

D.R. Williams (for Province)
In chief by Mr. Goldie

OCTOBER 19, 1989
VANCOUVER, B.C.

THE REGISTRAR: Order in court. In the Supreme Court of British Columbia, this 19th day of October, 1989. In the matter of Delgamuukw versus Her Majesty the Queen at bar, My Lord.

May I remind you, sir, you are still under oath.

THE WITNESS: Yes.

THE REGISTRAR: And would you state your name for the record please.

THE WITNESS: David Ricardo Williams.

THE REGISTRAR: Thank you, sir.

THE COURT: Mr. Goldie.

MR. GOLDIE: My Lord, I have transcript pages for tab 8A.

THE COURT: Thank you. Is that volume 2?

MR. GOLDIE: That's volume 1, My Lord.

THE COURT: 8A.

MR. GOLDIE: 8A.

THE COURT: I'm sorry -- no, this is not volume 1, Madam Registrar. All your 8's looks like 9's, Mr. Goldie.

MR. GOLDIE: Yes, I'm afraid they do. But it is 8A.

THE COURT: Not to be confused with 6's and 7's.

MR. GOLDIE: And 52C, which is volume 3.

THE COURT: Thank you.

MR. GOLDIE: And 109C in volume 5.

THE REGISTRAR: 109C.

MR. GOLDIE: C, yes.

THE COURT: Thank you.

MR. GOLDIE:

Q Mr. Williams, if you could have the index in front of you, and if necessary volumes 4 and 5. I want to determine which of the documents you regard as official correspondence and the exceptions to my question with respect to volume 4 in the index beginning at page 10. And these are, as I say, the exceptions to the question I will put to you with respect to official correspondence. At 57, 58, 59, 60A, 60B, 60C, 60F, 61F, 67A, 69, 75B.

A Just a moment, Mr. Goldie, please.

Q Sorry.

A 75 what was it?

Q 75B as in Baker.

A Yes.

Q 76E, 78, 79A, 79C, 84, 86, the enclosure with 91A. At 92, 93 and 96D. I'm sorry -- yes, the second 96D. There are two under the same tab, and it's the

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1 newspaper article.
2 A Yes.
3 Q With those exceptions, are the documents found in
4 volume 4, letters, entries, memoranda made by the
5 government officials in the course of their duties as
6 far as you can determine?
7 A Yes, Mr. Goldie, except that I would not exclude from
8 that category the enclosure with 91A. That was an
9 enclosure by Vowell. It was the subject of his
10 letter.
11 Q I see. Yes. All right. I was thinking of the nature
12 of the letter itself, but -- all right.
13 MR. ADAMS: And was 94 mentioned?
14 MR. GOLDIE: If it wasn't, it should be.
15 MR. ADAMS: Okay.
16 MR. GOLDIE: I have it on my list, and if I didn't mention it, I
17 should have mentioned it.
18 MR. FREY: There are two number 86's, and I wonder if it applies
19 to both. The second number --
20 MR. GOLDIE: Yes, you are right. It's only the first 86, the
21 newspaper article. Thank you.
22 Q The second document under that tab I put in the
23 classification of official correspondence.
24 A Yes.
25 Q Then with respect to volume 5, beginning with the
26 index page 15, document 99B, 103A. Over on the next
27 page there are two newspaper articles under that tab,
28 both of them.
29 A Yes.
30 Q And 103B, 103C, 104A, 104B, 104C, 104D, 104E, 109B,
31 109C, 109F, 110A, 110B, 111B?
32 A I'm sorry --
33 Q 111B.
34 A Yes, right.
35 Q 112A, 114C and 114D. With those exceptions, are the
36 documents found in volume 5, reports of memoranda,
37 entries made by government officials to or from their
38 superiors in the course of their duties?
39 A Yes, except that I don't know that -- I at least would
40 exclude 103B.
41 Q 103B is?
42 A The letter from then Superintendent of Police to
43 the -- to Bowser, who is the Attorney General, I
44 think, at the time.
45 Q Yes, I think you are correct.
46 A And nor I think would I at least exclude items 114C
47 and 114D. They were certainly related to government

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1 business.
2 Q Yes, I agree with you there on government business. I
3 was putting them in the category of reports to or from
4 superiors and inferiors in the course of business.
5 A Yes.
6 Q Mr. Williams, subject to the objections with respect
7 to the summary of your opinion evidence marked for
8 identification at this point Exhibit 1173, are the
9 conclusions which you have set out on pages 1 and 2,
10 your opinions with respect to the evidence you have
11 given?
12 A Yes.
13 MR. GOLDIE: My Lord, I tender -- I formally tender Exhibit 1173
14 as an exhibit, subject to the objections that have
15 been made.
16 THE COURT: Yes. I am trying to see what note I made. 1173.
17 MR. GOLDIE: Yes, that's the summary. I think it was tendered
18 at the beginning.
19 THE COURT: Oh, yes, that was correct. It was tendered the
20 first day, was it?
21 MR. GOLDIE: Yes.
22 THE COURT: Yes, all right.
23 THE REGISTRAR: Exhibit 1173, My Lord.
24
25 (EXHIBIT NO. 1173 - SUMMARY OF OPINION
26 REPORT OF DR. WILLIAMS)
27
28 THE COURT: Mr. Frey?
29 MR. FREY: No cross-examination.
30 THE COURT: Thank you. Mr. Adams.
31 MR. ADAMS: Thank you, My Lord.
32
33 CROSS-EXAMINATION BY MR. ADAMS:
34
35 Q Mr. Williams, let me first try to save us all a couple
36 of hours, and ask you whether you stand by the
37 evidence that you gave in your cross-examination on
38 qualifications?
39 A Yes.
40 Q Okay. And you adopt that evidence?
41 A If it's necessary for me to adopt it, yes, I gave it.
42 Q Yes. Now, I want to ask you first some questions in
43 general about doing legal historical research. And
44 that's what you were doing for the purposes of
45 rendering your opinion here?
46 A Yes.
47 Q Okay. Now, one of the things that you know in

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- 1 approaching legal historical research, is that there
2 will be a wide variety of potential sources?
3 A Yes.
4 Q Okay. And you are aware that in legal historical
5 research in general, and in your subject in
6 particular, there are often conflicts in the sources?
7 A Yes.
8 Q Okay. And those conflicts make it necessary to
9 evaluate the sources you are using, correct?
10 A Yes.
11 Q Okay. Would you explain, please, how you go about
12 evaluating the sources that you have used? On what
13 dimensions? According to what criteria do you decide
14 whether you can or cannot rely on a source when you
15 are doing legal historical research?
16 A I think essentially it depends upon judgment, based
17 upon experience, and based in part also upon
18 knowledge, perhaps derived from experience about the
19 people, the persons responsible for the sources being
20 examined.
21 Q And what do you need to know about the people in order
22 to evaluate them?
23 A Whether they are trustworthy, whether they are
24 observant, whether they have an axe to grind. Also
25 what period.
26 THE COURT: What?
27 THE WITNESS: What period, My Lord, period of time in which they
28 are operating.
29 MR. ADAMS:
30 Q Why is the period significant?
31 A Well, this is maybe more true of newspapers than of
32 documents, contemporary documents. Newspaper
33 reporting in the late -- the last half century of the
34 last 50 years of the last century was pretty strident
35 sometimes, and politicized often, and one has to
36 certainly take that into account in reading newspaper
37 accounts in the last century.
38 Q Anything else that you need to know about the people,
39 your sources, in order to evaluate them?
40 A I think it's helpful to have the knowledge and the
41 background of the people. I think it's helpful in
42 particular in reflecting on Mr. Loring's
43 correspondence and what he is attempting to say.
44 Q And I think you observed already it's sometimes quite
45 obscure what he in particular is attempting to say?
46 A Yes.
47 Q Anything else?

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- 1 A I think the whole process of legal historical
2 research, as with any other research project, depends
3 upon the degree of application that one brings to the
4 task. One examines the sources, one reads as widely
5 as one can as what time will allow in a particular
6 field. One finds conflicting views, of course, one
7 finds conflicting documents. One looks at all of
8 these, and one weighs them.
- 9 Q One of the things you haven't mentioned, that I
10 suggest to you is an important dimension of this
11 problem, is the extent to which the people who are
12 writing the documents you are relying on are
13 knowledgeable about the societies they are writing
14 about. That's important, isn't it?
- 15 A I think I said, Mr. Adams, that the object -- how
16 observant the source was.
- 17 Q You will agree with me that you can be highly
18 observant, but not be knowledgeable about what you are
19 observing?
- 20 A I'm sure that could be the case, yes.
- 21 Q So that the knowledgeability of the source is a
22 distinct dimension from their capacity of observation,
23 is it not?
- 24 A I would agree.
- 25 Q Did you put your mind as you were evaluating your
26 sources, do you as a general matter in doing legal
27 historical research, to the knowledge that your
28 sources have of the societies they are writing about?
- 29 A Well now, you are asking about knowledge of societies.
30 I am not sure just what you mean by that.
- 31 Q Well, let me give you an example. If somebody is
32 going to write about Indians, what Indians are doing,
33 what Indians are thinking.
- 34 A Uh-huh.
- 35 Q Then the degree of knowledge or the lack of knowledge
36 of your source in who the Indians are, how they are
37 socially organized, could be a significant constraint
38 on the reliability of the source, could it not?
- 39 MR. GOLDIE: I'm sorry, you mean if the person is writing about
40 the society, how they are organized? My friend's
41 question assumes the subject matter of the writing of
42 the person, if I followed him correctly.
- 43 MR. ADAMS: Yes, I'll try to make the question clearer, My Lord.
- 44 THE COURT: Thank you.
- 45 MR. ADAMS:
- 46 Q Mr. Williams, if your source is writing about Indians,
47 it's so, is it not, that the degree of their knowledge

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- 1 of Indian societies, Indian cultures about which they
2 are writing, is a significant dimension in assessing
3 the reliability of the source?
- 4 A I was not asked to, if I may use the phrase, to embark
5 upon a sociological examination. I was asked to
6 investigate documentary evidence. This is what I did.
7 Now, I agree any -- any information that bears
8 generally upon a question no doubt has some value. I
9 am not so sure that in the particular type of research
10 that I was doing, what I would call sociological
11 considerations or ethnological considerations, had
12 much application.
- 13 Q So didn't make any difference to you whether your
14 sources knew something about the people they were
15 writing about or not?
- 16 A Oh, yes. As I said, one has to evaluate the worth of
17 what one reads.
- 18 Q And that's an important dimension of that evaluation,
19 is it not, the knowledgeability of the author about
20 the society they are writing?
- 21 A Well, if you mean, Mr. Adams, that I felt it was
22 necessary in attaching worth to some source to make a
23 determination whether that person had a complete
24 ethnological appreciation of the Indian communities
25 within the claim area, then I confess I did not -- I
26 did not do that.
- 27 Q Nor did you, I suggest to you, make any examination at
28 all of any of your sources with that in mind?
- 29 MR. GOLDIE: My Lord, I still have difficulty when my friend
30 says "with that in mind". There is an unspoken
31 assumption of what the person who authored the
32 document was writing about. If the person writing the
33 document says A shot B, that's one thing. If the
34 person writing the document says I think A is
35 attempting to --
- 36 THE COURT: Thinks he was justified.
- 37 MR. GOLDIE: Yes, exactly. There is a -- I'm having difficulty
38 with what is the assumption that is behind the
39 question about the evaluation.
- 40 MR. ADAMS: Well, My Lord, there isn't an assumption of the kind
41 my friend implies. The question is simply if you are
42 going to write about documents, if you are going to
43 use documents that write about Indians, do you not
44 need to know what the person writing knew about the
45 Indians.
- 46 THE COURT: I suppose you would recognize there is a
47 distinction, as Mr. Goldie suggests, if you are

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1 talking about a specific act, describing a specific
2 act without attributing ambiance and other features to
3 it.
4 MR. ADAMS: Well, if it's at the level of my friend's example,
5 that A shot B, yes. If the statement is A murdered B,
6 we may be into an interpretive problem. I don't
7 accept that it's a simple dichotomy either. It's
8 something anyone can observe, or it's something --
9 THE COURT: Well, I think Mr. Goldie has made his views on this
10 question known, and that's a matter the witness can
11 take into account and can factor into his answers, if
12 he thinks it's appropriate. And you may proceed.
13 MR. ADAMS:
14 Q Do you recall where we were?
15 A I would appreciate it if you would rephrase the
16 question, Mr. Adams.
17 Q I was urging on you that if you are going to rely on
18 documents where non-Indians are writing about Indians,
19 it would be at least helpful to know what the writer
20 knew about Indians.
21 A I agree it would be helpful, yes.
22 Q And you agree with me that you didn't give any
23 particular attention to that dimension of the problem
24 of relying on documentary sources?
25 A That's not so. For example, in considering reports by
26 Fitzstubbs, he had a long connection with Indian --
27 with a -- with Indians before he came to Hazelton.
28 Q Yes. How long had he been in Hazelton to your
29 knowledge?
30 A He came there in 1888.
31 Q Yes.
32 A But he had been in the Omineca.
33 Q And is it your view --
34 A In the 1870's. And it's -- I -- to take him as an
35 example, I think he was knowledgeable. I attach
36 significance to what he says.
37 Q About whom was he knowledgeable?
38 A He had lived in the north country for 16 years before
39 he came to Hazelton.
40 Q And is it your view that people in the north country,
41 Indian people in the north country are pretty much the
42 same from place to place?
43 A No. I was speaking about Mr. Fitzstubbs, not about --
44 well, I'm sorry, I misunderstood you. I don't think
45 there is a great deal of difference amongst the
46 northern people in that respect. But in any case,
47 many of the people that he was dealing with in the

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- 1 Omineca came from Skeena. The Omineca mines were not
2 far away from the Skeena.
- 3 Q Is that the only example that comes to mind of a
4 person where you turned your mind to what they might
5 know about the subject of their writing?
- 6 A No. If you want me to give my -- my personal
7 evaluation of the individuals as source material, I
8 will do so, but he's a notable example.
- 9 Q Well, perhaps when we come to some specific examples,
10 I can give you that opportunity. You would agree with
11 me that in doing legal historical research, it's
12 advisable to consult sources as widely as possible?
- 13 A Yes, in general I would agree, so far as the time
14 allows, of course. Anything is helpful.
- 15 Q And you would accept, I take it, that in doing legal
16 historical research, it's important not to ignore
17 documentary materials that would contradict your
18 working hypothesis?
- 19 A I agree one takes them into account.
- 20 Q And you do that when you are conducting legal
21 historical research?
- 22 A Certainly.
- 23 Q And you did that in your preparation for this case?
- 24 A Yes.
- 25 Q And you would agree with me that it's important to
26 approach both your subject and the documentary
27 evidence without preconceived conclusions?
- 28 A Quite, with objectivity, if one couldn't manage it.
- 29 Q And you would do that in your enterprises in legal
30 historical research?
- 31 A I tried to.
- 32 Q And you did it in your preparation for this case?
- 33 A So far as I was able.
- 34 Q What were the limitations on your ability?
- 35 A Well, so far as -- as a researcher. Within my
36 capacity as a researcher was able to do is what I
37 meant.
- 38 Q And you would agree with me that in communicating the
39 results of your legal historical researches to others,
40 that it's important to be able to relate factual
41 assertions and opinions to the sources from which they
42 are derived?
- 43 A Yes.
- 44 Q Because if you don't know where a statement comes
45 from, no one else can verify it?
- 46 A That's right.
- 47 Q All right. And is that something that you do in

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- 1 general in your legal historical research and your
2 writings as a result from it?
- 3 A I try to do the best I can, but we are not all
4 infallible.
- 5 Q And is that something you try to do the best you could
6 in preparing for this case?
- 7 A Absolutely.
- 8 Q And in rendering your opinion for this case?
- 9 A Yes.
- 10 Q Okay. You would agree with me when you are relying
11 exclusively on documents, and your opinions are
12 founded on your reading of the documents, that it's
13 important to get the factual details contained in the
14 documents correct?
- 15 A Yes.
- 16 Q And is that something that you do in general in your
17 legal historical research?
- 18 A One tries to.
- 19 Q And do you think you succeed?
- 20 A That's for others to say, I guess.
- 21 Q What about --
- 22 A I am satisfied with the adequacy of the research that
23 I did here, but others may disagree.
- 24 Q And you will agree with me, I think, that it's
25 necessary in this enterprise to read the documents you
26 are relying on carefully?
- 27 A Yes.
- 28 Q Okay. And is that something that you have done here?
- 29 A Again, one tries to.
- 30 Q Now, I have referred a number of times to your book on
31 Begbie, and that is to be found, My Lord, at volume 1
32 of the cross-examination materials, which is now
33 Exhibit 1172, tab 13. And I don't want to take you
34 there at the moment, Mr. Williams, but is that
35 publication an example of careful legal historical
36 research?
- 37 A I believe so.
- 38 Q And does it satisfy the various tests and requirements
39 that you and I have reviewed in the past few minutes?
- 40 A Yes, as of the time it was written. There are always
41 new materials that -- research never ends on a
42 particular subject. There are always new materials
43 that come forward. One hopes that they won't scuttle
44 the original enterprise.
- 45 Q And you don't think that enterprise has been scuttled
46 by new material, do you?
- 47 A No, but new materials have come forward.

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- 1 Q All right. Have they altered the opinions that you
2 expressed in that publication?
3 A No, not in the main.
4 Q Have they at all?
5 A There are refinements of it. I don't think I need to
6 go into detail. There would have been some
7 differences had I been writing the book now instead of
8 11 years ago, 12 years ago.
9 Q Are you aware of any differences between 11 or 12
10 years ago and today that you consider relevant to the
11 subject of the evidence you have given here?
12 A No, I don't think so. There is one, perhaps -- two,
13 perhaps, areas of which I may have gone a bit further
14 had I been writing the book now. One would have been
15 in connection with the case of Metlakatla in which
16 aboriginal title was involved in 1885, I think it was.
17 I think I would have pursued that further had I been
18 doing the work now. I had one other in mind a moment
19 ago, but it's gone. That's one instance.
20 Q Let me ask you about the Metlakatla example. You're
21 saying that that's something you would like to
22 research further, if you were doing it today?
23 A If I was doing the book on Begbie today, yes, I would
24 have spent more time on that.
25 Q I take it you haven't done that --
26 A I'm sorry, Mr. Adams, the other one -- it momentarily
27 slipped my mind. The other one I would have spent
28 more time on would have been his decision in the
29 potlatch case at about the same time. I guess mainly
30 because of this research project I discovered more
31 materials, which I would like to have had at hand when
32 I was writing 12 years ago.
33 Q I ask you to confirm for me that you haven't yet done
34 the additional research that you think you now would
35 do if you were rewriting Begbie.
36 A That's true of every historical work indeed. There
37 are always new materials.
38 Q Yes. What I am getting at is are you now aware of
39 those materials and the contents of them and have
40 formed opinions about them, or is this just an area
41 that you have identified that you would have liked to
42 have pursued?
43 A It is a -- those are two areas that were I to write a
44 book now, I would spend more time on them, yes.
45 Q Yes. I take it you haven't formulated the opinions
46 that would go into those new areas? That's what I am
47 getting at.

