Vancouver, B. C.
May 18, 1989.

THE REGISTRAR: In the Supreme Court of British Columbia, Vancouver, this Thursday, May 18, 1989. Calling the matter of Delgamuukw versus Her Majesty the Queen, at bar.

THE COURT: Mr. Adams?

MS. MANDELL: My lord, before Mr. Adams commences I wanted to hand up to your lordship the two documents which were referred to yesterday for your lordship's viewing.

THE COURT: Thank you.

MR. WILLMS: Sorry, there were three, I wonder if my friend could indicate which two of the three she is handing up?

MS. MANDELL: The Smoldering Ambers and the document entitled Economy and Society on the Upper Skeena. With respect to the 1986 draft, there are a large body of documents which are all drafts which are in one box, and neither the witness nor myself could identify. Might have been the 1986 one. So in this respect I would say that your lordship, if you could make a decision with respect to these which are the final documents prepared in this respect, if these are admissible, then certainly the drafts would be too. And the problem would be dealt with then in that way.

THE COURT: They would both have to be produced?

MS. MANDELL: All of them, yes.

THE COURT: All of them. All right. Thank you. There are two documents here are there?

THE REGISTRAR: I have the other one, my lord.

MR. WILLMS: I didn't -- the three that I remember from yesterday, my lord, were This Is Our Land is one of them, Smoldering Embers is the other and the third was Galois, 1986. The one that my friend just mentioned Economy or something or other, I don't remember that one.

THE COURT: What is the -- I have Smoldering Embers.

THE REGISTRAR: This is The Economy of Society, 1850 to 1900.

MS. MANDELL: That's just another title of the document.

THE REGISTRAR: There is Galois, 1986.

MS. MANDELL: This is the document which is This Is Our Land.

THE COURT: You think that Economy and Society, The Upper Skeena, is the --

MS. MANDELL: The same document as This Is Our Land.

THE COURT: -- as This Is Our Land. I am not sure how anyone knows that but -- all right. I suppose what I am going to be doing is making a comparison in part with

what is now Exhibit 1034 for identification, and determine also whether it is reasonable to contend that these two documents are draft arguments.

MR. WILLMS: The one other point, my lord, and this is from Dr. Galois's evidence yesterday, if your lordship just wishes to make a note that starting at page 16371 of yesterday's evidence, I am in the --

THE COURT: I am sorry. Yes.

MR. WILLMS: And I don't know if your lordship has the transcript, but --

THE COURT: What page?

MR. WILLMS: Page 16371, down at line -- starting at line 42, that is where I started asking questions about This Is Our Land and Smoldering Embers and that carries on over to the next page all the way down to line 35. And I submit that that is also a relevant consideration for your lordship when looking at those two documents to start with.

MS. MANDELL: My lord, if I could just add that the documents which we have handed up to you, we say are part of solicitors' brief because they are in preparation for the argument. They are not the argument itself. And I wanted to make sure your lordship was aware of that.

THE COURT: But as I recall, the argument yesterday, Dr. Daly referred to these three documents as sources upon which he relied.

MS. MANDELL: Dr. Daly -- and/or Dr. Brody both indicated in 1986 there was a draft of material which they referred to and they attributed it to Dr. Galois. We have advised your lordship that with respect to the passages which they have referred to, those materials are contained in the summary which is before your lordship. Further, there was drafts of the two documents which have been handed up to your lordship, which also contain the same material.

THE COURT: They referred to Galois or Galois, 1986?

MS. MANDELL: Referred to Galois, 1986.

THE COURT: All right.

MS. MANDELL: And you will see if you review those summaries, my lord, it refers to certain of the instances of protest, which Dr. Galois will be referring the documents to your lordship today and will be the subject of his evidence.

THE COURT: You haven't handed me anything that is Galois, 1986?

MS. MANDELL: This is immersed in drafts and we could not separate out a document entitled Galois, 1986 to be certain that that was the one that was viewed by the

two other witnesses.
THE COURT: These two documents were also referred to or mentioned by Dr. Galois in the application for funding?
MS. MANDELL: This is on Exhibit 1032 and it was part of material which he indicated in that exhibit had been written by him.
THE COURT: What's happened here? I have Mr. Willms's gray book, I have --
MS. MANDELL: It would be in the plaintiffs' material.
THE COURT: Yes. These were the plaintiffs' materials. That's right.
MS. MANDELL: Yes. And it was page --
THE COURT: Yes, I have it. All right. Thank you.
MR. WILLMS: And now, my lord, I don't want to unduly complicate things, I do agree with my friend that if your lordship should find that these are not privileged, then 1986 would not be privileged either.
THE COURT: What Ms. Mandell says about that is that if these are not privileged, then none of the drafts that she has are privileged. She can't identify 1986.
MR. WILLMS: No, and to that extent on the privilege aspect, I agree with my friend, except for a separate argument on Galois, 1986, because your lordship will recall that earlier in the trial, during the marking of documents which formed the background for Dr. Daly's report, we first came up on why are these documents going in, and your lordship said at that time that it didn't seem to be important whether they were marked or not, any party could use them in argument, whether they were marked as exhibits or not. A reference to a report. Now, obviously --
THE COURT: When I said they could use them, I meant they could adopt them and phrase their argument in the terms of the document.
MR. WILLMS: In terms of the document. Of course if we don't have that document, we can't make that argument. So that's a separate issue, in my submission, my lord. I don't know whether or not my friends have canvassed Dr. Daly or Mr. Brody to see if they still have a copy of what they called Galois, 1986. Maybe they do.
THE COURT: All right. Thank you. Mr. Adams?

EXAMINATION IN CHIEF BY MR. ADAMS: (continued)

MR. ADAMS: My lord, I have to hand up the table of contents to the document binders.

THE COURT: Yes. Should it go in volume one?
MR. ADAMS: That might be the most convenient place for it. Your lordship will see that it refers to page numbers of the report and when it does it's talking about the lists of sources that appear in the report after each of the two sections and in the appendices. And then when it refers down the left-hand side to numbers, it's talking about the tab numbers within the binders. And the footnotes are also identified by numbers.
THE COURT: On page one, I take it there is nothing in the first 23 pages of the report that has any footnotes?
MR. ADAMS: No.
THE COURT: Except the identification of the footnote to follow and then footnote one appears at page 23.
MR. ADAMS: No, that's not correct, my lord. Perhaps if you go to page 23 in the report you will see beginning there a list of sources.
THE COURT: Yes.
MR. ADAMS: The numbers there are the footnote numbers which appear in the text. And for all of part one, over to page 28, there is a list of sources.
THE COURT: Yes.
MR. ADAMS: Those pages of sources, 23 through 28, are noted on the table of contents beginning on page one and finishing -- yes.
THE COURT: Yes. All right.
MR. ADAMS: And finishing on page 13. Then after part two of the report, beginning at page 104, there is a further list of sources, and a new series of footnotes.
THE COURT: All right.
MR. ADAMS: Because that seemed unmanageable, what we have done is assigned a number and therefore a tab to each one of the sources as it's first cited. And our proposal, my lord, is that the entire series of binders be given a number and that the tabs within it be tabs within that exhibit number.
THE COURT: All right. What's the next exhibit number, 1035?
THE REGISTRAR: 1035, my lord.

(EXHIBIT 1035: EIGHT VOLUMES, TABS 1-580, SOURCE DOCUMENTS FOR OPINION REPORT OF ROBERT GALOIS)

THE COURT: So that will be eight volumes of source documents subject, of course, to all just exceptions. So that your friends are free to -- your friends aren't caught

by everything that's in here, if it turns out that something is, for one reason or another, found to be inadmissible.

MR. ADAMS: I would prefer from my own point of view, that, because as I discussed with my friend, Mr. Willms, this morning, there are some exceptions to the one tab, one item, the plan, and some things have been exhibited and they have not been re-copied. Some things were cited several times and in constructing the list of sources, I overlooked the first citation so a new number has been assigned and those have all been grouped under the first tab. A few things, none of which I won't be referring to in the course of this witness's evidence, were not available for one reason or another, in time to put the binder together.

THE COURT: I am going to refer to these by number 1035 Roman tab I to VIII and then the tab number.

MR. ADAMS: That would be convenient, my lord.

Q Dr. Galois, I wonder if you could turn to page 15 of your opinion report. And you say there, three lines from the top, with respect to the period between 1870 and 1897, "Salmon remained the crucial food source. It was supplemented by country (or bush) meats, including caribou and mountain goat and a variety of berries. A considerable range of fur-bearing animals (notably marten and beaver but including bear, muskrat, mink, fisher, lynx, otter and fox) were taken for commercial purposes. Some were also used for food."

And then towards the bottom of your text on page 15, you carry on: "The system of resource ownership regulated access to fishing sites, hunting territories and berry grounds." You go on to refer to a statement of the chiefs and principal men of Kitwanga, to which I will come, but I want to ask you, first, do those two statements as to the food resources and as to the existence of a system of resource ownership, represent your opinion?

A Yes.

Q And I want to take you by way of illustrating that to tab 58 in volume two, and that's the first of the two Poudrier Reports. And at page 370 of tab 58 -- do you have that, my lord?

THE COURT: Yes.

MR. ADAMS:

Q There is a heading towards the middle of the page, the Indians and there he says:

"The Indians of the coast by Gardiner's Inlet seem to belong to a tribe closely allied to those of Bella Coola. Near the Skeena they belong to the Tsimshian Nation. Above Kitselas Canyon, the country is held by the Ski-tigans or Kig-ticseans. They are closely related to the Tsimshian. On the Nass another tribe called the Nascars seem to be close relations to the two first. The mouth of the Watson-Kwa at Hazelton is occupied by a few families of Carriers. They are a subdivision of the great tribe of Tinehs. A few families of the same stock Nahanees or Sekani visit the extreme upper water of both the Skeena and Nass. A large numbers of these Indians come to the seashore to work at the canneries. Those who do not can make an easy living by fishing the salmon, which is their chief article of food being very abundant. Some of them have the bad habit of closing small streams to catch that fish. It is a ruinous custom and it is a good thing the fisheries inspector is now teaching them to do better. The crop of small fruit, extremely abundant in the interior, brings them a good article of food which they preserve well for winter use. A few plants are also largely used by them as food. Trout, (char) are also plentiful in every stream. The blacktail deer, so common on the coast, is replaced in the interior by the caribou and at the head of the big rivers and nearing the Stikine by the moose. Fur trapping is the leading occupation of those Indians who do not come to the sea in the summer."

And then again at tab 59, which is the second Poudrier report, and the reference is page 455, my lord, not all the page numbers are reproduced clearly but it's the second page of tab 59.

THE COURT: 499?

MR. ADAMS: Tab 59, page 455, the second page of the tab. And there almost halfway down, in the paragraph beginning "The Indians have a reserve", there is a sentence beginning "the chief feature", and it says:

"The chief feature of importance to the Indians respecting the situation of Moricetown is the extraordinary facility with which they can catch their supply of salmon. The fish are secured by

the means of dip nets placed where the water rushes through the narrow canyon. Large quantities of lampreys are also caught here. They are of a very large size, nearly double in weight the eastern or the European lamprey and the Indians dry and smoke a large supply of them."

Goes on to refer to gardens and then in the next paragraph:

"The abundance of berries of different kinds and the proximity of the mountains where caribou, mountain goat and bears are plentiful render this spot one of the most desirable homes for the Indians, and as a rule they live in abundance, are well-dressed and are very good customers for the merchants of Hazelton."

Then if you turn over to page 459 of the same tab, and that, my lord, is not readable, but if you count the -- the one we started from was 455 and go over four more pages, to the heading "timber", it's one page from the back.

THE COURT: Yes.

MR. ADAMS: And there it says just above the heading geology of the Bulkley Valley:

"Berries like the service berry, bush cranberries, wild cherries of three species, wild currants, gooseberries, strawberries, raspberries are almost prolific and plentiful. In no part of British Columbia have I found such a variety and quantity of these. To the Indians they are a staple food and to the settlers later on they should prove most welcome."

And I simply ask you, are those examples of the material on which you rely in coming to your opinion --

A Yes.

Q -- that appears at the top of page 15 and to which I have already referred you?

A Yes.

Q Now, as to the statement further down on page 15 that I have also referred to, a system of resource

ownership regulating access to fishing sites, hunting territories and berry grounds, let's me take you to tab 105, which is in volume three, my lord.

THE REGISTRAR: I believe it's just number five.

THE COURT: Volume three did you say?

MR. ADAMS: Yes, and once we hit the hundreds, I understand the hundredth tab is numbered but after that it's assumed we can figure it out. So it will be tab 5 in volume three.

THE COURT: Yes.

MR. ADAMS:

Q And that's something you cite, Dr. Galois, as a return to an order. I wonder if you could first just explain what this document is as a whole?

A Well, it's the publication by the provincial government in the -- what are known as the British Columbia Sessional Papers, of correspondence pertaining to the sort of, well, troubles they are described in the title there, that occurred on the northwest coast pertaining to the Indian peoples of that region in 1884.

Q And the very first item there is a reproduction of a letter that appears to have been signed by Robert Tomlinson, directed to the chief commissioner of land and works. Who was Robert Tomlinson?

A Robert Tomlinson was a church missionary society missionary, he came out from Ireland, I think in about the mid-1860s, originally I believe worked for Duncan and then established the mission to the Nisga'a at Kincolith. In the early 1870s he made several journeys up the Skeena where he encountered the Gitksan. And in 1879, he established the first mission in Gitksan territory at a location called Ankatlas, A-N-K-A-T-L-A-S. There are, of course, a number of different spellings of that. But it was located at a point about seven miles above Kispiox.

Q And are you aware who the chief commissioner of lands and works was in 1884?

A I can't remember who the chief commissioner of lands and works was.

Q Okay. In that letter, on the first page, that is on page 27 of the return, Mr. Tomlinson says, this in the second paragraph -- and let me ask you first, in the second line he is referring to the Skeena River District, and then goes on:

"The facts are as follows: From time immemorial the several families among these tribes have claimed the sole right to hunt in particular spots, to the exclusion of all others, whether members of their own tribe or not and any attempt at trespassing was punished by the destruction of the trespassers property or more frequently by an attack on his person. Several persons in years gone by have lost their lives in this way."

Then he goes on to refer to a specific incident at Metlakatla and a trial and then right in the middle of the page, he says, with reference to that trial, and Mr. McKay:

"Before deciding it he consulted the then Attorney-General and received instructions to uphold the Indian law and punish the offender. After this peace reigned and there were no attempts at trespassing until the advent of P. O'Reilly, Esquire, Dominion Reserve Commissioner, in the autumn of 1882. The question was brought before him and he gave it as his opinion that beyond any rights the Indians would have in the reserves he was then marking out, the government would not acknowledge any right to that exclusive use of any land that as a hunting ground by any family or any tribe and would not punish any trespassers on those grounds."

And carrying on:

"This opinion was given late in the autumn and Mr. O'Reilly had no opportunity of visiting the up country tribes but as soon as they learned the decision he had given they were much suprised and hurt. The matter formed the chief topic of conversation among them and when the chiefs of the different tribes met they consulted as to what they had best do under the circumstances. The result of their decision is best expressed in the words of one of the chiefs who gave utterance to them in a large meeting where they were afterwards fully approved. He spoke as follows."

And the letter is quoting here:

"'The exclusive right to claim to hunt, fish or gather fruit in any particular place is a hereditary right enjoyed by us before the white man came among us. It is a right most rigoursly upheld by all our tribes without exception. Our hunting and fruit gathering are the principal sources of our livlihood. Do away with them and we are at the mercy of the white man. We are prepared to maintain them in our own way or we are willing for the government to maintain them for us by law but we will not permit them to be interfered with.'"

And then if you could go over to page 283 of the return, at tab 305. My lord, it's possible to see the 82 of 282, and that will show you where 283 is.

THE COURT: Where is --

MR. ADAMS: It's four pages into the document. And there is a heading on the right hand side.

THE COURT: What page do you want me to look at, 283?

MR. ADAMS: Yes. And it says the Reverend Mr. Tomlinson to the Provincial Secretary, dated October 20, 1884 at Metlakatla. And there he says:

"I have the honour to inform you that in accordance the request contained in yours of the 29th of February last, I have made known the contents of that letter to the Indians interested, and I beg respectfully to transmit herewith for the consideration of the government a document containing the petition of all the chiefs and principal men of the Kitwanga Village situated on the Skeena River about 120 miles from the mouth. In presenting the petition I would respectfully ask permission to make a few explanations that may tend to make the matter more clear to the government and perhaps indirectly aid them in coming to a decision. In your letter these words occur: 'Whatever hunting or fruit gathering rights they may claim the government will not disturb, at least until such time as the lands are required'. Now this paragraph appears to the Indian mind so indefinite as to be unintelligible, especially as some of them are being disturbed and those disturbing them claim they are supported by the government."

And then over the page, still within that same letter, five lines from the top, six lines from the top, he says:

"At the same time you ought to understand that they look upon this question as one of vital moment, that they feel they can rely on the support of all the surrounding tribes and they seem to determined to have the question settled and will not be satisfied with any postponement."

Then finally nine lines from bottom of the letter there is the sentence beginning "one thing":

"One thing which has militated greatly against my efforts in this direction hitherto is that while the Indians can point to some among them who are being interfered with, I cannot show that the government has made any attempt to protect their rights. I would therefore respectfully point out to the government the urgent need there is for taking the matter under consideration. I would remind them that there is still an opportunity to treat with the Indians who, while determined to have the matter settled, are not yet excited or exasperated."

And then I want to take you, Dr. Galois, to tab 103 in the same volume -- I am sorry, it's -- it may be 303. It is 303, my lord, so it's in the same volume.

THE COURT: I am sorry, in the same volume?

MR. ADAMS: It's tab 3 of volume.

THE COURT: That would be 103.

MR. ADAMS: I am sorry, 103. And there appears there, first of all, a copy of a handwritten letter apparently signed by Duncan and dated the 24th of September, 1877.

A I don't have that.

MR. ADAMS:

Q Do you have anything in tab 103?

THE COURT: Volume three, 103.

MR. ADAMS: And the large numbers at the top, there is the handwritten version, and then in front of that, at least in my book, there is a type script of what appears to be the same letter, perhaps of a portion of the letter.

Q Are you aware of where and by whom the type script was prepared?
A I prepared that.
Q And is this a portion of the letter that appears following?
A It's -- yes, yes.
Q All right. And Duncan says in this letter:

> "Re a complaint of a number of Indians of the Kinaheoiks tribe against one Melumk Upa of the Kitankh tribe. The complaint was that the said Melumk Upa, though of another tribe, persisted in hunting on the Kinaheoiks hunting ground, which is contrary to the Indian law, as each tribe has their own. Melumk Upa in defence pleaded that white men have now abrogated all the Indian laws and therefore he claimed the right of hunting without regard to Indian restriction. In the interests of peace in so remote a part of the province I decided to sustain the ancient Indian law and therefore I forbade Melumk Upa from trespassing on the Kinaheoik privileges. As I learn it is Melumk Upa's intention to disregard my order I desire for my future guidance most respectfully to submit the following question for your decision, whether until the Dominion and Provincial Governments have settled the Indian land question I am to continue to uphold the Indian law in the Skeena River district, which regulates the tribal rights of Indians to certain than hunting grounds or is indiscriminate hunting by the Indians now to be permitted here?"

If I could ask you to go over to the next tab, 104.
THE COURT: Duncan again was who, please?
A William Duncan was the church missionary society missionary who established Metlakatla. At this point I believe he was also serving as a J. P.
THE COURT: Thank you. And then where Mr. Adams?
MR. ADAMS: To the next tab, my lord, 104. And this appears to be a handwritten letter again with a type script of a portion of it, from Elliott, Attorney-General, to William Duncan. And there the Attorney-General says:

> "In reply to your letter of the 24th ultimo, I may say that I agree with you that until the Dominion and Provincial Governments have settled the

Indian land question it would be well to uphold the Indian law in the Skeena River District, which regulates the tribal rights of Indians to certain hunting grounds."

And then I want to take you to a further passage in tab 105, which is a return to an order, and it's at page -- I am sorry, we have already been there.

To tab 108. Now, my lord, within tab 108, this is one of the complications, there are three documents and they are designated on the source list as 108, 108 (a) and 108(b), but they are not separately tabbed. And 108(a) and (b) are DIA annual records for 1899 and 1900 respectively. And the first of them should have handwritten in the middle, B. G. 108(a) and at the top it says 63 Victoria, 1900.

