APRIL 2, 1990
VANCOUVER, B.C.

THE REGISTRAR: Order in court. In the Supreme Court of British Columbia, this 2nd day of April, 1990. The matter of Delgamuukw versus her Majesty The Queen at bar, my lord.

THE COURT: Thank you, Mr. Rush.

MR. RUSH: Thank you, my lord. My lord, I will begin the argument for the plaintiffs. And I will deal with introduction to the plaintiffs' case as well as a summary of the argument or propositions which the plaintiffs urge upon your lordship.

The plaintiffs will be alternating in terms of counsels' submission to you, and after I have made the introductory comments and the summary of the proposition, Mr. Grant will argue the history of the Gitksan and and Wet'suwet'en in their homeland. And as I indicated to your lordship when we delivered the summary of argument, we intended and will deliver a final argument. And the first portion of that final argument, my lord, is in the maroon coloured binder that is on your right hand.

Your lordship has enquired about discs. We are in the electronic age now, and it seems like hard copies come with disc copies. And I can tell your lordship that this copy, this portion of the argument is on Word Perfect 5, so we can breathe a deep sigh of relief, and we could provide your lordship with a copy of the diskette, and depending on your computer, my lord, we can provide you with a three and-a-half size disc as well, depending on Your Lordship's wishes.

THE COURT: Three and-a-half is preferable.

MR. RUSH: Now, my lord, I am going to begin with the introduction to the plaintiffs' argument, and it is in the first portion of the maroon binder.

Almost three years ago on May the 11th of 1987 in Smithers, the centre of their territory, the hereditary chiefs of the Gitksan and Wet'suwet'en made an opening statement. It was made through counsel to this court, and the statement began with these words:

> "The Gitksan and Wet'suwet'en, in asserting their rights of ownership and jurisdiction over their territory, are affirming the foundations upon which their civilizations are based and have been based for over 5,000 years. In

1 denying that these rights exist, the Province
2 of British Columbia and the Federal Government
3 of Canada are denying the very existence of
4 those civilizations. The foundations of
5 Gitksan and Wet'suwet'en societies are firmly
6 entrenched in their own laws. But in the face
7 of provincial and federal disrespect for these
8 laws and the injustice this is brought, the
9 Gitksan and Wet'suwet'en have come to this
10 court to secure those foundations in Canadian
11 law, law which the Provincial and Federal
12 Governments can be compelled to respect. Only
13 then will the Gitksan and Wet'suwet'en be able
14 to negotiate a just resolution of their
15 relationship with Canada. This case is
16 therefore a search for the legal pathways to
17 justice."
18
19 The opening at that time, my lord, concluded with
20 this invitation to the Court:
21
22 "This case offers you an historic opportunity,
23 based on evidence no other court has ever
24 heard, to render judgment that will move Canada
25 closer to the achievement of a true
26 Confederation which includes its founding
27 Indian nations."
28
29 It is appropriate that you are now being called
30 upon to pass judgment about the Indian place in
31 Confederation at a time when the nation is struggling
32 to define the constitutional standing of the peoples
33 upon whose land this country was founded.
34 This is not rhetoric or grandstanding. The
35 province stands on its "honour" in dealing with the
36 Gitksan and Wet'suwet'en and their ancestors. The
37 province also invokes "equity" in claiming that the
38 Gitksan and Wet'suwet'en are estopped from asserting
39 their rights. Canada says it has discharged its
40 "charge" and "trusteeship" to them. Language that
41 resignates from the Terms of Union. Nothing could be
42 farther from the truth.
43 In this case the defendants have stood on the
44 historical injustices done to the plaintiffs and their
45 ancestors as the basis for their defences. This is
46 fully evident from their pleadings, their openings,
47 evidence and now argument, all of which deny the

existence of the Gitksan and Wet'suwet'en as distinct societies and assert that the Crown by the force of law or otherwise can simply steal their land.

In his opening to the Province's case, Mr. Goldie clearly stated that the position of the provincial defendant in this litigation was that the reserve-making policy in the colonial era and later by the province, was a humane and enlightened one, even when judged by standards today. This, we say, is the justification of the land thief who comes to court seeking ownership of your house when he first arrived as a guest but decided to stay, and after being told to leave confines you to a cupboard in the basement and then tells you that the house isn't yours anymore, because he has occupied it for a hundred years and you are happy in the cellar.

Mr. Goldie suggested further that the Colony of B.C. acted with "humanity" when it sought to protect and preserve Indian lands for them. He said it was only the implementation of the policy which might have been unpraiseworthy or lacking in generosity.

These were Mr. Goldie's words:

> "... and I'm referring to evidence which calls in question what I will call the honour of the Crown, and that's a phrase that your lordship has seen, and it relates not only to Crown of the executive government of the colony and then the Province of British Columbia, but also in right of Canada and by extension the Imperial Crown. And in its broadest terms the issue that is raised and has been raised is whether the Indian peoples of this province have been treated fairly."

He goes on in the opening.

> "... Second, that the policy of the Colony of British Columbia towards native people was in its time and even now when viewed from the perspective of the late 20th century enlightened and humane."

The next point that he carries on with:

> "The next point that the Colony of British Columbia recognized that humanity require that

1 lands used and occupied by the Indians be
2 protected and preserved from them."
3
4 "For them" he meant to say.
5
6 "Now, my lord, it certainly can be argued that
7 the discharge of the obligations which were
8 undertaken in the name of the Crown were not
9 always attended by a praiseworthy or a generous
10 spirit, but nevertheless the obligation was
11 performed. And I will ask your lordship to
12 reject what I will call the conspiracy theory
13 of history which appears to have been adopted
14 by the plaintiffs in support of the
15 far-reaching claims of present day ownership
16 and jurisdiction."
17
18 That was the Province's opening in July of 1989.
19 In this passage, my lord, counsel for the province
20 asserts that first the colony, then the province, up
21 to the present day treated the Indians of British
22 Columbia, including the plaintiffs and their ancestors
23 humanely and with a enlightened spirit. He says that
24 those who unilaterally marked out reserves for them
25 were moved by a spirit of humanity. The province has
26 staked its defence upon its just treatment of the
27 aboriginal peoples of the province.
28 Now, the province's position would be dismissable
29 if it weren't dressed up in the discourse of the court
30 room and the pretensions of the provincial crown.
31 This reserve policy was illegal if it was intended, as
32 argued after the fact, to deal with or extinguish the
33 aboriginal title of the plaintiffs' ancestors.
34
35 Mary Johnson spoke for all of the Gitksan and
36 Wet'suwet'en when she described the effect of being
37 confined to the "humane" reserves spoken of by the
38 province: This is what she said:
39
40 "So the way I feel about it is we are fenced in,
41 the Indians, they just put up a fence around us
42 like they did to the pigs or animals. And we
43 can't -- we can't go out on our territory and
44 do some farming or anything on the outside. So
45 I am hoping and praying that the Queen will
46 know what they did to us in the olden days when
47 they took away our ter -- inheritance."

In fact, My Lord, the policy towards Indians was built on denial and deceit. In the hands of Joseph Trutch the colonies surpressed its obligation to deal with the title of the Indian people of the province. Officials in the colonial executive purposely lied about the colony's policy towards Indians. There was a scheme of misinformation, perpetrated by Trutch and Governor Musgrave, which led to a denial of aboriginal title, a confinement of the land rights and an impoverishment of the people. Neither the colony nor the province has dealt with the Indians honourably or justly. Any such claim is a perversion of history.

I will ask your lordship to refer to a few historical documents at certain critical times to assess what is said about humanity and to show why honour must be restored to the Crown.

Joseph Trutch wrote to Sir John A. Macdonald on October 14th, 1872 setting out his position on aboriginal title, which position we say influenced the colonial executive in the years prior to union and which came to be the provincially-promoted version of how the Indian peoples were treated in the colonial era. And this is what Trutch said:

> "We have never bought out any Indian claims to lands, nor do they expect we should, but we reserve for their use and benefit from time to time tracts of sufficient extent to fulfill all their reasonable requirements for cultivation or grazing. If you now commence to buy out Indian title to the lands of B.C., you would go back of all that has been done here for 30 years and would be equitably bound to compensate the tribes who inhabited the districts now settled, farmed by white people, equally with those in the more remote and unsettled portions. Our Indians are sufficiently satisfied and had better be left alone as far as the new system towards them is concerned, only give us the means of educating them by teachers employed directly by government, as well as by the efforts of the missionaries now working among them.

Trutch carries on with what he wishes to see, and for him it's:

> "To be rid of all concerns with our Indian affairs would of course free me of a very considerable part of the trouble and anxiety I have had in the past year..."

Now, my lord, it was not true that the colony had "never bought out any claims to land". The fourteen Douglas treaties were land purchases with the consent of the Indians. It was not true that the Indians did not "expect we should". The Cowichan Valley controversy was about Indian demands for cession of their lands, and government promises to do so, but never fufilling those promises. The land reservation system employed by the colonial governments when they ran out of money to buy the lands from the aboriginal owners, was an expedient designed to protect both the settlers and the Indians from each other at the frontier. But the reserve system was not to, and could not, deal with the land title of the people. The "tracts of land of sufficient extent" were niggardly acreages which the colony grudgingly conceded.

In this letter, my lord, Trutch urges Macdonald not reverse the practise, he says falsely, was in place for the previous 30 years. That would have taken him back before the time the colony had been established. He acknowledges paradoxically what he had previously denied, namely, that there was "Indian title" to "buy out" in the province and the colony. But, he argues, "don't buy it because the government would have to pay for the white-settled as well as the unsettled lands of the Indians." He says, "Leave the Indians alone as they aren't complaining. What a generous spirit, my lord, the B.C. spirit.

Now, was this fair, just or honourable? Trutch's advice was built on a tissue of half-truths. He denied treating with the people in respect of their aboriginal title and in so doing perverted the historical experience which affected the treatment received by the Indians of the province at the hands of Canada. His reserve-allocation scheme was an unilateral one conveniently ignoring the need for consent and the obligation of protection of the Indian interest. Trutch's reserve policy was to cut-off land from the Douglas reserves, reducing even more what little the Indian people had. The aboriginal right to

title to the land was for him forever to be deferred. What was done was to deny the Indian title; what was said was the reserve policy was "fair". Given the extensive denials of the province in this litigation and the position advanced in its opening, this continues to be the province's stance today. And we say it is as unjust, dishonourable and illegal today as it was in 1872.

Canada's position is no better. It says that extinguishment occurred when "sovereign authority was exercised in a manner necessarily inconsistent with the continued existence of aboriginal rights, whether by legislation or otherwise." That position they took and expressed in Exhibit 1248. Their statement on their defence.

Without saying so directly, my lord, Canada takes the position that extinguishment of the Gitksan and Wet'suwet'en rights and title has already occurred, having been brought about by acts taken or authorized by the province in respect of the plaintiffs' land since union. This is the creeping-erosion-of-your-rights-while-I-stand-idly-argument. What is inexplicable is that by taking this position Canada not only disregards its own constitutional duty to protect Indian land, but also stands on its failure to protect as a legal basis for arguing that extinguishment or diminishment has occurred by the unlawful acts of the province. Federal-provincial relations are clearly more important to the federal government than constitutional obligations to the Indian nations. Canada says further that Indians have some rights, but they don't amount to much; in fact, they are barely worth talking about at all.

Now, my lord, after sitting through 250 trial days listening to the hereditary chiefs, after hearing the wealth of cultural and economic evidence in the historical record, and after being an administrative presence with constitutional responsibilities to administer Indian affairs in the territory and throughout this country since the turn of the century, all that Canada can see of the Gitksan and Wet'suwet'en is their pre-1900 hunting, trapping, fishing and berry-picking activities. At its core this is a racist position deliberately blind or refusing to give value to the way of life of the people. It makes a mockery out of the guarantees of

1 Section 35. What the Federal government says is that
2 it created an empty box for the Indians in Section 35,
3 and the constitution doesn't really mean anything.
4 On August the 2nd, 1877, David Mills, the Minister of
5 the Interior (with responsibility over Indian Affairs)
6 wrote to the Indian Superintendent in Victoria
7 expressing the Dominions' views on aboriginal title in
8 B.C. This is what he said:
9
10 "I do not know whether the Government of Canada
11 were fully aware of the condition of things at
12 the time British Columbia was admitted to the
13 union -- whether they were aware that the
14 government had undertaken to deal with the
15 public lands of that province without first
16 having extinguished the aboriginal title. But,
17 however that may be, there can be no doubt
18 whatever that no arrangement between the
19 government of Canada and the government of
20 British Columbia could take away any rights
21 which the Crown has always recognized as
22 belonging to the Indian natives."
23
24 Only six years after Union, at a time when there
25 were fewer than a dozen non-Indian residents in the
26 whole of the Gitksan and Wet'suwet'en territory and
27 virtually no law which had direct impact on the lives
28 of the Gitksan and Wet'suwet'en residents, the highest
29 official in the Government of Canada with
30 responsibility for Indian Affairs firstly recognized
31 aboriginal title in the Indian peoples of British
32 Columbia.
33 Secondly, stated without qualification that
34 aboriginal title had to be extinguished before public
35 lands could be dealt with.
36 Thirdly, acknowledge that no bilateral agreement
37 between Canada and B.C. could remove the aboriginal
38 rights held by the Indian people, including the
39 ancestors of the plaintiffs. 112 years later Canada
40 asks this court to ignore the Crown obligations as
41 expressed by Mills, just as they have ignored the
42 Gitksan and Wet'suwet'en people over the century. Is
43 that just? Is that the honour of Canada?
44 My lord, let's take the federal and provincial
45 defences at their highest. The province recognized a
46 "humane" reserve policy, the federal government was
47 duty-bound to protect the aboriginal people in their

village sites, berry grounds and cultivated fields. Then, I say, how do they explain to Johnny David, to Bazil Michell and Anna Michell and other Wet'suwet'en people their forcible eviction from their homes to replace their ancient ownership there with rights of non-Indian settlers? How do the provincial and federal governments answer Bazil when asked how he felt when his family was forced to leave Barrett Lake and after the family home was burned to the ground? Mr. Michell said this.

> "Even though we were young we really hurt by what was done to us. Our people had cleared the land and white people just moved in and chased us off the land. We weren't happy about it. The white people that worked for the government just went home after we were chased off our land and we were left to die because we had to live in tents at 60 below weather. It wasn't right what they did to us."

The federal and provincial governments cannot explain to Bazil Michell by what principle he was forced off of his land, and there is no explanation for it in the extinguishment defences of the defendants. Because in fact, my lord, their defences on extinguishment are made up. They are rationalizations after the fact created to justify their position in the case. The extinguishment defences have little, if anything, to do with what was really going on or being said by the governments in the colony or the province. No colonial, provincial or imperial authority ever said that the aboriginal title of the Indian people in the Skeena/Bulkley region had been extinguished by any legislation, direct or indirect, conduct or agreement whatsoever. No one even whispered that they intended to extinguish or reduce the land title of the plaintiffs' ancestors. None of this arose until the province filed its defence in Calder.