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- 1 A That is correct. Begbie rendered a decision in each
2 of those instances.
- 3 Q All right. Your book on Simon Gunanoot, an extract of
4 which is to be found, My Lord, at Exhibit 1172, tab
5 13. Is that an example of careful legal historical
6 research?
- 7 A Yes. Much of it or a considerable portion of it was
8 based on interviews as distinct from examination of
9 documents. Begbie was a much more -- how shall I say
10 this -- sources were almost chiefly documentary with
11 Begbie, but a considerable extent of my book on
12 Gunanoot was based on interviews.
- 13 Q Notwithstanding --
- 14 A But even there new materials have come up, and I'm not
15 sure whether you have the reprint which was published
16 just last year.
- 17 Q Yes.
- 18 A You will see that I have made some amendments to the
19 work as first published.
- 20 Q Yes, the version that I put in front of you is the
21 1988 version.
- 22 A Yes.
- 23 Q And that, notwithstanding that it's based in part on
24 interviews, is a product of careful research?
- 25 A I believe so.
- 26 Q And you stand by the opinions that are expressed in
27 that publication today?
- 28 A Yes, that I expressed at that time, yes.
- 29 Q Now, when did you actually do the amendments to the
30 Gunanoot book?
- 31 A Last year.
- 32 Q In 1988?
- 33 A Yes.
- 34 Q After you had completed your report for this case?
- 35 A Yes.
- 36 Q All right. So I can expect that anything you learned
37 as a result of your research for this case, would be
38 reflected, if it was relevant, in the amendments?
- 39 A You can.
- 40 Q Okay.
- 41 A In part, not entirely. No, I think probably all the
42 amendments were due to my research of this case,
43 material which I found incidentally to what I was
44 doing, or incidental to the work.
- 45 Q All right.
- 46 A By that I mean while researching this matter, I ran
47 across materials which were helpful with the book, but

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- 1 not, perhaps, so much relevance to what I was doing
2 here. That's what I meant by saying incidental.
- 3 Q Yes. And just to be clear, my question was: If you
4 had discovered something as a result of your research
5 for this case that was connected in your mind with
6 something you had written about or wished to write
7 about in the Gunanoot book, that research was
8 reflected in the Gunanoot book?
- 9 A Yes.
- 10 Q All right. Now, what have been described as your
11 working papers, correspondence and drafts and so on
12 that are excerpted in Exhibit 1172, tabs 1 to 4. You
13 recall identifying those last Friday?
- 14 A I -- frankly, I don't, Mr. Adams. Which are those? I
15 didn't know the exhibit number.
- 16 Q They are in the black volume that says on the spine
17 "Cross-Examination of David Williams", volume 1.
- 18 A I don't have that in front of me.
- 19 Q Tabs 1 to 4 of that volume. Those are ones that you
20 identify as correspondence to and from you and in
21 connection with you?
- 22 A Oh, I see. Yes.
- 23 Q And my question is simply: You are aware that in your
24 drafts and your notes there you quote extensively from
25 documents that you are looking at?
- 26 A I am sure I did, yes.
- 27 Q And my understanding is that your technique for doing
28 this is to read the document into a tape and to
29 transcribe the tape?
- 30 A Have it transcribed for me, yes.
- 31 Q All right. And therefore I take it that to the best
32 of your ability and knowledge the quotations from
33 documents contained in those papers are accurate?
- 34 A Yes.
- 35 Q Okay. All right. I want to turn now to your summary
36 of opinion, which is Exhibit 1173.
- 37 Q Do you have that in front of you?
- 38 A Is that 113 or 112?
- 39 Q I believe it's 1173.
- 40 Q Now, in light of the various considerations that I
41 have raised with you this morning, is that a careful
42 piece of legal historical research?
- 43 A This is an opinion or a report, if you like, which is
44 the product of the research.
- 45 Q Okay. And the research of which it's the product, was
46 careful legal historical research?
- 47 A I believe so.

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- 1 Q And I take it that you are unaware of any significant
2 omissions in that document as to either -- and I
3 shouldn't confine you to that document -- in the
4 sources that have been introduced in evidence through
5 you and in that document, of significant documents or
6 events that bear on the subject you set out to
7 discuss?
- 8 A Mr. Adams, I have not disclosed either in the report
9 or in the five volumes of documents every document
10 which I examined.
- 11 Q I am aware of that.
- 12 A I have examined a great many documents, and not all of
13 them appear.
- 14 Q My question was: Where you are aware of documents or
15 events that are significant in your judgment for your
16 opinions as expressed in this report, one should find
17 reference to them either in the report or in the
18 documents?
- 19 A Yes. What I believe to be the significant ones, yes.
- 20 Q Now, significance depends on just what your enterprise
21 was in preparing this opinion, doesn't it? It has to
22 be significance in relation to your --
- 23 A I was asked to do a general survey of documents
24 relating to a particular theme or subject, which is
25 stated at the outset of the report, and after I had
26 been working for roughly a year in doing that survey
27 and giving reports from time to time on what I had
28 found, I was then asked in the fall of 1986 if I was
29 able to offer an opinion on what I had -- on the basis
30 of what I had so far looked at, and --
- 31 Q And you were able to do that?
- 32 A -- I did so. And that led to the -- an opinion which
33 I delivered in March of 1987. But previous to that I
34 had given a very large, what I considered to be an
35 extensive review of sources under various headings or
36 groupings of headings.
- 37 Q Yes.
- 38 A I think you have seen that.
- 39 Q Yes. And you didn't wait until you were invited in
40 late 1986 to render a formal opinion, to express
41 opinions on the subjects that found their way into
42 your summary, did you?
- 43 A I was asked -- it was in September of 1986 if I could
44 formulate an opinion.
- 45 Q Yes. My question was that you had expressed opinions
46 along the same lines well before you were asked to
47 render a formal opinion?

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- 1 A I certainly expressed opinions on some aspects of the
2 matter, yes, but I had not been asked to give an
3 opinion overall.
- 4 Q All right. If you look at the cover page of Exhibit
5 1173, your summary of opinion.
- 6 A Uh-huh.
- 7 Q And that calls itself "Imposition and Acceptance of
8 Law and Order Within the Claim Area".
- 9 A Yes.
- 10 Q Could you explain to me, please, what you understood
11 "law and order" to be.
- 12 A I took that to mean generally the administration of
13 justice according to the judicial system of the -- the
14 judicial system of the country -- of the province.
- 15 Q But you didn't begin with confederation, did you?
- 16 A No, I didn't. I began -- there was a judicial system
17 within the colony.
- 18 Q Does that change your definition of law and order
19 to --
- 20 A Well, I'm sorry, you are quite right, colonial and
21 provincial.
- 22 Q And that's your definition of law and order?
- 23 A Well, this is what I took to be my task, yes.
- 24 Q Okay. And you agree with me that that by definition
25 excluded you from any consideration of Indian law?
- 26 A I was not asked to consider Indian customs or
27 customary law or whatever the phrase might be, you are
28 right.
- 29 Q In forming your opinion, did you ever consider
30 anything that you weren't asked to?
- 31 A In formulating my opinion?
- 32 Q Yes. Is there anything reflected in Exhibit 1173 that
33 was you saying I think this is important, I am going
34 to disregard the suggestion and instruction, whatever
35 it was, and not to consider it?
- 36 A Well, I am not sure that I understand quite what you
37 mean, Mr. Adams. I was asked to render an opinion in
38 a field which I -- which it was thought I was
39 competent to render an opinion on, and that I have
40 done in this report. But as part of my ongoing
41 research, which went on for quite a long time, I
42 frequently ran across material which seemed to me to
43 be of interest, and I would pass this on. But I was
44 not asked to make pronouncements upon various topics,
45 and certainly Indian law was not -- was one that I was
46 not asked to pronounce on.
- 47 Q Yes. Some of the material that you found, you thought

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- 1 was relevant to the subject that you eventually
2 rendered an opinion on, that is imposition of law and
3 order around Indian acceptance or otherwise --
4 A Yes, like statutes for example.
5 Q And sometimes that material found its way into your
6 opinion, and sometimes it didn't, correct?
7 A Yes.
8 Q And where you were not asked to consider it, whether
9 or not you thought it was relevant to your subject,
10 you didn't?
11 A Well, again I am not sure that I understand you. I
12 was never instructed to disregard anything that I ran
13 across. I -- in the sense that -- I think I may have
14 said in a way I was on a fishing expedition. If I
15 found something that it seemed to me to be of
16 potential interest, I would pass it on. It didn't
17 necessarily -- it did not, in fact, necessarily form
18 part of my ultimate opinion.
19 Q Yes. And if you were asked to consider it, you did,
20 correct?
21 A Certainly.
22 Q And if you were not asked to consider it, you didn't?
23 A That's right. I have already given you an instance of
24 of that. The whole question of Indian reserves, for
25 example, was something that -- the work of the Indian
26 reserve commission was something that I was -- I was
27 not asked to do it. It was not my field, or
28 potlatching. But if I ran across material on those
29 subjects, I would pass it on, for what it was worth.
30 Q And it wasn't your judgment of what it was worth, it
31 was counsel for the provincial attorney's judgment
32 about what it was worth; is that not so?
33 A In the areas outside the fields of which I have been
34 asked to conduct research, yes.
35 Q Well, even inside it.
36 A No. I was never constrained by counsel in the
37 formulation of my opinion.
38 Q Was there a law against potlatching?
39 A There was in the Indian Act in the 1880's.
40 Q Was the effort to enforce it or otherwise part of the
41 imposition of law and order as you understood it?
42 A It was certainly -- it was an area which I did not
43 specifically enquire into, but I certainly reported on
44 the attitude of the provincial government towards the
45 potlatch law, yes. I passed that on.
46 Q Yes.
47 A That may have been referred to already in this case.

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- 1 I don't know.
- 2 Q You would agree with me that that in your judgment, as
- 3 a scholar in coming on that material, was that it was
- 4 relevant to the question of the imposition of law and
- 5 order?
- 6 A I think -- I don't know. I think it was more
- 7 attitudinal than anything else. The provincial
- 8 government was much less enthusiastic about repressing
- 9 the potlatch than it was the federal government and
- 10 the Indian agents. But the attorney general of the
- 11 day, it certainly said that. But I did not take the
- 12 potlatch law into account in formulating my opinion.
- 13 That's true.
- 14 Q Yes. That wasn't because you were unaware of material
- 15 related to it, correct? You wrote extensively about
- 16 it in your notes?
- 17 A I certainly reported on anything that I found, yes.
- 18 Q Now, you have got as far as the potlatch law being a
- 19 law. You are aware of that. And it's within the time
- 20 period you were considering, correct?
- 21 A Uh-huh.
- 22 Q And it was a law directed exclusively at Indians, was
- 23 it not?
- 24 A Yes.
- 25 Q And your report was going to be about the imposition
- 26 of law on Indians, correct?
- 27 A Yes, the imposition of law -- of law and order within
- 28 the claim area, and the reaction and response of the
- 29 Indians to it.
- 30 Q Yes. Then how is it that you decided to make only
- 31 passing reference in your report to the potlatch law?
- 32 A Well, I really can't say how it is, but it's what I
- 33 did or what I did not do.
- 34 Q All right. There is another word in your title I want
- 35 to ask you about, and that is "imposition". What did
- 36 you understand in formulating your opinion was
- 37 imposition of law and order as you have defined it?
- 38 A Well, one doesn't want to get bogged down in
- 39 semantics, I don't think. One could use a variety of
- 40 words. That, I think, was the proposition that was
- 41 given to me. I don't quarrel with it.
- 42 Q What was the proposition that was given to you?
- 43 A I was asked to consider the historical evidence
- 44 relating to the imposition of law and order within the
- 45 claim area and its acceptance.
- 46 Q Yes. My question is: How did you know imposition
- 47 when you saw it in the documents?

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- 1 A Well, I don't know what you mean by that. I mean,
2 imposition means the creation, formulation by common
3 law or police action or legislation or -- I don't
4 know. I'm afraid it seems to me -- I'm not trying to
5 argue, Mr. Adams. It seems to me to be a self-evident
6 term. Perhaps there is some meaning in there which
7 escapes me.
- 8 Q Please understand, I am trying to get at what you
9 meant when you used it.
- 10 A I -- what I meant was the existence within the claim
11 area of structures and of law and order, the
12 administration of law by police officers and by
13 judicial officials, and the response of the Indian
14 community to these -- to the law of the land, the law
15 of the province or colony.
- 16 Q So let me try to understand this. Once the structure
17 existed, the provincial police structures, was it your
18 view that law and order had been imposed?
- 19 A Part of it.
- 20 Q What else?
- 21 A The work of judicial officials, administration of
22 mining laws, the functioning of the court system, the
23 apprehension of criminals or accused criminals and the
24 handling of their cases, disposal and the disposition
25 of their cases, the functions of -- functions of rural
26 police officers, all of these things. Legislation.
- 27 Q Okay. The next word I want to take up with you is
28 "acceptance". What did you mean by acceptance? What
29 were you looking for?
- 30 A I was asked to consider the reaction -- what was the
31 word, phrase used? The response, reaction and
32 amenability of the native people within the claim
33 area. That has translated itself into the shorthand
34 of the word "acceptance".
- 35 Q Well, every response wouldn't be acceptance, would it?
- 36 A Of course not.
- 37 Q And every reaction wouldn't be acceptance?
- 38 A No. But in weighing the totality of the sources, it
39 was my view that there was an acceptance.
- 40 Q Yes, I understand that. When you were looking at
41 documents, how did you know that you were seeing
42 acceptance as opposed to non-acceptance or nothing at
43 all?
- 44 A I didn't.
- 45 Q You didn't?
- 46 A But if I thought it was relevant to problem, I noted
47 it, and then reflected on them later.

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- 1 Q All right. When you were reflecting on them later,
2 what told you that what you had read represented
3 acceptance by the Indians?
4 A In the case of an individual document --
5 Q Yes.
6 A -- you are speaking of?
7 Q Yes.
8 A Not the totality.
9 Q Well, let's start with an individual document.
10 A Well, there are a great many of them which I have
11 referred to in the course of my evidence.
12 Q Yes, I am aware that you have referred to the
13 documents. My question is: How could you tell, when
14 you looked at one, that you were seeing what you
15 judged was acceptance?
16 A I see. Well, if you mean in the earlier stages of my
17 investigation or --
18 Q I mean at all.
19 A -- or later.
20 Q What criteria did you apply to determine whether you
21 were seeing acceptance, non-acceptance or neutrality?
22 A I was asked to consider the response or the reaction
23 of the native people. If I saw a document which in
24 some way related to that, I noted it.
25 Q Yes. And then how did you distinguish one kind of
26 reaction from another?
27 A Oh, well, sometimes -- I guess in some instances there
28 would have been opposition amongst the native people
29 to a particular aspect of law, the provincial or
30 colonial law, and in other instances there would be an
31 apparent favourable response to it. I took these
32 things -- I looked at everything that I could find
33 that bore on that question.
34 Q You did find instances of opposition, didn't you?
35 A Yes.
36 Q What forms did that opposition take in your review of
37 the documentary record?
38 A Well, there is -- again there is a good deal of
39 evidence that I have given. In some cases the
40 response was favourable, and in others it was
41 unfavourable, but of the totality, I think there was a
42 favourable response and acceptance of the native
43 people to colonial and provincial administration of
44 justice.
45 Q My question was: What forms of opposition did you
46 find in the documentary record?
47 A Oh, written sometimes. Certainly there was the threat

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- 1 of -- the threat of physical violence. I don't need
2 to repeat the incidents.
- 3 Q There was some instances of actual violence?
- 4 A No, I don't think there was ever any actual
5 violence -- actual violence, in the sense of physical
6 harm as a result of any opposition to -- among the
7 native people to the intrusion of -- or the arrival or
8 intrusion, if you like, of the white people and the
9 white people's law.
- 10 Q You found examples of assaults?
- 11 A Yes, as ordinary crime. There were instances, as I
12 mentioned the other day, in which there was
13 intimidation of white persons in 1908 in the series of
14 events, 1908 onward. Prior to that, if one leaves
15 those out, there were only a handfull of instances in
16 which there were any cases of intimidation of white
17 people by Indians.
- 18 Q You recall referring yesterday at page 22 of your
19 summary to what you had earlier given as your opinion
20 of four instances of Indian threatening white men with
21 guns over land squabbles, your term, and you now
22 revised that to 18 such incidents?
- 23 A Right.
- 24 Q So you are including those as opposition, are you?
- 25 A I am including the Kitwanga and Kispiox and Kitwancool
26 affairs of 1909 and 1910 in that figure of 18, yes.
- 27 Q Anything else that struck you as a category of
28 opposition in your review of the documentary records?
29 You mentioned writing, and by that you mean such
30 things as petitions and letters?
- 31 A Yes.
- 32 Q All right. You mentioned threats. You have mentioned
33 intimidation?
- 34 A Yes.
- 35 Q Anything else?
- 36 A Well, I don't know how -- there was certainly
37 political, to use the word in the broad term,
38 political protest. I suppose the first major instance
39 of that would have been the delegation going to Ottawa
40 in 1906 over the Babine fishery affair.
- 41 Q What about instances of just not obeying the law? Is
42 that opposition?
- 43 A Of course. But I did not run across any -- I did not
44 run across any evidence of widespread disobedience or
45 civil disobedience or anything of that sort, or any --
46 very little of it, in fact.
- 47 Q Now, there is one other term that recurrs in your

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- 1 report that I would like to ask you about. Well, let
2 me ask you something else first on the theme of
3 acceptance. You will agree with me, I take it, that
4 to be able to speak about acceptance by the Indian
5 about anything, you have to infer from the documents
6 what they are thinking, correct?
- 7 A No, I don't agree with that. I was -- I think that
8 was a much broader consideration than I was asked to
9 embark upon. I was observing -- I was asked to
10 examine historical documents, and to -- from the point
11 of view of action and reaction, observable reaction.
12 I was not asked to enquire into the minds of the
13 Indians in their response to the -- to the law of the
14 land.
- 15 Q You wouldn't know, would you, whether their reaction
16 was acceptance or non-acceptance, unless you knew what
17 was behind it?
- 18 A One observes what they did and what they said.
- 19 Q Yes. And from that one infers what they thought, does
20 not one?
- 21 A One -- on a number of instances that I have spoken of,
22 the Indians themselves have said -- made statements,
23 which to me seem to be acceptance of the rule of the
24 white man in the area. I have relied on those
25 statements, without seeking to go below the surface of
26 them.
- 27 Q Yes, indeed. And quite apart from what people might
28 be thinking, if you are going to talk about acceptance
29 by Indians of anything, you need to know something
30 about why they are speaking and behaving in certain
31 ways that are reflected in the documents, correct?
- 32 A I don't accept that. To start with, I didn't do it, I
33 didn't enquire and make that sort of enquiry, but I --
34 but I don't think it was necessary in my judgment. I
35 was prepared to take for granted what the Indians
36 themselves said on various occasions when confronted
37 with the enforcement of law.
- 38 Q And from that to get acceptance you must have been
39 drawing inferences, correct?
- 40 A I think it's more than inference. If one of the
41 Indian chiefs told Fitzstubbs and Roycraft that
42 hereafter he was going to do his best to keep the law,
43 I think that's more than inference. You may think
44 that he was putting them on as an argument, but it's
45 not of inference, it's what he said.
- 46 Q So let me see if I can summarize this. You didn't
47 think it was necessary to know what the Indians were