THE COURT: Sessional Paper number 14?

MR. ADAMS: Yes. And it then lists Kispiox Band and Kisgegas Band and so on. The first two pages are an extract from that DIA report and designated 108(a) and the following page has written on it 108(b) and says 64 Victoria, 1901, Sessional Paper number 27 at the top.

Q I just want to refer you, Dr. Galois, to some passages out of those two DIA reports. Under the heading of the Kispiox Band, and up on the right-hand side with the sub heading resources, it says:

"Among the resources of this reserve are fishing for salmon on both rivers, hunting and trapping. There is also an abundant supply of berries."

And then under the heading Kisgegas Band on the right hand side of the page and down under resources, it says:

"The resources of this band are catching salmon, especially in the canyon below the village, hunting and trapping. This band's hunting and trapping grounds extend far beyond the headwaters of the Skeena."

Then over the page under the heading of Kuldo Village, and the sub heading resources, about the middle of the page, it says:

"The river furnishes an abundant supply of salmon. The large hunting and trapping grounds are giving large returns to the few Indians here in pursuit of game and fur. Also the berry grounds give especially large yields."

Then under occupations immediately following:

"This band depends on fishing, hunting and trapping. The women gather the wild berry crop and by drying preserve it for winter use."

Over the page again, this time in the 1900 report, again for the Kispiox Bands under resources, in the middle of the left-hand side:

"The salmon fishing, hunting and trapping are the principal resources of these Indians."

And the Kisgegas band, now up on the right-hand side under resources:

"The resources of this band are catching salmon especially in the canyon below the village. Hunting and trapping. This band's hunting and trapping grounds extend far beyond the headwaters of the Skeena and to Bear Lake, also to Stikine."

And under occupations it says:

"Very few of these people go to the coast to work. They mostly depend on hunting and trapping and till their potato patches. The women, accompanied by their children, gather wild berries and dry them for winter's use."

Under Kuldo on the same page under resources:

"This river furnishes a plentiful supply of salmon. The large hunting and trapping grounds are giving good returns to the few Indians. Also the berry grounds give an especially large yield."

And under occupations:

"Salmon fishing, hunting and trapping are the main

occupations of these Indians. Increased attention is also being paid to potato growing."

Are you aware of who the author of those reports would have been?

A They are the annual reports which were sent in to the DIA by R. E. Loring, who was the Indian Agent for the Babine Indian Agency from 1889 onwards until 1920.

Q I want to refer you to another document, apparently authored by Indian Agent Loring, and that's to be found at tab 99, that's in volume two, my lord. I think, my lord, the first four pages of that will be almost completely illegible and then there is supposed to be a substituted clearer copy.

THE COURT: Sorry, turning to page 945?

MR. ADAMS: That's correct, my lord.

THE COURT: I have serious misgivings about my ability to read this.

MR. ADAMS: Well, my lord, I hope that I can overcome those, because I have some crib notes for it. But to locate you where on the actual document I am beginning, on the first page, halfway down there is a paragraph beginning with a large E and every family.

THE COURT: Yes.

MR. ADAMS: That's what I am going to start reading.

"Every family of the Kitihseen Indians on the Skeena, boast of having one or more fisheries, which exist in eddies, back of projecting points of rock on the river. Again, the fisheries used in common are the perpendicular sides or nearly so of all the canyons on the river. As regards the first, a large dip net of interwoven willow reeds to an oval-shaped frame terminating in a handle is usual. Its receptical is in form like the longer half of a pear cut longitudinally. It is handled from a platform fastened with ropes of twisted cedar bark fibre into crevasses."

A Yes.

MR. ADAMS: My lord, I wonder, with my friends' agreement, what I have are the handwritten, is the handwritten transcription of the witness and perhaps I can get him to read his own writing better than I am managing to do.

A I don't have at the present time copies of this.

THE COURT: All right.

MR. ADAMS: Perhaps I could ask you to pick up where I ground to

a halt, Dr. Galois.
THE WITNESS:
"Crevasses or on to points of rock. The vibrations of the handler of the net indicate approximately the amount of fish therein. In respect to the second, the salmon are gaffed, the gaff attached to a long, well-seasoned slender pole is let down into the seething and foaming waters and is passed down with the current. The narrow confines of the canyon cause a large spread of salmon converge into a dense mass, there being little probability of missing one. The vibrations..."
And then I can't read the next word in the original.
Q Received?
A I don't have --
THE COURT: Received through the medium of the slender pole?
THE WITNESS: Right.

"Indicate the salmon fastened. On the salmon becoming hooked of its own weight and resistance, the gaff is caused to be detached from the pole. The intermediate connection of both to each other consists of braided pieces of sinew of about six to eight inches in length. The salmon are drawn up to the platform suspended in like manner as before mentioned but at greater height and, as it were, in a compromise of its intents and that of an eyry and are killed with the blow of a short club and kept nicely arranged thereon. Thence the fish are packed in cedar bark blankets by women and girls on a continuous line of notched sticks in almost perpendicular position, frequently at distances of 40 feet or more to the top of the bank whereupon the smoke and curing houses are situated. One of the latter in many cases suffices for several families as co-owners, whereas one being in the possession of a single family, some is readily shared with those less fortunate than any and either respect. As in regards to the conveying the salmon from a platform to the top I advocated the use of a windlass where circumstances would allow. The fisheries pertaining to eddies, each with one or more curing houses..."

And I couldn't read the next word,

"...therewith and apportioned to the Indians by the Indian Reserve Commissioner begin about seven miles below of here, down the Skeena and in the following order respectively with names translated, belonging to both of the Kitse-guglas (new and old) the mother of pearl on the left bank of the Skeena River. The goat. Ditto."

Which means on the left bank of the Skeena River.

"The wasp..."

I think, that was difficult to read,

"On the left bank of the Skeena River below Kitse-gukla. The ant on the left bank of the Skeena below Kitse-gukla. The crow's roost, both banks below Kitse-gukla. Phlim's, right bank below Kitse-gukla. Splashing riffle, right bank below Kitse-gukla. Death rapids, right bank opposite Kitse-gukla reserve", I think, or new, I am not sure.
"The wild carrot below right bank below old Kitse-gukla. The trap, right bank belonging to Kit-wan-ga. The Land Otter on the right bank of the river and below Kit-wan-ga. The kid, on the right bank of the river and below Kit-wan-ga. The mosquito, on the left bank and below Kit-wan-ga. The whirlpool, both banks below Kit-wan-ga. The latter is the last of them belonging to Kit-ksuns down the river, thence the fisheries Tsimp-sians begin. No surveys have been made of the above mentioned, hence I can not herewith furnish a more detailed description of each. From the seven miles below of here mentioned above, no fisheries have as yet been assigned to the Indians to within about 72 miles to the north of here up the Skeena, i.e. to the Village of Kis-ge-gas, (On the Babine River). Three of the most principal fishing centres in the latter direction ought to be by all means apportioned to the Indians, to wit, one, the little canyon three miles above Hazelton, both banks of the Skeena. Two, the canyons of Ksun, 23 miles above Hazelton, both banks of the Skeena. Three, the canyon of Kis-ge-gas, about

72 miles on both banks of the Babine River and four miles above its confluence to the Skeena. The fishery regulations pertaining as to specified times regulating the canneries of the coast are here not strictly observed. The catching of the main fish supply for the winter's use is limited to about the same period. Some fish are caught by the Indians of the Skeena in the spring and fall, less during the winter there, but in its large tributaries, with nets under the ice (vide my monthly report November 30th '97, third page) and this in way of fresh fish for change of food now and then in the smoked article, having no other reserve means of subsistence. From the best information at my disposal I cannot discover that the Indians have any reason for complaint in regard to their existing privileges. The only complaint being, since removed, have been the fishing with nets of white man and Tsimshian Indians for cannery supplies at a narrow tidewater about 35 miles above the mouth of the river, which received a check after bringing the matter to the notice of the department in my letter of March 7, '96, (second last paragraph), a monthly report of March 31-96 (third last paragraph).

The fisheries apportioned to the Hoguel-get division of this agency, are those at the canyon of the Hoguel-get River three-and-a-half miles distant and in northeasterly direction comprising both sides thereof. The Hoguel-get Village is situated on the left bank of the river and the fisheries are included within its reserves. And again on the same river at Lach-al-sap, about 34 miles to the east of here at both sides of the canyon whereon that village is situate, the fisheries there are also confined within that reserve. The Indians of the interior are depending more on trapping and hunting and on fish to a lesser extent and derive them mostly at the discharge of the continuous chains of lakes by inserting traps of willowwork consisting of several successive conical baskets with well stretched mouths. The latter mode of fishing is also in practice at only one of the Kit-ksun villages in that of Kit-wan-cool (inland) on the lake of the like name on the trail to the Nass

from Kit-wan-ga, and old Kitse-gukla. The baskets being placed in no instances entirely obstruct the passage of the fish as some cannot be made efficient any distance from shore. I often chanced to see them filled and found fish going under, over and by the flanks of them and the general supposition that they shut off the passage is a matter whereof the imagination plays the greater and observation the lesser part in my opinion."

MR. ADAMS: Let me ask you two questions about that letter, towards the bottom of page four, which is the printed number, my lord, 951, there is a reference to a place, Lach-al-sap, and are you able to identify that location?

A That was a name that was used in the 1890s for Moricetown in the DIA reports.

Q Then on the final page, this is his page five and the printed 951, there was a reference to willow traps and the observation by Loring that the latter mode of fishing in effect is practised only at Kitwancool. Are you in a position out of your research and the documents to comment on that statement?

A I think Loring was in error on that point. One must remember this is a huge agency that he was in charge of, it's an impossible task in many ways. It seems extremely unlikely to me that he could have visited all of the fishing sites within that agency. And I place that besides another document that I read, which indicated that Robert Tomlinson, at the mission at Kincolith, which was the mouth of the Nass River in Nishga territory, noted that he hired two -- a Gitksan couple to erect a weir as a fishery for the mission.

Q All right.

A What I take from that is that the Gitksan were familiar with that type of technology. And it suggests that the Nishga probably weren't.

Q May I ask you to look at tab 107, which is in volume three. That's a letter dated, as far as I am able to read, October 1st, 1889.

THE COURT: What's the date again?

MR. ADAMS: October the 1st, 1889, my lord.

THE COURT: All right.

MR. ADAMS:

Q Is that what you read at the top of the first page?

A Tab 107, yes.

Q And that's a letter from whom to whom?
A It's from Loring to Hamilton Moffitt, who is the acting superintendent of Indian affairs in British Columbia.
Q Can you look at the third page of that tab, actually the fourth page in my copy is a clearer copy, it has the number 3146 in the upper right hand corner, my lord, and it's the last page of the tab.

THE COURT: All right.

MR. ADAMS:

Q And I am going to ask you, first of all, is there a connection, to your knowledge, between the last page and the Loring to Moffitt letter?
A It was an enclosure in that letter.
Q Okay. And I wonder if you could read through the enclosure letter, that is, not the one from Loring but the clearer one that has at the top, 3146, 4[a] in square brackets.
A Do you want me to read them?
Q Please.
A It's headed Babine Agency, Hazelton, B. C., October the 2nd, '89.

"I, Get-dum-gal-doe, head chief of the Get-an-max tribe, make the following statement, viz: There is land belonging to me and my tribe on the lower delta near the confluence of the Skeena and Hoguel-get Rivers. This land mentioned belonged to us to times back as far as can be remembered. This land in question is part of our hunting, trapping, snaring and especially fishing grounds. The fish house is there on and has been there for many years back. All this has been taken up by people not belonging there. Houses are there on and more are being built. Those people came there to erect a school house..."

THE COURT: Is that school or gospel? I guess it's school.

A I think it's school.

"...as a pretense but turned the same into a trading establishment for the purpose of gain. I strictly protest against all these proceedings and appeal to the law to aid and protect me in this matter. Get-dum-gal-doe, his mark, witness, William Holland, interpreter, Margaret Loring. Respectfully submit, R. E. Loring, Indian Agent for Babine district."

MR. ADAMS:
Q Okay. Thank you. And the documents and passages that I have referred you to this morning, are those examples of the basis on which you conclude on page 15 of your opinion report, that "the system of resource ownership regulated access to fishing sites, hunting territories and berry grounds?"
A Yes.
Q Now, if you could go to tab 192, that's in volume four, and that's a letter that appears to be from Loring to -- it's written Losnell, L-O-S-N-E-L-L, and somebody has put in a G, to make take Gosnell, G-O-S-N-E-L-L.
A That's my correction.
Q This typed copy of the letter, is this the version that's in the archives?
A This is a copy that I obtained, I think at the Tribal Council archives, which was a copy of some -- what are known as the Loring papers which are deposited in the National Archives of Canada.
Q And this appears to be a sketched autobiography of Loring, and I don't want to confine you to that but I want to ask you if you could say something about who Loring was, what his background was?
THE COURT: Well, everybody knows he was born in Dresden and his christian name was Alfred, don't they?
MR. ADAMS:
Q I don't want to go into history, I want you to say whatever is significant in his previous background, when and how did he come to be Indian Agent?
A One thing I can add to that from consulting the 1891 census that is he identified himself as 37 years old, so I take that to mean he was born in 1854.
He came to -- his first visit to the Upper Skeena was as a provincial constable with a group of specials, who were sent to arrest Kamalmuk, a Kitwancool Indian, he was then the subsequent year appointed as the Indian Agent to the newly-created Babine Indian Agency. And as it indicates there, he arrived at Hazelton in August, 1889. Shortly thereafter he married the widow of Thomas Hankin, who had established the Hazelton Post in 1866 and had acted as a merchant in Hazelton from --
THE COURT: Sorry, established a post in what year?
A 1866, your honour, to '68. And then he was one of the first independent merchants at Hazelton from -- I forget whether it was 1870 or 1871, I think it was

1870 -- until his death in 1885.
Margaret Hankin was a half breed daughter of a Hudson's Bay employee and a Tsimshian woman.

THE COURT: I am sorry, his daughter Margaret was a --

A Margaret Hankin.

THE COURT: Because he married --

A He married a half breed Indian woman, who then, after Hankin died, married Loring and she acted as the interpreter for Loring and for the DIA until her death in 1910.

MR. ADAMS:

Q And is there evidence in the documents that you have examined in the course of preparing your opinion that indicates to you something about the attitude Loring took to his mandate as Indian Agent.

MR. WILLMS: My lord, I object to that. I realize that historical geographers can apparently give opinions on a wide range of topics but not on somebody's attitude, in my submission.

THE COURT: Well, I assume that the attitude can be discerned only from the documents, can't it?

A That's what I am relying on.

MR. ADAMS: That's how my question was phrased, my lord, and I am going to take the witness through a couple of documents.

THE COURT: All right.

MR. ADAMS:

Q Let me refer you, Dr. Galois, to tab 206 in volume four.

THE COURT: 206 will just be six again, won't it?

MR. ADAMS: Yes, this gets complicated but it's well into the volume.

THE COURT: All right. I am making all these notes, references beside page 15 of the report, is that the best place to put them?

MR. ADAMS: My lord, until we got to Loring, the references were all intended to go to the two passages on page 15 that I had first put to the witness, yes.

THE COURT: But when we got to Loring, volume four, tab 192, perhaps we should have gone somewhere else or is it just --

MR. ADAMS: I am just addressing Loring the first time he comes up as a source for this witness.

THE COURT: That's fine. Thank you. 206. I think I can read his writing.

MR. ADAMS:

Q Well let me ask you first of all, Dr. Galois, is this

his writing?

A I think it's a copy. It says copy on the top left hand corner. Certainly different from the majority of ones of his that I have received. It's in a different file. His notebooks are all R. G. 10, vol. 1583 to 1590.

Q All right. I wonder if you could just look at that, beginning at the first paragraph on the first page, where he says:

"I must apprise the department of the results after having had a council with the Kit-mu-max tribe on the 5th Inst. The feeling amongst them I found to be in the highest degree in favour of the law and regulations laid down in my instructions. They conceded to everything, even to giving up the potlatch, but the speaking of an Indian by the name of Lewis employed by Capt. Fitzstubs, S. M. --"

THE WITNESS: Stipendiary magistrate.

"...as constable, turned the scale in opposition to the abolishing of their old customs."

And over on the second page, in the second full paragraph:

"I assembled the tribe in council was eagerly listened to as the presence of my wife inspired them with confidence. Despite the alarm given they consented to send their children to school, stop eating dogs and everything else mentioned but to give up the potlatch they could not as they were advised by Capt. Fitzstubs, constable, that the law had no power to punish it as an offence and that they could go on as they had been doing."

And then the bottom paragraph of page 2, at the very bottom it begins:

"There is a very rich soil about Hazelton, Hagwilget and Kispiox. To encourage the Indians and inspire them with confidence could be greatly

assisted by helping them in tilling of their land."

And then he goes on to say that he promised to ask for ploughs.

And then let me take you next in this connection to tab 211 in the same volume -- do you have a document in that tab, my lord?

THE COURT: Yes.

MR. ADAMS: I will provide my friends with a copy, my lord, there is only a sentence out of here I want to refer the witness to.

THE COURT: All right.

MR. ADAMS:

Q This is your type script, is it, Dr. Galois, at tab 211?

A Am I looking at the right one?

THE COURT: It's page 27.

A 210 I have got. Sorry. 211 again, right.

MR. ADAMS:

Q Is that a type script that you made?

A This? No.

Q Where does that come from?

A It's an extract from the Loring papers in the Public Archives of Canada.

Q And it's dated then in January 19, 1894?

A Yes.

Q And is Loring writing to whom? Or can you tell?

A I am not sure. It looks -- what these are, your honour, are extracts of Loring's papers that Barbeau collected during one of his visits to the Upper Skeena and he just preserved segments of them. I am not -- I would assume that it would be to another Department of Indian Affairs official, quite whom I am not sure. It would either be in Victoria or in Ottawa.

MR. ADAMS: The archival reference, my lord, is given in the source list opposite item 211.

Q And there --

THE COURT: Well, I have read it anyway.

MR. ADAMS:

Q And I just want to refer you to the passage at the last half dozen lines about "the destruction by fire of ceremonial paraphernalia which still bound the inhabitants of two villages to the customs and ideas to pre-historic days and prevented them from entering into the spirit of full civilization."

On the basis of that material and the other material you have examined, are you in a position to

comment on Loring's view of his mandate as Indian Agent.

MR. WILLMS: My lord, I object to that opinion. I don't -- in my submission, this witness is not competent to give opinions like that. The documents are there, they say what Loring did, if someone else has some other documents created at the time but, first of all, it's beyond this witness's competence and Loring's attitude is irrelevant, in my submission, to any issue in this proceeding.

THE COURT: Well, I don't think that the documents I have been shown support or would entitle anyone to reach a conclusion about a person's attitudes. He made some comments but his attitude doesn't shine through these few documents, does it? Maybe there are others. But is there any reason why I can't reach the same conclusion that the witness may have if that's all he is looking at?

MR. ADAMS: Well, my lord, there is a very large volume of material authored by Loring that this witness relies on. Part of his methodology, in my submission, has -- and I am quite prepared to question him about this and I would seek to, has involved using that material in some fashion. He already explained with reference to one document how it is that he concludes that some of the details of the description of the fishing technology may be inaccurate for reasons that he gave. He has, in my submission, continually, in using this material, to come to an assessment of what he may rely on --

THE COURT: What good does it do to have Mr. Loring's views summarized? What issue does it go to? How does it advance the cause? He was -- he may have been terribly sympathetic to the Indians and all their problems and all their claims or he may have been totally against them in all their views. What difference would it make?

MR. ADAMS: In my submission, my lord, somebody who seeks to use the document that he authored needs to know something about that in order to assess the documents. This is the perpetual problem of whether the documents do or do not speak for themselves.

THE COURT: They speak for themselves but we can't hear them. That's the problem. I think that if the witness were to say -- and far be it from me to say what questions counsel should ask -- if the witness were to say, "I have collected together these documents in these books

that I think are significant and I think they are all authentic documents", can it be taken any further than that? At the time of argument counsel can say, from these documents, if you look at the ones that are set out in the following pages it's apparent that Mr. Loring had a certain attitude or I suggest that that's the view that you should reach, speaking at that moment in the position of counsel. And if I felt that it was a matter that I had to pursue I would have to look at the documents to which counsel directed my attention and decide whether counsel's submission is well-founded or not. But does it do any good for the witness to, having looked at the documents, to say he was a good, kindly, decent man or he was a terrible brute? It's a summary and it may be that it's a useful thing to do but it is objected to.