The defences here, my lord, air-brush the real history. They are couched in the language of fair-play, but they deny the existance of the Gitksan and Wet'suwet'en and their right to exist in their homeland as their ancestors have done for thousands of years. The governments have no obligations, according to them, except to keep the Gitksan and Wet'suwet'en

1 confined to reserves and to proceed with the pace of
2 development for the benefit of the non-Indian economy
3 and the governments.
4 Now, I ask you, my lord, to juxtapose those
5 made-up defences with the richness of the evidence of
6 the way of life of the Gitksan and Wet'suwet'en
7 people, which you heard in this case, and which you
8 will hear about in argument. Their identity and their
9 land-based culture has survived.
10 Now, my lord, this case is about the honour of the
11 Crown, because for the first time a court will
12 scrutinize that honour publicly. The honour of the
13 Crown as given lip-service by the defendants in this
14 case must be carefully considered when evaluating the
15 private agreement reached in the Terms of Union
16 against the following exchange in the legislative
17 council of the United Colonies on March 25th, 1870
18 shortly before Mr. Joseph Trutch left for Ottawa to
19 negotiate the language for the union.
20 MR. GOLDIE: My lord, there is no evidence of that.
21 MR. RUSH: Well, it's in my friends' documents. I read it
22 there.
23 MR. GOLDIE: Well, my friend is busy replying to my argument
24 before he hears it, and my suggestion is that we hear
25 his case, then my case, and then he has the right of
26 reply.
27 THE COURT: I am not sure that I understand what you're saying,
28 Mr. Goldie. No evidence of what?
29 MR. GOLDIE: That Trutch left for Ottawa to negotiate the
30 language for union, referring to Term 13, of course.
31 THE COURT: Well, this exchange that you are quoting here --
32 MR. RUSH: My lord, that's the relevant part that I wish to
33 speak to.
34 THE COURT: Is that in evidence?
35 MR. RUSH: Oh, yes. My friend put it in.
36 THE COURT: So it's the soldier in Ottawa that's not --
37 MR. GOLDIE: That's correct. There was a delegation of three,
38 and Mr. Trutch had no authority, beyond what he was
39 instructed by the governor, and one of the items that
40 the governor held in his own hands was the negotiation
41 of Term 13. That's all that evidence.
42 MR. RUSH: Well, my lord, I am going to ask you to draw an
43 inference that it was Mr. Joseph Trutch that went down
44 there to Ottawa, and I think you are going to hear
45 lots of evidence of his role in this. But let's hear
46 what was said in the legislative assembly, because I
47 think this is illuminating.

THE COURT: I am not going to draw any inference right now anyway.

MR. RUSH: I am not asking you at this point, but we will ask you.

My lord, this is what was said in an exchange of the legislative council of the colonies on March the 25th, 1870.

> "The Hon. Mr. Holbrook -- I have very great pleasure in bringing this resolution forward with reference to the Indian tribes.
> Hon. Attorney General (Crease) -- I ask the indulgence of the Hon. Member whilst I interpose a few words. On a former occasion a very evil impression was introduced in the Indian mind on the occasion of Sir James Douglas' retirement. I ask the Hon. gentlemen to be cautious, for Indians do get information of what is going on.
> Hon. Mr. Holbrook -- My motion is to ask protection for them under the change of Government. The Indians number four to one white man, and they ought to be considered. They should receive protection.
> The Hon. Attorney General -- These are words that do harm. I would ask the Hon. Magisterial member from New Westminster to consider.
> Hon. Mr. Holbrook -- I say they shall be protected. I speak of Indians of my own neighborhood on the Lower Fraser.
> Hon. Mr. Robson -- I rise to a point of privilege. I think that the warning of the Hon. Attorney General is necessary. This is the sort of discussion which does harm.
> The Hon. Mr. DeCosmos -- Don't report it."

Don't tell the Indians what we are going to do. These were all honourable men, my lord. The resolution of Holbrook was lost by a vote of twenty to one. This is the honour in which the governments in this case stand, and by which they ask you to judge B.C.'s union with Canada.

The Indians went to the British courts before the patriation of the constitution fearing that the Crown would not act honourably towards them upon patriation. In refusing to grant the declarations sought, Lord Denning said that Section 35 of the Constitution Act

1 would provide the necessary protection. And in this
2 case, The Queen v. The Secretary of State for Foreign
3 and Commonwealth Affairs, he said this:
4
5 "There is nothing, so far as I can see, to
6 warrant any distrust of the Indians of the
7 Government of Canada. But, in case there
8 should be, the discussion in this case will
9 strengthen their hand so as to enable them to
10 withstand any onslaught. They will be able to
11 say that their rights and freedoms have been
12 guaranteed to them by the Crown -- originally
13 by the Crown in respect of the United
14 Kingdom -- now by the Crown in respect of
15 Canada -- but, in any case, by the Crown. No
16 Parliament should do anything to lessen the
17 worth of these guarantees. They should be
18 honoured by the Crown in respect of Canada 'so
19 long as the son rises and the river flows'.
20 That promise must never be broken."
21
22 The Constitution of Canada guarantees the rights
23 of the plaintiffs. Those rights are embedded in
24 history. They must be respected by the Crown whether
25 provincial or federal. Consider now what Stanley
26 Williams said in testimony about how he perceived the
27 treatment of the Gitksan by the government.
28
29 "When a grizzly bear gets into the provisions of
30 another person then he eats it up, when the
31 owner comes back and the grizzly gets mad
32 instead, gets mad at the owner. And that's how
33 the government is treating us today concerning
34 our territories. "
35
36 The far reaching denials of the defendants coupled
37 with the negation of the defendants' historical
38 obligation to the Gitksan and Wet'suwet'en show
39 without doubt that the plaintiffs can expect no just
40 and honourable treatment at the hands of the
41 governments. It is for this reason that the
42 plaintiffs now turn to Your Lordship's court for
43 protection in order to enforce the obligations of the
44 Crown and to safeguard the aboriginal rights of the
45 plaintiffs.
46 I will now turn, my lord, to the outline of our
47 argument, which I have set out here in summary form.

1 I want to advise Your Lordship that the argument, as
2 it was contained in the table of contents of the
3 summary, that this argument, it attracts the Roman
4 headings that are set out in that table of contents.
5 So when we refer to a heading and a subsection, we are
6 tracting, except insofar as we introduce a new heading
7 "organized societies".
8 Firstly, my lord, "History of the Gitksan and
9 Wet'suwet'en in their Homeland".
10 Continuity with the past is an essential and
11 determining aspect of Gitksan social, political and
12 legal institutions. The Gitksan chiefs repeatedly
13 emphasized the antiquity and persistence of these
14 institutions as evidence of their validity.
15 The oral histories describe the others of the
16 Gitksan and Wet'suwet'en, and their ownership and
17 jurisdiction over their territories from ancient
18 times. The Kungax and oral history emphasize
19 Wet'suwet'en presence on the territories since the
20 very earliest times.
21 The Wet'suwet'en Kungax provide an historical
22 connection between the Chiefs and their territories.
23 The Gitksan and Wet'suwet'en peoples live in a
24 resource-rich area that is suitable for the seasonal
25 pursuit and harvest of a diversity of material
26 resources.
27 We will advance the position that the biophysical,
28 archaeological and linguistic evidence demonstrates
29 that there has been a remarkable degree of ecological
30 continuity through time in the territory.
31 Now, secondly in the subject of the development of
32 fundamental common law principles, we will assert
33 these propositions:
34 During the early colonial period from 1609 to
35 1763, a set of fundamental principles emerged
36 governing the legal and political relationships
37 between aboriginal peoples of North America and the
38 Crown.
39 THE COURT: What you refer to by 1609 --
40 MR. RUSH: We are going to take a date, my lord, an arbitrary --
41 in a sense an arbitrary date, but a date at which
42 treaty making, the process of making treaties
43 proceeded, and it is -- the particular date is the
44 date of the Virginia Charter.
45 THE COURT: Thank you.
46 MR. RUSH: These fundamental principles emerging from that
47 period to 1763 were these:

The aboriginal peoples were acknowledged as being the original owners and proprietors of the soil with jurisdiction over their territories and their people as self-governing nations.

B. Legal and political relationships between Indian nations and the Crown were to be conducted by treaty in accordance with both Indian and colonial legal and diplomatic protocol.

C. Lands within the ownership and jurisdiction of Indian nations which were required by the colonial authorities for settlement and development could only be legally acquired with Indian consent given by authorized representatives expressed in a public council.

D. The Crown asserted rights of sovereignty over its colonial territories against other European colonial powers. These were limited as far as jurisdiction was concerned to the establishment of government and laws for British subjects, but involved no intrusion into the jurisdiction and internal self-government of Indian nations. So far as ownership of lands was concerned, Crown sovereignty was limited to the right of preemption, the exclusive right to acquire such lands and the possession of the Indian nations as they were inclined to sell.

E. In asserting this right of sovereignty, the Crown assumed the obligation of protecting the Indian nations from frauds and abuses committed by British subjects in other colonial nations.

Now, our argument will be that these fundamental principles ripened into well established rules of the common law.

Next, my lord, regarding the jurisprudence of aboriginal rights, we will assert these propositions.

The decisions of the U.S. Supreme Court in the first part of the 19th century, building upon both British colonial and American state practice, affirm common law principles upon which the relative rights of ownership and jurisdiction of colonial governments and Indian nations are to be determined. And these principles are first:

In relation to rights of ownership, aboriginal title was pre-existing right, and colonial governments acquired by virtue of the doctrine of discovery only the exclusive right to purchase such lands as the Indians were prepared to sell.

Second, discovery vested in the discovering

colonial government the ultimate fee in the lands in the special sense that it had, as against other European governments, the exclusive right to purchase Indian lands. The doctrine of discovery did not vest a complete title to the lands of North America in the discovery nation, but gave it the sole and exclusive right of acquiring the soil from the native people.

Third, this ultimate fee was a sufficient title to enable the colonial authority to make a grant of a land, which grant was, however, subject to the aboriginal title and could not take effect in possession until aboriginal title had been lawfully ceded by treaty.

Fourth, this aboriginal title encompasses full rights to the beneficial enjoyment of tribal territory in accordance with tribal land tenure.

Fifth, the sole limitation on the pre-existing aboriginal title of Indian nations flowed from the exclusive nature of the colonial authorities pre-emptive right.

Six, in relation to rights of jurisdiction each Indian nation had full powers of self-government within its territories. Colonial governments by virtue of the doctrine of dicovery acquired the exclusive right to negotiate political and trade relationships with Indian Nations.

Seven, the language and process of treaty making both signified and affirmed this nation-to-nation relationship between Indian nations and the Crown.

Eight, in the course of the expansion of colonial settlement and the consolidation of colonial political authority, a common form of political relationship between Indian nations and colonial governments emerged in the form after protectorate. While this involved a restriction on the capacity of an Indian nation to conduct legal relationships with any other European sovereign, paralleling in this respect the pre-emptive right in regard to land, it did not affect an Indian Nation's power of self-government within their tribal territory, save and except as this was the subject after agreement by treaty.

And finally in return for this form of political relationship, the colonial authorities undertook responsibilities to prevent intrusion and incursion into tribal territory.

Now, my lord, we say that at the time when British claims to sovereignty over what is now British

Columbia were settled by the Treaty of Oregon in 1846, the fundamental principles of the common law to determine the rights of aboriginal peoples were the principles articulated first in the Marshall decisions of the U.S. Supreme Court which have their fullest expression in the case of Worcester v. Georgia, (b) in the Treaty of Waitangi and the decision of the New Zealand Supreme Court in R. V. Symonds. These principles recognize the pre-existing rights of aboriginal peoples to the ownership of their territories and the right to exercise full authority over those territories, limited only by a restriction on alienation of their territories to persons other than the Crown or persons authorized by the Crown. These principles also recognize an underlying Crown title in the colonies which so far as the pre-existing rights of the aboriginal peoples was concerned was limited to the right to acquire such lands as the aboriginal peoples were willing to sell. Underpinning the legal relationship between aboriginal rights and Crown rights was the principle of aboriginal people's consent and a Crown protectorate. This was the legal framework which was applicable to the Colony of Vancouver Island when it was established in 1849 and the Colony of British Columbia when it was established in 1858.

It will be the plaintiffs' submission that the common law as it was received into British Columbia recognized the right to internal self-government, and that this recognition was paralleled and supported by the Royal Proclamation.

The plaintiffs will argue that the plaintiffs' right of jurisdiction or internal self-government is an existing aboriginal right within the meaning of Section 35 of the Constitution.

Now, turning to the Proclamation of 1763. We will make these submissions as to the propositions which your lordship should apply. The Royal Proclamation of 1763 is a founding constitutional instrument. It has the force of law and was binding like other constitutional enactments, or alternatively it had the force of the statute and it was never repealed. Paragraph 4(a) of the Proclamation made Indian title extinguishment only by voluntary cession to the Crown. The Crown was bound by the purchase provisions of the Proclamation in British Columbia, and therefore any private purchases of land made contrary to the

Proclamation's provisions were invalid.

Those general provisions of the Royal Proclamation which were strict land grants, settlement or private purchase of lands reserved to the Indians were intended to apply to all parts of North America over which the British Crown claimed dominion as against other European powers.

There was no western geographical limit placed upon the Indian lands provisions of the Proclamation and none was intended. Nothing in the text of the Proclamation precluded its geographical application to what is now British Columbia, and it did so apply.

We will argue further that the category of Indians living under the protection of the Crown in relation to whom various provisions of the Proclamation were directed, was not intended to be a frozen category limited only to those Indians known to the Crown as of 1763. Those provisions applied to Indians living in what is now British Columbia.

The Proclamation we will argue apply to British Columbia and Indians in British Columbia at the time of the establishment of the Colony of Vancouver Island in 1848. The mischief that was to be remedied must be identified so that a construction and interpretation may follow which attain the Proclamation's legislative purpose. The purpose of Part IV of the Proclamation was to recognize and protect the principle of territorial integrity of Indian lands and to establish a uniform procedure based upon Indian consent which would strictly govern the Crown's purchase of such lands. The intention of the Crown is not to be considered fixed as of 1763, but rather that the provisions of Part IV are to apply to situations after that date.

The Royal Proclamation, we will argue, is an Imperial law within the meaning of the Colonial Laws Validity Act in 1865, and thus the provisions of the Proclamation operated as a restriction on the legislative competence of the mainland colony and then the united colonies of British Columbia. Any colonial enactment contrary to the Indian land provisions must be read down to avoid the enactment being repugnant to Imperial law.

The common law principles of recognition of aboriginal rights reflected in the Royal Proclamation of 1763 provided the legal framework in the post-1763 period within which the Crown negotiated for the

acquisition of lands in Canada in possession of the aboriginal peoples which was required for settlement and development. This framework was applied in what is now Quebec, and what is now Ontario, and is, as colonial expansion pushed westward, is what is now Manitoba, Saskatchewan, Alberta and in most parts of British Columbia and the Northwest Territories. Most recently, this framework has been applied in Northern Quebec, the Yukon and parts of the Northwest Territories not hitherto covered by treaties of cession. The unifying principle on this acquisition of aboriginal lands has been the principle of Indian consent, and the unifying process has been one in which that consent is expressed through treaties or land claim agreements.

The Royal Proclamation of 1763 and the principles of consent which it embodied is recognized in Sections 25 and 35 of the Constitution.

Now, my lord, turning now to the Gitksan and Wet'suwet'en societies as they were and are. The propositions which the plaintiffs will advance are these:

The plaintiffs have established a complex social organization which goes well beyond the minimal judicial test of organized society. The Gitksan and Wet'suwet'en define membership in a society according to the matrilineal system of the house and clan. Central to the societies are discreet territories owned by houses and governed by hereditary chiefs. The complexity of the social organization is demonstrated through their spiritual world, the Daxgyet -- power -- the fundamental law of respect, the laws, the feast and the economic structure.

In dealing with the nature of the Gitksan and Wet'suwet'en society at the time of first contact, my lord, we will ask you to accept these propositions. Upon contact with the Gitksan and Wet'suwet'en in the early 1820's the Hudson's Bay Company traders encountered organized Indian economies and societies with long established systems of territorial ownership and political authority in the hands of hereditary chiefs.

The proposition that Gitksan and Wet'suwet'en social and cultural phenomena of the present era had been generated by outside external agencies rather than by a complex of in situ physical, social and historical factors is controverted by considerable

historical, linguistic and anthropological evidence presented to the Court. This evidence supports the plaintiffs' assertion that concepts of Gitksan and Wet'suwet'en ownership and jurisdiction long pre-date both European fur trade and the assertion of sovereignty by the Crown.

We will then ask your lordship to consider the Gitksan and Wet'suwet'en claim to ownership and jurisdiction, and with regard to the plaintiffs' right to ownership, we will urge this proposition upon you. The plaintiffs have sought to lay before this court a detailed description of the precise nature and contours of the distinctive Gitksan and Wet'suwet'en system of land tenure. This evidentiary basis goes far beyond anything laid before any Canadian or U.S. court, and it is submitted that it provides a basis upon which this court can accurately characterize the nature of the plaintiffs' interest in their territories in the manner in which that interest is described in the Statement of Claim. In this way it is submitted this court is in the unprecedent position of being able to define the sui generis nature and character of the plaintiffs' rights not "on abstract principles fashioned a priori", but on evidence rooted in the fundamental principles, laws and customs of the plaintiffs.