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- 1 actually thinking, correct?
- 2 A I did not -- I was not asked to make that sort of
- 3 enquiry, and in any case I don't think it is
- 4 necessary.
- 5 Q All right. And you didn't?
- 6 A And I didn't.
- 7 Q And you didn't think it was necessary to make an
- 8 enquiry into why the Indians at various times were
- 9 speaking in certain ways or writing in certain ways?
- 10 A No. I relied upon their statements as recorded in the
- 11 documents, and I took that as given.
- 12 Q When you saw a statement from Indians reflected in the
- 13 documents, you took it as a given that that was an
- 14 accurate statement of their state of mind? Is that
- 15 what I understand you to say?
- 16 A I took it as an accurate statement of what they said.
- 17 Q Yes.
- 18 A And one -- one has to assume that the less a person is
- 19 deceiving or is for ulterior motives making a
- 20 statement that is not true, I am prepared to accept
- 21 the statement. I don't -- I see nothing in here which
- 22 would lead me to think that the Indians on these
- 23 various occasions were making duplicit statements.
- 24 Q You didn't come across any documents that records
- 25 statements of Indians that you thought were not true;
- 26 is that what you're saying?
- 27 A That is so.
- 28 Q Okay. And then the final piece of that was that, I
- 29 take it, you didn't think it was necessary to enquire
- 30 into why the Indians behaved in certain ways as
- 31 reflected in the documents?
- 32 A If by behaviour in certain ways you are talking about
- 33 what I may refer to as sociological aspects of their
- 34 behaviour, no, I did not. But if one enquires into
- 35 certain specific types of behaviour or why they did
- 36 it, I did enquire. For example, why was there the
- 37 interference with the pack trade in the Cassiar trail
- 38 in 1874.
- 39 Q And you excluded the sociological mention, I take
- 40 it -- you also exclude, because you don't refer to it
- 41 in the cultural dimension?
- 42 A That is so.
- 43 Q Now, I said I wanted to ask you about one more term,
- 44 and that recurs through your report, and you can
- 45 correct me if I'm wrong. But in my observation,
- 46 almost always when you refer to Indian activity in the
- 47 categories that you have identified this morning as

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1 opposition, you call it turmoil. And what I would
2 like to ask you is what you mean by turmoil, and how
3 you distinguish it from resistance.
4 MR. GOLDIE: Well, perhaps my friend ought to direct the witness
5 to the instances he is talking about, if the context
6 is going to be important.
7 MR. ADAMS: My Lord, they are throughout the report. I am happy
8 to go and find the instances of the occurrence of the
9 word.
10 MR. GOLDIE: That's fine.
11 MR. GOLDIE: Page 35.
12 MR. ADAMS: They start much earlier than that.
13 Q Let me just ask you while I am looking. Do you have a
14 general understanding of what you mean when you use
15 the word "turmoil" with reference to Indians in the
16 land claim area in the period you were concerned with?
17 A Yes, I do.
18 Q What was that?
19 A Well, that's -- one can have synonyms for it.
20 Agitation, disturbances, upset, disagreements.
21 Turmoil is a general -- to me, at least as I use it,
22 is simply a general term to describe an unnatural
23 state of agitation in the community, or a state
24 induced by some event. There is no sinister --
25 nothing -- that's the way I use it. There is nothing
26 sinister about it.
27 Q And then the second half of my question was how do you
28 distinguish it from resistance or opposition?
29 A It sometimes resulted from resistance and opposition.
30 Q Okay. I think in the course of your cross-examination
31 on qualifications you already agreed with me that in
32 forming this opinion you made little or no reference
33 to secondary literature.
34 A I didn't do much reading -- was that the phrase I
35 used? Did I say little or no?
36 Q That's my word.
37 A Okay. Reflecting on this, one of the books that I did
38 read -- I may have mentioned it -- was Morice's work
39 on the northwest coast Indians. I read that.
40 Q Yes.
41 A And -- but you are right, generally speaking I worked
42 entirely from archival sources.
43 Q All right. And just three areas I want to confirm
44 that that's so for it. Materials on legal history?
45 A How do you mean materials on legal history?
46 Q You weren't looking for secondary materials on
47 materials on legal history?

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1 A No.
2 Q Nor on anthropology?
3 A No.
4 Q Nor on geography?
5 A Yes, geography certainly. Not secondary. I looked at
6 maps and consulted maps and -- from time to time,
7 certainly.
8 Q Okay. But no secondary literature?
9 A I didn't read any literature on it, no.
10 Q You didn't conduct any interviews?
11 A Not -- with whom?
12 Q With anyone.
13 A Within the claim area you mean?
14 Q Yes.
15 A No. I don't think so, but I spoke to lots of people
16 over the course of three or four years. But if you
17 mean in the sense did I go out to find information
18 which I used in my report, which was based on
19 interviews with persons, the answer is no.
20 Q Yes. That's what I am getting at. Nothing in your
21 summary is based on interviews that you conducted?
22 A No.
23 Q Nor is it based on records of interviews that other
24 people conducted?
25 A The Barbeau Beynon material is a record of interviews,
26 which I looked at.
27 THE COURT: Is it convenient to take the adjournment, Mr. Adams?
28 MR. ADAMS: Yes, My Lord.
29 THE COURT: All right. Thank you.
30 THE REGISTRAR: Order in court. Court stands adjourned for a
31 short recess.
32

(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.

LORI OXLEY
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1 (PROCEEDINGS RECONVENED PURSUANT TO THE MORNING BREAK)
2
3 THE REGISTRAR: Order in court.
4 THE COURT: Mr. Adams.
5 MR. ADAMS:
6 Q My lord. Mr. Williams, just to pick up a couple of
7 points that came up before the break, you referred to
8 reading a book of Father Morice's, and I just wanted
9 to ask you which book that was?
10 A That was "The History of the Northwest" -- I forgot
11 the -- "History of the Northwest Indians" was it?
12 "The Indians of Northwest British Columbia."
13 Q And then you'd referred briefly to the Barbeau-Beynon
14 material. Can you recall that?
15 A Yes.
16 Q All right. Your sources as listed with your opinion
17 somewhere in Exhibit 1173 don't refer to Barbeau-
18 Beynon, do they?
19 A That's right. I hadn't read the material at the time.
20 Q All right. How did that material come to your
21 attention?
22 A It was -- it showed up on a document list of Dr.
23 Galois.
24 Q Was that the first you knew of the existence of that
25 material?
26 A It was not the first I knew of its existence, but it
27 was the first time I read it.
28 Q All right. You had never looked at Barbeau-Beynon
29 before?
30 A I had not looked at Barbeau-Beynon, no, until
31 subsequent to the preparation of my March report.
32 Q So when would you first have become aware of its
33 existence?
34 A Oh, I can't say when I first became aware of its
35 existence, Mr. Adams, but I didn't read it until
36 subsequent to March of '87.
37 Q I wonder if you could look at the black binder, the
38 cross-examination binder, Volume 1 at tab 13, please.
39 That's Exhibit 1172, my lord. And if you turn to page
40 174, which is the second last page.
41 A Yes.
42 Q And if you look under Primary Sources, item J.
43 A Yes.
44 MR. ADAMS: This Additional Manuscript 2101 (Barbeau) item
45 B.f.90.17.
46 MR. GOLDIE: Where are you reading from?
47 MR. ADAMS:

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1 Q It's item J.
2 A Oh, yes.
3 Q In the Primary Sources.
4 A Yes, yes.
5 Q That was something you referred to in doing the
6 Gunanoot book?
7 A In the revision of it, yes, the reprint.
8 Q Only in the revision?
9 A Yes.
10 Q Was that -- did that come to your attention as part of
11 your work on this case?
12 A Yes.
13 Q All right. And how much of the Barbeau-Beynon
14 material did you review?
15 A I reviewed the portions of it that were disclosed in
16 Dr. Galois' document statement.
17 Q All right. And that included the interview with Anna
18 Campbell that you referred to --
19 A Yes.
20 Q -- in your evidence yesterday?
21 A Yes.
22 Q And are you familiar with who Barbeau was?
23 A Generally, yes.
24 Q Who was he?
25 A He was an anthropologist, Canadian anthropologist who
26 made a study of the Indians of the Pacific Northwest.
27 Q And what about Mr. Beynon?
28 A Beynon was a -- I suppose one would describe him as a
29 field man, I guess. He was the man who I understand
30 conducted most of the -- in fact, conducted most of
31 the interviews, at least the ones that I read. He was
32 associated with Barbeau.
33 Q Was he an anthropologist?
34 A I don't think Beynon was an anthropologist, but I am
35 subject to correction on that. I think he was a
36 layman, but a talented one obviously.
37 Q Do you know where he was from?
38 A I -- I think he was himself of Indian ancestry.
39 Q From?
40 A I don't know.
41 Q You don't know?
42 A No.
43 Q Okay. Now, you referred a number of times in your
44 evidence in chief and today to doing further research
45 after your March 1987 opinion was rendered?
46 A Yes.
47 Q And I want to ask you first of all what was the nature

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1 of that further research?
2 A Virtually the same as the work which I had done up to
3 that date, except that I -- I read, I think, virtually
4 all of the documents that were disclosed on Dr.
5 Galois' original list. I was asked to look at those,
6 and I was glad to do so. But I did -- quite apart
7 from that, I did further research of my own.
8 Q So I take it that anything that was reflected on Dr.
9 Galois' list that you considered significant to your
10 theme will either be in your document collection or
11 will have been referred to in your evidence?
12 A Not necessarily referred to in my evidence or indeed
13 in my -- or in the documents, but certainly weighed by
14 me.
15 Q But not in any fashion that anyone else could read
16 about?
17 A Oh, yes. Some of the material disclosed by him I have
18 myself used.
19 Q Yes. My question was you had said not necessarily
20 reflected in your evidence and not necessarily
21 reflected in the documents that you have collected?
22 A Yes. By that I mean that I -- some of -- many, in
23 fact, of the documents he disclosed which I read I
24 felt to be of no relevance to what I was doing or if
25 relevant were of insufficient weight for me to take
26 them into account. I'm not castigating his work, mark
27 you, I'm just saying that in my view some of the
28 documents which he disclosed which I read I felt not
29 to be relevant or if relevant were not helpful.
30 Q All right. Have you read Dr. Galois' opinion report
31 in these proceedings?
32 A Is this the one that has been filed as an exhibit?
33 Q Yes.
34 A Yes, I have.
35 Q All right. And have you read the transcript of his
36 evidence at this trial?
37 A No.
38 Q Have you read any part of it?
39 A None. Nor did I hear any of it.
40 Q Okay. You refer in some of your correspondence to
41 something you call Fielding material?
42 A Yes.
43 Q I wonder if you could tell me what that is, please?
44 A That -- Mr. Fielding was a former employee of the
45 provincial government who I understand was engaged to
46 do research in connection with this case, and he
47 worked, as I understand it, primarily on

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- 1 correspondence and documents with -- in the office of
2 the lands department and possibly -- and I think also
3 in the mines department, but as I under -- as far as I
4 was concerned, his -- principally I think in the lands
5 department. He collected a considerable body of
6 documents, and these were made available to me.
- 7 Q And are they incorporated into your documents here and
8 in your opinion so far as they -- as you found them
9 relevant?
- 10 A Some. I can't say numerically how many, but certainly
11 I -- some.
- 12 Q The documents that Mr. Fielding had collected, are you
13 aware of the source of those documents?
- 14 A I believe they were either from the chief commissioner
15 of lands and works in the colonial days or the public
16 works department -- or lands department rather in the
17 provincial period.
- 18 Q There is reference in the correspondence to a person
19 named Leslie Kurz?
- 20 A Yes.
- 21 Q Is that someone that you know?
- 22 A I have met her.
- 23 Q Who is she?
- 24 A She again, I believe, is a researcher engaged by the
25 provincial Attorney-General.
- 26 Q And what part, if any, did she play in the collection
27 of your documents?
- 28 A None.
- 29 Q What was --
- 30 A Just hold on just a minute. I -- when I say none,
31 I -- she amassed a collection of documents which I
32 read or certainly looked -- read indeed, but I don't
33 think I have -- I don't think I have -- excuse me --
34 included in any of my document lists any material
35 which she had collected.
- 36 Q What was the nature of the materials she collected?
- 37 A My -- my recollection is not clear on this. I think
38 she was working with the -- with the Indian -- Indian
39 department material, department of -- well, Department
40 of Interior, then Department of Indian Affairs, I
41 think.
- 42 Q And are you aware from what source?
- 43 A Mr. Adams, I'd only be guessing at this stage. I have
44 her volumes here with me. If you want me to look at
45 them, I can.
- 46 Q If I understand your evidence, it was that you didn't
47 include any of that material, in any event, in your

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1 document collection nor refer to it in your opinion
2 report?
3 A I don't think I did.
4 Q And why was that?
5 A Because I -- I cannot say at this moment why. I would
6 have to look at her material to give you a precise
7 answer, but the fact is I did not use it. There --
8 there was -- there was some material in her -- there
9 was -- I recall that there was in her material some
10 items which I myself already had.
11 Q Yes.
12 A In one or two instances. The other material I did not
13 use.
14 Q Was that because it was irrelevant to your subject?
15 A I don't -- I'm not saying that it was irrelevant. I'm
16 sorry, I misunderstood you. I did not feel it was
17 relevant to my inquiries. It may very well have been
18 relevant to other issues.
19 MR. ADAMS: My lord, if that material is available in court, I
20 would ask for its production and an opportunity to
21 inspect it.
22 MR. GOLDIE: Well, that will be subject to my examination of it,
23 my lord. There may be privileged material in it.
24 THE COURT: Well, subject to privilege. Mr. Williams has
25 offered it to Mr. Adams, and subject to that I would
26 certainly not stand in the way of that kind of offer
27 of acceptance.
28 MR. ADAMS:
29 Q Mr. Williams, there's another name that comes up in
30 your working papers, and that is Mary Jane Jones?
31 A Yes.
32 Q Who's she?
33 A Mary Jane Jones is a member of the Ontario bar and a
34 skilled researcher in legal history who has, as I
35 understand it, been working in the national archives
36 principally in Ottawa for quite a long time in
37 connection with this case on instructions from the
38 provincial Attorney-General.
39 Q And what part did she play in finding or making
40 available documents to you?
41 A Well, she and I have exchanged correspondence. We
42 have exchanged documents with each other. She's --
43 she might herself disclaim any description as a legal
44 historian, but I think that's what she is, and her
45 interests and mine overlap certainly. And she has
46 worked extensively on the RG10 material in Ottawa but
47 in other areas as well. Departmental records, I

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1 believe.
2 Q And did you --
3 A But I -- Mr. Adams, I have not been in -- you know --
4 frequent contact with Mary Jane Jones, and though
5 I've -- I've met her on various occasions and
6 certainly have corresponded with her, I myself do not
7 have exact knowledge of the extent of her researches.
8 Q The time period covered by your opinion summary I
9 understand to be 1859 to approximately 1920; is that
10 correct?
11 A No, I constricted it -- well, yes, I -- essentially
12 pre-war, pre-first war, but I did look at some
13 material as late as 1919, and, in fact, there was a
14 letter introduced yesterday from Loring in 1919.
15 Q Yes. And you certainly -- from my inspection of your
16 working papers, you fairly routinely used 1919, 1920
17 as cut-off dates for reviewing various collections of
18 material. Do you recall that?
19 A Yes.
20 Q All right. And you do observe in your summary at the
21 bottom of page 3 that the greater part of your
22 research was into the pre-1900 period?
23 A Yes.
24 Q Are you able to put a very rough time on that as to
25 what proportion of your research was 1859 to 1900 and
26 what period was in the 1900s after 1900?
27 A Mr. Adams, I -- if you really want to know, I would
28 prefer to be given an opportunity to look at my
29 material or my -- at least my report so I could give
30 you some reasonable estimate of percentage. But what
31 I have said in the report is true, that the larger
32 volume of work which I did related to pre-1900.
33 Q Yes. Would it have been a much greater part, without
34 trying to pin you to a percentage?
35 A Quantitatively I would say yes, probably much greater,
36 but I don't want to be stuck with that, Mr. Adams, if
37 you'll forgive me. It's -- certainly the larger,
38 definitely the larger part was pre-1900. I -- I -- I
39 looked very carefully at events until 1910, 1912, the
40 outbreak of the war in fact. I read a good deal of
41 material up to that point. My interest, I confess,
42 petered out somewhat or I felt it was not necessary to
43 go much beyond 1914. And I don't want you to think
44 that I disregarded material after 1900, but certainly
45 it was -- in volume it was less than that before it.
46 Q All right. And I take it you satisfied yourself that
47 none of the post-1900 material you looked at called

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- 1 your conclusions in your summary into question?
- 2 A No, I relied upon it in forming my opinion. The post-
- 3 1900 material?
- 4 Q Yes.
- 5 A Oh, definitely I relied upon it. I mean, the events
- 6 of 1908 and 1909, 1910, 1906 of course. Lots of
- 7 things were happening after 1900, lots of things
- 8 happening, all of which I looked at and reflected
- 9 upon.
- 10 Q All right. And you recognized in writing your
- 11 summary, did you not, that assertions of Indian title
- 12 or aboriginal rights were relevant to the acceptance
- 13 or non-acceptance of law and order as you defined it?
- 14 A Yes.
- 15 Q So one of the things you were looking for in your
- 16 review of the documentary record so far as you
- 17 reviewed it was assertions of Indian title or
- 18 aboriginal rights?
- 19 A Yes.
- 20 Q Okay. And you understand those to be equivalent
- 21 terms, do you not?
- 22 A I -- Indian title I think is a less exact term than
- 23 aboriginal right, although even aboriginal rights is
- 24 certainly a matter of discussion, the definition of
- 25 it. But they're often used interchangeably, yes.
- 26 Q And you use them interchangeably?
- 27 A Yes.
- 28 Q Including in your published writing?
- 29 A Yes.
- 30 Q And assertions of Indian title or aboriginal rights
- 31 were in the period you were considering part of the
- 32 pattern of Indian-white relations, were they not?
- 33 A Yes.
- 34 Q Okay. And in that connection I take it you looked in
- 35 the portion of the documentary record that you
- 36 examined for specific assertions by Indian residents
- 37 of the land claim territory that they either owned or
- 38 had jurisdiction over that territory?
- 39 A Yes.
- 40 Q Okay. In that same review what was the earliest
- 41 specific assertion you found that asserted white
- 42 jurisdiction and denied Indian jurisdiction?
- 43 A That asserted white jurisdiction?
- 44 Q Yes. That represented, as I understand it, the first
- 45 imposition of law and order?
- 46 A Well, I suppose colonial ordinances.
- 47 MR. GOLDIE: Well, my lord, I'm concerned about that question