MR. ADAMS: Yes.

THE COURT: Perhaps we should take the morning adjournment and counsel can consider this and I would be glad to rule upon it if I have to. Thank you.

(PROCEEDINGS ADJOURNED FOR 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.

Wilf Roy
Official Reporter

(PROCEEDINGS RESUMED PURSUANT TO SHORT RECESS)

THE COURT: Mr. Adams.
MR. ADAMS: My lord, I'm not going to pursue for the moment the specific question about Indian Agent Loring. It may be that in some other document authored by him the issue will come up and my friend may object and we may have to deal with it at that time.
THE COURT: Yes.
MR. ADAMS: However, I'm afraid that doesn't keep us out of that soup for very long, because -- well, I'm coming to that shortly. The witness has an opinion and makes a broader statement in part two about white attitudes at large, and when I come to that I will have him, I hope, say something about why that matters to his field of enquiry, and perhaps we can come at the problem that way.
THE COURT: Yes.
MR. ADAMS:

Q Dr. Galois, could you go to page 20 of your opinion report, please.
A Yes.
Q And under heading "Conclusion" you there pose five questions, and under the heading concerning the nature of the white economy and society in the upper Skeena up to the end of the nineteenth-century you say, in the middle of page 20:

> "The white economy of the upper Skeena region before 1900 was based upon the extraction and transportation of resources."

And you say at the bottom of the page, and going over:

> "With a resident population of less than one hundred in the mid 1890's, whites depended upon Indian participation for the success of most economic activities."

Is that your opinion?
A Yes.
Q Okay. And under number two as to --
THE COURT: Population of less than one hundred is for the upper Skeena region?
A Yes.
THE COURT: And where do you start the upper Skeena?

A I would regard that as the area above Kitselas Canyon.
THE COURT: Thank you.
MR. ADAMS:
Q On page 21 under number two, as the processes of development of the white economy and society you say:

"The availability of resources, both within the region and adjacent areas brought whites to the upper Skeena. Furs were the initial, and an enduring attraction."

And then you refer to:

"The discoveries of placer gold provided important new stimuli. Gold rushes to Omineca and Cassiar had an impact upon the upper Skeena."

And finally you say:

"Improvements in transportation and geographical knowledge accompanied these mining developments."

Is that your opinion?
A Yes.
Q And under number three on page --
THE COURT: When do you say there were gold rushes at Omineca?
A The Omineca was 1870, 1871. Cassiar was 1873, '74. The rush to Cassiar was much larger than the one to Omineca, and endured somewhat longer, too. There was gold mining after this in those areas beyond the time of the initial rush.
THE COURT: Yes. All right.
MR. WILLMS: Perhaps we could have a date for Lorne Creek too, my lord.
A Lorne Creek is 1884. And there are returns for mining in Lorne Creek for the period 1884 to 1887. Those are, I believe, included in one of the appendices.
THE COURT: Yes, I read that somewhere yesterday.
A There's no information on mining production or employment in Lorne Creek apart from those four years.
THE COURT: Would you call the Lorne Creek a gold rush or just a discovery of gold?
A It was a brief flurry of activity, I guess, is the way I would describe it, your honour.
THE COURT: Thank you.

MR. ADAMS:

Q Under number three on page 21 -- I should say, my lord, that many of the details of these statements are in the report itself, and I'm simply trying to expedite things.

THE COURT: Oh, yes.

MR. ADAMS:

Q You ask what the features of the Gitksan and Wet'suwet'en society are described in the documentary record there. And there you're speaking, I take it, still of the last half of the nineteenth-century?

A Yes.

Q And you say:

> "Fish, game and berries were the basic components of Gitksan and Wet'suwet'en economies. An annual round, encompassing visits to the different resource sites, provided items for subsistence and trade."

You refer to eulachon grease and the grease trails, and then you say:

> "Access to resource sites was controlled through a system of territorial ownership."

And based on the documents that you've examined and listed as sources is that your opinion?

A Yes.

Q On top of page 22 under number four you ask what changes in Gitksan and Wet'suwet'en economy and society occurred during the second half of the nineteenth-century. You say:

> "The principal change in the economies of the Gitksan and Wet'suwet'en was the emergence of a non-traditional sector. The entry of whites into the upper Skeena region provided the Gitksan and Wet'suwet'en with a variety of new economic opportunities. Many - guiding, packing, canoeing - involved the use of traditional skills; some - mining were new. However, employment at the coastal salmon canneries (a mixture of new and traditional skills) was the major innovation of the period."

And based on the documents that you've examined and listed as sources is that your opinion?

A Yes.

Q Okay. And then under number five you ask what evidence is there --

THE COURT: I'm sorry. Just one more thing. When you say "the major innovation of that period", that period ends at 1900, but what is it, does it start at 1850?

A 1850 to 1897, I think.

THE COURT: The conclusion is one which reads up to the end of the nineteenth-century?

A Yes. It's basically the second half of the nineteenth-century is what I'm referring to.

THE COURT: It's really not the end of the nineteenth-century, it's really to 1897, isn't it?

A No, no, no. I'm just --

THE COURT: That is 1850 to 1900 then?

A Yes.

THE COURT: All right. Thank you.

MR. ADAMS: The difficulty arising, my lord, is because the report is in two parts. The first part which is an economic societal survey which covers the period 1850 to 1900.

THE COURT: All right.

MR. ADAMS: The part two, to which we're coming, is the protest material which covers 1850 to 1927.

THE COURT: Yes. All right. Thank you.

MR. ADAMS:

Q Dr. Galois, on page 22 under number five you ask what evidence of the continuity and persistence of the core elements of Gitksan and Wet'suwet'en economy and society during these years. And are you referring there to 1850 to 1900?

A Yes.

Q Okay. And you say that:

> "Non-traditional activities brought new opportunities and new wealth. They also posed challenges requiring adjustments in division of labour and the annual round. Nonetheless hunting, fishing and collecting remained major activities."

And you refer to your figure 1. You say:

> "Even in 1900 there were very few limitations upon Gitksan and Wet'suwet'en

> access to the resources of the upper Skeena - apart from those restrictions contained within their own cultural systems."
>
> You say:
>
> "Gitksan and Wet'suwet'en societies experienced the impact of old world diseases and old world religion during this period. The former produced a significant population decline and contributed, with economic processes, to some adjustments in the settlement patterns. Missionaries, together with DIA, sought to transform Gitksan and Wet'suwet'en cultures. Only limited success was achieved in this endeavor. Modifications in the form of a feast occurred but, notwithstanding missionary opposition and legal prohibition, the essential elements of the institution persisted."
>
> And finally you say:
>
> "The modifications in the economy and society of the Gitksan and Wet'suwet'en were the product of a process of flexible adaptation to changing circumstances and new opportunities. Although not the same as they had been in 1850, Gitksan and Wet'suwet'en societies remained distinctive and viable entities at the end of the century."
>
> Based on the documents you've examined and listed as sources is that your opinion?

A Yes.

MR. ADAMS: My lord, I'm going to go now to page 29, which is the beginning of part two of the opinion.

Q And first of all, Dr. Galois, you divide this and subdivide this period 1850 to 1927 in part two of your report. First of all, and on page 29, you identify a section A that's to deal with 1850 to 1888. Could you just explain why that period is chosen?

A 1889 was the date of the formation of the Babine Indian Agency, which seemed to me the important

dividing point in the relationships of the Indians of the upper Skeena to the white population, so I used that as a basic dividing line within the report.

Q Why did it seem important?

A Well, what it did was to bring in the -- the Department of Indian Affairs administrative apparatus. And part of that process, of course, was the appointment of Loring as an Indian agent stationed at Hazelton. There was no permanent representative of the department in the upper Skeena before that time.

Q And the second larger period that you identify is that from 1889 to 1927. What's the significance in your opinion of 1927?

A 1927 was marked by two developments, the first of which was the report of the special joint committee of the House and the Senate dealing with the claims of the allied tribes, and the second was an amendment to the Indian Act which prohibited Indians organizing and raising money to pursue title claims.

THE COURT: I'm sorry. Amendment of the Indian Act prohibiting the raising of monies?

A Yes. And I believe organizing, too. Those two developments occurred almost simultaneously.

THE COURT: And again -- what did you say again about the report of the special joint committee of the House and the Senate?

A That was -- it was a report with evidence which was from some hearings which were held in 1927 into the claims of the allied tribes of British Columbia. It was part of the process in which the Indians were attempting to --

THE COURT: Well, the claims were rejected?

A -- Oppose the implementation of the findings of the McKenna McBride Report.

THE COURT: Were the claims rejected?

A Yes, they were.

THE COURT: Okay. Thank you.

MR. ADAMS:

Q Dr. Galois, you called this second part of your report "Gitksan and Wet'suwet'en Protest Actions", and I wanted to ask you first what it is you understand by the term protest. Let's start there. What do you understand by that term?

MR. WILLMS: Perhaps the question should be what do you mean by that, not what do you understand it to mean. It's a word the witness uses.

MR. ADAMS: My lord, I don't see a distinction between my

question and my friend's suggestion so I'm happy to adopt his suggestion.

Q What do you mean when you use the word protest?

A I believe I defined it in the way that I use it in the report in the introduction.

Q Okay. Perhaps we could refer to that. On page three you say there, three-fifths of the way down:

> "The basic feature of protest is the component of opposition to the actions of some other party; in the present context, Gitksan and Wet'suwet'en opposition to white actions viewed as unacceptable."

And then over on page four, in the middle of the page, the second full paragraph, you say:

> "Between the two poles of violent conflict and persistence a multiplicity of other forms of protest actions are located."

And actually the sentence previous to that on page four:

> "The Gitksan and Wet'suwet'en responded in a number of ways to the white pressures but, in the end, the most effective tactic was simply to continue to operate the system. Such persistence, in the face of powerful white hostility, was an important dimension of protest."

And then you go on to the bottom of page four to refer to the structure of protest. And what do you understand as the structure of the protest that you're examining? Were you referring to the change over time and to the interaction between two sides referred to on the bottom of page four?

A Yeah. Yes, I'm referring to the way in which protests may change through the period that I was looking at, and also the process as an interaction between two different culture societies.

Q Okay. Top of page five in the first full sentence you say:

> "As the intrusive element it was white society which posed questions of the

> indigenous peoples."
>
> Is that the setting of the topic of protest, is that how that should be understood?

A Well, it's dealing with the fact that it was white society which were the newcomers, and that in important respects through the period it was the Gitksan and Wet'suwet'en forcing to respond to developments which were beyond their control. They were coming in from outside. And that there were links between what happened in the upper Skeena with other parts of the province and the country.

Q Now, given that understanding of the meaning of protest why is that of interest to an historical geographer?

A Well, one part of historical geography of North America is dealing with the whole process of the settlement of North America by -- I was going to say white society, but immigrants or newcomers, and part of that study, increasingly recently, has been concerned with the interaction between the newcomers and the indigenous peoples that they met. Such reactions were both peaceful and involved conflict.

Q And what do you as an historical geographer learn from an examination of the conflict?

A I am concerned with the nature of the interaction and what that does in part to the indigenous society and the -- and also, to some extent, the implications of that for the incoming groups as well, and its role, I guess, to the general regional geography of a particular area.

Q Let me ask you to look at page 30 of your opinion report.

MR. MACAULAY: Perhaps the witness can call our attention to the geographic element in the report this is taken from.

THE COURT: Perhaps you better ask him that in cross-examination, Mr. Macaulay.

MR. ADAMS:

Q In the first full paragraph on page 30 you say:

> "White British Columbians of this period tended to view Indians, including the Gitksan and Wet'suwet'en, as primitive and inescapably inferior."
>
> What I want to ask you about that is why does an observation of that kind have significance for your

understanding of protest activities?
MR. WILLMS: My lord, I object. This particular paragraph is supported by an extract from another professor somewhere, Robin Fisher, who has done his own research, I suppose, and -- but it does not appear to be supported by any historical record, at least in the footnotes.

The second objection is that this goes back to what I submitted earlier about somebody's attitude. What difference does it make to any claim advanced in this action whether an individual or a group of individuals had a nice attitude or a mean attitude or a good attitude or a bad attitude unless it is expressed in a document that is relevant to an issue in these proceedings. I really, in my submission, do not understand how good guy bad guy comes into any issue pleaded by my friends, or any issue pleaded by any of the defendants in this action.
THE COURT: Well, I've come to recognize that in this dichotomy that we're indulged in there are some very, very well entrenched cultural beliefs on both sides. The Indians think that the whites are universally -- have an undeserved superiority attitude, and the Indians seem to believe that all white people are insensitive and dishonest and grasping and inquisitive. They're probably both partly right and both probably partly wrong, but I don't think it is a matter that's gonna cause any trouble. These are realities that have come out of the evidence. It doesn't -- this isn't a suggestion I'm hearing today for the first time. I don't see any harm in the witness saying it again. Obviously he has a mind set about this thing -- this problem as he's expressing it. I'm going to have to consider it along with everything else, and it's certainly not a suggestion that's being made for the first time in this trial.
MR. WILLMS: No, my lord, but even to the extent that your lordship just mentioned, it would be one thing if this witness would say that the underlying attitude is essential to his opinion. Now, if that's something that is essential to his opinion --
THE COURT: I think it's essential for various reasons for the plaintiffs to have a witness say it. I think that's probably what we're here for this morning, and I don't see any harm in him saying it. It certainly doesn't surprise me. I wish it was an original thought, but it's not. I've heard it over and over again through

this trial. I'm struck by that as much as anything I've heard that the two sides obviously have a very low opinion of each other, or at least I haven't heard the defendant's evidence yet, but it certainly comes through to me very clearly that the Indians have a very, very low opinion of the white people. And they also have a very firm belief in the attitude the white people have towards them. It may be right, it might be wrong. I'm not sure it matters at all. I don't see any harm trying to suppress it if it were on grounds of relevancy. It may not be relevant. I think it's probably easier if we allow it to be said and get on with the case. I'm not going to affect your judgment, Mr. Adams. I've heard it over and over again, but I will hear it again.

MR. ADAMS: My lord, I might just say that -- I don't want to keep arguing where there's no argument, but the purpose in asking the question and going into this area is twofold. One is to see what this material -- how it figures in the methodology of this witness in particular. And the other is that, in my submission, this evidence of this nature may well go to the pleadings that I referred to yesterday as far as the voluntary giving up of rights. And, in my submission, there may be an argument at the end of the day that the attitude that was evidenced towards the plaintiffs' ancestors may bear on the question of how voluntary or otherwise the alleged giving up of rights was. But that's not where I'm going at the moment. At the moment my question was framed so as to ask the witness why in his enquiry as a scholar he needs to know about such things, if he does. And he gives the opinion, and that's how I started.

Q So to come around again, my question was something like why is it part of your enquiry to examine indications of white attitudes in the documents when you're concerned with protests?

A Well, I guess I have my two points on that. One is just establishing a general context of events and developments. The second point is -- concerns the development of conflicts and misunderstandings in regions such as the upper Skeena where if whites come in with those sorts of attitudes there would arise situations where there would be a disjuncture between those attitudes and the reality that they confronted, particularly in areas such as the upper Skeena where whites were few in number and in many ways dependent

upon the Indian population.

Q Let me ask you to look at tab 73 of volume 2.

THE COURT: Tab 72?

MR. ADAMS: 73, my lord.

THE COURT: Okay.

MR. ADAMS:

Q And that's something apparently authored by J. Turner-Turner entitled "Three Years' Hunting and Trapping in America and the Great Northwest", and I want to ask you to look at page 78, and let me ask you first who Mr. Turner-Turner is?

A He was an English gentleman, I guess, would be the best way to describe him, who was in North America indulging in a passion for big game hunting, and that brought him in, I think, 1886 to the upper Skeena region.

Q And in your examination of the documents you rely on as sources are you in a position to compare the attitude -- his view of Indians with prevailing attitudes in that period, as you mention in your opinion?

A Well, it's always dangerous to describe anything as typical, particularly when one's dealing with such a broad issue. I mean, his sorts of attitudes certainly are not uncommon, or were not uncommon in British Columbia at the time.

MR. ADAMS: And, my lord, I'd simply refer your lordship to the passage on page 78 beginning "I shortly confirmed the impression", and in particular in the middle of that passage 11 lines down beginning, "but I shortly learned".

THE COURT: M'hm.

MR. ADAMS:

> "But I shortly learned to value them at their true worth, the result of which valuation confirms me in the opinion, even when opposed to the most powerful argument conceivable in their favour, that the sooner every vestige of this almost inhuman being (whose very beastiality, thanks to his possession of the power of reason is intimitable by the most repulsive of animals) is wiped from the face of the earth, the greater the advantage to the remainder of its inhabitants."
>
> And so on in a similar vein.

And let me ask you also, Dr. Galois, to look at tab 146 in volume 3. That would be nearly at the end of volume 3, my lord.

THE COURT: Volume 3.

MR. ADAMS: Yes, my lord. Tab 146 is almost at the end of the volume.

THE COURT: Yes.

MR. ADAMS:

Q And, Dr. Galois, this is headed a "Report by J.W. Trutch on visit of HMS Sparrowhawk to Nass Harbour", and it's dated June 22nd, 1869. Perhaps you could first explain briefly who J.W. Trutch was, and what he was doing in Nass Harbour in 1869?

A At that time I believe he was Chief Commissioner of Lands and Works.

Q For?

A For the Colony of British Columbia. He had gone on HMS Sparrowhawk with Governor Seymour, I believe, in connection with a dispute and conflict that had arisen in 1868, and continued afterwards into 1869 between the Nishga and the coast Tsimshian.

Q And if you turn to page two in the third full paragraph beginning "and here", is this Mr. Trutch speaking?

A This is as I take it, yes.

Q In fact at the bottom of page three you'll find "I have the honour to be sir your obedient servant Joseph W. Trutch".

THE COURT: I'm sorry.

MR. ADAMS: At the bottom of page three, my lord.

THE COURT: You want me to look at paragraph 2 on page three?

MR. ADAMS: On page 2 -- paragraph 2 on page three. I just wanted to establish first whose voice this is.

THE COURT: Yes. All right.

MR. ADAMS:

Q And it says there:

> "And here it may be observed that however admirable the spirit and intention of suc Mission Stations."

That's having referred to Mr. Tomlinson.

> "And however valuable their humanizing influence in many cases on the surrounding savage tribes, tending directly to the discontinuance of barbarous customs such as

> have given rise to the outrages and disturbances now under reference, it is questionable how far the establishment of such posts should be encouraged in situations so remote from the centre of Government as Kincolith, while a field for missionary labour extending for Four Hundred miles southward along the Coast from Metlakatlah remains entirely unoccupied.
>
> It would appear mor judicious and advisable that missionary enterprise should radiate gradually from the centre of civilization instead of isolating itself at once in points like Kincolith on the utmost verge of the colony."

And I'd simply ask you, as I did with Mr. Turner-Turner, on your examination of the documents you list as sources, that contributes to your view expressed on page 30 as to the views of white British Columbians of Indians?

A I think those sorts of comments that are certainly fairly common, use of terms such as savage and barbarous and child-like, or those types of descriptions are certainly common in the documents of this period.

Q On page 31 of your opinion report you make reference about three-fifths of the way down -- well, half way down you say:

> "For their part, the Gitksan and Wet'suwet'en appear both to have welcomed the arrival of small numbers of whites and to have endeavored to control the terms of their entry."

And you say:

> "The difficulties encountered by the COT".

That is the Collins Overland Telegraph?

A Yes.

Q

> "Construction parties at Kispiox and Hagwilgate point towards such conclusions."

And then you refer in the footnote three to a publication identified as Morrison 1919, which is tab 17, my lord. And I'm not going to take you to that, I just note that that is Exhibit 969-18. And that was something that was put to Professor Ray in the course of his cross-examination.

THE COURT: 969-18.

MR. ADAMS: Yes, my lord. And the page reference is 25 through 27.

MR. MACAULAY: That's not quite right, my lord. Professor Ray mentioned it himself. It wasn't put to him.

MR. ADAMS: My lord, it's in as an exhibit is my understanding from reading the list of exhibits.