And we will submit, my lord, that properly analyzed and understood, the evidentiary record put before this court demonstrates the plaintiffs' rights to their territory are appropriately characterized as rights of ownership and jurisdiction. We will urge these propositions in this respect:

House territories have clearly defined boundaries.

The rights of exclusive possession are vested in hereditary chiefs on behalf of the house group.

The rights of the house to exclusive possession is underpinned by strict laws of trespass.

House property is the subject of succession and alienation. The rights succeed from generation to generation. House territory may be alienated through forfeiture or as compensation in peace settlements. House territory is subject to grants of access.

The Gitksan and Wet'suwet'en maintain a system of recording, registering and legitimizing the transfer of and succession to right of ownership and the grant of access rights.

In any system of rights of exclusive possession

and their correlative strict laws of trespass, there must be a widely dispersed knowledge of the persons or groups in whom those rights of possession reside and of the boundaries of their territories. Among the Gitksan and Wet'suwet'en this announcement of rights and territories is carried out, above all else, in the feast hall. It is one of the principle responsibilities of the Gitksan and Wet'suwet'en hereditary chiefs when they are invited to the feasts of other houses and clans to perform the essential role of witnesses and validators to the claims to chiefly names and titles to territories made by other chiefs and houses. In order for chiefs to perform their roles in this distinctive form of public acknowledgement of land title, they are trained by their predecessors in the boundaries of their own house territories and the boundaries of the territories of the neighbours.

Now, dealing with the plaintiffs' right to jurisdiction, my lord, we will urge these propositions. The plaintiffs' assert -- excuse me. The plaintiffs' asserted rights are not, as the defendants have sought to characterize them, rights to sovereignty. The jurisdiction which the plaintiffs assert is one exercised within the framework of Canadian Confederation as part of Canadian law. The plaintiffs' jurisdiction is, however, sui generis, and based upon the evidence before this court can be analyzed under the following heads.

Firstly, to harvest, manage and conserve the resources of the territory.

Secondly, to transfer the territory and to grant rights of access to the territory in accordance with Gitksan and Wet'suwet'en laws.

Thirdly, to determine Citizenship, including clan and house membership.

Fourth, to regulate family relations, including marriage and divorce.

Fifth, to supervise the internal affairs of the house.

Sixth, to conduct feasts and carry out feast obligations and responsibilities in accordance with Gitksan and Wet'suwet'en laws.

Seven, to resolve disputes within the house and between houses in accordance with Gitksan and Wet'suwet'en law.

Eight, to enter into and conduct international

relations and settle disputes with other nations.

Nine, to protect and affirm the ownership of the territory and the authority of the house.

To jointly maintain the Gitksan institutions and laws and the Wet'suwet'en institutions and laws.

To make and enforce laws in relation to the above.

Now, what is the law applicable to aboriginal title in British Columbia? And we say that the principles to be applied are these. The fundamental principles of aboriginal rights were embodied in the common law, and these principles constituted the legal framework which was applicable to the Colony of Vancouver Island in 1849, and the Colony of British Columbia in 1858.

The same principles applicable to the Crown and to the Indians were confirmed in the Royal Proclamation of 1763. The Proclamation's provisions regarding Indians applied prospectively to the British dominions and territories as they were known and as they came to be established. These provisions followed the fur trade westward and were incorporated in the law presumed to be applied under the various jurisdiction acts of Quebec and Upper Canada, referred to in this case later, in the argument. As such the Indian land provisions operated to bind the governors of all British colonies in North America at whatever period they were established. Hence these provisions applied to the colonies of British Columbia.

The Royal Proclamation and the guarantees which it afforded to Indian peoples was not an ordinary statute, as I earlier referred to. The principles which it affirmed codified fundamental rights for Indians. These rights were of a higher order than those created by simple enactment and took on constitutional status. It was an Imperial law which operated as a restriction on the legislative confidence of colonial legislatures. Any colonial enactment which could be read as being inconsistent with the Indian land provisions of the Proclamation had to be read to avoid repugnancy with the Imperial law. The Royal Proclamation of 1763 applied in this way to what is known as British Columbia -- known as British Columbia as at the time of the establishment of the colonies of Vancouver's Island and British Columbia. Douglas was bound by the Proclamation provisions when he took up his post in 1849.

Now we say that the Royal Proclamation was

encompassed within the Colonial Laws Validity Act upon the latter's enactment in 1865.

We make another argument, my lord, in the alternative. If the common law and the Royal Proclamation provisions regarding Indian land rights and protections did not apply to and bind the colonial authorities in British Columbia insofar as their policy and local laws reflected, then we say that there was a constitutional convention operative in the colonies as of 1849 which acted as a guarantee of Indian land rights and as a limitation on the colonial statute-making power.

Now, we argue further in the alternative, my lord, that if the principles of consent to which we have made reference do not apply to British Columbia, then extinguishment of aboriginal title could only be affected by express legislative enactment demonstrating a clear and plain intention to extinguish title. And the onus for that is on the defendant Crown to prove extinguishment. The onus is on the defendant to prove the fact of extinguishment.

And we say that the defendants cannot show a clear and plain intention by the sovereign to extinguish aboriginal title in any of the legislative enactments relied on in the Statement of Defence. A clear and plain intention to extinguish title must be expressed. Mr. Justice Hall in Calder said:

> "Aboriginal title to public lands in the colony is hereby extinguished"

As being an example of the type of language that would be necessary in order to effect a clear and plain intention to extinguish.

Alternatively, even if a clear and plain intention could be implied from legislation, the statutes relied on by the Crown do not lead to the conclusion that the aboriginal title of the plaintiffs or their ancestors was extinguished.

Now, the Indian land policy in British Columbia, up to the time that British Columbia joined Confederation, can be seen as consistent in two parts. Firstly, to purchase aboriginal title and secure surrender of lands not required by the Indians, and secondly, to reserve to the Indians adequate land for their use and occupation. This remained in place throughout the colonial era. Implementation of the

policy after 1859 was affected only in part. Government continued to reserve lands for Indians as settlement proceeded. Formal arrangements for the extinguishment of aboriginal title and payment for lands not reserved were postponed to be dealt with at a later time.

As to Union, my lord, it's our proposition that Article 13 of the Terms of Union of 1871 does not have the legal effect of extinguishing aboriginal title. The Terms of Union having constitutional status imposes constitutional obligation on both the Dominion and the British Columbia governments in relation to setting aside lands reserved for Indians. When the obligation to protect Indians was assumed by the Federal Government in 1871, Indian title did not pass to them, but remained in the plaintiffs as a burden on Provincial Crown title.

After 1871 the Crown in right of British Columbia could not extinguish aboriginal title. Furthermore, the constitutional impediments upon the province's powers constrained its ability to impair or otherwise interfere with aboriginal title or the exercise of aboriginal rights.

We will urge this proposition, that while the underlying legal title to lands subject to unextinguished aboriginal title lies in the province, that provincial interest is a contingent and pending one which includes no right to the use or benefit of the land prior to the surrender of the Indian interest.

The Federal Crown, by the terms of Confederation, obtained no title to or property in Indian lands. It was, however, given exclusive jurisdiction to legislate with respect to the lands and to administer them. It was empowered to accept surrender of aboriginal title, and assumed the corollary burden of the fiduciary duty to deal with surrendered lands in the interests of the Indians.

Now, while provincial legislation may to a very limited extent incidentally affect matters under federal jurisdiction, such legislation may not destroy the subject matter of the federal jurisdiction.

Aboriginal title is a matter of federal common law. Aboriginal title and rights protected by federal common law are no more vulnerable to provincial statutory extinguishment, impairment, diminishment or reduction by provincial legislation than are statutory

reserve lands.

The evidence and the law establish that the consent of the Indians is necessary before their lands and authority can be dealt with by the Crown, including the Federal Government. Any unilateral act by the Federal Crown purporting to bind the plaintiffs or their ancestors in respect of their territory or jurisdiction is invalid as against them.

Since the Terms of Union of 1871, neither the Federal Crown or Federal legislation has intended or effected extinguishment of the plaintiffs' aboriginal title. This proposition is correct, we say, as a matter of fact, and based on the evidence in the case at bar is correct as a matter of law.

Now, we'll also refer your lordship to Treaty 8 and the significance of Treaty 8. Treaty 8 demonstrates three things we say. Firstly it provides further documentation that the Dominion Government recognized the existence of unextinguished aboriginal title in British Columbia after the province joined Confederation.

Second, it provides an example of Crown purchase with Indian consent to extinguish aboriginal title well after the date of which the Crown asserted jurisdiction over the area, and well after a large body of colonial and provincial legislation had been enacted to regulate land and any other matters.

Third, the history of Treaty no. 8 shows that the Government of British Columbia has actively cooperated in carrying out the terms of Treaty 8 by conveying lands to Her Majesty in Right of Canada for the purpose of fufilling land obligations to the Indians under that treaty.

The defendant Province alleges that aboriginal title was extinguished by Federal provincial agreements and legislation providing for the establishment of Indian reserves in B.C. It will be our proposition that neither the agreements nor the legislation show the requisite clear and plain intention to extinguish, and furthermore that case law does not support the defendants' position in this regard.

THE COURT: Mr. Rush, can you remind me of the date of Treaty 8.

MR. RUSH: It was 1899, my lord.

THE COURT: Is it convenient to take the morning adjournment, Mr. Rush?

MR. RUSH: Yes.

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

(PROCEEDINGS ADJOURNED)

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

_____
LORI OXLEY
OFFICIAL REPORTER
UNITED REPORTING SERVICE LTD.

1 (PROCEEDINGS RECONVENED PURSUANT TO ADJOURNMENT)
2
3 THE REGISTRAR: Order in court.
4 THE COURT: Mr. Rush.
5 MR. RUSH: Regarding the heading under Roman IX, my lord, in the
6 administrative actions and alienations to third
7 parties, our proposition is simply that administrative
8 actions pursuant to statutory authority cannot
9 extinguish aboriginal title.
10 Regarding the acts of plaintiffs as the assertion
11 of, surrender of, or estoppel against raising
12 aboriginal title, ownership and jurisdiction, we have
13 these propositions. We will urge on the court that
14 the historical evidence establishes two crucial facts
15 with regard to the reserves. The first is this, that
16 the plaintiffs and their ancestors resisted the
17 establishment of reserves; and second, to the extent
18 that the plaintiffs or their ancestors requested or
19 accepted reserves, they did so on the strength of
20 explicit assurances from representatives of the
21 Provincial and Dominion governments that such request
22 or acceptance would not be taken as surrender of their
23 aboriginal title, or prejudice their opportunity to
24 have the existence and extent of that title judicially
25 determined.
26 The historical evidence we will urge on the court
27 establishes essentially four relevant propositions
28 under this heading relevant to the assertion of the
29 plaintiffs' rights. Firstly, that from contact on the
30 plaintiffs and their ancestors asserted their
31 aboriginal title, ownership, and jurisdiction, by
32 engaging in direct speech and action, by posting
33 notices, by writing petitions and letters, by forming
34 and participating in political organizations, by
35 resisting Colonial, Provincial, and Dominion laws, and
36 by continuing to operate their own legal, political,
37 and economic systems. Secondly, that from contact on
38 the plaintiffs and their ancestors resisted acts of
39 the Crown in right of the United Kingdom, the colony
40 of British Columbia and the province of British
41 Columbia, when those acts were understood by the
42 plaintiffs to challenge their aboriginal title,
43 ownership, and jurisdiction. Third, that any apparent
44 acquiescence by the plaintiffs to provincial authority
45 was induced on the one hand by promises of protection
46 for Indian rights, and on the other by duress in the
47 form of disease, legal disabilities, threats of

1 violence, prosecution and dispossession; and fourth,
2 that the plaintiffs and their ancestors never
3 represented that they would not rely on their legal
4 rights to aboriginal title, ownership, and
5 jurisdiction. The province never relied on any such
6 representation, and the province never suffered any
7 detriment in consequence of such reliance, with the
8 result that the doctrines of estoppel by acquiescence,
9 laches, and delay raised by the provincial defendant
10 have no application to this case.
11 The resolutions of the House of Commons and the
12 Senate concurring in the final report of the Special
13 Joint Committee we will argue are not laws and have no
14 legal force or effect, nor do they define or alter the
15 law of Canada in any way. As to the Special Joint
16 Committee, we will urge upon your lordship that no act
17 of the plaintiffs or Canada in response to the 1927
18 Special Joint Committee report was intended to nor did
19 it have any legal effect on the plaintiffs' aboriginal
20 title, ownership, and jurisdiction.
21 As to statutory limitations raised in defence by
22 the defendants it will be our proposition that all the
23 declarations sought in this action are declarations
24 which are constitutional in both substance and form
25 and therefore the province cannot either through its
26 Crown Proceedings Act or Limitations Act preclude this
27 court from granting any such declarations. Provincial
28 limitation statutes we will argue are constitutionally
29 incapable of barring actions relying upon aboriginal
30 rights and title and cannot extinguish aboriginal
31 title and rights. These are matters solely within the
32 jurisdiction of the federal crown. There is no
33 jurisdiction in the provincial crown which provides it
34 with the constitutional ability to unilaterally
35 terminate rights which are subject to exclusive
36 federal jurisdiction. Limitation periods which
37 destroy by extinguishment the subject matter of
38 federal jurisdiction cannot be read down so as to
39 apply and cannot be read to only incidentally affect
40 matters under federal jurisdiction.
41 And, finally, my lord, regarding remedies, the
42 propositions that we will assert, the broad
43 propositions that we will assert here, are these. The
44 discretion to issue declaratory relief should be
45 exercised to resolve questions of rights and
46 obligations between these parties. The considerations
47 arising in exercise of that discretion are firstly the

1 utility of the declaration, if granted, and secondly
2 whether such a remedy will settle questions in dispute
3 between the parties. It is precisely the unswerving
4 history of denial and infringement by the defendant
5 province which compel exercise of that discretion in
6 favour of the plaintiffs.
7 The essence of the plaintiffs' claim in relief is
8 for affirmation and preservation of ownership and
9 jurisdiction over the land base upon which they have
10 existed since time immemorial. The land base is
11 essential to survival of their society and culture
12 into the future. It is appropriate here to question
13 whether remedies geared solely to solutions of the
14 problems raised, solutions you've heard in reference
15 to employment, education, housing, alcohol, drugs,
16 health, and gambling, whether those solutions would
17 amount to an effective resolution. Those problems are
18 symptoms of a society under seige. The solution is
19 not to simply address the symptoms, but to halt the
20 seige and protection the foundation of the society.
21 This is what the plaintiffs seek.
22 Taken as a whole, my lord, the declarations sought
23 judicially ratify the continuity and existence of the
24 plaintiffs' aboriginal rights, including ownership and
25 jurisdiction as defined by the evidence, recognize and
26 define the content of those rights, and affirm the
27 constitutional position and status thereof, assert the
28 consequent inhibition on the province's jurisdiction,
29 and act in restraint of further wrongful interference
30 with the continued exercise of those rights. These
31 declarations, we will urge upon your lordship, form
32 the minimal necessary basis for cultural and societal
33 survival and rehabilitation.
34 Now, my lord, that in broad stroke represents the
35 propositions that the plaintiffs will urge upon your
36 lordship throughout the course of the argument that
37 you're about to hear. For the most part, the argument
38 will track the sections of the summary of argument
39 which we have submitted to your lordship, although
40 there will be some alterations. I will now turn the
41 argument over to my learned friend Mr. Grant.
42 THE COURT: Thank you. Mr. Grant.
43 MR. GOLDIE: My lord, before my friend Mr. Grant starts, it will
44 be apparent to your lordship that the introduction and
45 outline which my friend handed up this morning was not
46 included in the summary of his argument that we
47 received and we didn't see it until this morning when

it was handed up, therefore, there is no reply to some of the more rhetorical language in the introduction in the summary that has been filed with your lordship of our argument. I wouldn't like my silence to indicate that we will not answer some of those more extravagant remarks fully.