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1 because it has two things in it, asserted jurisdiction
2 and denied Indian jurisdiction. I don't think the
3 witness has said anything about Indian jurisdiction.
4 MR. ADAMS: Fair enough, my lord. I'll ask it as two questions.
5 Let me ask you again then, and that was what's the
6 earliest specific assertion you found in the documents
7 asserting white jurisdiction in the land claim
8 territory?
9 THE COURT: I have trouble with that question, Mr. Adams.
10 THE WITNESS: I do too, my lord.
11 THE COURT: I'm not sure whether you are intending it to be
12 answered by reference to specific matters to the
13 exclusion of theories of sovereignty and that sort of
14 thing that may exist in English common law.
15 MR. ADAMS: All right. I think I can solve that problem, my
16 lord.
17 THE COURT: Thank you.
18 MR. ADAMS: My question, Mr. Williams, is directed at occasions
19 on which you find government officials asserting to
20 Indians in the land claim territory that they have
21 jurisdiction over that territory.
22 MR. GOLDIE: They?
23 MR. ADAMS: They the white government officials.
24 MR. GOLDIE: Well --
25 THE COURT: You mean the authority they represent, of course?
26 MR. ADAMS:
27 Q Yes.
28 A Well, I suppose the 1872 affair arising out of the
29 Kitsequecla fire would have to be among the earliest.
30 I'd have to reflect on -- you were speaking of
31 specific occasions when some white functionary said to
32 a group of Indians: "We are the law"? This sort of
33 thing, is this what you're talking about?
34 Q Yes. And the reason -- I asked first to have you
35 confirm that you had been looking for specific
36 assertions by Indian residents that they owned or had
37 jurisdiction over the territory.
38 A Yes, I had that in mind.
39 Q And this is the mirror of that question from the
40 other -- coming from the other direction.
41 A Yes. Well, 1872 certainly was an instance when the
42 lieutenant-governor and the Attorney-General
43 proclaimed the law. Prior to that time there were
44 actions by government officials which, in my view, if
45 taken -- looked at objectively indicate an assertion
46 of white jurisdiction, but I don't know whether
47 that -- whether I'm straying into a legal matter on

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- 1 that issue but -- on that point rather.
- 2 Q Okay. And the second half of my question was from
- 3 your examination of the record what's the -- and maybe
- 4 it's the same time -- what's the first instance you
- 5 recall a specific denial on the part of representa-
- 6 tives of the colonial or provincial government or the
- 7 federal government of Indian jurisdiction?
- 8 A The first denial by the -- by the colonial government
- 9 or the provincial government?
- 10 Q Or the dominion government.
- 11 A Or the dominion government of Indian jurisdiction?
- 12 Q Yes.
- 13 A Well, I would have to think about that. I'm not just
- 14 sure which in point of time would be the first. If
- 15 you mean a specific assertion by government action or
- 16 legislation, I'd have to think about that, Mr. Adams.
- 17 MR. ADAMS: I'm talking about assertions directed at people in
- 18 the land claim territory.
- 19 THE COURT: You mean expressed assertions, Mr. Adams?
- 20 MR. ADAMS:
- 21 Q Yes.
- 22 A Well, again, I suppose it would be the Kitsequecla
- 23 affair of 1872. Now, there -- if I were to look at my
- 24 notes, there may be an earlier instance, but that
- 25 certainly is a significant occasion.
- 26 Q And that's the earliest one that comes to mind?
- 27 A At this moment, yes.
- 28 MR. ADAMS: Okay.
- 29 THE COURT: That was at the time of the burning, was it?
- 30 THE WITNESS: Yes, my lord.
- 31 MR. ADAMS:
- 32 Q I'd like to ask you now to look at page 5 of your
- 33 opinion summary, Exhibit 1173.
- 34 A Yes.
- 35 Q And you will recall that you've given evidence about
- 36 Downie --
- 37 A Yes.
- 38 Q -- travelling in 1859?
- 39 And you list there on page 5 a number of what you
- 40 say are villages and then what I take are your guesses
- 41 about where he was at the time?
- 42 A Yes.
- 43 Q All right. I want to ask you to confirm, if you can,
- 44 that what Downie was doing was travelling up river
- 45 from the coast following the Skeena as far, so your
- 46 guesses show, as Kisgegas?
- 47 A Yes.

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1 Q All right. And are you familiar with the basic
2 geography of the land claim territory in the present
3 day?
4 A I think so.
5 Q All right. You'll be aware then that Kitwancool is
6 not on the Skeena River?
7 A True.
8 Q And are you aware of anything in Downie that suggests
9 that he departed from the Skeena River?
10 A Well, he went over land from east -- from -- from
11 Hazelton, but I think he -- his record seems to
12 indicate that he confined himself to the Skeena.
13 Q So you'd agree with me that your guess about
14 Kitwancool is probably wrong?
15 A It might be suspect, yes.
16 MR. ADAMS: All right.
17 THE COURT: You've got it in quotation marks. Have you taken it
18 from somewhere?
19 THE WITNESS: I put a question mark, my lord.
20 THE COURT: Pardon me?
21 THE WITNESS: I put a question mark.
22 THE COURT: But your text shows Kittcoonla, and are the question
23 marks or -- I'm sorry -- are the quotation marks to
24 show uncertainty about the spelling of the name or is
25 this a quotation from something that you've taken?
26 THE WITNESS: My lord, I don't have quote marks on my copy.
27 MR. GOLDIE: It's further down the page, Mr. Williams.
28 THE WITNESS: Oh, I'm sorry. Okay. Right. Quite so. That's
29 quoting Downie's reference.
30 MR. ADAMS:
31 Q So the place where you observed that he was welcome
32 and given provisions you have agreed with me may well
33 not have been Kitwancool at all?
34 A Yes, it's possible, certainly.
35 Q And you don't know where it was?
36 A I don't know of any village called Kittcoonla, no.
37 Q Okay. You gave some evidence about a place later in
38 his travels, a village by the name of Nass Glee?
39 A Yes.
40 Q Do you recall that?
41 A Yes, I do.
42 Q And do you know where that is?
43 A Well, I --
44 Q Or was?
45 A I -- I've inquired into it, I've speculated, I've
46 tried to figure out where it is, and I -- I must say
47 I'm uncertain. I think it's at the headwaters of the

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- 1 Babine River somewhere. It may not even be in the
2 claim area. I'm not sure. I don't know what village
3 that is, frankly.
- 4 Q And you don't know specifically whether it's inside or
5 outside the claim territory?
- 6 A I don't.
- 7 Q Okay. There's a -- back on page 4 you say of Downie
8 at the bottom of the page, the last sentence:
9
10 "He and two non-Indian companions journeyed
11 through the mid-section of the claim area..."
- 12
- 13 A Yes.
- 14 Q
15 "...and some of the villages he visited or
16 described can be identified."
- 17
- 18 A Yes.
- 19 Q Now, we've dealt with Kittcoonla?
- 20 A Yes.
- 21 Q To your knowledge, are the rest of the villages listed
22 there inside the land claim territory?
- 23 A Well, if my identification of them is correct, they
24 are. I -- but I must say I'm not so sure -- I'm not
25 sure whether Kitsumkalum is in the claim area.
- 26 Q You're not sure?
- 27 A But there isn't much doubt about -- there's no doubt
28 about Kitseguecla, or Gitenmaks, or Hagwilget, or
29 Kispiox, and, if I'm right, Kisgegas. All those are
30 in the claim area.
- 31 Q All right. Could you go, please, to page 7 of your
32 opinion summary, and there under number (b) -- and
33 you're speaking now of the Collins Overland Telegraph?
- 34 A Yes.
- 35 Q Five lines down under item (b) you say:
36
37 "There were one or two unpleasantnesses
38 involving Indians and whites..."
- 39
- 40 A Yes.
- 41 Q
42 "... (assaults) and occasional worries,"
43
44 etcetera?
- 45 A Yes.
- 46 Q You're aware, are you, that some of those
47 unpleasantnesses included a threat at Kispiox in 1866

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1 that the Indians would shoot the first white man that
2 crossed the river?
3 A This was because of the fear that the advent of the
4 wire was going to cut off the flow of salmon, yes, and
5 Conway went up there to deal with that.
6 Q And how did you know that that was the reason for the
7 threat?
8 A Conway talks about the -- the -- or it was one of the
9 officials. I think it was Conway who talked about
10 having to go up to Kispiox because the chief there
11 wasn't going to let the wire go through.
12 MR. ADAMS: Well, I wonder if I could ask you to look at your
13 own document binder, volume 1. That is Exhibit 1174,
14 and at tab 5 --
15 THE COURT: I'm sorry, Mr. Adams, what tab number?
16 MR. ADAMS: It's tab 5, my lord.
17 THE COURT: Thank you.
18 MR. ADAMS:
19 Q Page 27 in the tab.
20 A Yes.
21 Q And this is Mr. Morison, is it not, who was part of
22 the construction party?
23 A Yes.
24 Q Okay. And you're aware that until this occasion on
25 which he was on the Skeena that he had never been
26 there before?
27 A Yes.
28 Q All right.
29 A So he says.
30 Q And on page 27 of his memoir about a third of the way
31 down the page --
32 A Yes.
33 Q -- he says:
34
35 "Now amongst these people was a very learned
36 Doctor or Medicine man, and he thinking very
37 rightly that the advent of the white men
38 amongst his people would destroy his power over
39 them told them that if the telegraph wire
40 crossed the Skeena no more salmon would ascend
41 that river and that all birds and animals
42 crossing under or over the wire would instantly
43 die; the people of Kispiox becoming alarmed
44 sent word to Mr. Conway that they would shoot
45 the first whiteman that crossed the river
46 connected in any way with the Telegraph, here
47 was a serious hindrance, Mr. Conway ordered all

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1 work to be stopped and ordered every man armed,
2 luckily we had an adequate supply in case of
3 necessity; the whitemen were ambushed along the
4 Skeena bank opposite Kispiox. Then Conway came
5 down to Mission Point for a council of war. He
6 decided to send Paymaster Burrridge and another
7 man up to Kispiox in a small canoe to parley
8 with the Indians; I cut up a lot of pig-tail
9 tobacco into short lengths and put it in a rice
10 mat; we then proceeded to Kispiox. Burrridge
11 managed to explain to the Indians that our work
12 would be a source of revenue to them (always
13 touch a man in his pocket) and that if the
14 Chiefs would come forward he had a present of
15 tobacco (like gold dust to them) for them,
16 instantly every man nearly was a chief, the
17 tobacco was emptied, a general hand-shaking
18 ensued. We returned home, put the arms away
19 and the men returned to work without the
20 Indians ever knowing that a man was under
21 arms."

22
23 And that was the unpleasantness to which you referred?
24 A You better read the next sentence.
25

26 "The Kispiox Indians turned on their wise man
27 and chased him out of the Village..."
28

29 MR. ADAMS: Yes. Well, just working our way through that
30 passage, how would you suppose that Morison, who you
31 agree has never been there before, would know what the
32 medicine man was thinking?

33 MR. GOLDIE: Well, that's a matter of argument, my lord.

34 THE COURT: Oh, I don't know. Well, I think it might be a
35 matter of argument. Surely there's no unfairness in
36 giving Mr. Williams an opportunity to explain it, if
37 there is an explanation.

38 MR. GOLDIE: Well, there's no unfairness, but is it appropriate
39 for somebody to speculate on the state of mind when
40 both the writer and the person he's writing about are
41 dead?

42 THE COURT: Well, Mr. Williams has presumably read this
43 document. He may have a ready answer or it may be a
44 matter of argument. I think the question is one that
45 may be asked. If Mr. Adams wants to possibly
46 foreclose this opportunity to argue it, to leave it on
47 the basis of argument for a later date.

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1 MR. ADAMS: My lord, in my submission this is independent of
2 argument because this is a specific example of the
3 kind of question I was asking the witness earlier this
4 morning.

5 THE COURT: Can you answer the question, Mr. Williams?

6 THE WITNESS: Yes. The question again, Mr. Adams, was?

7 MR. ADAMS:

8 Q It was how -- let me ask you this first. This is one
9 of the sources you rely on for an account of this
10 incident?

11 A Yes.

12 Q And you indeed have pointed me to a further statement
13 about the Kispiox Indians turning on their wise man
14 and chasing him out of the village?

15 A Yes.

16 Q All right. Now, given that you say this is one of the
17 accounts you rely on, my question is how do you know
18 in using this source that Mr. Morison knew what the
19 medicine man was thinking telling the people in
20 Kispiox -- let's just stop there.

21 A I can't -- I can't say. I don't know.

22 Q You have no idea?

23 A I don't know what -- what -- how he knew that, no.

24 Q And you don't know whether he did know it, do you?

25 A All I know is he records his recollection of what
26 happened. The other account of the affair, which I
27 think was either by Elwyn or Conway, was much less
28 colourful than this one. But I'm not -- this may be
29 quite accurate. You know, this is one of these things
30 where one finds a description of an episode which is
31 relevant and one has to look at it. The whole affair
32 blew over.

33 Q Yes. And it blew over, according to Morison, I'll
34 suggest to you, because there was a parley, his word,
35 there were gifts, and then there was peace; is that
36 so?

37 A That's what he says.

38 MR. ADAMS: Okay.

39 THE COURT: What am I to understand by the expression:

40

41 "...the whitemen were ambushed along the Skeena
42 bank opposite Kispiox"?

43

44 THE WITNESS: I think he's talking, my lord, about this -- the
45 earlier statement in his -- in that same passage where
46 he says:

47

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1 "...the people of Kispiox becoming alarmed sent
2 word to Mr. Conway that they would shoot the
3 first whiteman that crossed the river (who was)
4 connected in any way with the Telegraph, here
5 was a serious hindrance..."
6
7 THE COURT: You don't think ambush in that context means a shoot
8 out or anything like that?
9 THE WITNESS: No. I mean, nobody was injured.
10 THE COURT: I see. All right.
11 MR. GOLDIE: Well, I took it -- well --
12 MR. ADAMS: Now that is argument.
13 MR. GOLDIE: Well, it's argument with context.
14 MR. ADAMS:
15 Q Mr. Williams, another of the unpleasantnesses that's
16 recorded by Morison appears at page 25 of the same
17 extract, and I'm in the first full paragraph, seven
18 lines into the paragraph, where you'll see there's a
19 discussion of the construction of a bridge across the
20 Bulkley at Hagwilget.
21 A I'm sorry, what page was it, Mr. Adams?
22 Q Page 25.
23 A 25.
24 Q Yes. First full paragraph, seven lines down in the
25 paragraph. And you'll see towards the right-hand side
26 of the page: "...to build a bridge across the
27 Bulkley..."
28 A Would you give me the start of the sentence, please?
29 MR. ADAMS: That's not always easy.
30 THE COURT: "...so Steve Decker..."
31 MR. ADAMS: You'll see Steve Decker's name just before the
32 passage I'm referring to.
33 THE COURT: Seven lines down in the first paragraph.
34 THE WITNESS: I don't see it on my copy, my lord.
35 THE COURT: Page 25.
36 THE WITNESS: No, I don't. Maybe -- is it possible 25 is
37 missing from mine?
38 MR. ADAMS:
39 Q There it is.
40 A Oh, okay. I'm sorry, my page numbers were indistinct
41 here. Okay.
42 Q And it says with reference to building a bridge across
43 the Bulkley:
44
45 "...here another difficulty arose, the Indians
46 strongly objected to this procedure as one of
47 their wise men had informed them that if the

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- 1 'Whites' built a bridge across the river no
2 more salmon would run up it, and as the Company
3 did not want to collide with natives in any way
4 a great palaver was held, and the Indians
5 consented to allow Steve Decker to repair their
6 own bridge and make it practicable for the
7 passage of animals."
8
9 A Yes.
10 Q And my first question out of that passage is just
11 parallel to the one you answered with respect to the
12 passage on page 27, and that is that as far as you
13 know there's nothing here that tells you how Mr.
14 Morison knew of the explanation for the Indians'
15 objection?
16 A You're right.
17 Q Okay. And secondly, out of this passage you will
18 agree with me that the -- there's a repetition of a
19 meeting, what he calls a great palaver, and a
20 settlement, that is, which results in consent?
21 A Yes. I think this -- I think the -- except -- yes,
22 the two events are very much the same. The one on
23 page 25 I think took place first rather than -- rather
24 than the affair at Kispiox.
25 Q Yes. I'm not trying to suggest that we're going in
26 chronological sequence.
27 A Yes.
28 Q I believe the narrative does.
29 A Yeah.
30 MR. ADAMS: Now, because you, by your evidence, are without a
31 detailed knowledge of the laws and customs of the
32 Gitksan and the Wet'suwet'en, I take it that you don't
33 know anything about the function of a parley and gifts
34 and a settlement in those two cultures?
35 MR. GOLDIE: There's no reference to gifts in the incident that
36 has just been referred to, my lord.
37 THE COURT: Well, unless the rawhide rope was a gift.
38 MR. ADAMS: No, my lord, I'm referring to the incidents
39 together.
40 THE COURT: Yes, all right.
41 THE WITNESS: Well, in -- in reading this and considering it I
42 did not take into account any system of traditional
43 presentation of gifts or -- customary amongst the
44 Gitksan people, no, I did not.
45 Q Okay.
46 A Or said to be customary.
47 Q Still on page 7 of your summary, 11 lines down on page

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- 1 7 you say on the right-hand side: "...many were
2 employed." And you're referring there to the native
3 population in connection with Collins Overland
4 Telegraph?
5 A Yes.
6 MR. ADAMS: All right. And you're not suggesting, are you, that
7 you know whether all or any of the people so employed
8 were Gitksan or Wet'suwet'en?
9 THE COURT: I'm sorry, Mr. Adams, where is that, please?
10 MR. ADAMS: I've forgotten my count. I'm still in item (b).
11 I'm six further lines down from the reference to
12 unpleasantnesses.
13 THE COURT: Oh, on page 27.
14 MR. ADAMS: No, I'm sorry, I'm in the report on page 7, my lord.
15 THE COURT: Oh, thank you.
16 THE WITNESS: Well, there are a number of references in the
17 material to employment of native persons as the line
18 progressed through the claim area, and none of them
19 were identified specifically as being Gitksan or
20 Wet'suwet'en.
21 MR. ADAMS:
22 Q No. In fact, they were --
23 A But there is one reference to an Indian at Hagwilget
24 who was in charge of their store's depot there. I
25 think it not likely that anyone other than a Tsimshian
26 or a Carrier would have come to Hagwilget to guard the
27 stores.
28 Q Do you?
29 A But I -- I have assumed that those Indians being
30 employed were within the claim area.
31 Q All right. And when you referred to employment on the
32 COT, you were including, were you, both the
33 construction party and the people moving supplies to
34 the party?
35 A Yes.
36 Q All right. Well, with that in mind let me ask you to
37 look still in this same extract from Morison first at
38 page 26. My lord, I'm eight lines from the bottom of
39 page 26 in tab 5.
40 A Yes.
41 Q And there he says:
42
43 "We had a gang of Indians working on the
44 construction line mixed up of,"
45
46 I think he means to say Haidas.
47 A Yes.