MR. MACAULAY: Yes. After he had referred to it himself.

THE COURT: Yes.

MR. MACAULAY: He called it up.

MR. ADAMS: Yes. Nothing turned on the characterization of how it got there, I just wanted to identify it.

THE REGISTRAR: The Attorney General cross-examination book of Arthur Ray.

THE COURT: Thank you.

MR. ADAMS:

Q Now, Dr. Galois, beginning on page 32 you give accounts and opinions about four sets of incidents, and they are listed about three-fifths of the way down page 32. And you say:

> "The incidents were: the burning of Kitsegukla in 1872; the Cassiar trail incidents of 1874; the murder of A.C. Youmans in 1884; and, the Skeena 'uprising' of 1888."

And we will come to each of those in turn. But my introductory question is just in the course of your enquiry why and how do you pick out incidents of that kind as worthy of your attention?

A How did I find out about them initially is -- my first information on those is obtained by use of the index to the newspapers of early British Columbia in the provincial archives.

Q I don't want to go back quite that far. What I want to ask is why pay attention to those -- to that set of incidents. You say just before that, "The most visible moments in this process were four dramatic confrontations".

A Well, one of sort of the features of the documentary

record is that incidents such as those that I've identified where there is some form of overt conflict attract considerable attention from the people who make records, so that one gets a lot of information not only about the events, but surrounding circumstances in a way that one doesn't get outside of those types of incidents.

Q Yeah. Let me ask you then to look at tab 134 in volume 3.

THE COURT: What is that again, please?

MR. ADAMS: 134, my lord, right in the middle of volume 3. And I'm not sure whether this is in order in everyone's book, because I have a note on it saying it may not be. The first thing I want to refer to has a number 206 in the upper right-hand corner.

THE COURT: Yes.

MR. ADAMS: It says "To His Honour The Lieutenant Governor".

THE COURT: Yes.

MR. ADAMS: Okay. And following that the third page in should be headed "To His Honour The Lieutenant Governor" and beginning "We the inhabitants". It's in the same handwriting and same sort of appearance, and then it has a long list of signatures and marks.

THE COURT: Okay.

MR. ADAMS:

Q And, Dr. Galois, this appears to be a covering letter from Thomas Hankin to the lieutenant governor and enclosing the document that follows it. Is that your understanding?

A Yes.

Q Okay. All right. Hankin says:

> "Sir: I have the honour to inform you that at the earnest request of the Indians, I wrote for them the enclosed petition; and the statements are I believe substantially true. At first they were hostile to the whites and refused to allow any canoes to pass their place, turning two back and threatening to fire if they attempted to proceed. I went down to their camp..."

And he goes on to say he forwarded the petition. In the petition itself, if I understand it, is an account of the incident that you refer to as the burning of Kitsegukla in 1872?

A Of the initial stages of the events.

Q Yes.
A Yes.
Q Okay. And it says in the middle of the first page, the one with to his honour at the top.

"Two canoes passing up the river with white men in them stopped and built a fire immediately above our village. The weather being very dry for sometime would have caused a fire to" --

THE COURT: Aspen -- no.
A Spread.
MR. ADAMS:

"Spread very quickly unless care were taken when leaving camp to see that it was safe. This was neglected by those camped there and the consequence was, the total - destruction of the village, 11 houses and 13 poles, also ten canoes. The poles are of great value to us. Our loss is very heavy, and thousands of dollars worth of property and years of time having been expended in the building of the houses and the erection of the poles, all of which was entirely destroyed in one hour by the fire."

And there then follows a list of signatures and following that a list of witnesses.

Q Do you accept that brief account of the incident?
A There are other documents that disagree on minor aspects. For example, the number of houses I think another document cites 12 and 12 poles. But, in essence, the main outline of events conforms reasonably well with other documents.
Q Okay. And what followed on from the fire that destroyed Kitsegukla?
A The initial reaction of the Indians at Kitsegukla was to prevent further parties of whites in canoes going up -- up the Skeena. This came to the attention of the authorities in Victoria when Constable Brown was stopped by the Indians at Kitsegukla and obliged to return downstream to Port Essington where he communicated with Victoria. He was subsequently summoned to Victoria to provide further information.
Q And are you aware what followed on from him providing further information?
A The next step in the process, I believe, was that the

lieutenant governor, who was Trutch by this time, consulted with William Duncan and then travelled on HMS Sparrowhawk up to Metlakatla. And then word was sent to the Indians of Kitsegukla to invite them down to a meeting with the lieutenant governor and a number of other officials, I can't remember exactly who was involved, which was held on board HMS Scout in early August. I can't remember the exact date offhand.

Q Of 1872?

A 1872, yes.

Q Okay. Could you look at tab 137 in volume 3, please. And could you explain what this document is?

A This is Trutch's account of the meeting with the Kitsegukla chiefs aboard HMS Scout.

Q Could I ask you to go -- this is not paginated. Eight pages from the back, my lord, which might be the quickest to get there. And the page begins "Indians only that I should be".

THE COURT: Yes.

MR. ADAMS:

Q And I wonder if -- in the middle of that page it begins "at Victoria"?

A Yes.

Q I wonder if you could read from there.

A

> "At Victoria I heard from Mr. Brown, Constable, who came down for the purpose to see me. All that he has now said and which you acknowledge to be true, the white people at Victoria were very angry towards you, but at the same time Mr. Brown told me of your village having been burned, of your having suffered much loss and that you supposed the fire was occasioned by white people passing up the river; therefore I was very desirous that you should not be treated summarily because I wanted to be just towards both you and the whites and came up here to hear what you have to say, and I have heard it.
>
> With us the law is not the will of the Chief on this earth like myself, but the will of God above founded on right and justice towards Indians and whites alike; and that when the whites resist or commit crime against the law they are inevitably punished, and it is so also with the Indians

in these days, whether here..." --

MR. ADAMS: Near.

A

"Near or far from Victoria that what you have done in resisting Mr. Brown, Constable, and in threatening his life and those of the whites with him (had it occurred amongst the Indians with whom white people had more intercourse and who understood the laws) I should at once have taken steps to punish you summarily, but as you were suffering under a great loss, labouring under much excitement at that loss I am going to treat you more as children than as grown up people. You say you repent having threatened the Constable and whites with him, therefore you will be forgiven, but you must remember when you return to your village that because you are some distance up the river you are not out of the reach of the law and that if you commit offences at whatever cost you will inevitably be punished by the law and at the same time of white -- if white people offend you they will likewise be punished. Now as to the fire it is very clear from your own admission that it was accidental. Fires occur both in Victoria and in the country. White people suffer heavy losses and sometimes..." --

MR. ADAMS: These.

A

"These fires are caused by the Indians in Victoria and..." --

THE COURT: In that event occasion.

A And in the woods I think that is.

THE COURT: In the woods.

MR. ADAMS: In the event and occasion much loss to the white people.

A

"And occasion much loss to white people. Had you informed me that white people had caused the fire intentionally I should have found out the whites and punished them

accordingly, but there is no punishment for either Indian or white man if a fire is caused by accident. There is even no proof that the fire which consumed your village was caused by white man, although I suppose it was, they not having thoroughly extinguished their fire when they really thought they had done so.

As to the amount of loss in property, I think it is time that all Indians should abandon the silly practice of giving their property away, which accounts for the great value placed by you on your houses. Nothing can be more foolish than this custom except that of tearing up your property and destroying it, and now that you have -- that you live among white people you should give up these follies.

Neither on the Skeena or elsewhere has anyone authority except those appointed by me for the purpose, and you will always know who that is; you know Mr. Brown was the Constable, therefore it was a crime resisting him. No one else has authority and what he tells you is law. I cannot acknowledge that because you have suffered from this accident that therefore you have a claim on Government to make good your loss, but at the same time both myself and all the white people are very sorry for you. I know you must have lost much, and that your hearts are much depressed, therefore I'm going to make you a present which that I will give to Mr. Spalding and Mr. Duncan and which they will divide amongst you on Monday, as they may think fair and proper, this is an act of grace to you and not a payment of a debt. You are -- you were very wrong in taking the law into your own hands and by so doing you really forfeited all claims on the bounty of Government, but as this is the first occasion on which you have opposed the law I've decided on treating you with leniency, as children, but you must be careful not to offend again in the same way,

for if I come or send again it will be much to your loss, and you will be visited in a very different spirit, on the other hand should you have any complaints against anyone to make to me you will always find I am ready to hear you and carefully enquire into such complaints, and the medium through which your complaint should come, is the Constable.

MR. ADAMS: Thank you.
THE COURT: All right. Two o'clock, please.
THE REGISTRAR: Order in court. This court will adjourn until two.

(PROCEEDINGS ADJOURNED)

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

_____
Peri McHale, Official Reporter
UNITED REPORTING SERVICE LTD.

(PROCEEDINGS RESUMED AT 2:00 O'CLOCK P.M.)

THE COURT: Mr. Adams.

MR. ADAMS: My lord, we -- this is still dealing with the Gitsegukla fire, and I want to take the witness to tab 141 in volume three. It's towards the back of the book. Could the witness be shown tab 141 of volume three, please.

Q Dr. Galois, I wonder if you would just explain what the tab is at tab 141 that's headed Collection Marius Barbeau, informant Dan Guxsan?

A It's a -- one of the narratives that Barbeau collected dated 1924 from Dan Guxsan, pertaining to events surrounding the Gitsegukla fire of 1871. The identification number B/F/163.2 refers to the code index of the Barbeau Beynon materials.

Q Two things I want to draw your attention to and ask you to comment on as a document, just as a document, first of all, clearly it's produced sometime after the events; and, secondly, that it appears to be a recording of an oral account; is that correct?

A I take it to be an oral narrative that Barbeau collected from the informant in 1924.

Q Okay. What is the nature of the use that you made of this document in coming to your opinions and documents of this nature, because there are others, among your sources?

A Having constructed a basic outline of the events concerning the burning of Gitsegukla and the subsequent events that followed from that, from the white documents, I was then concerned to locate any documents which spoke to the Gitksan version of those same events. And I used this narrative and a number of other ones to supplement the basic account that I already established on the basis of white documents.

Q And I just draw your attention to the last page of tab 41, that's page four, where it says in the first full paragraph:

> "Finally the officers of the man-of-war adopted a compensation of $50 for each house. Before the adjusted this compensation the fathers of the man-of-war took the Gitsegukla on board and showed them the powers of the law and shot..." et cetera.

And I just want to draw your attention also to the bottom of page 33 of your opinion report where you say, five lines from the bottom, six lines from the

bottom:

"The resulting settlement contained three elements. The first one mentioned is payment to the chiefs which they viewed as compensation for their losses."

My question is whether you were relying in part on that Gitksan narrative to come to that conclusion?

A Yes.

Q I want to take you to tab 145, still in volume three, let me ask you first to look at page 34 of the opinion report. And in the first full paragraph there you say:

"The tri-partite structure of events at Metlakatla was compatible with Gitksan procedures for resolving conflicts. Given the precedent of the Tsimshian-Nishga settlement of 1869 - which involved the exchange of compensation, a feast and signed 'papers' and the important role of Duncan as interpreter and advisor to Trutch, it is unlikely that this correspondence was accidental."

First let me ask you, what's the tri-partite structure that you refer to?

A That is the payment of compensation, an agreement -- they should be in the other order I guess -- and some form of hospitality or entertainment.

Q When you say it's unlikely that this correspondence was accidental, on whose part are you speaking?

A I am referring there to William Duncan and his familiarity with the culture of the Coast Tsimshian and his role as an advisor to Trutch.

Q And the Tsimshian-Nishga settlement of 1869, is that connected with the document we looked at earlier in which Trutch was being quoted?

A Yes.

Q Okay. Now, if you will look at tab 145 --

THE COURT: That would be where Trutch is being reported, that would have been 137?

MR. ADAMS: That was 137, my lord, yes. This is a different Trutch reference. 137 is Trutch on the Kitsegukla fire itself.

THE COURT: But you only read part of that.

MR. ADAMS: There is an earlier reference --
A Trutch, 1869.
THE COURT: Yes, the burning of Kitsegukla was 1872, wasn't it?
MR. ADAMS: It's 146, my lord, the 1869 Trutch.
THE COURT: Yes.
MR. ADAMS:
Q Now the document at tab 145 says at the end "Indians of British Columbia by their solicitors" and then there is a name, Dickie DeBeck?
A Yes.
THE COURT: Dickie and DeBeck.
MR. ADAMS: Dickie and DeBeck.
THE COURT: An old law firm.
MR. ADAMS:
Q And that's dated the 27th of February, 1922?
A Yes.
Q What I want you to look at is the first two pages of this document, and it's addressed to the Superintendent General of Indian Affairs in Ottawa and describes itself as a memorial of the Indians of British Columbia who are petitioning for amendment to Section 149 of the Indian Act. I wonder if you could just read down that page, there are some places it's very hard to read.
THE WITNESS:

"The Indians of British Columbia prior to the advent of the white man had achieved a social and political organization very high for a primitive people. Owing to the fact that they were without writing, the only alternative was the administration of all their affairs with certain ceremonies, solemnities and certain publicity. This was done through what is termed the 'potlatch'. The Potlatch in its broadest sense is the gathering of those who are directly or indirectly concerned, either of one tribe or more than one tribe, for the formal publication of some event whereby the status of an individual or group of individuals or to the tribe nation was altered or fixed. The extent of the events thus proclaimed was extremely wide, including political or administrative, judicial, economical and social, amongst the many others, and included any event in the life of the individual or family such as birth, the giving of a name, the attainment of the age of puberty, marriage, making of wariors, adoption, divorce, election to

chieftancy, initiation into one of the various phratries, death and many others; it included agreements between tribes, peace treaties and declaration of war. Economically included ratification of all contracts, transfers of property, transfer of the property rights in names, crests, dances or songs, either by hereditry or contract; judicially it involved the administration of both criminal and civil law, granting of divorces, et cetera. In short, any event which would require definite statement before those interested, and some degree of publicity in order to make it a matter of record. The system is the natural result of the evolution of a people without writing or striving for greater organization and solidarity, and parallel instances may be found in the development of any of the component parts of the civilization of the world today."

Q Let me stop you there. That's fine. Could you also look, please, at 146, the one following.

THE COURT: I am sorry, what does this document settle? 145? What does it purport to settle?

A I take it to be --

THE COURT: Or is it a petition?

A It's in the nature of a petition, yes, to -- for an amendment to the Indian Act concerning the prohibition of the feast.

THE COURT: Thank you. All right. Going to 146.

MR. ADAMS:

Q Back into 146, which is the 1869 Trutch. And at page five of that extract, there is what appears to be an account, opposite June 2nd, of the events on board the SPARROWHAWK in 1869. I wonder if you could read that one paragraph.

A Beginning "the chiefs"?

Q Yes.

THE COURT: What page is that?

MR. ADAMS: Page five my lord, opposite June 2nd.

THE WITNESS:

"The chiefs of the Chimpsean..." I take that to be, there is C-H-I and then there is a blank but I take that to be an M, P-S-E-A-N, "...tribe having arrived on board at 10 o'clock was set opposite to the Nass chiefs on the quarterdeck in the presence of the governor. A parlay ensued

which lasted for a couple of hours. All the events of their hostility during the past year were discussed and the amount of compensation to be paid for each tribe for injuries done to the other having been finally settled among them, peace was concluded and symbolized by the former enemies blowing swan's down over each other's head. A document setting forth that peace had that day had been concluded between the Chimpseans and the Nass Indians in the presence of the governor was then drawn up and to this the chiefs' names were all signed by their marks being set thereto as certified by the governor's signature and seal. Each chief was also furnished with a paper certifying that he had signed this treaty. These paper were signed by a Mr. Lowndes and certified by Mr. Duncan as interpreter."

Q Thank you. And those materials in part which you rely on for the statements on page 34 with reference to the tri-partite structure of events at Metlakatla?
A Yes.
Q Now the next set of incidents that you focus on after the Gitsegukla fire you described as the Cassiar Trail incidents and you have said something about the mining at Cassiar, what's the Cassiar Trail?
A The Cassiar Trail was begun in 1874 as one solution to the logistical problems of supplying the miners in the Cassiar Region of Dease Creek, Dease Lake and McDanes Creek. The Cassiar trail was constructed as -- the route was explored and constructed in 1874. As far as Hazelton it followed pretty much the line of the former Collins overland telegraph and then for the area north of Kispiox it was necessary to conduct fresh investigations for an appropriate route. That was undertaken in 1874 and construction followed rapidly thereafter.
Q Let me ask you to look at tab 152 at the beginning of volume four. And that appears to be an extract from the Daily British Colonist, dated Sunday, August 23rd, 1874? That is the newspaper is, the article on the left hand side is dated August 8, 1874.
A Yes.
Q Okay. And then I just want to read a couple of extracts from that article in the second full paragraph and it's dateline Skeena Forks:

"Several parties have arrived here on their way to Cassiar and scarely any have been permitted to pass without more or less loss of time and property. In June last Mr. Campbell of Thompson River Valley crossed the Skeena at the Kispiox Ranch, some 15 miles above this place. The Indians belonging to the place in broad day plundered and abstracted from the train any goods they thought fit and left the parties destitute of blankets and horses without rope."

And then the last paragraph says:

"There never has been as much as a constable here nor any person to administer justice. If there were a few men stationed on the river, to give them some powder in ball in place of the potlatch they received at Metlakatla the Kitsegukla affair would not have occurred. I remain yours. A. C. Youmans."

Now, let me ask you first of all what you understand the reference in the final paragraph to the potlatch they received at Metlakatla to be?

A I take that to be referring to the events aboard HMS SCOUT, August the 9th, and the subsequent events the 10th and 11th, I believe.

Q In 1872?

A 1872, yes. In other words, the meeting with Lt. Governor Trutch.

Q Let me ask you now to go to tab 155 in volume four, which is another newspaper account, this time in October, 1874, October 18, and there is the story that begins in the second or the third column, "The trouble at Skeena - neglect of the government." And it takes the form apparently of a letter to the editor. In the first paragraph, eight lines down, there appears the name Mr. Humphreys?

A Yes.

MR. ADAMS:

"Mr. Humphreys' party left Hazelton in the early spring to cut a trail, either to intersect the trail from the head of the navigation on the Stikine or if possible to strike Dease's Lake. After he arrived at Culdaw, some 80 miles from the lake, nothing more was heard from him. Some three weeks after this the first cattle party

passed Hazelton, and the Indians, i.e., the Kyspyouks, were inclined to be troublesome but it ended in talk. The next party of cattle men, viz L. Campbell's, when they got to Kyspyouks, were threatened, and blackmail was levied by stealing flour, tobacco, etc., and killing one of their cattle. They further said that if anyone passed that way they would certainly kill them. The Indians at the forks who as yet had been quiet and civil, now began to talk and claimed the settlers gardens as their ground."

Going up to the top of the next column, 11 lines down, it begins:

"The whites were ordered to leave and even now the only two white men there are ready at a moment's notice to leave everything and escape; such are the plain facts of the case."

And then there is there are some comments about the trail. And then it, there is a reference to Dease Lake and carries on:

"The distance from Fraser River to Dease Lake is not less than 700 or 800 miles and in the whole of that distance there is not the least sign of any legal authority whatever while the route passes through a country inhabited by no less than eight tribes of Indians numbering at least 4000 people. The small town of Hazelton at the forks of the Skeena has now been started over three years and although situated in the midst of Indian tribes and a whites continuously passing to and fro, no legal authority has ever been stationed there."

And then at tab 151, which is the first tab in volume four, there is what appears to be a letter from Constable Brown?

A Yes.

Q And he is quoting a communication, I take it sent to him by somebody else?

A By Matthew Feak.

Q Who is Matthew Feak?

A Matthew Feak was the clerk at the Hudson's Bay Company store at Port Essington.

Q And this is dated --
A Which is located at the mouth of the Skeena on the south side.
Q This is dated September 17, 1874 and the quoted portion is dated the day earlier. And it says:

"Two white men just arrived from the forks who were enroute to Cassiar but have had to leave their goods et cetera and return here. They wish to give a certain Indian of Kispiox in charge. Please come up at once and take him before Mr. Duncan."