THE COURT: Thank you.

MR. RUSH: My lord, I want to advise my friend and the court, as I indicated in the letter, which I would have thought was obvious, and that is the argument we submitted was a summary of argument and we intend to expand upon portions of it and perhaps delete portions of it. But I want it to be clearly understood that we will make further submissions and round out and develop arguments that are contained in the summary. And my friend has already notified the court that he reserves the right in his written argument to make further responses, and I suspected that he will do so, but I can tell your lordship that we will present, as I indicated, arguments by sections as we move through the general content of the description of that argument.

THE COURT: Thank you. Mr. Rush and Mr. Grant, before we change gears, have counsel given any thought to the question I raised about sitting hours or hours of sitting?

MR. RUSH: We have, my lord, and we would like to reserve on the question in order to determine the length of time that our submissions are taking. We have a very tight agenda for our argument, conscious of the 18 days that we have to present it in, and at this point we're not entirely clear how long portions of the argument are going to take, but we have scheduled them and we'll present them within the time frames that we've allotted. But what I'd like to do is reserve on that question, my lord, for until perhaps tomorrow or the next day to determine how we get along in the argument.

THE COURT: All right. Perhaps it might be convenient to notify counsel now that, subject to anything else that might arise, it would be my plan to start a little bit late on Monday morning and sit later in the day if necessary so that I might have the extra day in the garden, if that's possible. It's that time of year you know, or it soon will be.

MR. RUSH: Although my garden of choice.

THE COURT: Yes, in the garden of choice. All right. I'll be glad to hear from you whenever it's convenient. I

1 won't mention that matter again. Thank you.
2 Mr. Grant.
3 MR. GRANT: Thank you, my lord.
4 THE COURT: Mr. Grant, do I understand that this part that
5 you're going to be dealing with starting --
6 MR. GRANT: Tab 1 of the maroon binder.
7 THE COURT: That is the same as what I've already seen is it
8 not?
9 MR. GRANT: It is in substance the same, but it starts at --
10 what you've already seen commences at page 35, and I
11 should say there are two, three inserts that are
12 relatively short, so --
13 THE COURT: All right.
14 MR. GRANT: I would -- the floppy disc that you will get will be
15 of this version and it's complete and my friends now
16 have the complete version as well.
17 THE COURT: I haven't seen pages 1 to 35?
18 MR. GRANT: You have not seen pages 1 to 35, no.
19 THE COURT: Thank you. All right.
20 MR. GRANT: My lord, it's fitting, before I commence, it is
21 fitting to say that we are commencing this legal
22 argument in the heart of the territory of Wah tah
23 k'eght -- of Woos I should say, yes, that we're
24 commencing this in the heart of Woos' territory,
25 Gitdumden of the Wet'suwet'en people. You recall the
26 evidence of Dr. Matthews who drilled in Seeley Lake
27 and discovered an epic event 3500 years ago. If we
28 took the core of what Dr. -- of Dr. Matthews and
29 drilled it here, under this building, we would find,
30 if there's -- if that core could tell the story,
31 hardly an inch or even less of white presence
32 non-Indian people here and over 5000 years of the
33 Wet'suwet'en people here. The evidence of the
34 histories of the Gitksan and Wet'suwet'en demonstrates
35 this time depth. The evidence respecting the adaawk
36 and the kungax of the Wet'suwet'en and the Gitksan
37 chiefs were effectively unchallenged in
38 cross-examination. What they said is not merely their
39 belief, what they said was this is true. The system
40 of the proprietary rights that you're being asked to
41 recognize here is a system that is very old. The
42 Gitksan history that I will review demonstrates that
43 well over 5000 years ago the clan system, the crests,
44 and the feast institutions were well established. By
45 3500 years ago the houses -- this, my lord, is not in
46 the written, this is --
47 THE COURT: No, I understand that.

MR. GRANT: The houses, the poles, and the distinct house territories were in place with both the Gitksan and the Wet'suwet'en, and it is demonstrated through the history at Temlaxam and at Dizkle. By 2500 to 3000 years ago whatever vacant lands remained within the territory was taken up by the Gitksan and Wet'suwet'en. In the context of this case, my lord, in which the Gitksan and the Wet'suwet'en are seeking recognition of jurisdiction and ownership, this antiquity is important and an important aspect of the recognition of the understanding of those societies. I'd like to start at page 1 of the argument, part 1.

As I have said, this history of these peoples goes back long before the time of Greek civilization in our context. The histories demonstrate that the Gitksan acquired territories either when nobody was there or they joined people who were on the territory. The Wet'suwet'en history, on the other hand, demonstrates that in conjunction with the linguistics and the archaeology the Wet'suwet'en have been on their territory for as long ago as memory and as some period relatively shortly after the last Ice Age.

In order to appreciate the complex civilizations that existed at the time of contact among the Gitksan and Wet'suwet'en, it is essential to understand their history. A careful analysis of this history demonstrates how fleeting has been the history since contact with the Europeans. Secondly, an understanding of the Gitksan and Wet'suwet'en history explains and clarifies certain apparently complex and confusing features of the societies. An obvious one is the concept of wilnat'ahl, which was explained by Miss Harris in her evidence and also by a number of the witnesses.

This, you may recall, if I may step aside for a moment, is the concept that wilnat'ahl in some cases can refer to one house, in other cases refers to a group of houses who have an ancient origin, and in the broadest context can refer to all of the Gitksan houses of one clan. And Miss Harris prepared a chart of Kliiyemlaxha's wilnat'ahl to explain that, which we will refer to later in argument. But an understanding of the wilnat'ahl assists the court to understand the characteristics of certain plaintiffs in the action. Why does one house represent more than one house?

Thirdly, the history of the Gitksan and the Wet'suwet'en also demonstrates the foundation for the

fundamental principle of respect and the antiquity of that principle within Gitksan and Wet'suwet'en societies. As we shall demonstrate, my lord, the constitutional underpinning of the Gitksan and Wet'suwet'en legal system is this law of respect, and from it flows all other laws of the Gitksan and Wet'suwet'en. Of course, you, in dealing with the issues in this case, will be concerned of particularly relevance to the foundation of laws relating to territory and jurisdiction.

Fourthly, the history of the Gitksan and Wet'suwet'en explains why certain houses have several territories while other houses have only one. In two examples among the Gitksan there are houses who are plaintiffs without a territory, but only a fishery. This is explained through the ancient histories.

Now, my lord, it is only recently that non-oral societies such as the Euro-Canadian Society have begun to accept the validity of the history of oral societies. The validity and veracity of the oral history and the passage of that oral history through centuries is difficult for those of us trained from a written record. However, it was -- we must remember that it was only a few centuries ago that the European societies passed down histories orally. Of course, it has been very convenient for the European societies to reject the validity of oral history of the aboriginal nations of North America. Once the historical foundation for the aboriginal peoples' presence and ownership of their territory has been dismissed as fictions or fables, the theft of the land is very easy to justify.

And here I will refer for a moment to page 56 because John Brown, a leading chief in the house of Gwiiyeehl spoke to Barbeau and Beynon in 1920, and it's quoted on page 56, and this is from the Barbeau-Beynon accounts:

> "It was customary..."

Half-way down:

> "...to transmit the adaawk so that they may be preserved. A group that could not tell their adaawk would be ridiculed with the remark, 'What is your adaawk?' And if you could not give it you were laughed at.

'What is your grandfather's name? And where is your crest? How do you know of your past, where you have lived? You have no grandfather. You cannot speak to me because I have one. You have no ancestral home. You are like a wild animal, you have no abode.' Niiye'e..."

Which means the forefathers.

"...and adaawk, grandfather and history are practically the same thing."

What John Brown was saying there, my lord, is that people must have a history to have a place, and of course it was -- this is why we must recognize the history of these people.

Going back to page 3, the Gitksan and Wet'suwet'en history is much more than bedtime stories and morality lessons. It does include morality. They are told at bedtime, but it includes much more than that. The utilization of metaphoric description is a recognized pneumonic device. It is no justification to dismiss the authenticity of the history of these people on their land. To describe events metaphorically, like poetry, is to give meaning in images and assist to remember key events of the history. It is phenomenal that when one analyses the hundreds of adaawk filed in evidence and kungax there is a remarkable parallel between the same historical events described by chiefs at places like Kitkatla and Hartley Bay, all the way to Kuldo'o, between a period of time from 1915 with the first Beynon account up to 1989 when you hear different descriptions. To suggest that the oral history is hard to verify and should therefore be discounted is to ignore the care with which Wil Robinson, a trained -- a person that worked in the courts, recorded the Men of Madiik and the Wars of Madiik. It also ignores the willingness of these chiefs to be cross-examined in the court about their oral histories, and it ignores the tremendous volumes of recorded oral histories of the north-west coast, probably one of the largest records of oral histories in the world for one group of societies.

Finally, it ignores the accepted fact that all history, my lord, is subject to revision, based on the learning of new facts. The facts and the context of

1 history must always be weighed against other evidence,
2 the values of the speaker, the methods of recording
3 and transmitting the information, the drama of the
4 event, the importance to the recorder of the record in
5 terms of his world view, the weight of the history and
6 teaching methods of the culture. All of these factors
7 have been established in evidence. Indeed, the
8 Barbeau-Beynon account and its care with respect to
9 those factors is one of the reasons that that record
10 is so invaluable.
11 Similarly, my lord, it is a culturally bound
12 perception to assume that the only reliable history is
13 written history. Surely today in 1990 we are beyond
14 the simplistic ethnocentric belief that for the
15 Gitksan and Wet'suwet'en, as Roper said of Africa,
16 "There was no history there until the white man
17 arrived."
18 My lord, you have had the first opportunity to
19 hear not only the oral histories, but also a unique
20 analysis of them in the context of entirely
21 independent geological, paleo-biological,
22 archaeological and historical evidence. The
23 defendants are asking this court to close its eyes to
24 the history of the plaintiffs just as Joseph Trutch
25 and other early colonialists closed their eyes to the
26 richness of the civilizations which they encountered
27 in British Columbia. My lord, this court should not
28 unequivocally reject -- this court should
29 unequivocally reject such an ethnocentric, myopic, and
30 ultimately racist approach to the Gitksan and
31 Wet'suwet'en people.
32 Now, there are many features that have
33 demonstrated the veracity of the oral history through
34 the course of this action. It's been demonstrated in
35 the following ways. The geological and
36 paleo-biological evidence corroborates major events at
37 Temlaxam. And here of course I'm referring to Dr.
38 Matthews and Dr. Gottesfeld's entirely independent
39 work. The detailed method of training the oral
40 histories as described by the chiefs and the witnesses
41 and the preparation of specialists of preservers of
42 the history, many of whom you have heard, but you,
43 through the test of the court process, have been able
44 to observe it. The spontaneous descriptions that have
45 been given in evidence in response to questions, for
46 example, Stanley Williams, Gwis Gyen, time and again
47 described detailed boundaries from memory while giving

evidence and a summary form of the adaawk regarding those territories. Olive Ryan, Gwans, described the names and the meaning and history of several fishing sites, and once again she would refer to an adaawk or in sometimes as she said these stories, the trickster's stories which were not adaawk, but she would know them. Madeline Alfred, Johnny David, Alfred Joseph, describing the names and history of many of the Wet'suwet'en places and fishing sites, and spontaneously coming forth in cross-examination with a kungax.

The archaeological evidence at Hagwilget, at Moricetown, at Gitangaat, and Kitselas, are all consistent with the oral histories and the time depth of those oral histories. The repetition from widely disparate oral histories at the time of the Beynon recordings; and finally, the four years of analysis of the Barbeau-Beynon adaawk by Miss Marsden and the critical review and interconnection of the adaawk as demonstrated by key elements and repetition of particular narratives. Each of these aspects of the veracity of the oral history shall be reviewed in the context of the actual histories that have been described and the time depth of the Gitksan and Wet'suwet'en. I will come to each of them at junctures of the history.

I'd like to review the oral history as history in this next part. As I've already said, they are different. The adaawk are different than morality lessons or bedtime stories. They are the historical record of the Gitksan and they record actual historical events. A careful analysis of the adaawk that have been presented in this case demonstrates that they are a recording of significant historical events and not such personal histories or anecdotes. Yes, there may have been some examples of a person telling a personal history or anecdote, but they did not say this was the adaawk. Kungax are the Wet'suwet'en performances and oral accounts of significant historical events. The evidence demonstrates that kungax include dance, song, and performance, as well as oral accounts. Nevertheless, significant events in the peoples' history are recorded and encoded in their oral tradition in the same way. I shall generally refer to both adaawk and kungax hereafter as oral history.

The accuracy of the oral history of the north-west

coast has been attested to in evidence and by the scholarly writers. Phillip Drucker, a recognized scholar by witnesses for both the plaintiffs and the defendants, has stated, regarding the north-west coast:

> "In connection with these traditions it must be pointed out that while the Indians had no written records and had to rely on oral transmission of their clan and family histories, the traditions of all the groups from Vancouver Island northward are so specific and consistent and, insofar as they can be checked, so correct that there is little doubt that for the most part they are historically accurate.
>
> Levi-Strauss notes that the recorded oral tradition of the Gitksan and the Tsimshian and other north-west coast peoples deserves to be seen as a tradition every bit as rich and detailed as the mythology and oral tradition of the ancient Greeks. The oral tradition of the Greeks and the Old Testament have inspired a great deal of archaeological and historical research. It was Schliemann's fascination with the oral tradition of the Greeks preserved in the Iliad and the Odyssey that led him to unearth the settlement of Mycenae; and it is the record preserved in the Old Testament, itself originally an oral history, that has led to the excavation of Jericho."

And I may say, my lord, it is Dr. Albright's review of the oral history that led her to digging the house site at Gitangaat.

Dr. Daly expanded on the validity of oral tradition as history in his report. He reviewed that oral tradition is both history and social reality in the eyes of the Gitksan and Wet'suwet'en people. I'll go to the bottom of that page. Dr. Daly explained by a parallel with the Iroquois cultural history, which he had researched, the experience of William Fenton.

> "William Fenton, who has devoted his career to studying Iroquois history and culture, has found that the versions of these

narratives which he recorded at Iroquois ceremonial sessions on the period from the 1930's to the recent decades have shown a remarkable fidelity to the earlier recorded versions. He explains that present-day Iroquois culture focuses upon three epics, from three different periods in the people's history."

Dr. Daly in his report at this part explains the three oral epics and then continues. And, as you recall, Dr. Daly himself did his doctoral work with the Iroquois.

"Fenton points out that while nineteenth century Iroquois philosphers' explanations of their culture and its history were subject to nineteenth century ideological colouring, the actual ritual tellings of historical/spiritual events continue to be told, free of ideological colouring. They were, and are, history of a different official order. The Handsome Lake prophecies occurred in post-contact times and the tellings have been documented since their first occurrence. They offer a control model for the accuracy of official oral accounts much as do the proto-contact and early contact events in the Gitksan and Wet'suwet'en oral history - as discussed above. Fenton continues:
...the Code of Handsome Lake affords a reasonable check on the accuracy of native tradition. The striking resemblance between modern versions and contemporary diary accounts of Handsome Lake's revelation does endorse the value of Iroquois tradition as a vehicle of history."

Dr. Daly then went on to consider the oral tradition of the Gitksan and Wet'suwet'en more specifically. He stated:

"...the oral history of the Gitksan and Wet'suwet'en is an important source for the reconstruction of pre-contact history. In my view, Gitksan and Wet'suwet'en oral

> history comprises useful and important material for gaining an understanding of pre-contact social structure as well as recounting those historical events which have been deemed to be crucial to the historical identity of specific kinship groups. These events are presented from the perspective of specific groups. Other houses, other clans, will tell them differently and stress their own role therein. The oral tradition is a worthy historical source material when it is treated as a whole, a corpus of linked and overlapping records of events that have been reiterated down through the generations. Individual tellings of one chief's history must be compared with one another and then with the accounts of the same or related events from the viewpoint of other chiefs. When this is done carefully the oral tradition can be treated as a valid historical source."