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1 Q "...Tsimpeans, Bella Bella's, Bella Coola's,
2 etc., all Northern Tribes."
3
4
5 A Yes.
6 Q All right. So far as you're able to rely on Morison,
7 that tells you something, does it not, about the make-
8 up of the construction party in the land claim
9 territory?
10 A Well, I'm not -- I'm not sure that he's here talking
11 entirely of the -- of the line within the claim area.
12 I think he's talking here generally about the
13 construction of the line. He said:
14
15 "We had a gang of Indians working on the
16 construction line..."
17
18 He at that stage is talking in general terms about the
19 construction. And the line ran from New Westminster
20 northward, and at the section between Quesnel and Fort
21 Fraser there may well have been Bella Bellas and Bella
22 Coolas. I don't know. That's what he says.
23 Q And you'll agree with me that in the sequence of the
24 narrative we are between the crossing of Hagwilget
25 Canyon and Kispiox?
26 A Are we?
27 MR. ADAMS: Those are the two passages we just looked at on
28 pages 25 and 27.
29 MR. GOLDIE: Well, with respect, I think he's talking about the
30 people in the company generally on page 25, the
31 paragraph starting: "A word about our good foreman
32 Steve Decker," and then he goes on to talk about, I'll
33 call them the players.
34 THE COURT: It is a rather nostalgic reminiscence, is it not,
35 Mr. Adams?
36 MR. ADAMS:
37 Q Let me put it to you this way, Mr. Williams. You
38 can't tell which part of the line he's talking about
39 when he says:
40
41 "We had a gang of Indians working on the
42 construction line mixed up of Hiadas,
43 Tsimpeans, Bella Bella's, Bella Coola's, etc.,
44 all Northern Tribes"?
45
46 A I cannot say, Mr. Adams, that every Indian employed
47 within the claim area was resident within the claim

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1 area.
2 Q Or that any of them were?
3 A Well, none of them are identified as coming from
4 within the claim area, but I think it highly
5 improbable that the -- all the Indians employed on the
6 line would have come either from the coast or the Fort
7 Fraser or Fort George area.
8 Q But there's nothing in that document that tells you
9 that, is there?
10 A No.
11 Q All right. Could you refer back to page 19, please,
12 and the paragraph there, the first full paragraph
13 beginning:
14 "Next day I was surprised at the return of all
15 the..."
16
17 A Yes.
18 Q "...Fort Simpson Indians with their canoes en
19 route home..."?
20
21 A Yes.
22 Q Now -- and then two thirds of the way through that
23 paragraph he mentions William Duncan and the mission
24 station at Metlakatla. Do you see that?
25 A I see the reference halfway through to the mission at
26 Metlakatla, yes.
27
28 "Capt. Butler never bothered his head about
29 them..."
30
31 Q Yes. And he goes on:
32 "...now Duncan was a wonderful Missionary, and
33 also a thorough man of business with his eye on
34 the main chance..."
35
36 A Yes.
37 Q "...he had a store at his Mission and saw at
38 once the immense advantage which would accrue
39 to his village from getting this work for his
40 people..."
41
42 A Yes.
43 Q

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1 "...he knew the Indians as well as a Hudson's
2 Bay Company Officer and talked the Tsimpean
3 language like a native."
4

5 A Yes.

6 Q
7 "At Capt. Butler's request he got the people
8 together with their Headman Paul Legaic, a
9 contract was soon entered into with them to
10 freight up the river for the season when Capt.
11 Butler was to meet them in the Fall with a
12 chest full of money and pay them in cash for
13 their work,"
14

15 and so on.
16

17 A Yes.

18 Q Now, so far as that tells you anything, would you
19 agree with me that it suggests that the people doing
20 the freighting were not from the claim territory but
21 were Coast Tsimshian?

22 A It looks as if the Tsimshians freighted the material
23 up the Skeena, yes.

24 MR. GOLDIE: There's a reference to Kitselas natives a couple of
25 lines following.

26 MR. ADAMS:

27 Q Yes. That was the next thing I was going to point you
28 to.
29

30 "Capt. Butler soon returned up river with his
31 flotilla and I must say these people, together
32 with a few Kitselas natives, worked faithfully
33 throughout the season in conjunction with our
34 thirty five White men,"
35

36 etcetera.

37 A Yes.

38 Q You know where Kitselas is, do you?

39 A Yes.

40 Q Is it inside or outside the claim territory?

41 A It's inside the claim area.

42 Q It is. All right. If you could go over to page 8 of
43 your summary, Exhibit 1173.

44 A Yes.

45 Q And at the top of the page under item (c) you say:
46

47 "There are no references to disputes over land

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- 1 ownership or interference with traditional
2 rights, as occurred forty years later with the
3 G.T.P.R., "
4
5 correct?
6 A Yes.
7 Q All right. And 40 years after 1866 would take us to
8 1916?
9 A 1906.
10 Q 1906. All right. Thank you. And I would just ask
11 you to confirm for me that -- well, let me ask you
12 this first. Would disputes over land ownership or
13 interference with traditional rights be significant in
14 your consideration of the imposition and acceptance of
15 law and order as defined?
16 A Now, what is that again, please?
17 Q Okay. I'm inviting you to agree with me that disputes
18 over land ownership or interference with traditional
19 rights would be relevant to a discussion of the
20 imposition and acceptance or non-acceptance of law and
21 order.
22 A It would be something that one would want to take into
23 account, I agree.
24 Q All right. And then what I wanted to ask you to do is
25 just confirm for me, if you would, that you make no
26 further reference in your report to such disputes in
27 connection with the G.T.P.R.
28 A That is so in the report.
29 Q Yes. And why is that?
30 A The -- the disputes took place -- well, if by
31 disputes, for example, we mean such things as the
32 acquisition of locating the right of way through
33 Indian cemeteries and burial grounds and through
34 villages and so on, this occurred certainly subsequent
35 to 1906, and I don't recall the exact date in which
36 the first of these negotiations took place, but I
37 think it must have been about -- subsequent to 1908 I
38 would guess at this point without consulting my notes.
39 But, in any case, I have not referred to those
40 disputes or negotiations, whatever they were, in my
41 report.
42 Q All right. And that wasn't because you were unaware
43 of them, was it? I mean, you refer to them?
44 A Yes. I was aware that there were negotiations
45 certainly between the -- mainly between the Department
46 of Indian Affairs, I think -- I don't think provincial
47 authorities were involved in this, but nonetheless,

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1 they occurred.

2 Q All right. So you were aware of them. It wasn't that
3 you thought they were insignificant to your subject?

4 A I -- I had concluded that by the time of the arrival
5 of the Grand Trunk Pacific and the negotiations with
6 the Indians over acquisition of land that, as I said
7 in my report, that the pattern or the relationship
8 between the whites and the Indians had already been
9 settled by then.

10 Q And with the acceptance of the Indians; is that
11 correct?

12 A Yes.

13 MR. ADAMS: Yes. I wonder if you'd look, please, at Exhibit
14 1172, which is the big --

15 THE COURT: I wonder, Mr. Adams, if we should break for lunch.

16 MR. ADAMS: Yes, my lord.

17 THE REGISTRAR: Order in court. Court stands adjourned until
18 two o'clock.

19

20 (PROCEEDINGS ADJOURNED AT 12:30 P.M.)

21

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

26

27

28

29 _____
 Leanna Smith

30 Official Reporter

31 United Reporting Service

32

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(PROCEEDINGS RECOMMENCED AFTER RECESS)

THE REGISTRAR: Order in court.

THE COURT: Mr. Adams.

MR. ADAMS: Yes, My Lord. My Lord, I am handing up two copies of tab 15, which is Exhibit 1172-15, Trigger extract.

THE COURT: All right. Where should it be?

MR. ADAMS: It should be at the back of the very last tab of 1172, which was volume 1.

THE COURT: Yes, all right.

MR. ADAMS: And I think I had said when I last referred to it that it's also Exhibit 888.

THE COURT: Yes.

MR. ADAMS:

Q Mr. Williams, we were at page 8 of your summary of opinion, Exhibit 1173, and I had just asked you to refer to tab 13 of that same binder, 1172. And we were talking about what you referred to in your report as disputes over land ownership or interference with traditional rights with the J.T.P.R., and I believe you had confirmed for me that that -- those events are not referred to elsewhere in your summary. That's correct?

A That's so.

Q And I believe you had agreed with me that they were nevertheless relevant to your subject, that is the imposition of law and order and acceptance or non-acceptance of it?

A Well, I don't think I agreed with you that they were -- put it this way. I did not think they were relevant to the formulation of the opinion which I have given. They were certainly a form of protest, but really didn't relate to the development of the administration of justice within the claim area, which I conceive to be my function to investigate.

Q But they did relate to aboriginal rights, did they not?

A Yes.

Q And we have already agreed that aboriginal rights were an aspect both of the relationship between the Indian and white communities, and an aspect of the acceptance or non-acceptance of the imposition of law and order?

A Yes.

Q All right.

A But I was not instructed to enquire into the relationships between the Indian community and the proprietors of the railway.

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- 1 Q And without such instructions, you didn't do that?
- 2 A I did not do that, no.
- 3 Q Okay. Now, I want to ask you to look at tab 13 of
- 4 Exhibit 1172. That's the extract from the 1988
- 5 version of the Gunanoot book.
- 6 A Yes.
- 7 Q And particularly at page 75, which I think you will
- 8 find is in the middle of the extract.
- 9 A Yes.
- 10 Q And I'm five lines from the bottom.
- 11 A Yes.
- 12 Q Let me first take you up a few lines. You see the
- 13 paragraph beginning "this incident"?
- 14 A Yes.
- 15 Q And you have been talking about --
- 16 THE COURT: I'm sorry, did you say -- I'm sorry, I thought you
- 17 meant Trigger. You meant tab 13, page 75. Thank you.
- 18 Yes, thank you. I have it.
- 19 Q You had been discussing earlier in the extract an
- 20 incident involving some of the activities of the
- 21 police, and then with reference to that you said:
- 22
- 23 "This incident may have been only a
- 24 manifestation of more serious trouble
- 25 underlying the relationship between the white
- 26 and native residents."
- 27
- 28 A Yes.
- 29 Q And then six lines down from there you go on to say:
- 30
- 31 "Much as the Indian and Inuit population of
- 32 northern Canada today fears the intrusion of
- 33 highways and pipelines as a threat to their
- 34 traditional way of life, so did the native
- 35 population of the Hazelton region after 1907
- 36 fear the proposed construction of the Grand
- 37 Trunk Pacific Railway. They saw the proposal
- 38 not only as an intrusion into their way of life
- 39 but more specifically as a project likely to
- 40 lead to loss of their traditional lands and
- 41 interference with aboriginal fishing and
- 42 hunting rights."
- 43
- 44 And that's one of the opinions you stand by today?
- 45 A Certainly. They did have that fear.
- 46 Q Yes. But it wasn't one that you thought significant
- 47 enough to take up later in your summary, or anywhere

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- 1 else?
2 A True.
3 Q Okay. Now, there was a good deal of discussion, and
4 you gave a good deal of evidence about Mr. Elwyn?
5 A Yes.
6 Q And you say on page 8 of your report in the last part
7 of section D that Elwyn was the -- first of all he was
8 a travelling magistrate with the construction crews,
9 and then you say at the end of that part:
10
11 "When late in 1866, other company officials left
12 the area, Elwyn was placed in charge."
13
14
15 A Yes.
16 Q Now, first of all what did you mean by the area?
17 A Well, I was speaking of the construction area, the
18 construction area within the claim area between --
19 well, the construction area was within the claim area,
20 came in somewhere around Burns Lake and continued onto
21 Kispiox.
22 Q Yes. You were referring to the construction area, not
23 to the land claim area?
24 A I was referring to the area -- the construction area
25 within the claim area.
26 Q But you are aware, and I think you testified, that Mr.
27 Elwyn went to Stikine over that winter of 1866?
28 A That's right, later.
29 Q All right. And while you say late in 1866 he was
30 placed in charge, right?
31 A Yes.
32 Q All right. But I think you will agree with me what he
33 was placed in charge of was the exploration party at
34 Stikine in October of 1866?
35 A Well, that was what was being done at the time, but as
36 I recall Conway's letter, he said he was being placed
37 in charge of the party, what the party was engaged in,
38 the exploration of the route from Kispiox to the
39 Stikine.
40 Q So if area was the land claim area, Elwyn is one of
41 those who left, wasn't he, in the winter of 1866, in
42 the fall of 1866?
43 A I believe so. He worked his way north to Stikine.
44 Q Yes. And I think you confirmed in your evidence
45 yesterday that in any event, and as you say in your
46 report, you don't know if he was exercising a judicial
47 function?

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- 1 A I have seen no evidence that he did.
2 Q Okay. Now, with respect generally to the Collins
3 Overland telegraph construction. You are aware, are
4 you, that the construction parties were under strict
5 instructions not to interfere with the Indians in any
6 way?
7 A Yes.
8 Q Okay. And is it your reading of the portion of the
9 documentary record you have examined that those
10 instructions were complied with?
11 A There were, I think, as I recall it, there were one or
12 two references to occasions when they were not
13 strictly followed, but by in large they certainly were
14 followed. Morison in his recollections talks of the
15 strict regulations dealing with the Indians, trading
16 with them.
17 Q Yes, he does. All right. Then you go on to talk
18 about settlement and population?
19 A Yes.
20 Q And I first want to ask you this. How was the size
21 and the composition of the land claim area relevant to
22 your subject?
23 A Well, I thought it had some -- it had bearing on it,
24 because what was being done was not being done in a
25 population vacuum. I thought the number of white
26 residents, the number of Indian residents was
27 something to think about when considering the
28 application of judicial authority in the area, which
29 applied not only to the Indian people, of course, but
30 to the whites as well.
31 Q What did you learn about the population or the
32 composition of the population that assisted you in
33 considering your --
34 A Well, I learned, for one thing, that the population in
35 the claim area was certainly concentrated around the
36 Hazelton area. Very little -- there seemed to be
37 very, very little population, both white or Indian, in
38 the eastern extremity of the claim area, so far as one
39 could tell from the documents. It seemed to me that
40 it would be useful to have some idea, however rough,
41 and it is very rough the population estimates -- well
42 1881 is not so rough, because we have a Census for
43 that, but it seemed to me to have some use to know how
44 many people were there, white and Indian.
45 Q And that's what I am trying to get at, is what was the
46 use of knowing that?
47 A Well, one wants to know if there are people who are

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1 being affected by the process of administering the
2 judicial system in the area. For whom is it being
3 administered.
4 Q Now, you have no special expertise in making
5 population estimates?
6 A I do not.
7 Q Okay. And I take it you would defer to professional
8 geographers when it comes to making estimates of that
9 kind?
10 MR. GOLDIE: I don't know why he should, My Lord. I have never
11 heard special geographers have special expertise in
12 counting heads.
13 THE COURT: Well, we'll see whether he does or not.
14 THE WITNESS: The population figures that I have referred to, I
15 have drawn from contemporary documents. And I have
16 given those figures as best I was able to define them.
17 I cannot give -- I am not trained, nor do I have the
18 knowledge to give population estimates of the more
19 remote areas of the claim area, but we do have some
20 definite knowledge about the portions of the claim
21 area around Hazelton.
22 MR. ADAMS:
23 Q You are aware there is an area within geography called
24 demography?
25 A And I am not a demographer.
26 Q Yes, but demographers are geographers, are they not,
27 to your knowledge?
28 A I suppose they are a -- one aspect of it. I wouldn't
29 say a sub-aspect of it. I believe demographers are
30 basically geographers by training.
31 Q And my question was to suggest that you would defer to
32 professional geographers in the matter of estimating
33 populations.
34 A Where exact figures were not available, but I have
35 produced some exact figures, however -- how much value
36 they are, I don't know, but they are not estimates,
37 they are enumerations and estimates by people who --
38 part of whose job was to make estimates of that kind.
39 Like Loring, for example, or Graham.
40 Q Now, you say towards the bottom of page 8, the last
41 paragraph:
42
43 "Permanent white settlement in the claim area
44 started at Hazelton in 1871, with the laying
45 out of a townsite and Indian reserve by Edgar
46 Dewdney; a few settlers, among them Thomas
47 Hankin, pre-empted land."