Then it's signed Matthew Feak. Now, the first thing I want to ask you, is: Are those accounts out of the newspaper articles and the one that I just read from Matthew Feak, are those examples of what you are referring to as the Cassiar Trail incidents?
A Yes.
Q And my other question about them is how do they fit into your characterization of protest, in what sense are they protests, as that term is used in your opinion?
A I see this as an example of the Gitksan attempting to control the terms under which white people entered into and passed through their territory, particularly concerning conditions where use of trade routes was concerned.
Q And then at page 35 of your opinion report you point in the middle of the page to "...the strong probability that the pack trains and the white packers infringed upon Gitksan customary law: First, by not securing permission and/or offering payment to secure passage through territory or across rivers; second, by injuring an Indian whether by accident or design and failing to offer compensation; third, the capture and removal from the district of Tsicktsap, which had the appearance of a hostage taking."

And I want to ask you first to look at tab 159 in volume four, and I wonder if you could first explain what that document is?

And I should say, my lord, I believe the third page of that does not belong to the tab. There should be a two page letter.

THE COURT: Yes. Dated 1873, 22nd of April?
A I think it's the 22nd of April, 1873.
THE COURT: Shall I give the third page back to you? This is a letter from Mr. Duncan to Mr. Brown, is it?

A It's a letter from Duncan to Mr. Farron.
THE COURT: Who was Mr. Farron, please?
A He was a merchant who for a period operated a store at Hazelton. In 1873, I believe, he was at Port Essington.
MR. ADAMS:
Q I wonder if you could just read the first paragraph of that letter please?
THE WITNESS:

"We have here in prison an Indian named Mesh-ki-boo, convicted of having unlawfully detained a party of white men on their way to Omineca via Nass River. On my hearing the case Mesh-ki-boo offered in his defence a statement to the effect that 'you had wronged him out of wages due to him for freighting goods for you up the Skeena River' and according to Indian law, he had sought to be revenged on the first party of white man who came into his power."

Q Thank you. And then if you could look at tab 147, which is back in volume three, that's identified in your sources as being an extract from Duncan's journals?
A Yes.
Q All right. And I want to refer you in particular to the final page, which has the printed number 11199 at the top right. And the second paragraph there beginning "this morning."
A This is for Tuesday, August 11th, 1868. "This morning the poor captive..."
THE COURT: Where is this?
MR. ADAMS: This is on the final page of the tab, my lord.
THE COURT: Yes, I have that.
MR. ADAMS: Seven lines down from the top. It's -- there is an indent from the paragraph and then it begins "this morning" and then there is an understand lined phrase.
THE COURT: Oh, yes.
THE WITNESS:

"This morning the poor captive Kitaksan left us for their home. I hope they will arrive safely. I had a talk to them yesterday, and they seemed thoroughly grateful for the little kindness I have shown them and especially of their --"

I think that's protection,

"I have afforded them. A party --"

Q Let me just stop you there. Who do you understand the Kitaksan to be?
A Gitksan.
Q And whose captives do you understand them to be?
A I would assume that they were captured by a Coast Tsimshian group. Duncan at this time is at Metlakatla so the captives are there. It would seem more probable that Duncan had retrieved them, probably from a Coast Tsimshian group other than those resident at Metlakatla.
Q And let me ask you whether the passages you have been referred to, at tabs 159 and this one at 147, are examples of the material you rely on in concluding that the packers on the Cassiar Trail were infringing upon Gitksan customary law and in characterizing the capture and removal of Tsicktsap as having the appearance of a hostage taking?
A Yes.
Q Finally in this connection, let me ask you to look at tab 39(a) in volume one. This should be in tab 39 itself, my lord, but separately identified.

Sorry, my lord, that's not on the source list. I think my note must be in error and I will track that down. What it is is the reference to the statement on page 35 of the opinion report about injuring an Indian, whether by accident or design, and failing to offer compensation.

I don't intend to read it but I will supply the reference as soon as I can find it.

Now, beginning at the very bottom of page 35 and going over to page 36 of your opinion report, you discuss events under the heading of the murder of A. C. Youmans in 1884. And I want to ask you first of all, is that in your understanding the same A. C. Youmans we saw writing to the Daily Colonist a short time ago?
A Yes, he was a merchant at Hazelton.
Q I wonder if you could look at tab 163 in volume four, please. That's another extract from the Daily Colonist, dated June 21st, 1884 and in the second column under the headline, "A Skeena Indian murders A. C. Youmans", there is an account datelined Fort Essington dated June 16, he says:

"Mr. Amos Card Youmans left Aberdeen late in May for his home at the Forks of the Skeena, having previously dispatched a canoe freighted with merchandise for the same destination. Just before reaching Kit-sa-lash, one of the crew of the freight boat commonly known as 'Billy Owens' was drowned. The remainder of the crew proceeded up the river until Kit-wau-gah was reached when they positively refused to make further progress. The canoe was unloaded. The merchandise was lodged in an Indian house and Mr. Youmans with a single Indian to carry his back started home afoot. When he and his Indian reached Kit-sa-gewkla, some men of that tribe set upon the Indian and robbed him of his pack. From this village Mr. Youmans walked home alone, which he reached on the 4th of June. Mr. Youmans did not at onec relate to the Indians at the Forks the story of Billy Owens' death by drowning, fearing they would take immediate revenge; for he well knew the old Indian law that if an accident or death in the pursuit of any enterprise occurred, he that originated it should make compensation with money or its equivalent to the friends of the the injured or forfeit his life.

Two days after Mr. Youmans' arrival at the Forks an Indian brought the news of the death by drowning in Kit-sa-lash. It rapidly spread. The Indians grew excited. Soon the father of the drowned man decided to take the life of Mr. Youmans to be avenged of his son's death."

And I want to ask you if that is the event you are referring to under the heading of the murder of A. C. Youmans?

A That's one account of those events, yes.

Q And is that, from your examination of the available sources, a largely accurate account?

A There are other accounts which contain slight variations, yes. But in essence it contains the basic facts.

Q I want to take you back to tab 105 in volume three.

THE COURT: Sorry, volume five?

MR. ADAMS: Tab 105 in volume three, my lord, so it will be tab 5.

Q And it's at page 279 which is the second page of the document. On the right-hand side there on page 279

there is what appears to be a reproduction of a letter of Geddum-cal-doe, head chief, to the provincial secretary, and it's dated September 7, 1884 and I ask you just to explain what you understand this letter to be in relation to the murder of A. C. Youmans?

A It's by way of an account and an explanation of the events which culminated in the death of A. C. Youmans with particular reference to the Gitksan laws covering such events.

Q And I wonder if you could just read the first four paragraphs of that letter?

THE WITNESS:

"We the chiefs and people of Kit-au-max, the place where the late A. C. Youmans was murdered, desire to lay before you and your colleagues in office our feelings in regard regard to that unfortunate affair. We are anxious that the matter shall be so settled that the utmost good feelings should exist between the whites and the Indians, which, unhappily, does not now obtain.

We wish to lay before you our law in regard to accidents and death that occur in company with others. It is expected that the survivors shall immediately, or as soon as possible, make known to the friends of the injured or deceased what has taken place. If this is not done it is taken as evidence that there has been foul play. In the case of the death of Billy Owen, Mr. A. C. Youmans arrived at this place and remained in the midst of Billy's friends two nights and three days without saying a single word to the friends of the deceased, although he asked Mr. Youmans if those with him were all well. His answer was, 'yes, except one had sore feet.' At the expiration of the two day and three nights a canoe came up and the news was conveyed to the friends of the drowned man and they thought there had been foul play on Mr. Youmans' part as he had not made the matter known.

The general custom among the Indians is if that if anyone calls another to hunt with him, to go canoeing and such and death occurs, the survivor always make a present corresponding with his ability to show his sympathy and goodwill to the friends of deceased and to show there was no ill feeling in the matter. Mr. Youmans failed

also in this. He gave no present thus showing no sympathy or goodwill "

MR. WILLMS: My lord, there has been a number of occasions where the full context of the document is not apparent on the record whatsoever, because my friend stops just before you get to the real meat of the document, which is at the bottom. And I have a long list of documents which I would have to go back through and put to the witness and put the extract that's been left out to the witness and I think my friend should either read the whole document into the record or we can all read it quietly and he can refer to it.

THE COURT: I have read it.

MR. WILLMS: Thank you, my lord. But it's most misleading on the record to stop where my friend stopped. Because the true story doesn't come out until you read the whole document.

THE COURT: I ever read this one, it's legible. I can't say that I have read all of them. I had to satisfy myself with extracts. I think, Mr. Willms, you must either bring it to your friend's attention or deal with it, as you mentioned, in cross-examination. Because some of them are so illegible I wouldn't even try to read them. At least I don't think I would. Maybe if I got myself a high powered magnifying glass I could but they are very, very difficult to read.

MR. WILLMS: This is one where I would ask the rest of the document be read.

MR. ADAMS: My lord, I have no objection to that. I have to edit these only because it would take a very long time to read the entire document in each case.

THE COURT: What it shows is that these people, they say they didn't know that Billy Owens' father was going to kill Mr. Youmans and that didn't oppose his arrest and they thought he would be dealt with fairly. And they say it was Mr. Youmans' fault because of the strange way he behaved in not disclosing the fact that Billy Owens drowned. So that for that reason they asked that clemency be shown to the murderer because he was a quiet and inoffensive man. Go ahead.

MR. ADAMS:

Q Over the page, there is a letter from a D. Jennings addressed to the provincial secretary and on the top it says Reverend D. Jennings, dated September 16, 1884. And this appears to be enclosing the letter that we just read an extract from, is that your

understanding?
A Yes.
Q Okay. And it says with reference to the -- apparently to the people of the Indian Village of Git-au-max forks of the Skeena, that they desire to mingle threats with their expostulations, threats we positively refuse to write telling them it would prejudice their case in the eyes of the government, and then he says something about the letter that's just been read. And then says:

"The Hudson Bay trader, Mr. Sampare, and Mrs. Youmans with their families, left the Forks on the day of our arrival, feeling their lives were no longer safe in that village. An Indian calling himself the brother of the murderer, threatens to kill the first white man he sees after he hears of his brother's death. This man has undoubtedly worked himself into a frenzy, for in replying to Mr. Green's remarks to him in the native tongue, he perspired in a few minutes to such a degree that his shirt became literally wet. Sampare, whom we afterwards saw down the river, told us that he feared another Indian, now in the mountains, worse than the brother. Sampare calls this man in the mountains the 'Guiteau' of the tribe. The Forks Indians threaten close the navigation of the Skeena in case their old friend is hanged. In this purpose they say the Kish-pi-ax, the Kish-ga-gas, the Kit-wan-cool, the Kit-wau-gah, the Kit-se-gew-clah, the tribes of the Upper Naas are one with them. We had an interview with the head chief of the Hag-wut-get Indians who assured us that he and his tribe would co-operate with theirs friends the Forks Indians. These Indians seemed to be earnest in this matter. They are certainly very ignorant of the power our government possesses. They know but little of the majesty of the Canadian law."

And then in the aftermath of the killing, further on in this document at page 28 -- sorry, that deals with the aftermath of the killing.

I just wonder if you can pick up the story at that point and explain what in your examination of the document --

THE COURT: What page?
MR. ADAMS: That is what I read from, page 280, my lord?
A That was a letter that was written by one of two Methodist missionaries from -- who went up to Hazelton, Gitanmax, but in your account you missed out one element, which was that Sgt. Roycroft, I believe he then was, and a party of two others, one constable and I believe a magistrate, went up to Hazelton and arrested the murderer of A. C. Youmans and then returned to Victoria with Haatq, and this letter then is written after the departure of the police party with the prisoner. So it's reflecting upon the state of the Indian population of the Upper Skeena after that event.
Q All right. And there is a newspaper account, my lord, of those events, at tab 3 -- sorry, tab 164 in volume four. And I won't read that but it's headlined "The Youmans murder" and then the return of superintendent Roycroft.
THE COURT: You're not going to read it?
MR. ADAMS: I am not going to read it.
THE COURT: Fine.
MR. ADAMS:
Q Dr. Galois, I wanted to ask you, out of the materials that we have talked about relating to the Youmans murder, how that fits into your characterization of some of the Indian actions as protest?
A Again, I see it as an example of the attempts by the Gitksan to exercise their own customary laws in terms of some of the -- a particular action by a member of the white community, which contravened that particular law.
Q All right. At page 40 of your opinion report you come to a set of events called the Skeena war or the Skeena uprising in 1888. And I wonder if you could describe those events, please?
A It's a very complex sequence of events, which is difficult to sort of encapsulate in a few sentences. Maybe if I begin then you can interrupt me as appropriate.
The episode begins at a feast at Kitwanga, I believe, where Kamalmuk and Neatsqua were competing for the inheritance of the name Hanamuk. Kamalmuk managed to obtain this inheritance for his son, at which point Neetsqua, who was a shaman, apparently threatened Kamalmuk and his family. Shortly thereafter, that set of events intersected with a

severe outbreak of measles, which resulted in the death of Kamalmuk's son, and a second son in fact. As a result of this, or the death of Kamalmuk's two sons was interpreted, particularly by his wife, as a result of the actions of Neatsqua. She then urged Kamalmuk to carry out the customary procedures or the procedures of Gitksan customary law, to extract revenge against Neatsqua, which Kamalmuk eventually did, shooting Neatsqua, if I remember correctly, somewhere on the trail between Kitwancool and Kitwanga.

Q Let me stop you there.

My lord, at tab 170 in volume four, there is an account of these events out of the Barbeau collection. And again I don't propose to read it. It's printed but it's attributed to Lelt, with the English name of Solomon Harris in 1924. And if you could just look at that, Dr. Galois, and indicate --

A What tab was it again?

Q Tab 170 in volume four.

A Yes.

Q That's -- is that one of the sources you relied on for your account of those events?

A As in the case of the burning of Kitsegukla, what I did in my accounts of these events was reconstruct the entire events as far as I could on the basis of white documents. Then I used the -- a variety of different narratives that were collected by Barbeau which gave the Gitksan description of these same events. Of those narratives, this is one example, yes.

Q And similarly, back to tab 169, the previous tab, there is another narrative, this one attributed to Charles Mark and Mrs. Cox. And on page 3 of that narrative, three-fifths of the way down the page there is a paragraph "they arrived in Gitwintkul."

THE COURT: Where are you?

MR. ADAMS: I am on page 3 of tab 169, my lord. It's the one just before the one the witness was just referring to.

THE COURT: Thank you.

MR. ADAMS:

Q And there is a paragraph at the bottom:

"They arrived in Gitwintkul but they did not get into the house. They stood below the house and they called to the murderer outside to talk to him. And this is the way that they presented the blood money. When the murderer came out, he was

dressed in a grizzly's skin and in his mouth he bit a copper hazetsu and came down on all fours like a grizzly bear. This meant that he was going to pay. And they brought out and behind him the people carried out the most valuable thing they had, blankets, coats and guns and moose hides. Then after the payment was made it was all over. There was peace among themselves. (There was no need of any assistance from the outside warriors). When they arrived with the body in Gitsegukla there was a white man living there, Mr. Washburn. He went over and an undressed the corpse and took the clothes off and took them to Victoria as his evidence. Then he was made policeman, as a guide and speaker for the police."

Let me ask you first what you understand that account to refer to?

A I take that to be the Gitksan account of the peaceful resolution or settlement of the sequence of events which I described earlier. The offer and acceptance of the payment of compensation by Kamalmuk to the family of Neatsqua. That payment was accepted and -- and so peace ensued.

Q Let me ask you to refer back to volume three, tab 149, and I am on page 2 of what appears to be a letter from Alfred E. Green, missionary, to the Honourable Charles Robson, provincial secretary, dated March 14, 1888. And I want to refer you to a short passage at the bottom of page two in that paragraph beginning "Kitwancool Jim." Could you read that?

THE WITNESS:

"Kitwancool Jim has sent 40 blankets and an Indian copper to the friends of Neatsqua and left them there but the friends refused to take them as payment for the life."

Q Let me stop you there. What do you make of those two accounts of what appear to be the same event?

A That is an account by a missionary who was resident at Greenville on the Nass. His information, as I recall, came from W. H. Pierce, who was another Methodist missionary, and what we have there is a direct contradiction in terms of whether or not there was a

settlement.

Q Okay. Whether or not there was, what were the significant events in your opinion that followed on that?

A Well, this letter was sent to the provincial government in Victoria and information on the same events came from a number of other sources. The outcome of that eventually was that a party of special constables, accompanied by Indian agent Todd, were sent to the Upper Skeena to arrest Kamalmuk. That's Kitwancool Jim.

Q What happened?

A One of the constables, Constable Green, shot and killed Kamalmuk.

THE COURT: That is Kitwancool Jim?

A Yes, that is. Kamalmuk is my understanding of his Indian name.

MR. ADAMS:

Q And what next occurred?

A There was a considerable degree of unrest at Kitwanga, where the shooting took place. Information on this was relayed back to Victoria and the upshot of this was the formation of the Skeena River expedition which consisted of "C" battery, the local militia in Victoria, and a second party of special constables, which was dispatched initially to Port Essington where the militia remained and a party of constables was -- went up the Skeena to Hazelton.

MR. ADAMS: My lord, that might be a convenient point to break. All right. Thank you.

(PROCEEDINGS ADJOURNED FOR SHORT 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.

Wilf Roy
Official Reporter

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

THE COURT: I've got "C" battery staying at Essington and the special constable going up the river to Hazelton.

MR. ADAMS: My lord, to complete this account I'm just going to dive back into the documents here. The first is at tab 179 in volume 4.

Q Dr. Galois, this appears to be signed by a B.W. Washburn, Constable in Charge Hazelton for the Skeena River, June 27, 1888. I wonder if you could just explain what the document is, please?

A Constable Washburn was one of the people who went to Victoria with information on the shooting of Neatsqwa. He was -- he subsequently returned with a second group of -- the first group of specials, and he was, as it indicates there, in charge of that group of specials. And it's a letter written from Hazelton, which I believe is the letter describing the shooting of Kamalmuk.

Q So if I understand correctly this is the letter going down that reaches Victoria, this is how one of the ways the information goes to Victoria?

A Yes, it is.

Q Okay. On page five, my lord, there is a passage that I'd like to refer to. Beginning on the third line on page five where he says:

> "I would like to make the urgent request for Mr. Roycraft or anyone with high authority to come at once with the party being sent, for I asked the chiefs not to bother with us, but that a high Government Chief was to arrive as soon as the stage of water would permit and to wait and lay their grievances before the same.
>
> The Indians are pacified until the time promised. I like furthermore to state, that I have more arrests to make in this town, but I cannot do a thing under existing circumstances.
>
> An Indian arrived from Kitsegukla warning me, that the Kitwancools are arming and starting for Kitsegukla to burn down that village for revenge, and are to come here to get the constable, that done the killing."

Is that our fortifying?
THE COURT: Am fortifying.
MR. ADAMS: Am fortifying. Thank you, my lord.

"The Hudson's Bay building. Adopted it as our barracks. After three days hard work, mainly in rain, made ourselves quite secure. The relatives of the deceased sent word with the demand of $1000 and a..."

A Man in place.
MR. ADAMS:
"A man in place of the killed as matter for compensation and the gun that had done the killing as a momento."

Q And could you just explain what -- which events that statement relates to?
A That relates to the shooting of Kamalmuk by Constable Green, and refers once again to the Gitksan customary law.
Q And at tab 187 in volume 4.
THE COURT: I'm sorry. Where?
MR. ADAMS: 187, my lord, still in volume 4.
Q And this appears to be a letter from N. Fitzstubbs, S.M. for stipendiary magistrate?
A Yes.
Q To the Attorney General. It's dated the 24th of July, 1888. And I don't want you to read all this, but I wonder if you can explain what ground it covers in terms of the story of the Skeena uprising?
A Fitzstubbs had been appointed to replace the previous gold commissioner who had left Hazelton, I think, in September 19 -- 1887, and Fitzstubbs has made his way into the Upper Skeena independently.
THE COURT: Excuse me. What date do you think the letter that we looked at a moment ago from Washburn is dated? It says Sunday the 17th. Do you know what month that is?
A I think it was June.
THE COURT: I'm wondering --
MR. ADAMS: It's tab 179. It's dated on page six, my lord.
THE COURT: Oh, is it?
A That's right. The first --
THE COURT: Oh, yes, June 27th. All right.
A The first page of that letter was missing in the archival copy that I obtained it from.
THE COURT: 1888. Thank you. Now we're at tab 187.