As the evidence demonstrated, the adaawk and the kungax explain who the teller is, why the teller has a right to speak and to live and interact in the community and hold land and fishing sites. The Wet'suwet'en kungax explains the chief's attachment to the territory where the Wet'suwet'en say they have always lived. The Gitksan adaawk explain how the people have come to settle a specific river fishery and how their ancestors obtained the territories. In both Gitksan and Wet'suwet'en society the oral history situates the group, gives it identity and pedigree by virtue of experiences of the house ancestors on the territory, and this is what John Brown, the former member of the house of Gwiiyeehl, was describing.

Dr. Daly noted that oral history when told within the house group and in conjunction with daily life at the smokehouse, berry patches and hunting grounds, the chiefs' histories can be presented with full and graphic detail. These histories contain sequences of events set out in a linear fashion familiar to historians of the European tradition. They also contain detailed knowledge regarding economic and practical skills and practical wisdom, a philosophical outlook, meditative techniques, knowledge pertaining

to health care. Unfortunately for scholars this elaborated form of the oral history has rarely been presented for the written record. Always it has been passed from one speaker directly to the next. For example, when told to researchers or to the court it is necessarily abbreviated. The adaawk of Gyologyet was told in approximately one half hour at trial, yet Mrs. MacKenzie testified the telling usually takes in more than one sitting.

Mrs. MacKenzie explained that the adaawk are told with a greater degree of precision depending on the occasion. The raising of a totem pole is one occasion for detailed rendering:

> "In a feasting of a burial of a chief, these adaawks are not told deeply, it's just a changing of a successor, it is a burial feast. But when a totem pole is erected that's when these adaawks come out of the creation of a totem pole and they these questions tell the adaawk of the family and the erecting of a totem pole, the chiefs gather at an erection, the chiefs tales illustrates or tells the story of the adaawk of these crests. Now there is a pause there somewhere, if one person thinks that one crest is not supposed to be on that totem pole, they say it right then. So if everything's all the crests are on there, everybody says it's all right, that's when these chiefs come with their speeches, putting their power and the blessing of this totem pole of the adaawk that this totem represents. This is the kinds of feasting, and this is done in a feasting house where the chiefs give their blessing and their power to the chief that erects the totem pole."

Now, my lord, just as in the 1920's as when Barbeau attended a feast in the 1920's and heard this, so in 1945 at the Kitsegukla pole raising by Beynon and so in 1987 at the pole raising observed by Dr. Daly, in all of those events the adaawk or the kungax were being told.

Dr. Daly concluded that:

"The oral histories provide a framework for understanding of people's social realities at two levels; first, through individual house histories and, second, through the broader scope of all these individual histories viewed together. When this information is supplemented with other available data a generally reliable view of pre-contact history can be established.

In other words, taken as a whole, the oral tradition provides an extensive text which the ethnologist can use to gain insights into the culture and society of the past. This was not possible before the many separate but often overlapping histories were recorded and compiled. This recorded oral history contains the sequence of historical events such as migration, war, raiding, taking hostages, retribution and peace settlements. These events occurred in a number of individual but interlinked strands. Taken as a whole, these strands of migration and interaction provide researchers with a broad understanding of the early, unwritten history of the upper Skeena, Nass and Stikine drainage systems and the adjacent coast.

To a certain degree this is the work that Barbeau and Beynon began and which others follow today. The task of plotting the distribution and time sequence of these narratives and locating the social institutions referred to in the texts, such as matrilineal inheritance, the spiritual observances associated with hunting and salmon fishing, property ownership, and political alliances established or renewed by marriage and consanguinity, often over great distances."

Now, my lord, in this case Miss Marsden has undertaken the completion of the task commenced by William Beynon and Mr. Wilson-Duff. Miss Marsden explained the process of sequence ing the historical events and the adaawk of each wilnat'ahl:

"When adaawk are formally told, the correct sequence of events is included in the telling. Given the time involved, it is understandable that few complete adaawk were recorded in writing. Most of the written record consists of discrete historical events, incomplete sequences of such events, or complete chronological events, in which each event is a quick synopsis, that brings to mind the event as it is otherwise known."

She described her methodology as follows.

"It is through the re-sequencing of the historical events in the adaawk of each wilnat'ahl, the comparison of these sequences and the dating of events within them, that a framework for the history of the Gitksan is possible."

Miss Marsden began this process by familiarizing herself with the adaawk of the Gitksan, Nisga'a and Tsimshian in the Barbeau-Beynon collection and in other sources. She says:

"I also familiarized myself with the histories of the neighbours of the Gitksan, the Tlingit, Haida, tsetsaut, Gitamaat and Wet'suwet'en through a number of publications by Swanton, Boas, Jenness, Robinson..."

That's Michael Robinson, not Sheila Robinson.

"...and De Laguna. And, finally, I examined all the origin accounts and personal names and crest in the Duff files based on Barbeau and Beynon's work among the Gitksan, Nisga'a and Tsimshian, and in Swanton, and De Laguna on the Tlingit, in Emmons on the Tahltan, and in Jenness on the Wet'suwet'en.

I had already lived among the Gitksan, attended feasts and heard adaawk being told for ten years prior to this. I was familiar with the poles on which the Gitksan adaawk are recorded, having photographed and catalogued them. I had also compiled an

1 overview of the Gitksan houses, clans and
2 wilnat'ahl based on Barbeau and Halpin and
3 was familiar with the present members of
4 these houses as they participated in feasts
5 and other formal events."
6
7 Using these sources, Miss Marsden examined the
8 commonalities between groups, in adaawk, crests,
9 personal names, migration routes, village membership
10 and origins. These she compiled into charts which
11 show the relationships between houses indicating their
12 membership in a wilnat'ahl.
13
14 "The wilnat'ahl can be defined in this broad
15 historical context as that group which
16 shares ancient common origins. Once I had
17 traced each house to its place in this
18 larger group I was then able to map their
19 movements and expansion over time as they
20 split off to different peoples, areas and
21 villages across the Northcoast area, to
22 their locations as recorded in 1920 by
23 Barbeau and Beynon."
24
25 Now, my lord, you have heard evidence that the
26 oral history is taught and is likely to be told
27 accurately if it is recited by someone trained in that
28 aspect of it, who has been authorized to tell it.
29 When the court heard the adaawk, the most reliable
30 informants told the adaawk. Several of the witnesses
31 described in detail in their evidence that they were
32 trained in a particular way. As I have already said,
33 the spontaneous statements of Stanley Williams, Olive
34 Ryan, Madeline Alfred, Johnny David, Henry Alfred, and
35 Art Matthews Junior attest to the success of the
36 proper training in oral history for an oral society.
37 It is noteworthy that none of these witnesses trained
38 in the adaawk were cross-examined on their knowledge
39 of the adaawk or its accuracy.
40 Dr. Mills testified that the issue of
41 authorization may be somewhat differently understood
42 by the Gitksan and Wet'suwet'en. She stated:
43
44 "The Wet'suwet'en share some of the Gitksan
45 concern about who is authorized to tell a
46 story, but for them it is less important
47 that it be a member of a particular house or

1 clan associated with the kungax than it be
2 someone that knows the kungax well.
3 Thus Johnny David, Chief Maxlaxlex,
4 suggested in his Commission Evidence that
5 Peter Alfred, Chief Kanots, tell the story
6 of Kweese' war on the Kitimat, which Chief
7 Maxlaxlex said was the source of his otter
8 crest (in the tradition of the Wet'suwet'en
9 ascribing many crests to this major
10 Wet'suwet'en victory) because he thought
11 Kanots knew the story well, as the son of
12 Namox, a high chief in Kweese' clan. Kanots
13 confirmed that he had learned it as his
14 father told the kungax in the evening in the
15 winter when they were out in the territory.
16 Having learned kungax well from his father
17 authorized Kanots to recount it, as
18 Maxlaxlex recognized."
19
20 The question of the authority to speak about
21 various aspects of the adaawk was the subject of
22 considerable testimony by the chiefs, and I submit, my
23 lord, that several principles emerge from the
24 evidence. Firstly, permission to testify to matters
25 which belong to the adaawk of more than one house
26 requires permission from all the houses who had an
27 ownership interest in that adaawk. This is the
28 context for the statement made by Mrs. MacKenzie that
29 she was not able to speak about the laws of other
30 houses and other clans so when she was -- talked about
31 in her evidence about Gitksan law, she says she's
32 really telling us about the law of the house of
33 Gyologyet.
34 Dr. Daly pointed out that:
35
36 "Oral histories are for the ears of the
37 chiefs, of the main actors in a specific
38 social system. Their telling is generally
39 confined to the house group or wider group
40 of kin with a common origin or long term
41 common proximity in a village. Apart from
42 this internal telling the oral history is
43 only revealed publicly at appropriate and
44 formal events; that is, at certain feasts."
45
46 My lord, I'd like to make an aside here that you
47 may recall that Stanley Williams described exactly

this kind of event. He corrected a chief from Kitwancool who he understood mischaracterized the adaawk which was also part of Gwis Gyen's adaawk, and he did it in a feast after this man spoke and he corrected him there and his correction was accepted. That was also attested to by Art Matthews Junior who witnessed that event at that feast.

> "...within the community the narration of the oral histories is subject to the constant judgment of other chiefly narrators. A number of the witnesses at each telling will have a clear knowledge of the places, events, crests and songs that are recited in the telling. If the teller is inaccurate he or she diminishes the luster of the house, and does so in public. Such behaviour can also court psychic retribution, especially, if an unauthorized person attempts a telling, because the psychic power of the crest, which are central to telling, can be dangerous and even malevolent toward the unauthorized."

Dr. Daly explained, I'm on page 17, that in his research for his doctoral thesis with respect to the Iroquois, he relied on the oral history and referred to Fenton's work. He explained that Fenton was concerned with particular oral histories which are passed down generation after generation in public ways, public gatherings.

Dr. Daly explained in his oral evidence how Fenton relied on the Handsome Lake revelation to analyse the validity of the oral history and this is what he testified to:

> "...He", that is Fenton, "says since it occurred in historic times, there are other documents that back it up. These revelations of this prophet came into being in 1799...in upper New York state. And they are...they have been told the same way and they have been recounted by white men ever since then. And they have been told in the same way today as they were being told as early as 1820, I think is when they first began to do this. So he", that is Fenton,

"goes back to the earlier period, the formation of the League of the Iroquois, which people seem to think was about a hundred years before the coming of the Europeans. And he reaches back through the kinship links of the grandparents of the old people at the earliest point of contact, what they said about it, and finds a consistency there as well. And then they go back to the more ancient myths of origin of the very people themselves."

In the case of the Gitksan, my lord, there are certain parallels. The events described in an adaawk of Mr. Ross at Fort Babine are events that are also recorded in the Hudson Bay records. Furthermore, the court has had an opportunity to compare the contemporary accounts with those accounts described by grandparents and great-grandparents of witnesses to Beynon and Barbeau as early as 1915. This consistency of those accounts reflects on the reliability of the oral histories themselves.

Similarly, my lord, the co-relation between the major cataclysmic event at Seeley Lake 3500 years ago and the Madiik adaawk is another indicator of the veracity of these events. The co-relation between the archaeological finds at Hagwilget and Kitselas and the adaawk is further evidence of the veracity of those events. Those archaeological finds demonstrate a major change occurred around 3500 years ago in respect to the utilization of those areas. Now, Dr. Cruickshank in her annotated bibliography of approaches to the analysis of oral tradition dealt in a separate section with oral history. She referred to recent students of oral history from a Keith Basso and Renato Rosaldo. And that document is Exhibit 1051-2, Dr. Cruickshank's.

THE COURT: 1051-2.

MR. GRANT: Yes.

THE COURT: Thank you.

MR. GRANT: It's tendered by the provincial defendants in cross-examination.

Dr. Cruickshank stated:

"Recent students of oral history, like Basso and Rosaldo argue that informants' statements about themselves, their

environment, their history have to be taken seriously. They propose to make theoretical contributions to cultural ecology (Basso) and to anthropological theory generally (Rosaldo) by demonstrating that how people think about their landscape and their history has a significant impact on how they interact with their environment. They demonstrate their positions by meticulous analysis of oral tradition and pay particular attention to place names."

Now, Miss Marsden was extensively cross-examined with respect to her approach to oral history. Unlike Vansina she had extensive knowledge of the kinship relations of the Gitksan system prior to analysing the oral history. She agreed in cross-examination that the informant statements about themselves, their environment and history have to be taken seriously.

The concept of exercising care --

THE COURT: I'm sorry, I'm not sure I understand your context there, Mr. Grant. Is the next paragraph the condition that follows the "if" at the start of that?

MR. GRANT: I'm sorry. I'm sorry. I see I marked it out. There should be no "if". I'm sorry.

THE COURT: Thank you.

MR. GRANT: I had marked mine out, my lord.

The concept of exercising care when relying on oral histories cited by Trigger was put to Miss Marsden. And you may recall Mr. Trigger, who studied the Huron, his asides about oral history were put to many witnesses. But she responded:

"I know that there are other aboriginal societies that have oral histories that they do not put forth as history. There are other oral traditions, oral narratives that are passed on and that are important to aboriginal societies that are not historical accounts and they don't claim that they are. And I haven't done a survey of all the so-called tribal societies so I don't know how many of them have historical accounts. But I feel that from what I have looked at, that the north coast historical accounts are the wealth and richness of what has been collected on them is unique probably

1 anywhere."
2
3 Now, as an aside, in Dr. Cruickshank's annotated
4 bibliography, she corroborates what Miss Marsden says
5 because she delineates three or four or five different
6 categories of oral tradition and oral history is only
7 one of them.
8 Now, in further cross-examination the following
9 exchange occurred regarding the wealth of the oral
10 history of the north coast.
11
12 "The recording of oral tradition as well may
13 be suspect."
14
15 This is Trigger's comments, and the first part of this
16 is the question, my lord, it actually should have --
17 THE COURT: Starting "The recording" is from Trigger.
18 MR. GRANT: That is, yes, and this is Mr. Willms' question, and
19 he reads this section to her.
20 THE COURT: Thank you.
21 MR. GRANT:
22
23 "The recording of oral tradition as well may
24 be suspect. The few committed to writing in
25 eastern Canada prior to the late 19th
26 century were done in extremely cursory
27 fashion and from poorly identified sources.
28 At least some of these oral traditions
29 appeared to be heavily influenced by white
30 historical narratives, missionary propaganda
31 and even anthropological publications. They
32 also frequently reflect knowledge of periods
33 later than those to which they are alleged
34 to refer."
35
36 Mr. Willms then questions Miss Marsden.
37
38 "Just pausing there, in respect of the oral
39 traditions that you reviewed, you're
40 satisfied, I take it, about Barbeau and
41 Beynon's recording as being not suspect,
42 identified sources and not heavily
43 influenced, is that fair?"
44
45 Miss Marsden:
46
47 "Yes, I think that even in the north coast

1 body of oral literature they stand out as
2 such. Boas' transcriber of oral histories,
3 his name was Tate, he felt that he had to
4 clean them up, he had to take out references
5 that would offend white people and make them
6 acceptable to Christian thinking and I don't
7 use those in the same way as I use the
8 Barbeau-Beynon account."
9
10 Miss Marsden was further examined as to the
11 verification of the oral histories and explained the
12 internal verification as well.
13
14 "So it's your view..."
15
16 This is the question, my lord, I'm sorry.
17
18 "...that even in the absence of independent
19 verification, that you can say that
20 traditions can be accepted as accurate
21 historical accounts.
22 A I think there are internal, there are ways
23 of analysing them internally. If you have a
24 version collected in 1898, another one
25 collected in 1915, another one collected in
26 1970, and in different parts of the north
27 coast area, and if they all have the
28 essential elements, you have to begin to
29 assess them as something other than figments
30 of people's imagination.
31 Q So if they are all this century, if you have
32 got a consistent pattern this century, you
33 say that that's your independent
34 verification?
35 A They have to...one of the things that
36 started convincing me, and this has started
37 convincing me that these could be used in a
38 meaningful way and not be subject to this
39 kind of criticism was the fact that the
40 informants obviously didn't know each other
41 and probably their ancestors, their
42 immediate ancestors, didn't know each other.
43 So the fact that a tradition can be passed
44 on in different locations over a long period
45 of time accurately, indicates its value to
46 the people and indicates that there are
47 methods there of transmitting it where it

1 doesn't end up, as he says here, basically
2 changed around to suit people's purposes."
3
4 Miss Marsden went on to agree with the methodology
5 of Vancina, but explained her own methodology as
6 follows:
7
8 "My methodology is extremely complex and I am
9 at a disadvantage if you ask me individual
10 aspects of it. I don't think Vancina..."
11
12 And that should be with "a", my lord.
13
14 "...got into the same kind of analysis
15 because I don't think he had the same kind
16 of sources. However, there are things that
17 he said that I agree with. For example, the
18 ones that you quote, that you have to look
19 at the informant, you have to look at the
20 different versions and you have to consider
21 it as a historical source, but not as a
22 historical document in the sense that we
23 westerners consider documents. In other
24 words, having been written down at the time
25 by a person involved in this situation."
26 "...I felt comfortable with my
27 methodology when I was doing it. I did not
28 have the time to do a study on other
29 people's opinions on oral history while I
30 was doing this and I made sure that I had...
31 I asked as many people as possible whenever
32 there were anthropologists or linguists
33 coming through the area if there is anything
34 on this in print and I saw Vancina as a
35 result of that. I didn't see this..."
36
37 referring to the Cruickshank annotation,
38
39 "...but when I did see it I looked through it
40 and the people working on oral histories are
41 not working on them in the same way that I
42 am, except Vancina. And he hasn't done it
43 the same way."
44
45 In summary, my lord, Miss Marsden shows a
46 meticulous analysis of adaawk consistent with a
47 growing tendency within the field of anthropology to

analyse oral histories carefully and consider them as history when appropriate.