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- 1
2 Do you see that?
3 A Yes.
4 Q My question is this. Do you know what happened to the
5 townsite and to the Indian reserve that you say was
6 established in 1871?
7 A Do I know what happened?
8 Q Yes. Do you know what became of them?
9 A Well, Hazelton is still there.
10 Q Yes.
11 A And so is the Indian reserve.
12 Q Is it the same town?
13 A You mean are boundaries the same?
14 Q Yes.
15 A I cannot say of my own knowledge whether the
16 boundaries of Hazelton today are those set out by
17 Dewdney and his sketch in 1871.
18 Q What about the location of the Indian reserve?
19 A I think probably the -- I am sure that the size of the
20 Indian reserve laid out by Dewdney in 1871 has been
21 altered since that time.
22 Q All right.
23 A But essentially it's in the same place, I believe.
24 Q Did you review materials that told you what happened
25 to the Indian reserve in the townsite as soon after
26 1871 as 1887?
27 A As to the alteration of boundaries?
28 Q Yes.
29 A You will have to give me a bit more information. At
30 the moment I can't recall.
31 Q You don't recall reviewing any documents that told you
32 about the fate of either the townsite or the Indian
33 reserve?
34 A I was not asked to, as I said earlier, to study the
35 reserve question, if I may use that phrase, and I am
36 unfamiliar with the details of any alterations of
37 reserve boundaries. I know -- I can recall running
38 across material with the alteration to the boundaries
39 of re -- or reserve, rather, at Moricetown. There was
40 some alteration to the boundaries at Kitsegukla that I
41 recall looking at. The village was relocated. But I
42 do not recall reading anything, at this point at
43 least, about alteration of boundaries of the Indian
44 reserve at Hazelton in 1887.
45 Q All right. I am going to show you a document. My
46 Lord, this is something that I delivered to my friends
47 a few days ago. It has added to it an index to

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1 indicate its source, but the page which they will have
2 seen before is the last one. And I am instructed that
3 this is an extract from the materials on the church
4 missionary society, kept in the library of the
5 Vancouver School of Theology.
6 Q If you could just take a moment to read that through.
7 A I looked at this -- yes, I saw this.
8 Q But you hadn't seen it before?
9 A No. It was handed to me just a day or two ago, Mr.
10 Adams.
11 Q Okay. Now, this identifies itself on the page where
12 the printing appears as an extract from the annual
13 letter of the Rev. J. Field, Hazelton, and somewhere
14 on here it says 1887.
15 MR. GOLDIE: It's the fellow who was asking for money for his
16 church.
17 THE WITNESS: Yes. I have read this, Mr. Adams.
18 MR. ADAMS: Okay. My Lord, it's item number 497 on page 17 of
19 the second page.
20 THE COURT: 419.
21 MR. ADAMS: 497, I'm sorry, on page 17.
22 Q Now, I just want to ask you to look at this about the
23 middle of the left-hand column. Well, first of all
24 the first sentence he says:
25
26 "There are two buildings here belonging to the
27 C.M.S."
28
29 That is the Church Missionary Society?
30 A Yes.
31 Q And I take it that that's at Hazelton?
32 A Yes.
33 Q And then going down about halfway down the column:
34
35 "About 2 acres of land nominally belonged to
36 these buildings: I say nominally, because
37 there is no title, and when the reserves for
38 the Indians are laid out we may have to give up
39 possession. I understand the Bishop has been
40 making inquiries about a title, but at the
41 present time the Government is not, I fear,
42 disposed to consider such applications. The
43 Metlakahtla affair must be settled before
44 things here will even think of shaping
45 themselves. No grants have been made for land
46 here. All rights are what are called
47 'squatters rights', but as Hazelton is a town

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1 the Government is not bound to respect such.
2 Any one may come and build on what is now
3 considered C.M.S. property, and we should have
4 no legal right to object. We have already been
5 thus threatened; indeed, the foundations of a
6 house were laid. I, in the interest of the
7 Society, protested, but my protest was
8 disregarded, and the work would have been
9 continued had it not been for the arrival of
10 the Rev. H.O.G. Sheldon, who succeeded in
11 persuading the builder to abandon it. But it
12 caused much unpleasantness, and I fear, bad
13 feeling on the part of the Indians. The old
14 story of the Society being in league with the
15 Government was published abroad, and this case
16 pointed out as an instance of it. A
17 deputation, headed by the chief, waited on me
18 requested to be informed by what authority I
19 had interfered with the building of the house
20 referred to above. I assured them that the
21 right of the site was purchased. To this they
22 replied that all the land was theirs, and had
23 been their fathers from the first."

24
25 And so on.

26 A Yes.

27 Q Now, does that tell you something you didn't know at
28 the time you did your opinion summary about what
29 became of the reserve and the townsite of Hazelton
30 after 1871?

31 A I was not instructed to enquire into the history of
32 the surveying and location of the reserves within the
33 claim area.

34 Q All right. Then I take it you didn't mean to suggest
35 in the paragraph at the bottom of page 8 in your
36 opinion summary that from 1871 and the establishment
37 of the townsite and reserve, that that was some
38 permanent situation from then on?

39 A Well, the -- I suppose in the -- again, you know, I
40 have not enquired of the history of the settlement of
41 the reserves, so far as boundaries are concerned, and
42 I suppose it may have not been until 1891 and 1892 and
43 O'Reilly's visits and the boundaries of reserve at
44 Hazelton were precisely defined. But they were there,
45 and they were -- I'm sure they were the settlers,
46 treated it as the Indian reserve. That's where they
47 lived.

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- 1 Q And is there some documents you are relying on to make
2 that statement?
- 3 A Well, Mr. O'Reilly was in Hazelton in 1891 and 1892 on
4 behalf of the Indian Reserve Commission.
- 5 Q Yes.
- 6 A But again, Mr. Adams, I say I am not familiar with the
7 history of the definition of boundaries of individual
8 reserves within the claim area. I can only speak to
9 what I found in various documents I looked at.
- 10 Q All right. Let me ask you to look at another -- oh,
11 My Lord, could I have that marked as the next exhibit,
12 please.
- 13 THE COURT: How do you want to mark it?
- 14 MR. ADAMS: If at this time convenient, it might readily go into
15 the volume 1 binder. In spite of its title, I don't
16 think it's volume 2. I have only a few additional
17 documents to put to the witness.
- 18 THE COURT: Put it as tab 16.
- 19 MR. ADAMS: If that could be tab 16, and I will provide the
20 appropriate tabs.
- 21 THE COURT: Thank you.
- 22 THE REGISTRAR: Exhibit 1172-16.
- 23
- 24 (EXHIBIT NO. 1172-16 - EXTRACT FROM THE
25 ANNUAL LETTER OF THE REV. J. FIELD)
- 26
- 27 Q The next document I want to ask you to look at is
28 Exhibit 1035-55, and that is in document 2 of Dr.
29 Galois documents.
- 30 A I'm sorry, Mr. Adams, is it for my own purpose -- this
31 is tab what?
- 32 THE REGISTRAR: It's going to be 16. They are going to provide
33 us with a -- just go on top of this.
- 34 MR. ADAMS: Sorry, My Lord, there is some difficulty with that
35 reference. I'm not sure what it is. Let me ask you
36 instead to look at volume 4 of Exhibit 1035 at tab
37 220.
- 38 THE REGISTRAR: Tab 220.
- 39 MR. ADAMS: 220.
- 40 Q And you will see that that's Mr. O'Reilly's writing on
41 behalf of the Indian Reserve Commission.
- 42 A Yes.
- 43 Q And if you look on the second page of that letter --
44 maybe the bottom of the first page. And he's writing,
45 as I see, to the chief commissioner of Lands and
46 Works?
- 47 A Yes.

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1 Q On August 4, 1891?

2 A Yes.

3 Q And he says:

4

5 "I have the honour to inform you that I am about
6 to visit the upper Skeena River for the purpose
7 of defining the Indian reserves in that
8 district. Among the places to be visited is
9 Hazelton, a townsite on the Skeena River
10 surveyed in 1871. I am informed that only five
11 or six of the lots are now occupied by white
12 men, but that the Indians attracted by
13 employment consequent on the traffic to the
14 Omineca mines in 1871 to 1873, settled on part
15 of the townsite, built houses and have since
16 remained in occupation.

17 I have been unable to discover that any
18 reserves were defined at Hazelton, though on
19 the plan of the townsite an Indian reserve is
20 shown at the northern end, its extent is not
21 given.

22 I am anxious to be informed by you if any
23 objection exists to that portion of the
24 townsite occupied by the Indians being included
25 within the reserve should it be found necessary
26 to do so, provided that it does not encroach on
27 the land claimed by the whites. I very much
28 fear that the Indians will consider it a
29 hardship should they be deprived of the land
30 they have cleared, fenced and have occupied for
31 over twenty years."

32

33

34 A Yes.

35 Q Now, what I am suggesting to you is that the
36 establishment -- the laying out of a townsite in the
37 the Indian reserve, as you record by Dewdney, does not
38 tell you what was on the ground in 1887 or in 1891.

39 A I accept that. I can't say otherwise.

40 Q All right. Going to page 9 of your opinion report.
41 You are speaking first of all of the white population,
42 and you say that it fluctuated -- I think you are
43 speaking of the 30 year period after 1871, between a
44 low of 5 and a high of 25.

45 A Yes.

46 Q Correct. So that's the period 1871 to 1901?

47 A Yes.

D.R. Williams (for Province)
Cross-exam by Mr. Adams

- 1 Q And is that a white population for the claim area as a
2 whole?
- 3 A I believe so. I take it to be so. The areas were
4 all, you know, people from Lorne Creek up to Hazelton,
5 and people from Hazelton up to Lorne Creek and --
- 6 Q But that's your reasonable estimate?
- 7 A Yes.
- 8 Q Okay.
- 9 A Since I wrote that, although maybe I had the knowledge
10 even before I wrote it there, I do draw to your
11 attention that there was a -- I gave in evidence the
12 white population of Hazelton as drawn from the 1891
13 Census figures, which were -- which showed white
14 population of 18, as I recall. I didn't see any
15 separate enumeration for places like Loren Creek.
- 16 THE COURT: I think it was included with Hazelton.
- 17 THE WITNESS: I think the area of population, My Lord, yes.
- 18 Q Then you go on to say in the first full paragraph on
19 page 9 of your summary:
- 20
- 21 "There are, however, reliable figures for the
22 Indian population in the Hazelton area in 1881
23 and 1891."
- 24
- 25
- 26 A Yes.
- 27 Q Had you dealt before you did your research for this
28 case with Census data?
- 29 A With Census data?
- 30 Q Yes.
- 31 A I think I must have done, but I don't make anything of
32 it. I must have looked at other Census records over
33 the period of years.
- 34 Q Okay. And apparently since this was written, you've
35 become aware that there are figures village by village
36 for many of the villages in the claim area produced by
37 the Indian agent covering approximately the period
38 1891 to 1916; is that correct?
- 39 A Yes. I am not -- yes, that's so.
- 40 Q And you weren't aware of that source even up to the
41 time you completed your opinion summary?
- 42 A That is so.
- 43 Q And does that tell me that you hadn't read any of that
44 material before you completed your opinion summary?
- 45 A Those population estimates by Loring I did not have, I
46 believe, when I wrote my summary.
- 47 Q You are not aware that they submitted those annually?

D.R. Williams (for Province)
Cross-exam by Mr. Adams

1 A Yes.
2 Q And you had never seen them before?
3 A I had not seen them at the time of writing this
4 report.
5 Q Okay. Now, in your report on page 10, with reference
6 to the Indian population, you had first given a 1881
7 estimate of 1,700.
8 A Yes.
9 Q And then you write:
10
11 "By 1891, it had dwindled sharply, probably as a
12 result of the severe measles epidemic in 1887."
13
14 A Yes.
15 xxx Q Now, at the time you thought it had dwindled to 928,
16 is the figure you had given at the bottom of page 9?
17 A Yes.
18 Q And you are now aware that that figure, at least so
19 far as the D.I.A. figures compiled by Loring are
20 concerned, is an error?
21 A Yes, I think it's -- well, Loring's figure in 1895
22 was, I think, roughly 1,300, four years later.
23 Q But you are able now, are you not, and I believe you
24 did in your evidence, correct the 928 figure with the
25 help of the annual report for 1901 from Loring?
26 A Yes.
27 Q And that gave you a figure of 1,156, as I understand
28 it?
29 A Whatever it was, yes.
30 Q All right. So --
31 THE COURT: What year was that please?
32 MR. ADAMS: That was 1891, I believe, My Lord.
33 THE WITNESS: I think it was 1895, My Lord, that I referred to
34 at least.
35 THE COURT: Wasn't there a Census in 1891?
36 THE WITNESS: Yes, but the -- I think it's the 1895 figure that
37 showed the increase over 1891. 1895 Loring figure.
38 MR. ADAMS:
39 Q So whatever else we learned from this, when you say in
40 the first paragraph of page 9 in your report that
41 there are reliable figures, and that they are to be
42 found at least in the 1891 Census, that wasn't
43 correct, was it?
44 A I don't think there is anything incorrect about the
45 Census figures. I don't think Loring made an estimate
46 in 1891, did he? I don't recall. He did in 1895.
47 Q Well, I think you agreed with me that there were

D.R. Williams (for Province)
Cross-exam by Mr. Adams

- 1 figures sent in by Loring from about 1891 to 1916, and
2 that you had become aware of that since writing your
3 report.
- 4 A I certainly became aware of them since writing the
5 report, but I don't know that he took his figures back
6 to 1891. I think the earliest that I saw, at least,
7 was 1895.
- 8 Q All right. So as far as you are concerned, the 1891
9 Census was accurate, and the 928 figure for 1891 is
10 accurate?
- 11 A I assume it is.
- 12 Q Okay. Now, I wonder if you could look at Exhibit 1035
13 in tab 572, and that's volume A of Dr. Galois
14 materials, My Lord. And if you go to the very last
15 page of tab 572.
- 16 A I haven't found 572 yet. Yes, all right.
- 17 Q And you see that table on the last page there?
- 18 A Yes.
- 19 Q And Babine and Upper Skeena River agency?
- 20 A Yes.
- 21 Q Followed by a list of villages?
- 22 A Yes.
- 23 Q All right. Now, when I take the figures that are
24 listed there, and I am instructed that these are a
25 compilation of the figures that appear in Loring's
26 annual report for 1901, you will recall that's the
27 year in which the Census figure you give is 928?
- 28 A No. I thought it was 1891 was the 928 figure.
- 29 Q I'm sorry, you are quite right. All right. So now we
30 are in 1901. And when I total the village figures for
31 Kitwanga, Kitsegukla, Gitanmaax, Kispiox, Kisgegas,
32 Kuldoe, Moricetown and Hagwilget, and please someone
33 correct me if I'm wrong, I get 1,308.
- 34 A I had just seen the thing, so I can't add it up. I
35 accept your figures. I have no reason to quarrel with
36 them.
- 37 Q And you will see at the very bottom of the page, the
38 third line from the bottom is listed Connolly Lake?
- 39 A I'm sorry, what page is that?
- 40 Q Same page, just going down the list of villages.
- 41 A After Kuldoe?
- 42 Q After Hagwilget was the last one I read, and then Fort
43 Babine and on down, and two villages from the bottom
44 you will see Connolly Lake.
- 45 A I'm sorry, Mr. Adams, I don't see it.
- 46 THE COURT: Last page.
- 47 MR. ADAMS: Same tab witness.

D.R. Williams (for Province)
Cross-exam by Mr. Adams

- 1 THE COURT: Last page of the tab.
2 THE WITNESS: Thank you, My Lord. Thank you. Right.
3 MR. ADAMS:
4 Q And the figure of 1,308 that I had suggested to you is
5 the -- what I make the total, excluding Kitwancool of
6 the first villages up to and including Hagwilget, and
7 then I was directing your attention to Connolly Lake
8 near the bottom.
9 A Yes.
10 Q And you are aware that Connolly Lake is also known as
11 Bear Lake?
12 A Bear Lake, yes.
13 Q And you are aware that there were, as of 1901, Gitksan
14 people at Bear Lake?
15 A Yes.
16 Q Already?
17 A I believe so.
18 Q And so some undetermined portion of at least of the
19 118 listed there were Gitksan, so far as you know?
20 A I would think so.
21 Q All right. Now, here is my problem. If the 1891
22 Census is accurate for a figure of 928, and Loring's
23 1901 figures are accurate of 1,308, leaving Bear Lake
24 out of it for a moment, something very peculiar has
25 happened in ten years, has it not?
26 A Population has grown.
27 MR. GOLDIE: Well, excuse me a minute. The 928 figure referred
28 to at page 9, does not, so far as I read it, include
29 Connolly Lake or Moricetown.
30 MR. ADAMS: I said, My Lord, I was leaving Connolly Lake out of
31 this calculation.
32 THE COURT: Uh-huh.
33 MR. GOLDIE: Well, I don't think it includes Moricetown.
34 THE COURT: Well, the question is whether something unusual has
35 happened, if population has grown from 928 to
36 something in the range of 1,308 plus whatever Gitksan
37 were at Connolly Lake in the year we are talking about
38 of 1901. Isn't that the question, Mr. Adams?
39 MR. ADAMS: That's correct, My Lord. And I also note that
40 Kitselas is included in the 928 figure.
41 Q Just while I am on that point, Mr. Williams, you have
42 said, I think earlier today, that you believe Kitselas
43 to be inside the land claim territory?
44 A I thought so. Am I wrong?
45 Q I believe you are.
46 A All right. I accept that.
47 Q All right. So whatever the total was for Kitselas,

D.R. Williams (for Province)
Cross-exam by Mr. Adams

- 1 should come out of the 928?
- 2 A Yes.
- 3 Q And come back to my question --
- 4 MR. GOLDIE: I haven't got it clear whether the one figure
- 5 includes Moricetown and the other figure doesn't.
- 6 MR. ADAMS:
- 7 Q When you reviewed the 1891 Census, do you recall it
- 8 including a figure for Moricetown?
- 9 A The 1891?
- 10 Q Yes.
- 11 A No. Because I have listed here in the report the
- 12 villages that were enumerated in 1891.
- 13 Q Yes.
- 14 A But Loring's figures include Moricetown. At least I
- 15 am sure they do. Certainly in some of his reports he
- 16 includes Moricetown. I don't know what he does in his
- 17 1901. He evidently doesn't here. Here he has got
- 18 Moricetown listed in that table.
- 19 Q Yes. Well, all I am suggesting to you, Mr. Williams,
- 20 is that there is some doubt about the reliability of
- 21 the 1891 Census, derived from the fact that natural
- 22 populations just doesn't go from 900 to 1,300 in 10
- 23 years.
- 24 A I am quite unable to comment on that.
- 25 Q It's certainly nothing that occurred to you in
- 26 producing the figures?
- 27 A I simply reproduce them as I found them.
- 28 Q Yes. And you write in your report on page 10 that one
- 29 cannot get any clear insight into the total claim area
- 30 population from 1901 and 1911 Census figures. And
- 31 that's correct, isn't it?
- 32 A I believe so, yes. I couldn't get any clear insight
- 33 into it, no.
- 34 Q You now know you didn't have to go to the Census
- 35 figures to get population figures. You could go to
- 36 the D.I.A. reports.
- 37 A Yes. I had forgotten the date of the latest D.I.A.
- 38 report that I had that I referred to the other day,
- 39 but I don't think they went up -- I don't think -- the
- 40 D.I.A. reports that I looked at, as I recall, did not
- 41 go up to 1911.
- 42 Q Well, I had asked you to agree with me that they were
- 43 provided for the period 1891 to 1916 approximately,
- 44 and I had understood you had agreed with that.
- 45 MR. GOLDIE: Perhaps he ought to look at his documents, My Lord,
- 46 before he speculates any further.
- 47 MR. ADAMS:

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Cross-exam by Mr. Adams

1 Q Would you like to look at your documents?
2 A Well, if you would refer me to it, yes. I think the
3 latest -- I think my evidence in chief, I think the
4 latest date of a document from Loring on the
5 population figure was on the 15th of July of 1901,
6 when my note shows that there were 1,382 people in the
7 Gitksan-Wet'suwet'en section of his agency.
8 Q That would be?
9 A That was tab 17G.
10 Q That would leave us with the problem for which I take
11 it you have no answer, which is how would you get from
12 approximately 900 to now you say approximately 1,400
13 in ten years?
14 A I have already said I can't comment on that.
15 Q Okay.
16 THE COURT: I suppose you have a special reason, when there was
17 severe measles in 1887 --
18 MR. ADAMS: I'll leave the witness to agree with that or not
19 agree with that.
20 MR. ADAMS:
21 Q The measles epidemic is your explanation of how you
22 got down do 928, isn't it?
23 A It's not my explanation. It's the explanation of the
24 people who were there at the time.
25 Q Well, adopted by you. You say by 1891 it dwindled
26 sharply, probably as a result of the severe measles
27 epidemic?
28 A Yes.
29 Q All right.
30 A But there was a general population growth. I can
31 observe that much from the documents. The population
32 was growing, particularly after 1900, with the
33 completion of the Yukon telegraph line. That was
34 growth I had taken both in the white and native
35 populations.
36 Q All right. Well, I want to suggest to you out of all
37 of this, that one of the things that was wrong with
38 the 1891 Census that you called the reliable source,
39 was that people from the claims area were not
40 enumerated in their home villages, but were enumerated
41 at the coast. Are you aware of that possibility?
42 A Yes, that is quite right. I am not sure that --
43 necessarily that it's a frailty, but it does have the
44 possibility of it, because in many instances the
45 people at the coast, who I suppose were working down
46 there at the time of enumeration, they were described
47 by their village, like Kispiox Dick or Gitamaax Sam or

D.R. Williams (for Province)
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1 Q So it seems that there are various meanings for the
2 word concentration?
3 A I don't ascribe differing meanings to it.
4 Q Just taking it as it is on page 10 as concentrated at
5 Hazelton. If you could go back to tab 572 in Exhibit
6 1035, volume 8. The village tables at the back of the
7 tab.
8 THE WITNESS: I'm sorry?
9 MR. ADAMS: Tab 572, My Lord, the population tables.
10 THE WITNESS: What page in the report?
11 MR. ADAMS:
12 Q We are at page 10 of the report.
13 A Yes. Yes.
14 THE COURT: Is that the same chart that --
15 MR. ADAMS: Yes, My Lord.
16 Q Now, what I see from that, Mr. Williams, is that the
17 population listed for Gitanmaax with Hazelton in
18 brackets is 239. Do you see that?
19 A Yes.
20 Q Okay. And I have suggested, and you have agreed to
21 me, subject to my arithmetic, that the total is 1,308?
22 A Yes.
23 Q And what I suggest to you is that 239 out of 1,308
24 isn't in most people's conception of the word a
25 concentration.
26 A No. But I am talking about the population around and
27 about Hazelton, Mr. Adams. I am not talking about the
28 townsite at Hazelton. It's the area -- as I already
29 said in thinking about the white population, I
30 prepared in my own mind to go as far down as Lorne
31 Creek, make that reckoning. I -- in my estimation
32 Kispiox is a different band, but nonetheless it's the
33 Hazelton area.
34 Q All right. If I include Kispiox, I get 454 out of
35 1,308. Is there any other village that you regard as
36 being Hazelton for purposes of page 10?
37 A Well, I include in my mind because, you know, the
38 records are so linked. They are fairly close to each
39 other, Kitwanga, Kitsegukla, Hagwilget. They are all
40 within a few miles of each other. And Hazelton was
41 certainly the centre of the area.
42 Q And do you include, as you did on page 26, Kisgegas?
43 A Certainly.
44 Q All right. So that's where I started, was asking you
45 if I could take the definition of the mid-section of
46 the claim area on page 26, and substituted, in effect,
47 for Hazelton alone on page 10, and I understand you to

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- 1 say that I can do that without any inconsistency.
2 MR. GOLDIE: I don't think he said any such thing.
3 MR. ADAMS: I am asking him a question about what he said, My
4 Lord.
5 A I have not done a demographic survey. I have
6 attempted to arrive at a reasonable figure for the
7 population around and about Hazelton. In calculating
8 that at page 10, I took in all the villages within the
9 Gitksan-Wet'suwet'en villages, and I took that to be
10 villages around about Hazelton. I have made the same
11 approach at page 26.
12 Q All right. That was my question.
13 A You know, the figures differ. You exclude this and
14 you exclude that, but this is what I tried to do.
15 Q When you say concentrated at Hazelton, you are talking
16 about the Gitksan and Wet'suwet'en villages?
17 A That's what I had in mind, yes.
18 Q All right. Thank you. That's all I wanted to know.
19 Turning to page 11 of your opinion summary. In the
20 second paragraph you say the 1881 Census figures are
21 revealing, and you are talking about occupations. You
22 say:
23
24 "A substantial number of males gave an
25 occupation. Those who say they were packers
26 and miners were concentrated at Hazelton or
27 Kispiox."
28
29 Now, let me ask you this first. There is nothing
30 in those figures, is there, that tells you what
31 proportion of the year any particular person was doing
32 any one of the occupations you referred to?
33 A That is true.
34 Q Okay. And you are aware that packing and mining at
35 this time and this place were both seasonal
36 activities?
37 A Certainly.
38 Q Okay. And I take it you are not suggesting that most
39 of those who gave an occupation were in what you call
40 white men related jobs? That's what your summary
41 appears to suggest, and I just want to find out
42 whether that's what you intended to suggest.
43 A Well, I took it that mining was essentially a white
44 man related economic activity, but there were Indians
45 who were mining on their own account. And the
46 enumeration doesn't draw any distinction between an
47 Indian who may hold a free miner's certificate, or

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1 operates on his own account, as distinct from one who
2 is employed by a mining company.

3 Q Maybe I didn't make my question quite clear enough.
4 What I was asking was whether you are suggesting that
5 the majority of those who listed an occupation were in
6 what you call white men related occupations.

7 MR. GOLDIE: That's not what his summary says.

8 MR. ADAMS: And that's why I am asking a question about it.

9 A Well, I have said those who said they were packers and
10 miners were concentrated at Hazelton and Kispiox.
11 Those occupations were white men related, and the
12 white men, relatively few in number, were in Hazelton,
13 the jumping off place for Omineca.

14 Q What I am suggesting to you is that the majority even
15 of the people who gave an occupation, did not give as
16 occupations what you call white men related ones.

17 A I see what you mean. You are quite right.

18 Q All right. The majority, were they not, listed
19 themselves as fishermen, hunters?

20 A Or of no occupation.

21 Q Or of no occupation?

22 A Yes, you are quite right.

23 Q All right.

24 THE COURT: Take the afternoon adjournment?

25 MR. ADAMS: That would be a good time, My Lord.

26 THE COURT: Okay.

27 THE REGISTRAR: Order in court. Court stands adjourned for a
28 short recess.

29

30 (PROCEEDINGS ADJOURNED FOR RECESSED)

31

32 I HEREBY CERTIFY THE FOREGOING TO
33 BE A TRUE AND ACCURATE TRANSCRIPT
34 OF THE PROCEEDINGS HEREIN TO THE
35 BEST OF MY SKILL AND ABILITY.

36

37

38 _____
39 LORI OXLEY
40 OFFICIAL REPORTER
41 UNITED REPORTING SERVICE LTD.

42

43

44

45

46

47

D.R. Williams (for Province)
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1 (PROCEEDINGS RECONVENED PURSUANT TO THE AFTERNOON BREAK)

2

3 THE REGISTRAR: Order in court.

4 THE COURT: Mr. Adams.

5 MR. ADAMS:

6 Q Thank you, my lord. Mr. Williams, I'm now at page 12
7 of your opinion report in the section headed "Area
8 Policing." And you say there in the first sentence:

9

10 "In the period we are considering, policing in
11 the province was done by constables of the
12 British Columbia Police."

13

14 And my question is what period does that cover,
15 please?

16 A Well, it's not entirely -- I must confess it's a bit
17 ambiguous. Some of the municipalities within the
18 province, cities and municipalities of the province in
19 the period covered, I think, from say 1889 to 1910,
20 which was the period I assigned to the compilation of
21 the criminal statistics, if I may call them that.
22 Certain cities, of course, had their own police, but
23 the bulk of the land mass of British Columbia was
24 policed by constables of the British Columbia Police
25 in that period. And in particular, the policing in
26 the entire claim area was done by British Columbia
27 provincial police right up perhaps until fairly
28 recently.

29 Q And do I read your report correctly to say that there
30 was no constable in the claim area until 1885 at Lorne
31 Creek?

32 A At Lorne Creek?

33 Q You refer to that about two thirds of the way down
34 page 12.

35 A There was no -- there was no constable stationed
36 there, but the policing was done from Port -- from
37 Port Essington. Constable Brown, for example, at Port
38 Essington came up to do police duties in Hazelton
39 prior to 1885 when the first constable was at Lorne
40 Creek.

41 Q Was Brown the first, to your knowledge?

42 A As I recall, I think he was the first in -- at -- who
43 policed Hazelton on a regular basis. He came up from
44 time to time.

45 Q Okay. And when did he first begin to do that?

46 A I cannot tell you without looking at my notes, and I'm
47 not even sure I could tell you then, but certainly he

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- 1 was doing it in 1872. And Fitzgerald, as I recall,
2 corresponded with him. He was in 1872, 1873.
- 3 Q Okay. On page -- well, beginning on page 12 you refer
4 to -- you say in the last full paragraph on page 12:
5
6 "A striking feature of policing in the last
7 decades of the 19th century and in the early
8 years of this was the engagement of Indians as
9 constables."
- 10
11 A Yes.
- 12 Q And then over the page you say:
13
14 "More significant...was the extent to which
15 Indians were hired ad hoc as specials by
16 provincial authorities."
- 17
18 A Yes.
- 19 Q Now, what significance did you attach in forming your
20 opinions to the fact that you found instances in the
21 documents of Indians accepting employment as police
22 constables? Why was that significant?
- 23 A They were participating in the process of the
24 administration of law according to the white
25 definition of it.
- 26 Q And it would follow from that, would it not, that it
27 would be significant for your subject if Indians
28 rejected employment as police constables?
- 29 A Yes, and there are certainly instances of it in the
30 material.
- 31 Q Yes. None of them referred to in your report, you
32 will agree with me?
- 33 A I'm not sure that that is so but -- I don't appear to
34 have referred to those parts of the material in which
35 Indians rejected the task, but certainly it happened.
- 36 Q All right.
- 37 A It's in the documents.
- 38 Q Now, on what criterion did you decide to include
39 instances where they accepted employment in your
40 summary but exclude instances where they rejected it?
- 41 A Well, I wasn't dealing -- at least in my report I do
42 not -- I did not attempt to deal with it on an
43 inclusive or an exclusionary basis. I simply referred
44 to the employment of Indians as a striking feature
45 that they were employed as ad hoc constables. I am
46 unable to numerate the number of people who were
47 employed, but there are a lot of references to them,

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1 and I looked for any instance that I could find in the
2 documents in which the subject of special constables
3 was talked about and noted them all, I believe.
4 Q Yes. And my question was how you decided, as you
5 apparently did, to include only references to
6 employment and no references to refusal of employment.
7 A How? I can't answer that. You're quite right, I have
8 not referred to the refusals in the report.
9 Q All right. But you do say you were aware of them?
10 A Certainly.
11 MR. GOLDIE: He referred to it in his evidence.
12 MR. ADAMS: And I would refer you, for example, in Exhibit 1172,
13 which is the volume 1 of your cross-examination
14 binder -- no, I'm sorry, that's not going to help you.
15 Let me ask you to look instead at Exhibit 1035, which
16 are Dr. Galois' documents, volume 4, tab 191. Now, my
17 lord, it's my understanding that the document that
18 appears at tab 191 is also in the witness' exhibit
19 binders in chief. I haven't been able to identify in
20 a hurry the tab number. It's provincial document
21 4784, and what that is is a complete handwritten
22 version of this document. The version that appears at
23 tab 191 of Dr. Galois' documents has omissions shown
24 by dots. I'm instructed it was prepared by Dr.
25 Barbeau. What I have to hand up is what I am
26 instructed is a complete typescript of the full
27 handwritten document.
28 THE COURT: All right. This is volume 4 of Galois, tab 191?
29 MR. ADAMS: Yes, my lord, although the existing typescript in
30 the tab is not a complete rendering of the document.
31 THE COURT: Yes.
32 MR. ADAMS:
33 Q This, I am instructed, is.
34 A My lord, the document in Dr. Galois' material is at
35 tab 34A of mine.
36 MR. ADAMS: Thank you. That's what I wasn't able to determine
37 quickly.
38 THE COURT: And yours is the full document?
39 THE WITNESS: I believe so, my lord, but I'm not prepared to
40 accept this typescript until I've compared the two.
41 MR. ADAMS: I was hoping that you would.
42 THE COURT: Well, does he have to do that, Mr. Adams? Why don't
43 we just -- oh, his document is not a typescript. I'm
44 sorry.
45 MR. GOLDIE: Well, there is a typescript following 34A, my lord.
46 THE COURT: Oh. It's a different typescript.
47 THE WITNESS: I think it must -- I think they must be the same,

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1 And I pause there to ask if you were aware what a Yook
2 is?

3 A This is a feast, I take it.

4 MR. ADAMS: All right.

5 THE COURT: I'm sorry, what is the Yook?

6 THE WITNESS: I take it to be the feast, my lord.

7 THE COURT: Oh, yes.

8 MR. ADAMS:

9 Q

10 "Believing that an act of prohibiting the
11 ceremony had passed the Commons (unfortunately
12 I am without the Indian Act) and that I had
13 been truthfully informed on the previous
14 evening. I answered that is Mr. Chief Lalt,"
15 L-a-l-t," then said, 'That he had already
16 issued invitations to the different people to
17 attend his Yook, and that he could not now
18 withdraw them, he had no desire to violate the
19 law but even if he were afterwards punished he
20 must proceed with it. Others followed him and
21 for three hours and a half the Yook question
22 was discussed, and from the earnest and
23 sometimes vehement manner in which its
24 retention was advocated it was obvious to me
25 that I had been misled, not one rising to utter
26 one word against it or to confirm the
27 statements of the evening before. The chiefs
28 said they had hoped to receive the Crown
29 (badge, but that now, if offered they could not
30 consistently accept, without staining it, as
31 they were about to participate in an event
32 which the law condemned. Thus I did not, could
33 not offer the Crown, but told the Chiefs that
34 under any circumstances, the Government held
35 them responsible for the good order of their
36 people.'"

37

38 And then skipping to the beginning of the next
39 paragraph on page 2, he's apparently at Kitsegukla?

40 A Yes.

41 Q Okay. And he writes:

42

43 "At Kitsayookla the Chiefs only were in
44 conference with me, for a whole evening, and
45 declined to accept the Crown. Last of all they
46 said, they felt sure some deception was
47 intended, that they had rights, particularly in

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1 the land and fisheries, and they feared being
2 entrapped into their surrender. Once they were
3 candid,"
4
5 and there's a question mark after the word candid,
6
7 "there was little difficulty in dealing with
8 them. It was arranged that the law against
9 Yook should sleep for the winter or until the
10 Government warned them of its intended
11 enforcement, and they then gladly accepted the
12 Crown and the implied duties, and guaranteed
13 the good conduct of the people during the
14 coming Yook, reserving the right to resign the
15 badge when the surveyors came, so that they
16 might be unfettered when attending to the,"
17
18 and then in square brackets,
19
20 "[illegible word] of the tribe."
21
22 A It might be actions.
23 Q Okay. And then on page 3 of the letter --
24 A I would like to draw to your attention the following
25 sentence, Mr. Adams:
26
27 "After the Chiefs explained to the people the
28 result of our interview I was invited to speak
29 to them and instal their chiefs."
30
31 Q Okay. On page 3, the paragraph beginning: "On the
32 24th (of) Novr I went to Kispayooks..."
33 A Yes.
34 Q Okay. And about ten lines down, the sentence
35 beginning:
36
37 "Where after a long interview with the Chiefs
38 similar to that at Kitsayookla..."
39
40 A Yes.
41 Q
42 "...they agreed to keep order amongst,"
43
44 and then in square brackets,
45
46 "[illegible word] people..."
47

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1 A Their people.
2 Q Their people.
3
4 "...and be sworn in and wear the badge. Next
5 day when the people had collected after
6 speaking to them I was about to swear in the
7 chiefs, when a young Indian stood up and in
8 very dramatic language..."
9
10 A Very derisive I have it.
11 Q Derisive?
12 A Yes.
13 Q Thank you.
14
15 "...said he had no wish that his chief should
16 give countenance & aid to the Government, they
17 were a people of themselves, had their own laws
18 and would acknowledge none other[;] six more
19 followed in the same strain, and on calling on
20 the constables elect to stand up and be sworn
21 in, they tremblingly declined, backed down in
22 fact before intimidation."
23
24 And I think this is a passage you read in your
25 evidence.
26 A Yes.
27 Q
28 "I exhorted them to show the Government and
29 their own people that they were not only men
30 and brave, but Chiefs, but to no purpose than
31 taunting them with pusillanimity told the
32 people they were unworthy the compliment
33 offered them, that the Government would find
34 policemen on all occasions requiring them,"
35
36 and so on.
37 A Yes.
38 Q And then if you go to page 5, in the second full
39 paragraph beginning:
40
41 "The Head chief alone of the Haquilgets..."
42
43 A Right, I have it.
44 Q
45 "...has evinced a desire to observe the law and
46 so, as he says improve his people but such was
47 the opposition of his fellow chiefs, that his

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1 life was threatened if he accepted the badge.
2 However he is a special though not publicly
3 sworn in the tribe having determined not to
4 witness the ceremony, and I could not give them
5 an opportunity of slighting a summons and
6 showing combined repugnance to authority - a
7 mischievous example."

8
9 And he goes on to say:

10
11 "Of the Kiskahgas and Coldoh Indians I know but
12 little, as the first is at least four and the
13 last seven days travel from here. I am told,
14 however, that the Kiskahgas people, tho' they
15 have little love for Pacht," P-a-c-h-t, "have
16 less for the law, and are endeavouring by
17 threats to deter the,"

18
19 and then there's the word "prison" crossed out,

20
21 "witnesses from appearing against him, and it is
22 more than likely I shall have to go for them
23 myself."

24
25 A Yes. In fact, he did not. Louis went.

26 Q And then the bottom of page 6, the last paragraph, he
27 writes:

28
29 "To sum up there has been no serious crime up to
30 this time, and I do not anticipate any, now
31 that the first meetings are nearly all over,
32 but the promises and appearances of last autumn
33 were to a great extent false."

34
35 Do you understand him there to be referring to the
36 autumn of 1888?

37 A Yes.

38 Q Okay.

39
40 "There is, I find, a strong race antipathy,
41 above all they abhor the law, and their dislike
42 for the Government and the officials whom they
43 are taught to suspect is made evident daily.
44 It is next to impossible to get the smallest
45 assistance or truth from them in anything
46 pertaining to law, those affording it incurring
47 an amount of popular odium as few Indians have

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1 the courage to face. However, due recognition
2 of the law depends entirely on our
3 determination and power to enforce it."
4

5 A Yes.

6 Q Would you not say, Mr. Williams, that that would have
7 been a significant document to have addressed in the
8 context of Indian policing?