A And the letter explains something of Fitzstubbs' activities and the situation on the Upper Skeena in the aftermath of the shooting of Kamalmuk.

MR. ADAMS:

Q Is this taking place before the expedition from Victoria, the events that he's recounting here?

A It's taking place at about the same time that decisions are being made in Victoria to send the expedition. I'm not -- I don't have a date for when this letter arrived.

Q Okay. Now, on page two of that letter, three-fifths of the way down, it begins:

> "The general bearing of the River Indians, or rather such of them as I have met, is one of hostility and although it is not at present demonstrative, it may develop itself on the regathering of the clans after the cessation of the fisheries. In the meantime I am sending to the various chiefs to meet me here and formulate each for his tribe any complaint or grievance that he may have and intend to deal with it at once, hoping to confine each tribe to the consideration of such matters as affect it as a tribe and thus separate them as much as possible and prevent their making common cause. If they should come as desired, I shall try to induce them to combine in a determination to suppress the growing ill-disposition towards one another and to the whites in particular, engendered by the recent homicides and shall propose that each in his village shall act and be in reality a special constable, trusting that the recognition of their state and authority may act as a stimulant to its exercise."

Are you familiar with whether the effort to -- the proposal that each chief should act and be a special constable was acted upon?

A Fitzstubbs I think certainly attempted to put this into play. As I recall it was with rather limited success. One constable, Big Louie, was in fact appointed and wore the badge, as it's described, but a variety of other chiefs in fact backed out when it came to the crunch on that issue.

Q Okay. Could you look at tab 118 in Volume 3, please. And that's a document headed "Copy of a Report of a Committee of the Honorable the Executive Council" and dated the 18th day of October, 1888. Could you explain what that document is, please?

A It's a document which was sent from executive council lieutenant governor of British Columbia to, I believe, to the federal government anyway. I forget exactly who within the federal government it was sent, but it represents an account of events of 1888, including an account of a meeting at Hazelton with the chiefs that was held by Captain Fitzstubbs and Roycraft. That's a transcript of that meeting.

Q If you go to page 41 is that the transcript of the meeting?

A Yes, it is.

Q Okay. I wonder if I could ask you to go in that -- to go to page 48 printed in the lower right. Actually the top of page 47 it says, "Mr. Roycraft, Superintendent of Provincial Police, then said", and it appears that what is written on page 48 is a quote from Roycraft. Is that how you understand it?

A Beginning on page 47 and continuing onto page 48, yes?

Q Yes. All right. In the middle of page 48 it says -- there's a line beginning "When the constables returned from Kitwanga." I wonder if you could just read through that, please.

A

> "The Indians rushed to meet them and to demand the life of the constable who shot and killed Kitwancool Jim. This was brought to the ears of the Government and they at once dispatched a warship, a large number of soldiers and myself with my officer to the forks. The Government gave me full power to act and I left the man-of-war and the soldiers at the mouth of the river to await orders from me. When I came up I was glad to find that a great deal of what we heard was untrue. But had it been true, all the Indians around about here would have been considered as having declared war against the Government. If I had been obliged to send for the soldiers the civil law would probably have been suspended and military law would have been established. The civil law is that a man is tried by a high judge

for all offences before he is punished. The military law is that three officers sit near a drum and try the prisoner and shoot him at once if he is guilty. And if the soldiers take a man with a rifle or weapon of any kind in his hands the prisoner is tried and shot very shortly after. The soldiers would burn your canoes, destroy your fishing places and lay waste your villages. What I am telling you is true. I am not saying this merely to frighten you. If ever you defy the Queen's authority, although you may kill a great number of whites, the Queen's soldiers would pursue you everywhere and shoot you down like rabbits. God forbid that you or I should see things like such a..."

THE COURT: Course.

A "A course. You might kill a few of the Queen's soldiers but you yourselves would be exterminated because the number of the Queen's soldiers is great, they are like the trees on your river. When I arrived here last week I found myself very well received by you. Last time I was here I went to the Chief's house and this time I went again and I saw a notice on his house that 'any white man having any grievance against an Indian was to come to the chief and he would preserve the peace'. If a man does anything wrong the law will be bound to hear of it. What I have heard since I came here is that that notice ought not to be on the Chief's house, because, instead of helping any white man who came to state their grievances, he holds secret meetings in his house and advises the Indians to kill all the whites."

MR. ADAMS:

Q Let me stop you there. Roycraft appears to say that the soldiers remained on call. How far did the expedition having left Victoria get?

A The expedition went to the mouth of the Skeena and the militia camped on a point just near Port Essington, which by that stage I believe had at least one cannery

operating there. So it was at the mouth of the Skeena. It was the party of, I think, 12 special constables who ascended the Skeena by canoe. It would have been very difficult for the militia to get up other than by canoe.

Q Okay. And then further on in that same tab, still in the transcript of the meeting, at page 17, printed page 57, the final paragraph on that page beginning Binex, B-I-N-E-X.

A I think that's a T.

Q Binet?

A Yes.

Q I wonder if you could just read from there.

A

> "Binet, of Kitanmax, K-I-T-A-N-M-A-X, (Hazelton) Great Chiefs, you have lectured our Chiefs strongly and maybe he deserves it. There has been trouble and I shall explain the cause of the discontent lurking in our hearts. Mr. Hankin was the first white man I ever saw and he was respected and liked by us. Mr. Youmans and Mr. Sampierre we also liked. During their life time all went well. Now they are dead and our troubles have begun. Nowadays if one of us goes to a white man to ask his advice about anything we are kicked out of his house because we are but dirty Indians, as he calls us in contempt. We retaliate, of course, and the result is that they take pen and paper and write down to the Government to send up armed men to punish us wicked savages. I am glad to have heard what you have spoken and I shall endeavor to live a law abiding life, but to preserve peace Government must also make the white man observe the laws. I am not speaking of all white men. I mean especially the Hudson's Bay Company. If we want a higher price for our skins than they want to give us, they strike us, and why blame us for retaliating. I'm glad that Captain Fitzstubbs has promised to protect us against the Company.
>
> No one else desiring to speak, Mr. Roycraft, before dismissing them, assured them all, that the law would defend them against all

injuries done them by the whites equally as much as defending the whites against Indians. Mr. Roycraft after thanking them for their attendance bid them all, personally, goodbye."

Q Okay. Thank you. I want to ask you, first of all, how you understand that Skeena expedition response to the events that you have outlined under heading of that incident, and particularly if, and if so how, you relate it to the series of events that you've described today beginning with the Kitsegukla fire?

A My feeling is -- my understanding is that the events of 1888 have to be viewed in a fairly broad context, both spatially and temporally. As a number of the documents that just been quoted indicate there have been what I can only call a deterioration in terms of the relationships between the whites and Indians on the upper Skeena area, but that discontent extended back and extended out from the upper Skeena including both the lower Skeena, the area of the coast Tsimshian, and also the area of the Nass, the Nishga. Those discontents encompassed a variety of issues. In part what was involved both on the coast and the interior were the various events at Metlakatla, involving in part an ecclesiastical dispute which culminated in 1887 in the abandonment by William Duncan of Metlakatla and a movement of him and considerable number of his converts out of the province to Alaska. This was a fairly dramatic move. Those precise events affected the upper Skeena at Kitwanga by 1884 where there was also a church missionary society mission. Also at about the same time one gets the first fairly intense competition between Gitksan and incoming whites over the access to land and resources in their territory. And what I'm talking about here in particular is the development of mining in Lorne Creek. There are a number of documents which speak to the hostility that was engendered at that time, and to some extent that continued on. It affected the discontent that was involved in a number of other economic issues, some of them affecting the Hudson's Bay Company in the operation of -- of the fur trade. It also involved the issue of establishment of reserves which had begun on the lower Skeena and the Nass by this time, and there were at least two incidents in which surveyors

were rejected and prevented from carrying out survey work. So I see the events of 1888 and the response of the government to those set of events as a response to a whole pattern of regional discontent which had mounted through the 1880's to the point where very drastic action was taken by the provincial government. Part of the correspondence that went from the provincial government to the federal government included a bill for those actions, and also some fairly strongly worded urging that the federal government do something about their responsibilities for native peoples in the upper Skeena region.

Q And what significance, if any, do you as an historical geographer attach -- to come down to the claimed Gitksan and Wet'suwet'en territories attach to the places where these events occurred?

A Looking at that sequences of events as an historical geographer the thing that strikes me is that the conflicts erupt at a series of new pressure points within Gitksan and Wet'suwet'en territory which are the product of new white incursions, new white undertakings within that territory. The events surrounding the burning of Kitsegukla are directly related to the use of the Skeena as a route to Omineca. The events that I have entitled the Cassiar Trail incidents develop as a result of the initial use of that trail for supplying the Cassiar District through Gitksan and Wet'suwet'en territory. The murder of A.C. Youmans and the hostility that surrounded that, which was not just restricted to that event, was very much tied up with in part the developments on the coast, but also the development of mining at Lorne Creek. And the hostility between miners and the people of Kitwanga within which -- within whose territory Lorne Creek was situated. And finally, as I've indicated, I see the events of 1888 as a climax in a sense to that entire regional process.

Q Let me ask you to look at page 45 of your opinion report. And there under heading "Conclusions" you have a number of numbered paragraphs, and you say there, first of all:

> "There is ample evidence of Gitksan and Wet'suwet'en protest activity in the period between Downie's trip through the upper Skeena region in 1859 and the 'uprising' of

1888. Most Gitksan and Wet'suwet'en protests took the form of direct actions, peaceful and otherwise, concerned with particular issues as they arose. Such responses, as with the Cassiar Trail incidents of 1874 and the murder of Youmans, included the use of traditional Gitksan laws, resolution procedures and sanctions."

Is that your opinion?

A Yes.

Q And in paragraph 2 you say:

"The principal change in the form of Gitksan protests concerned the use of white intermediaries. On a number of occasions, at Kitsegukla in 1872 for example, the Gitksan used third parties to give their protests written form. Such documents were shaped by whites but their substance reflects Gitksan values and institutions."

Is that your opinion?

A Yes.

Q And in paragraph 3 on page 46 you say:

"In part the disputes that arose between whites and Indians in the upper Skeena region were a product of the mutual lack of understanding. Sometimes whites became embroiled in intra-Indian conflicts: this may well have happened at Kispiox in 1874; it certainly happened in 1888. Some conflicts, though, reflected white transgressions against Gitksan norms or laws. In the 1880's, primarily as a result of gold mining on Lorne Creek, the question of competition for access to land and resources was brought to the fore."

Is that your opinion?

A Yes, it is.

Q Paragraph 4 you say:

"There was a temporal and spatial pattern to the various episodes examined in this opinion. These Indian/white encounters

reflected the emergence of pressure points in the process of white entry into the region. The incidents of 1866 (Telegraph Trail), 1872 (Omineca Route), 1874 (Cassiar Trail) and 1884 (Lorne Creek) were all linked to new developments in the white economy of the upper Skeena."

Then you refer to map one.

"Shows the shifting foci of Indian/white confrontations."

I wonder if you could just take out map one, which is in the first of the two pockets of the back of your opinion report. And could you first explain what this map is?

A It's not a very elegant map, but it was a map which was simply designed to indicate the locations of hopefully all of the place-names that I mentioned within my report.

Q And with reference to page 46 of your report you say that map one shows the shifting foci of Indian/white confrontations. Could you just explain that with reference to the map?

THE COURT: Map two?

MR. ADAMS: This is still on map one, my lord.

THE COURT: Oh.

A I was pointing to -- essentially to -- well, the locations that are referred to in that paragraph. The route up the Skeena past Kitsegukla and then carries on through the Suskwa to Omineca, which you can see the Omineca River marked there.

MR. ADAMS:

Q Upper right?

A Which is approximately the Omineca mining.

Q That appears in the upper right-hand printed portion?

A Yes. So it's sort of east west access and -- approximately, and that is the area of relatively intense contact, and it's along that access at one point that the incident breaks out.

Q All right.

A The 1874 incident we've -- refers to the Cassiar Trail, which is approximately north south access, where the trail followed the old Collins Overland Telegraph line. In terms of this map it's approximately flowing along the Bulkley River to

Hagwilget and cutting across to Kispiox and then proceeding up the Skeena past Kuldo. And it's in the area of Kispiox and north that the incidents of 1874 occur primarily. And that, again, is what I described as a new pressure point as a result of the entry of whites into the area. The 1884 episode concerning Lorne Creek, in part, is a result of the first intensive development of mine, of competition for lands and resources mining in Gitksan territory. You can see there the location of Lorne Creek.

Q That's just to the left of centre near the middle of the map.

A And it is located, as some of the documents indicate, within Kitwanga territory. And as I indicated before I see the 1888 episode as a regional process involving not only the upper Skeena, but the lower Skeena and the lower Nass as well. And one can see some of the sort of routes and links that are marked on there, and some of the places that I refer to in those areas. Kincolith, the Mission, Metlakatla, and Port Simpson and Port Essington.

Q Okay.

A And there were a whole series of trails which I have not attempted to map which link up the Nass and the Skeena.

Q Continuing on page 46 of your opinion report -- I'm sorry. I had taken you through paragraph 4, but I think I neglected to ask whether that represents your opinion.

A Paragraph 4?

Q Yes. That was the one concluding with the map. Does paragraph 4 contain your opinion?

A Yes.

Q Okay. Paragraph 5 says:

> "The principal objective of the Gitksan appears to have been redress for specific grievances."

Does that represent your opinion?

A Yes.

Q In paragraph 6 you say:

> "Protests were directed, initially at those whites who, if not directly responsible, were on the spot. Some grievances were directed towards the provincial government

and provincial officials."

Does that represent your opinion?

A Yes.

Q And on page 47 finally in paragraph 7 you say:

"In a number of cases the Gitksan achieved their objectives; in the more dramatic incidents - 1874, 1884 and 1888 - police action ensued. Such episodes made the Gitksan and the Wet'suwet'en aware of the coercive powers of white society. The ultimate consequence of these Gitksan protests was the establishment, in 1889, of the Babine Indian Agency. This involved the appointment of an Indian agent, resident at Hazelton, to regulate Indian/white relations in the region."

Does that represent your opinion?

A Yes.

Q Now, on page -- then you go into a section B that covers 1889 and 1927.

A Yes.

Q And I think you've already explained your choice of those two dates as being the establishment of the Indian agency and the twin -- the special joint commission and the outlawing of the raising of money for land claims?

A The amendment to the Indian Act of 1927, yes.

Q Okay. And then on page 49 of your opinion report, in the first full paragraph, you again break this period down into a number of sub periods, and I just want to ask you about the break points. The first you say is from 1889 to 1897. I wonder if you could explain briefly the significance of 1897?

A The point here, or the division point in this case really is an economic one. The period after 1898 was affected by the gold rush to the Klondike, and what one got at that point was the beginnings really of agricultural settlement within Gitksan and Wet'suwet'en territories, partly as a result of the developments that ensued consequent to the Klondike gold rush in terms of both supplies and communications.

Q And then you set out another period 1898 to 1907. And what's the significance you attach to 1907?

A 1907 -- I made the break 1907 1908 because 1908 is marked by the beginnings of the construction of the Grand Trunk Pacific Railway. That seemed to me to mark another -- another break in the sort of process or economic process, broadly speaking, and the consequences. The implications of that was to speed up the process of settlement within Gitksan Wet'suwet'en territories causing something of a boom in the area, and intensifying the competition between incoming whites and the indigenous population over access to land and resources.

Q What you've described as a boom, was an increased population a feature of that boom?

A Yes.

Q Okay. The next period you set out as 1908 through 1915, and what's the significance of the break point between 1915 and 1916?

A I took that up until the point of the hearings of the McKenna McBride Royal Commission in the Babine Indian Agency.

Q Okay. In the middle of page 49 you refer to the legislative enactment to prohibit the feast system, and I'd just like to draw your lordship's attention to tab 203 in volume 4, and I wonder if you could just explain to whom and from whom you understand that to be a communication?

A Well, it's a circular that was sent in this case to William Duncan. I located it in the Duncan papers from microfilm at UBC. And it is a circular pertaining to the recent amendment I think in -- passed in 1884 to the Indian Act which prohibited the Indian festival known as potlatch.

Q And it says in the middle of the page:

> "That any person who engages directly or indirectly in celebrating the Indian Festival, known as 'Potlatch,' or in the Indian Dance, known as the 'Tamanawas,' T-A-M-A-N-A-W-A-S, is guilty of misdemeanor, and shall be liable to be imprisoned therefor, for a term of six months."

And then I wonder if you could go to tab 77 in volume 2.

THE COURT: I guess that's tab 203, is it, Mr. Adams?

MR. ADAMS: Yes, it is, my lord. I don't know what I called it, but I should have called it 203.

THE COURT: I think you called it that. I just wanted to make sure it was 203. What are we in now?
MR. ADAMS: 77 in volume 2, my lord.
A Sorry, which?
Q 77. I don't want to have you read all this, but, first of all, it appears to be from Fitzstubbs to the Attorney General of British Columbia. And are you able to read the date at the top?
A I think it's 1890, as I recall. It's either the 13th or the 15th of March, 1890. I think it's the 13th.
Q Okay. And what I want to ask you to do is have a look at this and summarize its contents for his lordship and then I'm going to ask you to read some of the unreadable portions at the bottom.
A Fitzstubbs had stayed on in the upper Skeena after the return of Roycraft and the 1888 expedition. He had been appointed as stipendiary magistrate, and he remained there until Loring arrived in 1889.
Q Can I just stop you there for a second to ask whether that 1888 expedition is the same time you had said Loring had first gone to the area?
A Yes. Loring was one of the special constables who went up in the first group of special constables. He was there -- he wasn't at Kitwanga when Kamalmuk was shot, but he was at Hazelton at that time. He and Washburn went down from Hazelton to Kitwanga to examine the body of Kamalmuk. He subsequently then returned to Victoria.
THE COURT: He stayed until Loring arrived in?
A Loring arrived in August 1889.
THE COURT: In '89?
A Yes.
MR. ADAMS:
Q As Indian agent?
A As Indian agent. Yes.
THE COURT: This is dated 1890.
A 1890. So that it's written after Fitzstubbs returns to Victoria, and in a sense reflects in part upon his experiences in the year or so that he was in a sense almost acting Indian agent, or an incorrect use of the term. And what it does is to review an early, if not the first, attempt to enforce the feast prohibition within Gitksan territory which took place at Kitwanga in 1888. There are a couple of other documents involved included in the letter, as I recall. One is a letter from H.A. Pocock, who was the CMS missionary at Kitwanga, giving another version of those events,

and also enclosed is a memorandum from C.W.D. Clifford, who was the Hudson's Bay Company clerk at Hazelton at this time. And they present different opinions upon the -- both the feast and the attempts to prohibit the feast.

MR. ADAMS:

Q And what general opinion does Fitzstubbs express in this letter?

A As I recall, what Fitzstubbs tries to do is to make some sort of sense of the feast. He tries to enumerate as far as he understands it some of the functions that the feast performs. In that sense I categorize it as a relatively sympathetic review of that institution.

Q Okay. Let me ask you on the first page if you could read the paragraph at the bottom that fades out beginning "granting readily"?

A

> "Granting readily that the good of the Indians is desired by all there would appear to be fair ground for a difference of opinion as to what should be done on the upper Skeena. The present practically on the subject of the potlatch it can without difficulty be understood that the philanthropic and missionary point of view may not in all cases..."

I'm afraid I just can't read that on the copy that I have.

Q Okay. And then on the second page towards the bottom there appears to be a series of numbered paragraphs or sentences.

A Right. That's Fitzstubbs' attempts to characterize the -- the feast and some of its functions within Gitksan society.

MR. MACAULAY: My lord, I have what appears to be the original of that letter, that is the holographed letter. I can get it for my friend tomorrow so we don't have to guess what's at the bottom of the page.

THE COURT: All right.

MR. ADAMS: I'd appreciate that, my lord.

THE COURT: Okay. Should we take a short adjournment. Are we going to go to 5:00 o'clock? All right. Madam reporter, ten minutes be enough? Will you be staying with us?

THE REGISTRAR: Order in court.