Now, what's even more important and more credible in this case is the evidence of the chiefs themselves that adds in, which they explain, the teaching of the adaawk and the kungax.

THE COURT: Mr. Grant, do you think you should start another subject or another heading before we adjourn for lunch?

MR. GRANT: We can adjourn now. It's satisfactory.

THE COURT: All right. Thank you. Two o'clock, please.

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

(PROCEEDINGS ADJOURNED FOR LUNCH RECESS)

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

Tanita S. French
Official Reporter

1 (PROCEEDINGS RESUMED AT 2 O'CLOCK P.M.)
2
3 THE COURT: Mr. Grant?
4 MR. GRANT: Thank you, my lord.
5 I am still dealing with the basis upon which you
6 should receive the oral histories of the people. In
7 this part I will deal with the method of teaching the
8 oral history, the passage of the oral history. On
9 page 22 of my argument, the Adaawk and Kungax are
10 reliable sources of history because of the very
11 careful and systematic way in which they are taught.
12 The teaching methods of repetition and slow
13 elaboration are well-recognized learning tools. The
14 instruction of the young by the chiefs and the elders
15 is an essential part of the training into Gitksan
16 society. Dr. Daly said:
17
18 "In earlier times, before the intervention of
19 government agencies and other institutions in
20 the Gitksan and Wet'suwet'en communities, the
21 grandparents taught all the children the
22 narratives of their origin."
23
24 And goes on to explain that. Then he talks
25 about today in the last paragraph on 23.
26
27 "The elders expect such young people to develop
28 accurate and detailed memories as to the
29 territories of their house, of those nearby,
30 and those of their father's side. They are
31 expected to know their crest histories in
32 detail and to remember those of other local
33 chiefs as told in the feast hall. They must
34 also learn to remember the elaborate system of
35 rank names and positions in each house group in
36 the feast hall, such that they themselves are
37 able to seat without the embarassment of error.
38 All members of the community according to the
39 house, the wilnat'ahl and clan affiliation and
40 keep abreast of changing incumbents to these
41 names."
42 Dr. Daly was of the opinion that:
43
44 "The contemplation of oral instructions,
45 history, morality, practical techniques needed
46 in in daily life is a part of the ongoing
47 education of Gitksan and Wet'suwet'en people.

1 These teachings are provided in the context of
2 giving the young people a personal goal."
3
4 And he continues on and at the end he says:
5
6 "The acquisition and transmission of family
7 crest histories is an integral part of this
8 process."
9
10 And you, of course, my lord, have had the
11 opportunity to see the effect of that, not only on
12 elders such as Gwis gyen, Stanley Williams, Solomon
13 Marsden, Mrs. Ryan, Madeline Alfred, but also on the
14 younger people, the evidence of Henry Alfred, Art
15 Mathews junior, Glen Williams, for example.
16 At the bottom of page 24, I continue. Dr. Mills
17 comments in terms of the Kungax as well and then it
18 goes on. Many chiefs have testified that this
19 training and the training which they continue to do
20 with their children in the oral history occurs
21 formally and informally inside and outside of the
22 feast. Alfred Joseph, Gisday'wa, testified to the
23 very many ways and places a person is trained in the
24 oral history. You have to get your training from --
25 he stated in evidence:
26
27
28 "You have to get your training first from your
29 parents and then the grandparents, but the main
30 part of your training comes from your
31 grandparents because they are the people that
32 lecture the house members. They lecture their
33 sons, daughters-in-law every day. It starts in
34 the morning and you can't help but listen to
35 all these things and if you happen to be a bit
36 noisy, you are told that this advice giving is
37 directed at you also. So you have to listen
38 and there is visitors, elders visiting at our
39 house, visiting my grandparents and they are
40 also there as advisors. They get together and
41 there are always these songs and whenever they
42 are finished with a song they say that where
43 the song came from, where the song was
44 originated and what the occasion was. And
45 that's an ongoing thing with the Wet'suwet'en
46 and if you try to get away from listening to
47 the lecture and move over to your friend's

house the same thing will be happening there. So it is taking place at all houses and you are told to respect your elders. You are told to respect all living things so that is the things that a young person has to go through. And you are also told that in the future you will be dependent upon to do the things if you live the right way."

Then he goes on to describe the method of teaching and preparation for a feast. And on the next page Gisday'wa describes the training of the chiefs' names and crests, songs and totem poles at the feast and within the community. And he stated:

"There is a crest, like boundary, would have a marking, a marking on the boundary and then there you have the totem poles and songs and the personal crest relate to the land - whatever happened on the land so there is always some reminder of different feasts that have happened. If an elder two or three of them is visiting and they would sing these songs and when one quits they say, 'do you remember where this came from?' If you don't, while they say they tell them this was that feast when this chief died or when this chief erected his totem pole. And that was going on at every community. Discussions going on, how names, songs, and crests were acquired."

Now, of course, my lord, you saw with Gisday'wa with the depth of knowledge that he had, and he described and explained his own Kungax as well as the territories of his house and others, the effectiveness of that training. It is through this process of living the oral history as it is made, taught and expressed that Alfred Joseph learned about crests and how to carve totem poles. And he goes on on that page to describe how he saw the totem poles at Hagwilget Canyon and became interested in the crests and learned of them.

Now, let's go back, is this different than what was being done at the turn of the century? Johnny David, one of the oldest voices that you have heard here, described how he learned his song.

"Abraham and I were playing in my dad's house. My dad would sing his song and through listening to my dad, both Abraham and I learned the song that goes with Smogelgem."

This teaching, my lord, is also deliberate and repetitious and forms part of day-to-day home life. This was the testimony of many chiefs. For example, the former Hanmuxw, Fanny Johnson, taught Gwans, Olive Ryan adaawk of Hanmuxw, the territory and fishing sites of her house and many houses, the laws, the songs, the history of her house including the history of the crest, pole and also the adaawk of Guxsan's house, including the territory which was given to Guxsan for assistance in the burial of Yal. Guxsan, of course, is a different house but in the same clan, the same village, the same origin, in other words, the same wilnat'ahl as Hanmuxw. And she said:

"Every morning...tell me every day, that's how I know."

And the test, the test of veracity for you, my lord, is the way in which Mrs. Ryan could go on and describe these sites just from memory, without any reference to a map, because she didn't read maps. Mrs. McKenzie:

"At feast, at mealtime - it's an everyday thing."

David Gunanoot learned from his grandmother before he fell asleep. Sometimes training in the adaawk may be stimulated by a special event in the adaawk of the house. Mary Johnson described how she was trained in learning the adaawk and songs of her house when her house raised the one horned goat in marblestone and "they got together for a whole month to learn the song." This was at a headstone feast put up by her uncle George Williams in 1916, when George Williams took the name Tsibasaa and gave Emily Latz the name Anthgulibix. So you have the evidence of such training going on very early on.

And then we have Art Matthews, how he was taught the teachings of the adaawk occurring mostly at meal time and when you go to bed. The chiefs also explained that it's not just of interest, it's not

just a common practice or interest for the children, but they have an obligation to teach the adaawk. Mary McKenzie explained that while the adaawk belongs to the house, the head chief has the responsibility of telling is it.

> "The adaawk always belongs to the head chief and house and they are responsible of telling it themselves."

The chiefs have the obligation of both teaching the adaawk and continuing to learn more about the adaawk throughout their lives from those who are more knowledgeable.

And Mary McKenzie testified:

> "Every Gitksan, every chief now young or old, we have the adaawks that are told, repeated to us through oral way, and the chief have to repeat those things more often because it's oral. It's not written or anything, so when the feast thing or something, a head chief would gather all his wil'naa't'ahl and this is when these events are told to the wilnat'ahl."

This process began when Mary McKenzie was small and continued until after she had grown and it still goes on today. Mary McKenzie has recently learned from Delgamuukw who died in January. Those last two sentences, my lord, appear not to be in the quotation of Mrs. McKenzie but appear to be a synopsis of it. Mary McKenzie continues to teach the adaawk to her own children and grandchildren, and she goes on in this quote to describe that teaching and how now they are saying "This is what my granny told me." And she goes on to say, "So I have to continue with the knowledge I have today, I have to pass it on to them and my grandchildren."

My lord, as an aside, you can see how from the generation of Johnny David, who is close to 100 years of age, through the generation of Alfred Joseph and even to those younger, this is passed on. So we now have literally before the court a transmittal that has gone on for the better part of this century, from living witnesses.

The adaawk are told in greater detail and

elaboration as the people mature. This is what I mean by the repetition and elaboration as a teaching method. And Tenimgyet, Art Matthews, explained his training and of course you recall he gave one of the fullest accounts of the adaawk and described four adaawks which related to his house and his territory. He stated:

> "I would say I would be trained from a young age; these ada'oxs being told to me in short form, in medium form...when you're just a young kid they just give you the general outline of an ada'ox and as you get older more detailed... until the full form of the ada'ox is fulfilled, and the yuuhlxamtxw, gan didils, everything that's in it, you have to understand."

He then explained yuuhlxamtxw and gan didils:

> "Yuuhlxamtxw is wisdom, to give me wisdom, the understanding, the various spirituality of our land. Gan didils is the way of life, how to react, how not to react. In other words, it's a doctrine of one's ada'ox, it's a realism, it's philosophy, and it's epics, both life and death."

I want to be clear here, my lord, I am not suggesting or urging upon you that everything that said in the adaawk is merely history. As Tenimgyet said, there is the philosophy, there are lessons, it's combined, but it is founded, just as we use our tradition, the Iliad or the Odyssy, it's founded on historical reality, and it's those principal historical facts that demonstrate the time depth.

Later, Art Matthews stopped while telling the Bear Mother adaawk of Biis Hoont, and explained, this was an aside he made in the middle of the telling of it.

> "Now, if we were telling this in a longer version, we would stop there and go back and break it down. Then the yuuhlxamstxw takes over. The yuuhlxamstxw and the adaawk go hand in hand. The person who's telling the simoogit or my mother, whoever, they stop here and start breaking this adaawk down. Okay. They say

that that is the reason that we cannot be too proud. The bent box that I talk about symbolizes what you are trying to be told before. You are wise, you collect these and gather inside these bent boxes as collections for your thoughts, or the bent box symbolizes these things that are told to you. So you see the problem here is you are to try and make an adaawk, it stretches and you fill out all those things and that's why it's called an adaawk and these things were done."

Art Matthews, Tenimgyet, elaborated on the question of question of telling the adaawk with different degrees of complexity and completeness in this brief exchange:

"Q ...you say that you were taught a short version of the adaawk?
A Yes.
Q Can you explain that to the court?
A Short versions would be similar to Barbeau's stuff."

Now here, of course, we are looking at the Barbeau, for example, The Totem Poles of the Gitksan, in this context which has these one paragraph or two paragraph versions.

"Q You are referring to the type of notes that Barbeau would have taken?
A Yes.
Q Are there...different version of adaawk?
A Yes. Like I said this morning, that as you grow older the adaawk expands in detail."

He then went on to describe the sesatxw purification procedures that are included in the detailed adaawk. And he connects those as, again, in teaching the adaawk and the history, they are also taught the sesatxw.

And he stated that the -- at the bottom, that the Bear Mother adaawk would take up to four months. But

he explained that it is fitted into the daily life of those four months, it's not an unrealistic teaching method, he said:

> "It's like I described, all these material things, and nobody is allowed to hear this because wisdom leaking out about our sesatxw, how we do it and how we realize things, hunting signs, all other things they say belong to the house itself. The actual adaawk itself publicly is told in the feast halls, but not the secret parts of it. That belongs to the house itself."

It makes it a slightly more difficult but I say, my lord, don't be confused if this statement of Tenimgyet is put to say, well, you see, there is no reputation. The public parts, the historical events are told in the feast hall. The secrets are the methods of hunt, other types of special practices within a house. And, of course, it's not necessary for you in the findings to find specific hunting methods, for example, or specific purification and preparations, except as part of the system of the people.

Now, then, the other factor in terms of teaching, is that many witnesses testified the oral history was passed on by a chief from their house. Mary McKenzie's adaawk was taught to her by her grandmother, as I said Fanny Johnson's was taught by her grandmother, Oive Ryan's was taught to her by her grandmother, Fanny Johnson and now, of course, gwans explained that she is teaching these to her children and her grandchildren. Florence Hall, holder of the name Gwis, was taught by Mooseskin Johnny, and by Alec Tiljoe, Mooseskin Johnny, the former Gwis.

Going to the next page, the adaawk are told at the feasts, and then it explains and the evidence was very clear, that the chiefs must be taught the adaawk because of the obligation to tell the adaawk formally at certain feasts, such as a feast where there is a passing of a name or the raising of a pole.

Mary McKenzie testified the telling of the adaawk at feasts was important,

> "...because the adaawk tells in a feast hall who are the holders of fishing places, creeks and

1 mountains that belong to each house of the
2 chiefs, where they get food like berry picking,
3 they have -- they tell the owner and location
4 in the feast house. So, through this, this is
5 how I have my knowledge now is by attending the
6 feasting of any chief, even though it is my own
7 chief, even if it is my own feasting, I hear
8 chiefs repeat or tell the adaawk of theirs and
9 ours. This is the importance of the feasting,
10 that these adaawk are told."
11
12 Of course you may remember that Mary McKenzie
13 explained that her -- that Gwamoon and others were
14 related to her, Gwamoon was her daughter, but of
15 course their adaawk there was variation.
16 Mary McKenzie testified in the telling of an adaawk
17 that the chiefs tell:
18
19 "every one of them and they know what the
20 chief's boundary is. That's what he tell and
21 which mountain where they get their main food
22 and which berry patch they own and each fishing
23 ground."
24
25 And Alfred Joseph, Gisday'wa, testified that
26 witnessing chiefs also must formally affirm the
27 adaawk. The witnessing chief always talks about the
28 passing of the crest of the chief, the high chief
29 taking the name. This is, of course, the host chief.
30 That is, of course, told at the end of the feast and
31 they are told how the crests had been acquired by
32 previous chiefs and they are always reminded they are
33 responsible to their house and to their father's clan.
34 Of course the father's clan would be the -- included
35 among the guests.
36 My lord, it's in this process of telling the
37 adaawk by the chiefs and listening to it being told,
38 that the children and other young people are trained
39 in this aspect of the oral tradition. And the
40 ultimate credibility and veracity, I say, is this
41 method of training which has been very carefully
42 demonstrated and explained to the court.
43 And implied in that is, of course, the concept of
44 specialists, which will be discussed later in the
45 evidence -- in the argument, I should say, but the
46 concept of specialists, is something you are quite
47 familiar with, where specialists were trained.