9 A Certainly.

10 Q And it is not --

11 A And I did address it.

12 Q You didn't address it in your summary, did you?

13 A No. I notice at page 18 -- or page 17 as I have it on
14 the extract -- I'm not sure that the pagination is the
15 same as this one here, I'm looking at the extract in
16 my tab, tab 34A -- that at Kitsequecla the chiefs did
17 take the badge there following the Yook.

18 MR. ADAMS: Okay. My lord, might that typescript be marked as
19 tab 17 of my cross-examination binder?

20 THE COURT: Yes, all right.

21 MR. ADAMS: That would be 1172.

22 THE REGISTRAR: Yes.

23 THE COURT: Yes. 1172-17.
24

25 (EXHIBIT 1172-17 - LETTER FROM FITZSTUBBS TO AG DATED
26 JANUARY 5, 1889, EXHIBIT 1178-34A)
27

28 MR. ADAMS:

29 Q And just before I leave that reference to that
30 document, Mr. Williams, you will agree with me that it
31 is not referred to in the notes to your opinion
32 summary either, is it?

33 A In the footnotes?

34 Q Yes.

35 A If you say so, Mr. Adams. I haven't examined them
36 with reference to that.

37 Q You don't disagree with that statement?

38 A I don't quarrel with you, no.

39 Q Okay. So that in March of 1987 you rendered an
40 opinion, which is your opinion report which you have
41 adopted today, and you took up the subject, as part of
42 your task, of area policing, and you attached
43 significance to the fact that Indians had accepted
44 employment as police, and yet nowhere in your opinion
45 and nowhere in its references did you refer to that
46 document or those events?

47 MR. GOLDIE: The document, my lord, is a summary of opinion

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- 1 evidence. It was not tendered as a report.
2 A What you say is correct, but I'd read that document
3 before the report.
4 Q I see.
5 A It was not one of the documents I read subsequently.
6 I read it before.
7 Q All right. So you were aware of that before you wrote
8 the report?
9 A Oh, yes.
10 Q And did you make the decision not to refer to it in
11 the summary?
12 A Certainly. It's my summary.
13 Q All right. And why was that not sufficiently
14 significant to attract your attention in the summary?
15 A I have not mentioned in my summary every document that
16 I have examined.
17 Q Yes. And what was it about that document that told
18 you that it was of insufficient significance to refer
19 to or list as a source for your summary?
20 A It is not of insignificant significance. It's an
21 important document. It's one I looked at. It's one I
22 considered. When you take the document as a whole, he
23 was undoubtedly having some trouble talking some of
24 the chiefs and their people into accepting the badge.
25 Some took it, some didn't. Some were employed. And
26 he records out of all of that the appointment of Big
27 Louis as the constable for Hazelton, or as he became
28 the constable.
29 Q All right. And it's true, is it not, in the middle of
30 page 13 of your summary you refer to Big Louis?
31 A I'm sorry.
32 Q Middle of page 13.
33 A Yes.
34 Q And that's where you refer to him as a Gitksan from
35 Kispiox sworn in by in Napoleon Fitzstubbs?
36 A Yes.
37 Q Okay. Now, I take it from both the mention of him
38 here and the quotation from -- about him from
39 Fitzstubbs that you attach significance to the fact
40 that he -- that he accepted police employment?
41 A Yes.
42 Q Okay. And he is reported by Fitzstubbs in the passage
43 you quote on the bottom of page 13 as having boldly
44 declared his adherence to the law, his determination
45 to be governed by it?
46 A Yes.
47 Q All right. And you attached significance to that

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- 1 statement, did you not?
- 2 A Yes.
- 3 Q And what was the significance of Louis making that
- 4 statement in your mind?
- 5 A The significance of Fitzstubbs making that statement
- 6 about what Louis had said.
- 7 Q Yes. Well, let me do that in stages then. You accept
- 8 Fitzstubbs' account of what Louis said?
- 9 A Yes.
- 10 Q All right.
- 11 A In fact, he -- in one of Fitzstubbs' letters he
- 12 attaches the statement from Louis. But, yes, I do
- 13 attach significance to it. Big Louis, who was one of
- 14 the chiefs of the -- at Kispiox, became the -- the
- 15 constable at -- Indian special constable on salary at
- 16 Hazelton and was the constable for the -- for Hazelton
- 17 for all purposes, for all whites and Indians.
- 18 Q Yes. And it follows from the significance in your
- 19 mind of that statement, does it not, that if Louis
- 20 said other things at other times about the law and his
- 21 position in relation to it that those would also be
- 22 significant for you?
- 23 A Yes.
- 24 Q And you're aware that he did at other times say other
- 25 things about the law and his position in relation to
- 26 it?
- 27 A Well, there were reports by some of the other
- 28 villagers that he had said -- made statements that
- 29 seemed to be contrary to his accepting the position as
- 30 constable, yes.
- 31 Q And you were aware of those at the time you wrote your
- 32 report?
- 33 A Yes.
- 34 Q And you didn't --
- 35 A If they are the ones that -- the ones you are speaking
- 36 of and I am speaking of are the same, yes.
- 37 Q And you didn't see fit to include reference to them in
- 38 your summary?
- 39 A No.
- 40 Q Why was that?
- 41 A Why was that?
- 42 Q Yes.
- 43 A I preferred to accept what Fitzstubbs had to say about
- 44 Louis combined with Louis' own statement, and I took
- 45 those as being of greater reliance than statements
- 46 made by other people.
- 47 Q Including statements by Mr. Loring?

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1 A Yes, who subsequently recanted.
2 Q All right. I wonder if you could look, please, at
3 Exhibit 1035, which are the Galois documents, volume
4 4. I think that's the volume you last had out. And
5 that's tab 206, which is just about the middle of the
6 volume.
7 A Well, just a moment, Mr. Adams. I don't have it yet.
8 THE COURT: 204 you say?
9 MR. ADAMS: 206, my lord, in volume 4.
10 THE COURT: All right.
11 THE WITNESS: Is this Loring's letter of October 12th, 1889?
12 MR. ADAMS:
13 Q Correct. And he's addressing Mr. Moffatt, the acting
14 superintendent of Indian Affairs in Victoria?
15 A Yes, that's so. I think I dealt with this yesterday
16 or the day before.
17 MR. GOLDIE: It's tab 74, I believe.
18 MR. ADAMS:
19 Q All right. Do you have that letter in front of you?
20 A Yes, I do.
21 Q All right. And he says there:
22
23 "I must apprise the Department of the results
24 after having had a council with the
25 Kit-au-max," K-i-t-a-u-m-a-x, "tribe on the
26 evening of the 5th instant."
27
28 A Right.
29 Q
30 "The feeling amongst them I found to be in the
31 highest degree in favour of the law and
32 regulations laid down in my instructions."
33
34 A Right.
35 Q
36 "They conceded to everything, even to giving up
37 the Potlach. But the speaking of an Indian by
38 the name of Louis, employed by Capt. Fitzstubbs
39 S.M. as Constable turned the scale in
40 opposition to the abolishing of their old
41 customs. He spoke before me and all assembled
42 as follows..."
43
44 And you understand what follows to be Loring's
45 quotation of Louis?
46 A That's right.
47 Q And this is the quotation:

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1 "My uncle is the Head Chief of Kits-pioux, the
2 same told me, to oppose any new law, that
3 should come to this country. That they had
4 their own laws and that they wanted no other.
5 I know the law is against stealing etc. I am
6 an officer of the law myself. We do not want
7 anyone to come to Kits-pioux with any new laws
8 from the Govt. How would the Govt. like to
9 have their laws locked up, as they do ours."

10

11 A Yes.

12 Q And then carrying on, and I believe this is Loring
13 speaking now again:

14

15 "Then I told him, it was for those under oath to
16 uphold the law, to help to enforce and not to
17 obstruct it. Furthermore, that his remarks
18 were uncalled for, as I was addressing the
19 Kit-au-max tribe and intended to visit his
20 village in a few days or so.

21

22 Wednesday the 9th instant I started for
23 Kits-pioux. On arriving we were told that the
24 Ind. Constable Louis had sent them advise, to
25 oppose whatever I should have to say.

26

27 I assembled the tribe in council, was
28 eagerly listened to, as the presence of my wife
29 inspired them with confidence, despite the
30 alarm given. They consented to send their
31 children to school, stop eating dogs and
32 everything else mentioned, but to give up the
33 Potlach they could not, as they were advised by
34 Capt. Fitzstubb's Constable that the law had no
35 power to punish it as an offence and that they
36 could go on, as they had been doing. This same
37 Constable is kept on under pay, even after
38 Capt. Fitzstubb's departure from here to the
39 coast."

40

41 And you understand that as a reference to Louis, do
42 you?

43 A Yes.

44 MR. ADAMS: All right.

45 MR. GOLDIE: That's at tab 74 in Mr. Williams' book, my lord, a
46 slightly better copy.

47 MR. ADAMS:

48 Q And I think you said, Mr. Williams, that you had
49 referred to this in your evidence in chief?

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- 1 A Yes.
2 Q And that's so. And the reference, my lord, is at
3 volume 282, page 21046, and the question referred to
4 tab 74, and the answer was:
5
6 "A But this was a -- this is a report by Loring
7 and one that I have perhaps loosely
8 characterized as a town meeting.
9 Q Yes.
10 A This one was at Kispiox.
11 Q In October of 1889?
12 A Yes, it was a separate different meeting
13 from the one that Fitzstubbs reported on. A
14 later one.
15 Q Yes. Now, I think that that does bring us
16 to 1893..."
17
18 A Yes.
19 Q And that was the extent of your comment on that
20 document, was it not?
21 A That was so, yes.
22 Q Okay.
23 A That was all I was asked. I -- I'm prepared to
24 comment on it if you want me to.
25 Q Well, what I'd like to ask you again in the context of
26 this document is why you would have regard to and
27 quote Fitzstubbs on Louis and Fitzstubbs' version of
28 what Louis had to say and make no reference in your
29 summary or in your evidence to what Loring had had to
30 say on the same subject?
31 A Well, as I said, Loring later changed his mind about
32 Louis. But what's happening here is that there was a
33 considerable discussion about Louis as a constable at
34 the same time upholding the continuance of the feast
35 and whether as a constable he should give up his
36 badge. If the feast was illegal, how as a constable
37 could he conscientiously do his police duties by
38 condoning, if it was, an illegal act in the holding of
39 the feast. That was what all this discussion was
40 about. It's pretty good law, as a matter of fact,
41 because I think Begbie had given his decision on the
42 potlatch case by here -- by this time. Whether
43 Fitzstubbs was aware of it or Louis was aware of it I
44 don't know, but in October of '89, as I recall, Begbie
45 had handed down his decision on -- but anyway, that's
46 speculation on my part, I must admit. But the
47 discussion here is about the potlatch and whether

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- 1 Louis as a police officer could continue to be a
2 police officer since he wanted it continued, since he
3 wanted the feast continued. Loring, of course, was
4 opposed to the feast.
- 5 Q The discussion also, according to the documents I just
6 read from, was about the law, was it not?
- 7 A That was the law, but that was the potlatch law they
8 were talking about, I take it. That's how I take it,
9 Mr. Adams.
- 10 Q Oh, you think this is only about the potlatch law?
- 11 A Yes.
- 12 Q Well, he says on the first page:
- 13
14 "I know the law is against stealing etc..."
- 15
16 That's not part of the potlatch law, is it?
- 17 A Well, but that -- but, you see, at the second page,
18 the underlined portion of the letter:
- 19
20 "...but to give up the Potlach they could not,
21 as they were advised..."
- 22
23 This was a discussion about the continuance of the
24 feast. The second paragraph of his letter he says:
- 25
26 "They conceded to everything, even to giving up
27 the Potlach. But the speaking of an Indian by
28 the name of Louis..."
- 29
30 And here's where Loring's criticism of Louis was
31 founded, was that Louis defended the potlatch. That's
32 how I take the letter.
- 33 Q I'm just looking at the references to law in the
34 letter. In the second paragraph of the letter the
35 same -- that is Louis told me -- I'm sorry.
- 36
37 "...the same,"
- 38
39 referring to the Louis' uncle in Kispiox,
- 40
41 "told me to oppose any new law, that should come
42 to this country."
- 43
44 A The potlatch law had just come.
- 45 Q And the reference to the law against stealing, that's
46 not the potlatch law --
- 47 A No.

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1 Q -- I think we've agreed?
2 A No.
3 Q
4 "I am an officer of the law myself."
5
6 That's not a reference to the potlatch law?
7 A No. No, but he gives that as an instance of the sort
8 of thing -- you know -- how can he support the
9 potlatch and oppose the law of stealing. This is the
10 dilemma that he was placed in.
11 Q And he carries on:
12
13 "We do not want anyone to come to Kits-pioux
14 with any new laws," plural, "from the Govt."
15
16 Do you see that?
17 A Um hum.
18 Q And then on the second page in the second paragraph:
19
20 "...the Ind. Constable Louis had sent them
21 advise, to oppose whatever I should have to
22 say."
23
24 A Yes.
25 Q All right. And Loring was certainly talking about
26 more than the potlatch law, wasn't he?
27 A I think he was talking about -- the whole context of
28 this letter is the enforcement of the potlatch law.
29 Q Does it not appear from the second full paragraph on
30 the second page when -- in the second sentence when he
31 says:
32
33 "They consented to send their children to
34 school,"
35
36 that you understand is something that Loring was
37 attempting to persuade them to do in Kispiox?
38 A I suppose so.
39 MR. GOLDIE: I don't think there's any law to that effect, my
40 lord.
41 THE WITNESS: They consented to send their children to school,
42 stop eating dogs and everything else mentioned, but to
43 give up the potlatch they could not. And he
44 underlines it, or somebody has underlined it. That
45 may not be Loring's underlining. I don't know.
46 MR. ADAMS:
47 Q Now, what I had begun this by asking you was would it

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- 1 not have been equally significant -- you referred to
2 Louis' statements -- his employment and his statements
3 about the law. Would it not have been a balanced
4 approach to refer also to his reported statements even
5 accepting that we're only talking about the potlatch
6 law?
- 7 A Well, as I said, I was not directed to inquire in
8 detail into the working of the potlatch law, but I did
9 not refer to this in my report. That's so.
- 10 Q And on --
- 11 A But I did -- it --
- 12 Q On what criterion of things to include and things to
13 exclude did you include the one reported statement and
14 exclude the other?
- 15 A My judgment, Mr. Adams. I can't -- I have not
16 reported on every single document I have seen.
- 17 Q Yes. And why in this particular case include one and
18 exclude the other? What went into your judgment?
- 19 A I in my report had referred to the employment of
20 Indian special constables. It's a summary of an
21 opinion. It was not a dissertation on the subject.
22 And had I -- I suppose had I embarked on a lengthy
23 dissertation, I probably would have mentioned it, but
24 I didn't think it necessary for the purposes of the
25 formulation of my opinion.
- 26 Q Let me ask you this. Are you aware of any point in
27 your summary where when it came to a choice between a
28 document which you saw as supporting the thesis that
29 law and order, as you defined it, was imposed and that
30 it was accepted by the Indians as opposed to a
31 document that tended to refute that thesis, did you
32 ever include the document that refuted the thesis in
33 preference to the document that supported it?
- 34 A I have weighed all the documents that I have read, and
35 I have formulated my opinion upon them.
- 36 Q Yes. What I was asking for was any example of a time
37 when you chose between two documents or sets of
38 documents, one of which supported the thesis that
39 represents your opinion today and one of which tended
40 to refute it, where you chose the document that tended
41 to refute it?
- 42 A I have not, I think, included in here any specific
43 reference to documents which tend to refute the
44 opinion I have offered. But this is far from saying
45 that I didn't think about them.
- 46 Q Page 14 of your opinion summary, still with reference
47 to Indian constables, you say:

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1 "After 1909, there are no more references to
2 their employment,"
3
4 correct?
5 A I found no more references to their employment within
6 the claim area, no.
7 Q All right. Did you find a document that told you why
8 there were no more references to their employment in
9 the claim area?
10 A I did not.
11 Q You're not aware that in 1909 Mr. Loring is supposed
12 to have discharged them all?
13 A No, I was not aware of that, as a matter of fact.
14 Q All right. You say that you've reviewed Dr. Galois'
15 documents?
16 A Yes.
17 Q All right. Could you look at Exhibit 1035, volume 5,
18 tab 308?
19 A What's the reference again, please?
20 MR. ADAMS: It will be volume 5.
21 THE REGISTRAR: You haven't got that.
22 MR. ADAMS:
23 Q It's tab 308, which is about three fifths of the way
24 through the volume.
25 A 308. This is Loring's letter to Hussey of 12th of
26 September of 1909.
27 Q That's Maitland-Dougall's letter to Hussey of that
28 date.
29 A Oh, yes.
30 Q And you'll see there in the fourth paragraph on the
31 first page --
32 A Oh, yes.
33 Q
34 -- "Mr. Loring has told me himself that he has
35 entirely lost his control and grip over them,"
36
37 and here I believe he's speaking of the Indians at
38 least at Kitwanga, Kitwancool, and Kispiox.
39 A Yes.
40 Q In the second paragraph.
41 A Yes.
42 Q
43 "...and has discharged all Indian police as he
44 could not trust them."
45
46 A Yes.
47 Q

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1 "The Indians will have nothing to do with him
2 and I find already that they are coming to me
3 with matters that he ought to settle."
4

5 A Yes.

6 Q "In these cases I tell them to go to their
7 Agent."
8
9

10 A Yes.

11 Q Does that assist you in knowing why you don't find
12 references to Indian police in the claim area after
13 1909?

14 A No, it doesn't. I think he's talking about the Indian
15 police working on the reserve, not Indian police hired
16 by special -- not special constables hired by the
17 provincial authorities. Although at this time Loring
18 was a J.P., and I think probably a provincial J.P.,
19 but I don't think Loring would have had any
20 jurisdiction to discharge out of hand all special
21 constables. He's talking about the -- I think -- I
22 take it -- I've seen the letter, now that you referred
23 it to me. I take it he's talking about the dominion
24 police constables hired to work on the reserves
25 exclusively.

26 Q Have you found any other document that contains any
27 other explanation of why there are no references to
28 Indian constables after 1909?

29 A Well, I infer from the fact that the chief constable
30 was appointed in 1909 and the entire police force was
31 beefed up somewhat. There was a chief constable
32 appointed that year, Maitland-Dougall, and I -- I
33 think I've mentioned this in my report somewhere, that
34 I surmise that from the appointment of the chief
35 constable with additional regular police officers the
36 necessity for employing Indian special constables
37 disappeared or lapsed.

38 Q And that is your surmise, isn't it?

39 A That is what I infer from the material, yes.

40 MR. ADAMS: Okay.

41 THE COURT: We'll adjourn. Thank you. Ten o'clock.

42 THE REGISTRAR: Order in court. Court stands adjourned until
43 ten o'clock tomorrow.
44

45 (PROCEEDINGS ADJOURNED AT 4:02 P.M.)
46
47

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

Leanna Smith
Official Reporter
United Reporting Service Ltd.