(PROCEEDINGS ADJOURNED AND RESUMED FOLLOWING SHORT RECESS)

THE COURT: Mr. Adams.
MR. MACAULAY: My lord, I have -- it's not the holograph, it's merely the full size photocopy of the document, and although the lines that the witness was having difficulty with are quite clear there, oddly enough page two isn't as good in this version as in the other, but between the two I think we can --
THE COURT: Thank you.
MR. ADAMS: My lord, I wonder if we could just add this to the tab. I agree with my friend between the two it seems it's all readable.
THE REGISTRAR: Would you give me the tab number?
MR. ADAMS: I'd love to. 77, volume 2.

Q Dr. Galois, at page 49 of your opinion report you refer in the first paragraph under 1889 to 1897 first to the prohibition of the feast system, and we talked about that, and then to the establishment of reserves, and that's the subject I want to take up with you now. And over on page 50 in the final paragraph you say:

> "The process of establishing Indian reserves in Gitksan and Wet'suwet'en territories was initiated by A W. Vowell in 1890."

I wonder if you could explain first who A.W. Vowell was, and then how the process was initiated?

A I'm not quite sure of Vowell's precise position. He was, in effect, as I recall, a deputy for Peter O'Reilly, who was the Indian Reserve Commissioner.

Q Perhaps I can refer you --

A The letter may in fact have Vowell's position or title included in it.

Q If you look at tab 69 in volume 2, and that's a letter apparently signed by Vowell. I'm not able to read what appears above the signature.

A I think it says Indian Superintendent for British Columbia.

Q Okay. And it's addressed to --

A To Vankoughnet. L. Vankoughnet.

THE COURT: Initial L?

A Initial L. Sorry. Yes. V-A-N-K-O-U-G-H-N-E-T. My apologies for any mispronounciation on that. Who was the Deputy Superintendent General of Indian Affairs in Ottawa. In fact he was the head -- the permanent head of the DIA administration at that point in time.

MR. ADAMS:

Q Okay. I wonder if you could just review that letter briefly.

A As I recall it is Vowell's account of his preliminary journey up the Skeena into Gitksan territory as a prelude to the voyage to be made later that year, I believe. It was the original intention by O'Reilly, Peter O'Reilly, in his capacity as Indian Reserve Commissioner. In fact O'Reilly's trip didn't take place until 1891.

Q Okay. Let me ask you to look at page three of that letter at tab 69, and at the bottom, the paragraph beginning at the bottom of the page. I wonder if you could read through that again. The bottom two lines are maybe some trouble.

A

> "I got to the Skeena on the 12th of August with the Vigilant and Mr. Todd where I visited some of the fishing stations and was met by Indians representing different bands on the Skeena. They seemed..."

Q Uneasy.

A

> "Uneasy on account of my visit especially so when learning that I was going up to Hazelton some 140 miles from Essington saying that they never had a Chief visiting them before and they now feared that it was for some purpose injurious to their interests etc. that I was going into their country.
>
> It seemed that they had been generally informed all up the Skeena that their lands were going to be taken away from them by the Government and that that was what Mr. O'Reilly was going up with the Surveyors for, they had also been taught that they would have to pay for every stick of wood they cut for fuel and that they would have to pay to the Indian Agents a tax for the Government in skins etc. It took both time and patience to disabuse their minds of these falsehoods which I was given to understand have been circulated by persons who should know better, and whose duty it

> should be to refute rather than promulgate rumors so misleading and distressing to the Indians and so injurious to the Government and those acting under it in the interest of the Indians."

Q Let me stop you there and ask if you are able to say based on your review of the documentary record who is referred to as "persons who should know better, and whose duty it should be to refute rather than promulgate rumors", et cetera?
A I mean, it was fairly common at this time to blame missionaries for any untoward actions by Indian groups. That would be the most logical explanation that I can recall -- as far as I can recall for that paragraph -- those comments.
Q Now, you say that O'Reilly did not go up in 1890, but in 1891?
A Yes.
Q Would you explain the circumstances of that trip?
A O'Reilly went up accompanied by A.H. Green, who was, I believe, a provincial land surveyor, to carry out his functions as the Indian Reserve Commissioner.
Q And you say at page 51 of your opinion report that O'Reilly arrived at Hazelton in August 1891?
A Yes.
Q And allotted reserves at Gitanmaax, Hagwilget, Moricetown, Babine Lake, Kispiox, Kitsegukla and Kitwanga.
A Yes.
Q You go on to say:

> "At Kispiox and Kitwanga there was clear opposition to O'Reilly's activities; elsewhere, his reception was polite. In a second visit to the region in 1893, O'Reilly again encountered opposition at Kitwanga."

A Yes.
Q Is that view drawn from the documents that you list as your sources?
A Yes.
Q Okay. Now, I'd like you to look, please, at tab 213 in volume 4. There are two documents there, handwritten photocopy of a microfilm original and what appears to be at least a partial typescript of that document?

A I'm sorry, what tab?
Q 213. It would be about three-fifths of the way through the book, and it will just say 13.
THE COURT: There's no typewritten translation in my tab, Mr. Adams. I wish there was.
MR. ADAMS: I have another, my lord, which I'll hand up. I believe it's in the defendants' books.
Q Now, let me ask you first what the original document is?
A The original document is taken from the DIA files. Precise information is contained on the bottom.
Q Yes, and it was written by whom?
A I'm not absolutely sure who wrote that, but it is the minutes, or I take it to be the minutes of a meeting held by O'Reilly at New Kitsegukla on September the 30th, 1891 with Mrs. Loring acting as interpreter.
Q Okay. And the typed portion of this tab, is that your transcript, partial or otherwise, of the original document?
A That is my transcript, yes.
Q Are you aware offhand whether it's complete or partial?
A As I recall -- I thought it may not be entirely complete.
THE COURT: Who do you think this is from and to whom?
A I'm not sure who actually wrote it, your honour, but it pertains to O'Reilly's visit. It could have been written by O'Reilly, or perhaps by A.H. Green who accompanied him. I forget the exact number of people in that party. O'Reilly is also accompanied by his son on that, but --
MR. ADAMS:
Q It indicates that it's taking place at New Kitsegukla?
A New Kitsegukla, yes.
Q At the top left of the first page of the typescript it says "Popn. 12 or 14" and "Pop. of whole band 83". What did you understand that to be?
A I understand that to be a reference to the population of Kitsegukla, and number of people in attendance at that meeting. Number of Indians attending at that meeting.
Q Okay. Independant of the person who wrote the words down are you able to say whose words this is recording?
A It refers to the statements by O'Reilly, I take it, and also by, in this case, one of the New Kitsegukla chiefs by the name of Num tiks, N-U-M - T-I-K-S.

Q Okay. I wonder if I could ask you to look at the second paragraph of the typed script beginning "hitherto" and read that and the following paragraph.

A

"Hitherto the Prov Govt..."

That's an abbreviation for the Provincial Government.

Q Okay.

A

"Have not allowed pre-emps to be taken in the neighbourhood of villages least it shd interfere with the rights of the Indians, but after the reserves are defined this prohibition will no longer exist, therefore I wish you to tell me where your fisheries, timber, and village sites are. I will include their principal fisheries, in the immediate neighbourhood, but there is a special Act which prohibits white men from fishing in fresh water therefore the fisheries are virtually all the Indians, and it is not necessary to make a reserve of every little place where an Indian fishes.

I hope you will not ask an unreasonable extent of country, but only for that which would be useful to you. It is not necessary that the berrying or hunting grounds shd. be reserved. It would be an impossibility to define them as you go over hundreds of miles. You will not be confined to the reserves, but can hunt fish or gather berries where you will as heretofore."

Q Let me stop you there and ask you to go over to the next tab, which is 214. Now, there's a document first, at least it appears in my book, which says 214A, but I want to go past that to where there's a similar white lettered copy of an original and then a typescript, and that appears to be dated 18th of September, 1891?

A Yes.

Q And I wonder if you could explain the character of that document?

A It's similar to the preceding document except that it refers to a meeting at Lach kal tsap, L-A-C-H K-A-L

T-S-A-P, which is Moricetown on the Bulkley River about 35 miles from Hazelton.

Q And, again, you see population 76 and then "abt. 16 present and 6 women". What do you take from that?

A I take that to be the number of people present at that meeting.

Q Okay. And then I wonder if you could just read through that, please.

A

> "Chief Le goul. Am sorry the Chief is absent. The Govt. is anxious land shd. be set apart for you as it has been in the rest of B.C.. A reserve when made protects the land from trespass by others, but the Indian still has the right to hunt fish or gather berries outside. The Govt. does not wish to confine you on the reserve, but wishes to see your condition improve, and therefore had sent an Agent to advise you and protect your interests. My mission now is to see where your potatoe patches, cultivated land, fisheries and timber land are. I am glad to see you have such a good place, and such good land close to your village."

Q And then there's a paragraph following where it says "Namox 2nd chief" and immediately below that "Father Morice". What do you understand from that?

A I understand that to be a statement by Namox, the second chief, and it may well be -- it's possible that Father Morice was there or -- I suspect what it refers to is within that paragraph there is a reference to the priest, which would be Father Morice, who was functioning at that time as the missionary to the Moricetown Indians, but he was stationed -- his permanent residence was at Fort St. James, so he would only visit Moricetown once or perhaps twice a year. He would pay periodical visits to the area.

Q Okay. And let me draw your attention to one comment that's recorded in Namox's name and another recorded further down against the commissioner. And it records Namox as saying:

> "The priest has explained the land laws, and we are glad you have come to make the reserve. I wish to tell you what I want. You only see part of our people you must not

judge of our requirements from the number present: If you give us a small reserve the chiefs who are absent will blame me. I have no garden as I have neither tools nor seed."

And then further down the page the commissioner -- and who's that a reference to?

A I take that to be a reference to Peter O'Reilly, the Indian Reserve Commissioner.

Q And he's recorded here as saying:

"I am sure Father Morice advised you for the best. I am a stranger and I do not know where your best land is. I have no desire to curtail the extent of resv. if you can show me it will be useful to you. I never make a promise without seeing the land I am reserving. The reserve will be for the tribe, not for individuals. Allotments may be made by the Agent. Surveyors will be sent to define the exact boundaries, and plans will be sent to the Chiefs. I want you now to show me the land you ask for."

Now, before I ask you another question I want to refer you to tab 67 in volume 2, and that's a document that's set out calendar pages. I wonder if you could explain what that is?

A This is O'Reilly's visit which he maintained -- this is O'Reilly's diary which he maintained during his visit to the upper Skeena in 1891.

Q Okay. I wonder if you could look at the third page of that and it says "September Friday 18 1891" at the top, and whether you could read the entry for that day?

A

"Friday September the 18th. White frost. Snow on mountains. Beautiful view. Bright clear day. Cross Ind. bridge to hold meeting. Nothing ready though Loring had been instructed. Waited an hour. Held meeting. Rode around and defined resv. and meadow. Some heavy showers. Inds. brought some lampreys to camp which I bought. Not very good. Indian dogs very troublesome. Agent busy dispensing medicine. Too close to my camp."

MR. ADAMS: Thank you. I just draw to your lordship's attention that entry appears to correspond in date with tab 214, in volume 4.

Q Now, on page 51 of your opinion --

THE COURT: Does that indicate he crossed to Moricetown, crossed the Indian bridge?

A Yes.

THE COURT: He's at Moricetown. Thank you.

MR. ADAMS: Yes. And I think the witness indicated out after tab 214 the reference to the place Lack kal tsap was a reference to the location of Moricetown.

THE COURT: Yes. Thank you.

MR. ADAMS:

Q At page 51 I've already referred you to the sentences at the top of the page where you describe where O'Reilly and Green visited and allotted reserves.

THE COURT: I'm sorry. Which page is that?

MR. ADAMS: 51 of the opinion report, my lord.

Q And you speak there of clear opposition to O'Reilly's activities at Kispiox and Kitwanga, and again at Kitwanga in 1893. Let me ask you first, what were the circumstances of O'Reilly returning in 1893?

A It was to complete the allotment of reserves at Kitwanga.

MR. ADAMS: Okay. And, my lord, there is an extract from the diary covering that period at tab 68, which I don't intend to refer to, but it's there.

THE COURT: Where is it?

MR. ADAMS: It's at tab 68 in volume 2. It follows immediately on the extract that the witness did refer to.

THE COURT: All right.

MR. ADAMS:

Q Then in the following paragraph on page 51 of your opinion report you say the following:

> "Three factors seem to have contributed to the apparent lack of opposition to this process elsewhere. First, O'Reilly's stay at most villages was brief. Second, many of the people, including important chiefs, were absent from the villages during O'Reilly's visits. Third, O'Reilly offered assurances that the Indians would not be confined to the reserves:"

And then you refer to the passage that we've already quoted with reference to New Kitsegukla, and

then you go on to say:

> "The process of establishing reserves continued intermittently through the period covered by this opinion. Indian protests were a frequent accompaniment to the various stages in the process."

And I'd like to ask you first whether that represents your opinion?

A Yes, it does.

Q And, secondly, is it based on the documents that you've examined and listed as your sources here?

A Yes. There are additional documents, as this statement indicates, that it refers to subsequent events as well.

Q Yes. I wasn't confining you to one's you read portions of. Are you able to tell from the documents related to Kitsegukla how long O'Reilly was at Kitsegukla? And I can take you back to those if you --

A Kitsegukla. I recall he was there for less than a day. It was a matter of hours, but I can't recall precisely.

Q Okay. And then page 52 of your opinion report you refer at the top of the page just before footnote 37 -- well, actually starting on page -- the bottom of page 51. You say:

> "Two rather different types of protest also took place during this period. The first concerned the destruction of a fishing site at Kitsegukla during 'improvements' to navigation on the Skeena in 1893. As a result of protests and threats the local Indians were compensated with a fishing net."

Now, my lord, I just direct your attention there, because I'm talking there to tab 219, which is one of the references that appears under footnote 37.

And then you go on to page 52 to say:

> "A second incident occurred at Kispiox in 1891: it demonstrated that the Gitksan, even after the arrival of a resident Indian Agent, were prepared to take direct action

> on their own account. In this case the provocation arose from the visit to the upper Skeena by A.L. Poudrier, engaged on an exploratory survey for the provincial government. The reaction, at Kispiox, was a traditional one: Poudrier and his party were prevented from ascending the river and compelled to return."

My lord, again without taking you there, I'd take you to tab 70, which is one of the references under footnote 38.

Now, at the bottom of page 52 of your opinion report you under heading 1898 to 1907 you say:

> "As the nineteenth-century drew to a close the white economy of British Columbia underwent a series of developments which, in turn..."

And you refer to them initiating a transformation in the pattern of Indian/white interaction. And then you refer to -- first of all, to the Klondike gold rush, and I think I'll simply ask you if the paragraph set out below that in the further paragraph below under agricultural settlement represent summaries of your opinion on those developments?

A Yes.

THE COURT: How far did the telegraph line go?

A Which telegraph.

THE COURT: The Dominion Telegraph line?

A I believe that went to Dawson City.

THE COURT: Dawson City.

A Yeah. There was also, I think in 1900 or 1901, a branch line was constructed I think from Hazelton to Fort Simpson.

THE COURT: I see. Thank you.

MR. ADAMS:

Q Then on page 54 of your opinion report you refer at the end of the first partial paragraph to Loring making a trip to the Round Lake and Moricetown areas in connection with a few of the Wet'suwet'en giving annoyance to settlers, and following footnote 42. Again, my lord, I just give you a tab reference for that, which is 229, one of the references.

THE COURT: In relation to what on page 54?

MR. ADAMS: On page 54.

THE COURT: Yes. Round Lake. I see that. Tab number?
MR. ADAMS: 229, my lord.
THE COURT: Thank you.
MR. ADAMS:

Q And, again, at the bottom of 55, footnote 46, there's a reference to the alienation of the Indians from the Indian agent. And I have a note that at tab 49 there is a typescript that is one of the references in footnote 46.

Then on page 56 of your opinion report in the middle of the page you say:

> "Another aspect of the competition for land and resources, requiring separate treatment, was the growth of hunting and trapping as a source of Indian/white conflict. This was not a new issue, witness the experience of Turner-Turner in the 1880's, but it came to prominence in the early twentieth-century. As population in the province increased and the area of white settlement expanded, the provincial government took steps to regulate hunting and trapping. The first major governmental initiative, in response to conditions in the southern portion of the province, was an amendment to the Game Act in 1905. This provided for the appointment of a Provincial Game Warden and a prohibition on beaver hunting for the next six years."

Does that represent your opinion?

A Yes.

Q And then on page 57 in the middle of the page you say:

> "The situation concerning the feast changed little during this period. Missionary opposition continued, most dramatically in a second conflagration of ceremonial regalia, at Hagwilget. Loring, too, maintained the stance he had developed in the 1890's: he reported on the reform of the feast system and, on occasion, reported its imminent or actual demise. It is clear that the feast was undergoing a number of formal changes, but contemporary and subsequent reports indicate that Loring, on the latter points,

was guilty of wishful thinking."

And let me take you to tab 259 in volume five. Does your lordship have that tab? It was missing from one of the defendants' books.

THE COURT: Well, I have a tab. It's --

MR. ADAMS: It will be a fuzzy printed letter.

THE COURT: Yeah. Hazelton, December 31st, 1904, is it?

MR. ADAMS: It appears to be.

THE COURT: 09?

MR. ADAMS: Yes. On the second page it's clearer.

THE COURT: What year?

A It's two separate letters.

MR. ADAMS: It's the second one I want to refer to.

THE COURT: I can't read anything on mine. I've got Hazelton December 31st, 1904.

MR. ADAMS:

Q All right. On the second page of that letter I wonder if you could read the second to last paragraph beginning "many of the"?

A

"Many of the Hokweigets are adjusting things, preparatory of leaving for their hunting grounds, immediately after New Year. Aside of these, of whom all are Roman Catholics, it is well to mention that the Kitksuns, K-I-T-K-S-U-N-S, all but a few of the very old, have embraced new Christian faiths and beliefs, and because of this ascendency, throughout the district of the Skeena, the potlatch is put down for good and all, as in every condition evolved the survival of the fittest."

Q Let me just ask you whether on our examination of the documentary record that statement is accurate or not?

A No, it's clearly inaccurate. At least insofar as it pertains to the Gitksan feast.

MR. ADAMS: My lord, that may be a good place to stop for the day. I have another sizeable section that I would like to do in one chunk.

THE COURT: All right. How are we getting along, Mr. Adams? Are you not quite on schedule?

MR. ADAMS: I'm not quite on schedule, but I'm not too far off, my lord. I would hope to be finished at noon tomorrow.

THE COURT: All right.

MR. WILLMS: My lord, if I might say, I said I would be two days. I'll be two days.
THE COURT: Yes.
MR. WILLMS: I don't know how long my friend Mr. Macaulay will be. I think he said he would be at least half a day. I think no matter how long we sat tomorrow or sat Saturday it's clear that the witness is not going to finish by the end of Saturday, and I'm wondering in light of that whether or not it would be useful, or adviseable to consider another time to continue with this witness without perhaps using Saturday for the witness' evidence.
THE COURT: Well, I can't pretend to be against that suggestion if it's not going to seriously jeopardize any other timetable or schedule we're trying to maintain. Is the discussion that we're having now one that we might better have when we hear from Mr. Rush? Is Mr. Rush --
MR. ADAMS: I think it might, my lord.
THE COURT: Yes. Mr. Rush is expected at 5:00 o'clock?
MS. MANDELL: 5:00 o'clock, yes.
THE COURT: All right. I'll take a walk down the hall and back, and I'll be ready to proceed when Mr. Rush arrives. Thank you.
THE REGISTRAR: Order in court.
THE COURT: The witness is excused for the evening, of course.

(PROCEEDINGS ADJOURNED AND RESUMED FOLLOWING SHORT RECESS)

THE COURT: Mr. Adams.
MR. ADAMS: My lord, on the question of the scheduling of the rest of Dr. Galois' evidence the plaintiffs have proposed that we complete his direct evidence when it's completed tomorrow, and that his cross-examination go over to the 13th, 14th and 15th of June, which is after the completion of Ms. Marsden. However, Mr. Willms says he's not available at any time during that week, and therefore, the question is still up in the air as to where we can put him. The plaintiffs are on a fairly fixed schedule as far as Dr. Lane and Ms. Marsden are concerned.
THE COURT: Well, I think that the 12, 13th and 14th that's the week I have to go to Ottawa.
MR. ADAMS: Yes. That's Tuesday, Wednesday and Thursday of that week.
THE COURT: It's Tuesday, Wednesday, Thursday of that week?
MR. ADAMS: I believe so.