1 Having dealt with the method of training and the
2 passage of oral history and the concept of the oral
3 history being recognized in academic terms as well as
4 being recognized and understood by the people, I can
5 only say in conclusion that the adaawk, the history of
6 the people, is true and that there are elements, there
7 is certainly elements that are essential or that you
8 can find are true. And that are relevant to finding
9 ownership and jurisdiction.
10 I am now moving into the history of the Gitksan
11 and the next part of the argument is a focus on the
12 Gitksan society and then the Wet'suwet'en. But I will
13 say here, of course, that something that is probably
14 apparent to your lordship, in the flow of these two
15 pieces. The Gitksan migrated, the Gitksan moved, the
16 Wet'suwet'en were always there. This is a significant
17 difference between the histories of these two
18 civilizations. The Wet'suwet'en were always here, I
19 should say. And so the Gitksan history, through the
20 adaawk, describes the migrations and the joining and
21 the movement. The Wet'suwet'en describe their place
22 at Dizkle, which is up between the area between
23 Moricetown, on the Bulkley River between Moricetown
24 and Hagwilget.
25 THE COURT: I am sure you will come to it, Mr. Grant, but didn't
26 I read in your material that the Wet'suwet'en had
27 arrived here just after the last Ice Age or was that
28 this morning I read that?
29 MR. GRANT: The Wet'suwet'en -- the Wet'suwet'en in terms of --
30 this is in terms in which I am putting that with
31 reference to the map, is that in Exhibit 358-1 and
32 Exhibit 105-2. This map of the recent ice sheet in
33 British Columbia, if you look with reference to the
34 Skeena River that we have this area here where the ice
35 receded first and, of course, you have heard Dr.
36 Kari's linguistic evidence that the people were very
37 close to there. So the reference there was a general
38 reference that at the time of the Ice Age, or shortly
39 thereafter, the people were there. They came from --
40 they were from this refusium and this is, of course,
41 very close to this refusium, as opposed to somewhere
42 in the northeast.
43 When we move back to the mists of time to that Ice
44 Age with respect to the Wet'suwet'en, it's my
45 submission that the linguistic evidence combined with
46 the people's history, demonstrates that they were here
47 for a very long time.

THE COURT: I was just troubled by your statement a moment ago, always.
MR. GRANT: I think -- yes, I think that always I don't mean in an eternal sense but certainly eternal for practical purposes, since man was in this area.
THE COURT: All right.
MR. GRANT: Now, what I intend to do in the next section of the argument is to highlight certain features of it, my lord, in terms of the -- the material is there but to highlight what I submit is essential elements. And the way this part of the argument on the Gitksan works is that I am going to take to a certain time, and then look at what has happened and what's essential about the -- that aspect of history for what you are considering.

Continuity with the past is an essential and determining aspect of Gitksan social, political and legal institutions. The Gitksan chiefs repeatedly emphasize the antiquity and persistence of these institutions as evidence of their validity. In other words, as John Brown had said in 1920, "Our history is --" "We must have a history." Gwis gyen again, Stanley Williams, explained it, I believe, in a very vivid way when he said:

> "This is the law...all the Gitksan people use... This is like an ancient tree that has grown the roots right deep...into the ground. It's... sunk. This big tree's roots are sunk deep into the ground and that's how our law is. The strength of our law is passed on from generation to generation and each generation makes it stronger and stronger right to this day where I am today. Every time we put this law into action it becomes stronger and stronger. Each time our people use our laws they make it stronger and it still goes on today. We never deserted our grandfather's seat and we never deserted our land, our territories. It's still the same today. Today the government wants to take all this away from us and they want to take the laws of our people, of our ancestors and they want to break our laws today. I don't think they could do this because I has been passed on from generation to generation and we have had this law for thousands of years."

The roots of the people and their land. That's what he was referring to. And the two additional quotes on page 36 from Stanley Williams, Gwisgyen, was referring was the depth of the roots of the people in their land, the depth, that same depth. And the Wet'suwet'en, particularly, here I am dealing with the Gitksan, the principle of daxgyet, is essential. It is based on the maintenance of the ancestral institutions. As Solomon Marsden, the reference to Xamlaxyeltxw is Solomon Marsden, described in evidence, what we call daxgyet is the person who will pass the name and the territories on from generation to generation. It is their daxgyet that gives the Gitksan chiefs their authority.

> "I could talk about my own territory and when I mention my territory, this is where the basis, the foundation of my strength comes from. So in order to show the court that I do have strength with the other Gitksan people with the territories, I have to describe my land, my territory where my power is and my authority is."

The power and authority or jurisdiction of a house is called the daxgyet. The daxgyet includes the territory, the adaawk, the songs and crests and authority of the house to govern the territory for future generations. It encompasses the spiritual power upon which the house was founded and continues to exist. And I may say, my lord, that this reference is an addition to what was said in the summary. The concept reflects the power and authority of the chief which derives from the territory of the chief. This is a central component of the whole Gitksan society. The chief must be able to describe his territory to establish where his power and authority is and where it arises from. Daxgyet is a concept recognized by the Gitksan and Wet'suwet'en which connects the people to the territory, their authority and the feast hall. The concept of daxgyet among the Gitksan and Wet'suwet'en is an essential component of the organized society. The daxgyet of the chiefs connects them intimately into their territory and into their relationships with other people.

There is two references of Solomon Marsden and then Mary Johnson, a chief from Kispiox, described daxgyet in a similar way when she said:

> "You asked me about Wil Masxwit and they said it's Antxgulilbix whose hunting grounds and covers the whole mountain, that's where you get the mountain goats, that's their main food and groundhog. So that'a all those territory covers my daxgyet, that's Antgulibix."

Glen Williams referred to daxgyet as the authority of the house and the head chiefs over the territory. You may recall the adaawk described by Mary McKenzie, Gyolugyet, of Baskeylaxha, Bill Blackwater, and how he obtained his nax nox. Baskeylaxha is Bill Blackwater, one of the chiefs. A supernatural event occurred on the territory. Through that event Baskeylaxha has obtained power which he demonstrates in the feast. This is part of his daxgyet. That power, my lord, related to him seeing an event on his territory in which he had a vision from the sky and the name Baskeylaxha refers to the fear of the sky and Mary McKenzie vividly described how he performed that nax nox performance in the feast hall. The power and authority exercised by chiefs to protect and affirm their ownership of the territory and the authority of the house is related to spiritual power. This was described by Mary McKenzie.

> "...a Gitksan law we start our procedures with a nax nox. Nax nox is used in starting a feast house. When there is a death of a chief, raising of a pole, a headstone, and then the feast is put on and the first thing that appears in the feast house is for the chief to act out out their nax nox, which is a living thing to us and you can call it a spiritual thing which gives the strength of what the proceedings of the feast would be -- we will start heavy feasting by acting out the nax nox."

When she is referring there to heavy feasting, she is referring to those large feasts such as the pole raising. Daxgyet is here shown to be connected to the authority to the chief, the territory of the chief, the territory of the house and the spiritual power of the chief that arises through the chief on behalf of the house along with the nax nox.

Now, again, Tenimgyet, a young chief explained Art Matthews, the integration of daxgyet and the context of explaining it:

> "The actual name of sewing your nax nox is in our language, Luu hetxw halayt.. which means you are going to sew the power which I described as daxgyet - is going to be transferred to another person, to exact its rightful line of that name. So, therefore, this had to take place."

And the daxgyet connects this chief's name with the spiritual power of the house. Mary Johnson explained the importance of songs:

> "They were so important because it's about their hunting ground and all their crests and their names, all the crests are their power, everything is their power, daxgyet.

Daxgyet is rooted in their territory, the crests and the names. It is the foundation for the authority of the chiefs to represent their houses. And it's, Mary Johnson says, it will be passed from generation to generation, it won't be forgotten until the end of the world.

Now, my lord, the reason why I made this reference to the daxgyet here is that, as you can see, the evidence demonstrates this connects to the histories and the acquisition of territory, and for the Gitksan, a very important component of the historyies is the acquisition of their territories. The maintenance of territorial ownership. The importance to the Gitksan of continuity with the past is further shown in the maintenance of territorial ownership and boundaries. And I will just take one of several statements here where Xamlaxyeltxw, Solomon Marsden, said:

> "It's ever since the beginning of time the boundaries have always been the same. What -- the ancient times the people know where the boundaries are. They are still there day and there are no gaps between them. And it's still like this today."

The next section of the argument deals with education and training and this, I have in terms of the training of adaawk, I have already spoken about, this section, I -- is important to be here but I am not going to review it in oral argument because the concept of education and training is a concept that we will deal with in organized society.

So if you turn to page 49, in this second part of the introduction and this is the introduction to the actual histories. In the Gitksan socio-political, legal and territorial system, the strength of the house or wilnat'ahl, its powers and identity are directly related (a) to that group's antiquity and persistence through time and, secondly, to its ability to properly record and ceremonially display and validate this continuity with the past. Raised totem poles, feasts and the ceremonial events related to them together constitute the validation of the legal, socio-political and territorial record as perpetuated in a house's adaawk, limx'ooy', crests and names, as well as the legitimacy of the house within Gitksan society and its ownership of its territory.

The Gitksan chiefs over generations and in the present, have repeatedly validated ownership of the territory and their place in Gitksan society through the feast. The acknowledgement of a house adaawk and territory in contemporary feasts, proves its proper perpetuation in the past.

Here I will refer to Lelt, the former Lelt, Fred Johnson, and he was asked a question:

> "Mr. Johnson, you sang another song and you clapped your hands when you sang the song. What did the song mean? What relation does the song have to the rattle?
>
> A Showing the other high chiefs that I am now Simooget and they would acknowledge whatever I say. And the law will never be lost. And that our nephews will learn that they will follow our traditions, take over our names. The law still exists today, still good today."

Another component of this is, and feasts will be dealt with later in more detail, is the pole. On page 52, the proposition is that the existence of standing poles belonging to chiefs and their houses and the raising of new ones proves the ownership of the land

has been validated in the modern era and in the many generations preceding.

As Solomon Marsden explained:

> "The pole represents the power and ownership of the territory. The totem poles that you see standing have these, and they're not just standing there for nothing."

And the description of crest poles, my lord, whether they stand alone or form part of a house, may be a debate, but crest poles were at Temlaham, they are described in the adaawk at Temlaham. The crests were -- the crest system was already in existence then.

THE COURT: The statement you are going to have to explain to me what you want me to understand by the term crest or crest systems. I don't recall very much specific evidence about crests, but the sense I got, that I want to be corrected if I haven't got it right, is that the various components of the pole and the regalia, are indicia or evidence of a crest system. But I did not understand, and I want you to correct me, that there are, apart from that, individual or specific crests.

MR. GRANT: In the house?

THE COURT: Yes.

MR. GRANT: Well, yes, there are, and I think that there are crests within the house that reflect to the territories, for example.

THE COURT: Well, I understood, for example, that in some poles having a bear on the pole would be an indication of a connection with a location or an event, and that that was described as by somebody as part of the crest system.

MR. GRANT: Yes.

THE COURT: But that there wasn't a crest in the sense of an insignia as such.

MR. GRANT: The crest would be for example.

THE COURT: I thought it was a collection of things at first but I want to make sure I have got it right.

MR. GRANT: The crest and the reference to the crest system which we will deal with further, but I can respond to you now as I am dealing with the poles, for example, on Tenimgyet's fish site, his smokehouse, one of the exhibits shows his smokehouse, we saw that there was the crest of the Haiwas or the lion and the adaawk

which he referred to relates to that event occurring at that place. The portrayal of that Haiwa or that crest, can only be done by the house who is entitled to that. There was a -- Stanley Williams described how out of the Madiik, the grizzly at Seeley Lake, that you recall, that out of that there was a bear hide that went with the Gisgaas or the Fireweed Clan and he held it. When Wiget came up from Kitselas, he cut the bear hide in half and gave part of that crest to Wiget but he only had part of it. And that is actually the situation in which it was mis-described and he corrected the description. So in that sense, when Wiget was given a crest moving into the village it gave him more authority than he had, but Wiget of course is an example of a chief that doesn't have a land territory. So, it's a unique -- so a crest, in all cases, would -- or a crest should relate to the territory and the history generally.

THE COURT: But I do not understand there to be a specific crest other than a drawing or a carving or hide or something, that forms part of a collection which evidence the crest system.

Now, for example, if the Vancouver Police Department have a crest, what they put on their hat, I don't understand that there is a specific crest for each house. That could be narrowed down to one specific pictoral representation. Because I don't recall any evidence that this item here is the crest of our house. I took it, you will correct me if I am wrong, it doesn't have to be right now, that the crest is a much broader concept than a specific insignia.

MR. GRANT: The crests are, to the trained observer, are specific, but I may want to respond to you after some consideration because the crests are used differently with both systems, the Gitksan and the Wet'suwet'en, and also there is a broader crest and a narrow one.

THE COURT: Thank you.

MR. GRANT: The raising of the pole, I am on.

THE COURT: Page 52?

MR. GRANT: Page 53. I will be referring to certain of the quotes but I am not going to -- they are here as the supporting propositions.

Through the raising of their poles the Gitksan chiefs have repeatedly validated the ownership of the territory by bringing together their history, their crests, their respect for their laws and their land and the wealth of their territory. This is witnessed

in the baxmaga, or pole-raising feast, and by all who view the poles.

> "The naming, in the baxmaga of the mountains, lakes and rivers of the territories of the wilnat'ahl recreates and thereby validated once again the original act of naming that first established their ownership of the territory. The present chief recreates the time long ago when the ancestor walked the land and put his powers into the land."

Now, Fred -- Solomon Marsden at the bottom described that:

> "When a chief is planning to raise the pole, it is very important because he thinks back of his territory where he would put all -- on this pole he would put all the power and authority that he has and he will put all the crest and his adaawk on this pole. And even around this area we see totem poles and the Indians know how important it is to our people, because it shows where our power and authority and jurisdiction is. This this is what these poles show where it lies and this pole is called Xwtsaan."

Now here, of course, I believe you recall Glen Williams gave evidence of growing up with his grandfather and his grandfather explaining to him the different crests of the set of poles that Glen Williams grew up looking at in Kitwanga. And he would sit on his grandfather's porch which was right across from the poles, and would be told of the crests and the houses that owned the individual poles.

You also may recall there was the first cut ceremony described by Mrs. Ryan, Gwans, and the video of it, and it was explained that the father's side crest would go on the bottom and, therefore, that crest would change. So these poles aren't something that are totally duplicated but are modified, the crests of the father certainly is modified on them.

I would like to move to section one, this first section of the ancient history demonstrates that the adaawk, the limx 'ooy or the songs and the crests together, constitute the indigenous, legal, socio-

political and territorial record of the Gitksan.
The bottom, the founding groups. The adaawk of a Gitksan house or wilnat'ahl begins with an account of the arrival of their ancestors into their territory and an account of the acquisition of this territory or with a statement of the location of their ancestral village within the territory. The first group that we consider is the Frog Raven Clan. According to this, the adaawk of the Frog Raven Clan, and here we are talking about early times so we are focussing on clans, but all of their contemporary Gitksan houses can be traced to one or more of three original groups who migrated into this area in ancient times. The first of these, the northern group, eventually span the full length of the Skeena River in their migrations. This migration included the ancestors of Wii Minoosik, Miluulak, Lelt, Luulak, Haakw, Delgamuukw, Delgamuukw and Lutkutsiiwus, all plaintiffs in this action.
They arrived in the northern regions of the Stikine, Nass and Skeena rivers and they settled there and some of their number then moved toward the coast settling in ice-free areas along these river valleys.
If I may refer to the 10 -- 358-one, the large version of it, 105-2. The people of the Raven were the people that migrated in this area.

THE COURT: Locate me on the map, if you will be good enough, a landmark somewhere.

MR. GRANT: This is the Skeena, the mouth of the Skeena River, and it goes up this way roughly. Okay?
The people of the Raven are the blue, and you will see the migration of these people dispersing out from this area.

THE COURT: Where do you say that is?