THE COURT: Well --
MR. ADAMS: I think the 12th is Monday.
THE REGISTRAR: The 12th is Monday.
THE COURT: Yes, it's Monday, Tuesday, Wednesday then.
MR. ADAMS: No. Dr. Galois isn't available the Monday, so I was --
THE COURT: There isn't time then. I have to leave on Thursday. I wanted to leave on Wednesday, but I have to be there on Friday. I have to leave on Thursday unless I fly all night, and I'm not anxious to do that.
MR. ADAMS: Mr. Willms is saying he's not available at any time in that week in any case.
THE COURT: Well, is it realistic to think we are going to be able to maintain a four day schedule for Barbara Lane and five day schedule for Susan Marsden? Are you involved in either of those witnesses, Mr. Willms?
MR. WILLMS: I will not be doing Dr. Lane. All I can say with Dr. Lane is I have spoken briefly to Mr. Goldie who will be doing Dr. Lane, and he can see that there could be some time problems with four days, or even five going to Saturday, and that was before -- during this last week while Mr. Goldie was in, and he still is in Ottawa, further document lists have been disclosed with respect to Dr. Lane and he hasn't had a chance to review those at all. In fact we're still looking at them, so I really -- without saying that Dr. Lane couldn't be done in five days, my understanding is that it might be fairly difficult.
THE COURT: Well, what about -- what about finishing Dr. Galois on June 19th?
MR. WILLMS: June 19th?
THE COURT: The week of June 19th.
MR. WILLMS: That's convenient and agreeable to me, my lord.
MR. ADAMS: I have no problem personally with that, my lord. I don't have Dr. Galois.
THE REGISTRAR: He's just outside.
THE COURT: Mr. Macaulay?
MR. MACAULAY: I'll be available that day -- week.
THE COURT: See if Dr. Galois is still there.
THE REGISTRAR: Dr. Galois, courtroom 53, please. Dr. Galois.
THE COURT: There we are.
MR. ADAMS: My lord, Dr. Galois is available the week of the 19th.
THE COURT: So we could finish him then if we don't finish him tomorrow without sitting on Saturday.
MR. ADAMS: Well, the suggestion was that we simply stop when we complete his direct evidence.

THE COURT: Yes. Well, maybe Mr. Willms will take a page out of Mr. Goldie's book and decide not to cross-examine. But, anyway, all that aside, if that's convenient to everyone, and it can be done, I think that's probably the best arrangement. I'm quite prepared to carry through on all day tomorrow and Saturday, but it doesn't seem it's going to be particularly productive.

MR. WILLMS: Well, as I said, my lord, I will be two days, and I think bearing in mind what Mr. Macaulay said his estimate was, we couldn't do it.

THE COURT: All right. Well, then that takes us to the middle then of the week of June 19th.

Does Mr. Rush have some good news for us, or any news?

MR. RUSH: My lord, I hope you'll permit me to address the court in my current state.

THE COURT: We lost our following, I think.

MR. RUSH: My lord, the situation as it stands at the present time is that there is no indication about the current status of the plaintiffs' funding arrangements, and there does not seem to be any present indications as to when the situation's going to change. One remains hopeful, but at the present time I'm really unable to advise the court about anything positive concerning the present situation of the plaintiffs' funding. I had intended to say to your lordship that the plaintiffs were not in a position to schedule beyond the week of June the 8th, but circumstances seem to be as they are developing that due to the extensions of the present cross, or examinations and potential cross-examinations, that there will be weeks after June the 8th. But I -- at the present time, my lord, we are not in a position to advise of any schedule after -- I shouldn't say June the 8th, June the 9th when Susan Marsden continues, or at least completes, and I think it's Susan Marsden completes on the June the 9th, and present arrangements which have just been spoken to.

THE COURT: Well, Mr. Rush, I can't disagree with what you say, but I keep hearing things I shouldn't hear, some quite optimistic. You don't hear the same things that my judges keep hearing from other people, and telling me?

MR. RUSH: My lord, the advice that we have received, or the intelligence, if I may put it that way, that we have received is that the plaintiffs may well be advised of a changing funding situation at some time between tomorrow and a week from tomorrow. This, however,

regrettably is not going to suffice in terms of the present ability of counsel and the plaintiffs to continue the case after the -- I guess it's now the 19th of June.

THE COURT: Yes. Well, no, it's the middle of the week of the 19th.

MR. RUSH: The middle of the week of the 19th. The situation as it stands now, my lord, is that we have -- we have stepped down to some degree our preparations, and we have not been able to maintain the pace that perhaps our friends have been able to maintain, and this has had an impact on our scheduling, and certainly it has impacted in our ability to schedule in the weeks after June the 9th as it then was, but now 19th. I cannot advise you about whether or not if our funding situation alters in the next week whether that will allow us then to put us back into some track that will permit an orderly schedule on the plaintiffs' -- remaining portion of the plaintiffs' case.

THE COURT: Well, I don't -- I wouldn't think that I would call upon the defence -- well, I'm ahead of myself. Are you able to say whether these three witnesses will complete the plaintiffs' case?

MR. RUSH: Yes. They will not complete the plaintiffs' case.

THE COURT: They will not?

MR. RUSH: They will not. There are some other items that will take in court time to complete, and it is those items which at the present time the plaintiffs are unable to schedule.

THE COURT: Well, I would certainly hope to get those -- those matters looked after in the week of the balance of the 19th, and the week of June 26th, and I can only express that as in preparatory terms, because I am most anxious now that we've made these arrangements this far to call on the defence if the plaintiffs are finished on the week of July 3rd, if possible. I think they should be plan for that. I think we should plan for that, because without that I'm sure we'll run into great difficulty in the fall and the defence won't finish their case and there will be further -- we'll be still going for a year from now. I expect we probably will anyway. But I'll leave that statement into -- if that's the way it sounds for the advantage and benefit of counsel. I won't go beyond that.

MR. RUSH: Well, my lord, I want to make it clear for the sake of the record that this is not a situation that either counsel or the plaintiffs wish to be in, and that it's

a situation of tremendous uncertainty, and it's uncertainty that regrettably resonates into the scheduling and processing of the plaintiffs' case, and we're only able to do so much, and we're fast running to the point where we can not do any more in terms of the orderly scheduling of the plaintiffs' case and unless circumstances change quite abruptly. And we, as your lordship I'm sure is well aware, we've been hoping we could come to the court and state more positive results. And we're hoping, as I've indicated, that some light will be shed on the plaintiffs' financial and funding circumstances within a week, but at the moment there's nothing that we can -- we can say from that.

There is one other issue, however, my lord, if I may just interrupt, that I would like to address, and that is I find your lordship's comments about the desire to have the defendants proceed with their case of concern on two levels, not only from the court's level and the prospect of proceeding with the plaintiffs' case, but also in terms of the plaintiffs proceeding with the defendants' case. And our concern is heightened by the fact that in the last two months we have been writing to the province, in particular, asking whether they will proceed with lay or expert witnesses, if so who, and when. We have made requests of the province and the federal defendant, and this isn't so much a concern for the federal defendant as we've been presuming that the province will proceed with its defence first. We've requested that 60 days notice of their witnesses be given to us. And we've asked in the case of new expert opinion we've asked for 120 days notice. We've received the summary and opinion of a Dr. Farley, and we assume only that -- that he wouldn't be called within 120 days, but we know nothing about that schedule. We have received no notification whatsoever of witnesses, lay or expert, intended to be called at the end of our case, and we are very concerned about where this leads the plaintiffs' preparation of the defendants' case. Even assuming in the best of all possible worlds that the plaintiffs were in a position to proceed given their own scheduling and funding difficulties, because we feel that there has been no meaningful discovery of the provincial defendants or their case, and that they're the only insulation that we have in respect of our preparations for the defendants' case, is if

adequate notice can be given to us of who the witnesses will be, the summaries of their evidence, whether it's going to be expert or lay witnesses called first, and if notice cannot be given we are going to be in a very difficult position to make the preparations or organize for the cross-examination of the defendants' witnesses. There is a tremendous body -- corpus of documents that is sitting there that at the present time has no palpable relationship with what could be the witnesses, expert or lay, to be called by the defendants, and unless we receive some timely responses to the requests that we have made of the provincial defendant we are not going to be in a position to deal adequately with these witnesses.

Now, my lord, I raised this with your lordship some weeks ago, particularly on a question of disclosure by the defendant of witnesses, experts, that they intend to call within 60 days, and I just point out to your lordship if there is going to be an expert called on July the 3rd we don't have 60 days notice of it. Now, maybe there will be no experts called. There was a suggestion by Mr. Goldie that he would be able to advise us of affidavits of lay witnesses that were intended to be called as early as Easter and he's resiled from that and said by letter to me that he would not be in a position to do that until later in the summer.

Now, my concern is this, that without some adequate notice and ability to prepare for the defence, and I don't know what is really in the minds of my learned friends concerning how they are intending to schedule the defence, but certainly, funding questions permitting, I think it was assumed that the plaintiffs would endeavor to finish their case by the end of June, and if that is so then in my submission there needs to be considerable notice provided to the plaintiffs immediately of schedules and the nature of the witnesses to be called, and summaries if need be, and any further documents that are intended to be disclosed by my learned friends.

And so I say, my lord, that I think this is a twofold problem. One on the side of our ability to schedule the completion of the plaintiffs' case, and secondly, in terms of our ability given now what seems to be pressing time constraints by the absence of notification of the defendants' case.

Now, I will be in court next week with Dr. Lane,

and I hope to be able to keep your lordship current as to the information that the plaintiffs receive concerning their financial capacities.

THE COURT: All right. Thank you. Well, Mr. Willms.

MR. WILLMS: Well, my lord, there's much that could be said, and I think it's best left to next week. There are a number of outstanding issues, especially in respect of the alienation series. And you may recall that those maps were put to Marvin George, because we thought he was the cartographer. There is a lot of evidence about the alienation series and we still don't know what my friend's position is on this. We had hoped to deal with alienation early, because it's a long series. I don't think we'll be able to do that. We're still trying to determine what else the plaintiff is going to do. As I understand it, my lord, except for Dr. Farley all of the summary of opinion, or the opinion reports were given to my friend long ago, and so the only question is assuming a July 2 start to the defendant's evidence, what would be the schedule of the evidence.

Now, some of that will depend on the alienation issue, because obviously if the alienation issue requires us to formally prove every single aspect of it, and we're still waiting to hear from my friend and his friend the cartographer who are going to look at parts of it and determine whether or not they had any question about it that will change the complex of that. The -- certainly the alienation series wouldn't be very complicated to do in the absence of some objection to the underlying basis. And really right now, my lord, there are other items, and I'm sure Mr. Goldie could explain them in more detail, because he has been corresponding with Mr. Rush on these issues, and that's why I just raise this at this point, my lord, to say that perhaps this is a discussion that could carry on next week when both Mr. Rush and Mr. Goldie are in court.

THE COURT: Well, is there any reason why Mr. Rush can't be told what the order of the witnesses will be?

MR. WILLMS: My lord, I just alluded to that a moment ago.

THE COURT: There is always a reason why something can't be done. It's sort -- sooner or later someone has to make a decision.

MR. WILLMS: Exactly. Sooner or later someone has to make a decision as to whether or not in terms of scheduling the case and convenient use of three weeks of court

time and putting the defendants' case forward in a logical and rational manner. We need some answers from the plaintiffs. And I would rather, with all due respect to my friend, have all of the information necessary before we decide to take a shotgun, scatter gun, willy-nilly approach to leading the defendants' case. And, in my submission, especially in respect of the alienation series and some discussions about cross-examination and creation of affidavits to prove some of it. I think that issue is important and should be resolved before the plaintiff calls upon, or before the defendant is called upon to say all right, here is what we are going to do. Otherwise it's a disjointed collection of witnesses, my lord.

THE COURT: Well, we have three days; June 12th, 13th and 14th that aren't taken at the moment. If there is a problem with the alienation project it seems to me you better get -- you better get some motions going to get that problem resolved.

MR. WILLMS: And, my lord, I should say, as well, there are still a number of legal issues that arise out of the plaintiffs' case which will probably be best dealt with at the close of the plaintiffs' case rather than the close of the evidence, and I can't off the top of my head mention all of them, but some of them are the reports that have been objected to and you've -- your lordship has heard evidence subject to the objection and your lordship will then have heard of all of them.

THE COURT: We've got all the week of June 26th that isn't spoken for.

MR. WILLMS: Exactly. If I can just put it this way, my lord, my friends don't know when they will close their case, and we're asked to assume that they will close their case by the end of June. Assume that by the end of June we'll have all the legal issues between us resolved, assume by the end of June that the alienation issue is resolved, but we don't know which way, and then tell our friends who the witnesses are going to be in July. Now, there's no question, my lord, that if pressed a witness list could be thrown together for July.

THE COURT: Why don't you -- I think you better do that.

MR. WILLMS: I beg your pardon?

THE COURT: I think you better do that.

MR. WILLMS: Well, my lord, I'll certainly describe to Mr. Goldie --

THE COURT: I don't care whether you do or not. I expect the

defence to proceed with a witness on July 3rd if the plaintiffs have closed their case? I can't force them to close their case. I guess eventually there is a limit of how long and how far a case can take. I don't think at that point -- it's been known now for -- well, time goes by quickly. It's been known for three to four months now that we were going to be sitting on this case during the month of July. The only thing that stood in the way, and I indicated a number of times that I wasn't prepared to recognize this case wasn't -- I wasn't prepared to recognize this case could be shut down for any of the problems that I had been told about. I know there are limits to these things. If Mr. Rush's financing gets in place, I sincerely hope it will, it seems to me that there is no reason why the defence shouldn't be ready to proceed with their case on July 3rd.

MR. WILLMS: I'm not saying that the defence wouldn't be, my lord.

THE COURT: If it has to be done in an awkward or inconvenient or disorganized way, so be it, but I do not think that we can allow the uncertainty to continue indefinitely. Both sides are going to have to make some tough decisions. Mr. Grant -- if Mr. Rush wants to say I'm not agreeing to anything in the alienation project then you have your remedies under the rules. There are provisions for affidavit evidence and things of that kind. Maybe you need that kind of application. Those things are not for me to speculate on, but I am determined, and I hope that's not too strong a word, to keep this case moving through the month of July and shut it down for August and to get going again in September. So I think everyone's on fair notice that they will have to do whatever they have to do to see that that schedule is not lightly tossed aside.

MR. WILLMS: Well --

THE COURT: I don't cast any aspertions or put any blame on anyone, it's just that -- well, I noticed the other day there was two huge cases in the United States settled. One was the San Juan Puerto Rico fire that they were having a terrible time with. Judge went -- very difficult. It got settled. The Agent Orange case got settled, and there was another big one, I forget which one it was. But I think the time has passed when we can continue to take any kind of leisurely approach to this. We've got to get at it.

MR. MACAULAY: My lord, if the plaintiffs have to throw together

a witness list for --
THE COURT: The defendants.
MR. MACAULAY: The defendants, I think it behoves the plaintiffs to do the same thing with respect to their last witnesses. They shouldn't be allowed to keep their case open simply by the device of not disclosing the last couple of witnesses.
THE COURT: I don't even remember what the arrangement was with regard to late witnesses. I take it they're not --
MR. MACAULAY: I'm not talking about lay witnesses. We have a number of summaries of evidence of witnesses who may or may not be called. This is about the time that --
THE COURT: I was told the other day by somebody here -- whether you were here or not I don't remember. I was told the other day where were no outstanding notices of expert witnesses that were going to be called by the plaintiffs. Was I wrong on that?
MR. MACAULAY: That's not my understanding at all. I hope I didn't miss --
MR. WILLMS: No. I think what your lordship is referring to is that I suggested that if my friends were going to call another expert that perhaps they could let us know, because we haven't been told.
THE COURT: All right.
MR. WILLMS: There will be another expert after Ms. Marsden, and I think that's what my friend, Mr. Macaulay, is referring to.
MR. MACAULAY: No reason we should be left dangling. No reason, funding or otherwise, that can't be done. It's a matter of counsel making the decision of yes, I'm going to call doctor so and so, Dr. Smith, and doctor Jones. No, I'm not going to call any more expert witnesses.
THE COURT: That is something I don't think I can intrude upon.
MR. MACAULAY: Well, my lord, the plaintiffs are being asked to draw up that kind of a list, or being told to draw up that kind of a list. I mean, the defence.
THE COURT: I haven't suggested the defendants draw up a list. I meant make preparations and be ready to proceed. If that means giving notice and doing those things that has to be done.
MR. MACAULAY: Well, the same applies to the plaintiffs.
THE COURT: Yes, I should think so.
MR. MACAULAY: But time and time again we're --
THE COURT: What has the rule been? What has the rule been about the order of witnesses that are going to be called? What has the practise been?

MR. WILLMS: The primary difficulty has been ever since with Dr. Daly. It's not so much we hadn't received notice the witness was coming, we had the report but we didn't have the underlying facts. So your lordship made a ruling in respect of Dr. Daly that the underlying facts should be disclosed 60 days before the witness. That has usually converted itself into 60 days notice of when the witness will start testifying, because that's when we get the underlying facts.
THE COURT: Yes.
MR. WILLMS: But I don't think that your lordship has ruled even that the plaintiffs have to tell us who their expert will be. That's a matter between counsel.
THE COURT: Yes.
MR. WILLMS: It's just turned out that we know 60 days in advance who it is, because that's when we get the underlying facts. Now --
THE COURT: Your friends don't have 60 days notice which witnesses you're going to call?
MR. WILLMS: They have notice. They have disclosure under the rule of the expert opinion.
THE COURT: Yes. Opinion or summary?
MR. WILLMS: Most cases it's the opinion.
THE COURT: Yes.
MR. WILLMS: In some cases it's the summary. And insofar as the summary requires underlying facts to be disclosed that are not already disclosed they will be 60 days in advance of the witness.
THE COURT: Well, we're within 60 days of July 3rd now.
MR. WILLMS: And my understanding is except for Dr. Farley in respect of all of the other provincial experts 60 -- more than 60 days notice has been given.
MR. RUSH: Well, my lord, I beg to differ with my friend. An order was made that the individual's name who's going to be called within 60 days be disclosed, and we did that.
THE COURT: Yes, I think that's right.
MR. RUSH: And so if Dr. Farley is being called on July the 3rd we should know it now.
THE COURT: Yes, you should.
MR. MACAULAY: That's what I'm asking about.
MR. RUSH: But what I'm saying, my lord, for Dr. Farley I want four month's notice, not two.
THE COURT: Well, I'm not sure you're going to get four month's notice, Mr. Rush. There isn't four months, unless he's going to be called --
MR. RUSH: That's precisely the point, my lord. My learned

friends have had two years.
THE COURT: I know. And counsel have had -- well, I shouldn't say. I don't know when we decided -- when I said we would sit in July, but counsel have had that time, and it's up to them to do what they have to do to make sure they can call their witnesses. And I expect that the defence will be ready to proceed in the month of July if the plaintiff has closed their case. And they better be ready to proceed, and if there is some reason why they can't maybe that witness wouldn't be allowed to be called. I don't know what the result of all that will be. This case has got to keep moving. It can't be brought to a stop at this point.
MR. RUSH: I concur with that, my lord, but I would ask my learned friends on Tuesday of next week to give us some indication of what their case was going to be by who the witnesses are, the names of the witnesses that they're going to call when their case starts on July the 3rd.
THE COURT: I don't understand any reason why you don't -- you don't have that. I don't understand any reason in the world why they don't know what your remaining witnesses are going to be if they are witnesses that require that kind of notice. If they're lay witnesses I don't know what the notice is. 60 days?
MR. RUSH: No, it was 14.
THE COURT: Well, I'll leave that to counsel, but I'm just getting terribly concerned that -- that this trial is going to come to a point where counsel haven't done what they have to do to make sure that it goes ahead. I say, with the greatest of hesitation, that this trial has to keep going.
Shall we adjourn until tomorrow morning at ten o'clock.
THE REGISTRAR: Ten o'clock?
THE COURT: Ten o'clock.
THE REGISTRAR: Order in court. Court will adjourn until 10:00 a.m..
(PROCEEDINGS ADJOURNED TO MAY 19, 1989 AT 10:00 a.m.)

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

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Peri McHale, Official Reporter
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