MR. GRANT: That would be in the area of what's known as Lakwiiyip, it would be -- just a moment, it would be up the Skeena is here, I just want to be sure if it's between the Skeena and the Nass where this is. It would be near the headwaters of the Skeena between roughly in the area between the Skeena and the Nass.

THE COURT: Thank you.

MR. GRANT: And they were the first people, they migrated through the deglaciated northern areas, arrived at the headwaters of the the Stikine, Nass and Skeena and some of their number then moved toward the coast settling in ice-free areas along the river valleys and you see this migratory movement. What is relevant for

the the territory is that you will find when you examine Exhibit 646, 9-A and B, you will find that Wiiminoosikx and Luulak territory, they have territories in that area. These people, as the argument proceeds, some groups stayed in these areas and some moved further south, such as in the Gitangasx and Blackwater areas, and that's where you have the sources of the Wiiminoosikx and Luulak group. The map of the Gitksan territories show that others migrated south and then west and established themselves in the Kispiox, Hagwilget and Kitwanga areas. Some groups proceeded further to the Kitselas area know as Andudoon, and from there at a later date spread downriver, where they are consistently the earliest group in the accounts of the founding of the villages among the Tsimshian.

Fred Johnson, Lelt, the former Lelt, described part of this migration from Blackwater to Andudoon, in accounting for the origins of his wilnat'ahl, his group:

> "They drifted down from somewhere around Blackwater when they were starting to search for land. They knew what was going to happen. They heard of other lands, other places. That's why they set out to put their power into other lands. Wilnat'ahl travelled together, not too many, not too few, a strong, healthy group. Later others followed. They left Blackwater. Delgamuukw settled at Kispiox, Lelt, Haaxw, Luulak and Taxts'ox, settled at what is now Gitwingax. Others went further to Andudoon.

That would be in the area of Kitselas.

> "When they came to this land and found food they had to make a totem pole. Lelt and others were first there. Axti Hix...he's Gitwingax as well. He came here a long time ago as well. They came here the same as Lelt, after the flood. It was open just like in the spring time. They looked for a good place to grow, looking for good land."

These comments "searching for the land", "looking for the good land", "it was open just like in the

springtime" are triggerts in adaawk, my lord, triggers to demonstrate the tremendous antiquity of the particular time frame that he is describing.

Now Guuhadakxw, this is Thomas Wright, who is of the Wolf Clan, not the Frog/Raven, but he spoke of his father's wilnat'ahl which remained at Blackwater, T'amt'uuts'xwm'aks, establishing the Raven clan there. And Guuhadakxw said:

> "Wiiminoosikx has a lot of land because he surveyed the area himself. That's why he's got such a big area."

This is the kind of terminology that Ms. Marsden after her four year review of the adaawk, concluded that terms such as "survey the area" refers to when the land was first being found by the Gitksan.

Thomas Wright then goes on to describe his grandfather on his father's side and the former Wiiminoosikx.

Now, I want to pause here, because I won't refer you to the quote but at page 60, my lord, there seems to be a misconception that when a Gitksan says "my grandfather" a Gitksan is talking about one generation. That's not the way it is. Niiye'e, ancestors or grandfather, that's what is being -- that's what is meant. Thomas Wright, Fred Johnson, Stanley Williams, all used these terms. All of these elders were translated. It's acceptable within the Gitksan to translate it as grandfather. But it is not, it is not, I repeat, literally one's mother's or father's father.

Now, this is why that quote is there, because when he says he saw three Wiiminoosik, "your grandfather what was one of the Wiiminoosik; is that right?" His answer, this is on 59:

> "Whoever got Wiiminoosik, that is my grandfather. That's the Indian law. A lot of Wiiminoosik died before the time he was mentioning. And now it's the new generation. There are still Wiiminoosik."

Gwis Gyen, Stanley Williams, described very poignantly in his commission that Stanley Williams that name will go, but Gwis Gyen will not go, and of course there is Gwis Gyen here in court today, Lorne

Campbell.
This demonstration, and then Thomas Wright refers on page 60 to the the relationship between Wiiminoosik and Miluulak.

> "Miluulak moved out of Wiiminoosik's house. Once he moved out of Wiiminoosik's house it was different."

This indicates that Miluulak and Wiiminoosik are in the same wilnat'ahl. In this context, Miluulak's ancestors would have been part of the same migration of the Frog/Ravens from the north and this, of course, my lord, is consistent with the territorial evidence on Exhibit 646, 9A, which demonstrates Miluulak holding large territories in the northeast of the Gitksan territory, as does Wiiminoosik, in the area of the origin.

Now, Lelt's wilnat'ahl, Lelt, of course you will recall, Fred Johnson gave evidence, and he is a Frog from Kitwanga. But he described how others moved south. And he gives the description on page 61 in that quote and at the bottom, when asked what territory Lelt ownd, Fred Johnson named Gwinilxl, Gisga'ooxs and Ansimlaan. These are three fishing sites of Lelt and Haaxw that are shown on Exhibit 31, and they were described by Mrs. Ryan. Then he went on to say:

> "This is where the high chiefs got their food. And they speak for these territories. That is why they speak for these territories and that is why they have a longer life."

And then he described the location.
And then as Lelt stated above:

> "Others went further to Andudoon. This was the Satsan/Gubihlgan group that established itself below Gitsalasxw. Others continued toward the coast from there and arefound to be 'consisstently the earliest group in the accounts of the founding of the villages among the Tsimshian."

Now, my lord, I haven't asked to have the 469-A put out, but I see you have the overlay and if you look

that territory and you will recall, and we may come back to it, the territory of Luulak, it would be on the southeast corner of that western portion in that area, it would just be beside Sakamago.

THE COURT: Is Luulak, L-U-U-L-A-K?

MR. GRANT: Yes, Luulak. That's the territory. That territory is on the border with the Kitselas and both Lelt, Fred Johnson, and Stanley Williams describe an incident in which Guubagon had died and in which Luulak, who is in the same group as Lelt, when I say that, as a closely related house, Luulak acquired that because they buried read Guubagon. This happened from the description given by Stanley Williams in much more recent, relatively recent times. But what we find here that's of interest is that it wasn't an accident, even though Guubagon was from Kitselas and Luulak from Kitwanga, they were from the same ancestral group, they were the same relations if you go far enough back.

Now to deal with the Wolves and the Eagles. A number of the groups combined in the early eras to form the present Wolf/Eagle clans among the Gitksan. One of these is referred to the the evidence we have just seen where Lelt spoke of Axtii Hiikw being in Kitwanga at the same time as lelt. This group, the ancestors of Axtii Hiikw and Tenimgyet, had ancient villages at Ango'ohlhon and Xsigwinekstaat, Woodcock and Wilson Creek respectively.

Now you may recall, it's not reflected here, it's discussed under Art Matthews western territory that he describes how he actually moved over from the western territory at Cedar River into this area.

Tenimgyet's smoke house stands on this location today. And, of course, your lordship had the opportunity of viewing it. The ancestors of this Wolf Clan wilnat'ahl were also the earliest founding group of the Gitksan Eagles.

As Simediik, the leading Eagle chief in Gitwangax in 1923 explained, and this is an extract from his statement in the -- that's referred to by Ms. Marsden in her report, but it's from the Barbeau-Beynon interview, of course.

> "The family of Lax Gibuu (Wolf) of Tenimgyet, joined with the Eagles. They were only a few. They helped each other. The Lax Gibuu could not marry a Lax Xskiik here, only theGaneda or

> frog. That family was not quite Lax Gibuu, only half. The Lax Xskiik and Lax Gibuu herewere named differently: Lax 'nadze, only one name for the two. This term is in the old language, it has the same meaning as Lax Xskiik, in the old Gitksan language long ago. Lax 'nadze meant Lax Xskiik."

To translate that is what Simediik is saying here is that the clan, the rule of clan exogemy, you cannot marry within your clan, applied to the Eagles and the Wolves. So that the Eagles and the Wolves are colsely related. He is explaining something about long ago, and he is describing it in 1923. You heard Art Matthews junior describe the same thing, that the Wolves and the Eagles worked together at the feasts, for example, in Kitwanga.

Now, the next group was the people of the Ts'ooda and this is a group, a coastal group that helped to form a clan in the Gitksan, this case the Wolf Clan.

Now what you can see is in these very ancient times, the development of the clans is what is occurring.

I will go to the next page and he, I will just refer to Thomas Wright's statement or words. He is the Guuhadakxw. He talks about Wiik'aax, Neil Sterritt senior is of the Wolf Clan,

> "Came from Skeena City, it's beside Prince Rupert and then travelled all the way up to the Yukon. It's about ten miles down river from the Tyee Station. It was long before the white man came to the city. That bird sent Ts'ooda up the Skeena River. Ts'ooda, the big bird from the sky told him to come up the Skeena River and there will be seven houses and they will be called villages."

Firstly you will recall in Mrs. Marsden's evidence, it was shown in fact that there was a railway station labled Skeena River and so Thomas Wright was speaking from his experience when he was younger, but nobody, not many people today even knew where that Skeena City was. But he is talking here about this group here, the dark, the dark arrows, and that they migrated up through here, and up into here, right up into the

headwaters of the Skeena. This is the group where he describes them going up to Kisgegas and helping to builds the houses at Kisgegas.

There are in these very ancient adaawk, there are supernatural components. It's not, of course, necessary to find with respect to those supernatural components, but there are also very, very concrete descriptions of locations.

Here we find some description relating to the places and, of course, Wiigaak's territory is in the area of Kisgegas.

In cross-examination on page 66, my lord, Guuhadakxw was asked if his forefathers from Skeena City marked their lands in any way so that non-Gitksan people could tell that it was Gitksan land. He replied, yes they did. They used the names of the waters, the creeks, the mountains. They used those to mark their lands and they named them. And what he is here talking about is that from the time of the settlement, they named these places and of course these are the names that we see on some government maps where they have adopted Indian names and you have heard many of them. A fishing site, a creek, a lake, all of these names you have heard testified to the placement of the people here.

Now, on page 66, and this series of this very ancient time, there is a number of ways of determining antiquity.

THE COURT: Are you starting item three, Antiquity of the Origins?

MR. GRANT: Yes.

THE COURT: Should we take the afternoon adjournment?

MR. GRANT: Certainly, my lord.

(PROCEEDINGS ADJOURNED FOR SHORT RECESS)

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

Wilf Roy
Official Reporter

THE REGISTRAR: Order in court.
THE COURT: Mr. Grant.
MR. GRANT: Thank you. Thank you, my lord. Now, having covered this ancient period in a very summary form and reflected on the evidence of it, I would like to deal with two principle points. One is how do we consider this as of such great antiquity. And there are three main ways that are reflected.

Firstly by direct statements of the chiefs, statements like Thomas Wright, Guuhadakxw's statements:

> "Q...Were the people of the House of 'Wiik'aax living at Kisgagas long before the time of your grandfather?...
> A...Kisgagas was there for about I don't know how many thousands of years. It was just recently that the United States came and took it."

That comment, my lord, I think reflects a couple of points. The antiquity and as far as an elder, a person raised as Thomas Wright was, the concept of it being the Government in Victoria, the Government in Ottawa, the Government in Washington, the Government in London, was of equal relevance or irrelevance, and it was the outsider that came. So what he is talking about there is the arrival of course of the non-Indian people.

Such statements, though, of antiquity of many thousands of years were made on several occasions by chiefs who gave evidence of this era.

There are other statements, almost equally direct, to the effect that the ancestor of the wilnat'ahl was the first, or one of the first, to arrive at a place.

Again just the example here was Thomas Wright's speaking of Kisgegas.

> "A...The big bird that is from the heaven sent my grandfathers up here. And it told them to follow the river up to here until they get to the glacier and they had to come back from this glacier because they shouldn't live where it's too cold. That's what the big bird told them...at that time there was nobody that lived up there..."

This description of a very ancient time when it was very cold and nobody else was living there. The third reference or type of reference is surveying the land, putting their mark on it, naming it, putting their power into the land, all speak of a period when areas of land were unclaimed, and are usually made in conjunction with statements of being there first or of joining others already there. These references, especially when they are contained in the formal telling of an adaawk, constitute the validation of territorial ownership and are not made lightly.

References are also made to the "time when they were first claiming the land", as an early period thousands of years ago, during which such claims were still possible. Stanley Williams, Solomon Marsden and James Morrison, those references are only a few of several where this kind of description was given over and over again when talking of this ancient time. Accounts of claiming land --

THE COURT: I'm sorry, Mr. Grant, Stanley Williams Exhibit 446C, that's a commission?

MR. GRANT: Yes. That's volume three of the commission.

THE COURT: Volume three. C means volume three, does it?

MR. GRANT: Yes.

THE COURT: But S. Marsden V. 94, that means volume 94?

MR. GRANT: Yes, of the transcript.

THE COURT: Of the transcript?

MR. GRANT: Yes. The references we used were to volume numbers. And the volume 94, there may be references of course in this section about Solomon Marsden and Susan Marsden, but volume 94 is Solomon Marsden, and around that volume number and Susan Marsden is around 234.

THE COURT: Did Solomon Marsden give evidence around volume 94?

MR. GRANT: Yes.

THE COURT: All right. I don't remember that. There is lots I don't remember.

MR. GRANT: If you're suggesting it seems just like yesterday or --

THE COURT: Yes.

MR. GRANT: Yes, Solomon Marsden's evidence commenced at volume 92 to 96.

THE COURT: All right. Thank you.

MR. GRANT: And that was in May of 1988.

Accounts of claiming land are not restricted to the very earliest period, however, since some areas remained unclaimed until the dispersal from Temlaxam.

So there is still some unclaimed lands afterwards,

but the area I have talked about, we have now put the larger version of Exhibit 646 on the wall, and you can just see the names there on that north central area, for example, of Miluulak, Wii Minosik and the others. They are nevertheless accounts of "surveying" land in combination with accounts of travel over large areas without mention of other people or villages, sharply contrast with alter accounts in which mention is made of passing by or temporarily joining other villages or settlement areas. In these later accounts there are often statements of disputes resulting from overcrowding or clear statements of land subdivided for clan relatives, or made available to another clan.

And of course here we are talking about -- we are talking about here the migration from -- or the dispersal from Temlaxam where you have account after account of meeting others, whereas this dispersal here from the Skeena -- this migration of the people of Ts'ooda and these migration of the people of the Raven, there is widespread dissemination of the peoples from this source here and coming up from the coast, and there is no mention of the meeting other peoples enroute. So that is another indicator of the antiquity.

Now, then there is the references to land as an indicator of antiquity.

Adaawk accounts of the origins or early villages of a wilnat'ahl sometimes include references to a landscape different from today's. These descriptions are sometimes cryptic as, "when it was like spring", "when the land was still young and they believed themselves to be alone". They are sometimes more detailed as when they describe large lakes where there are now none, or the Skeena River and the Gitwingax area as "a small river" that grew bigger over time.

These are sometimes remarkably explicit as in the description of the Kitimat valley as "Kaklaleesala, meaning gravel banks".

And this is from one of the adaawk from that area at the time when Waamis first settled there, the Kitimat valley was all gravel banks along the river, which was visible far up the valley. The references are there given.

Now, before moving to the next era, I would like to just recount or reiterate what we have found has occurred in this ancient time regarding the Gitksan. The socio-cultural institutions in these accounts,

these early founding groups of Frog, Raven, Wolf and Eagle originated either at the headwaters of the Skeena or on the coast. The adaawk indicate the cultural institutions at this time, but they differ according to their origins. Ms. Marsden summarized these institutions.

The essential cultural features that arose at this time included:

The very early pairing of exogamous matrilineal clan groupings. The description that the Wolves and Eagles of Kitwanga would not inter-marry, for example. And she goes on to explain it. And this is from her report.

Secondly, the early merging of coastal groups, identified by spirit ancestor, and northern clan groups, that indicated the importance to the society of maintaining this early form of socio-political organization.

And I am not here in any suggestion suggesting primitive, but an ancient form where you would have the clan groups and the development of clan.

The importance of maintaining group identity from the earliest times, either by spirit-ancestor or by clan designation.

The presence of the limx'ooy in the earliest accounts as an encoding of an event and place important in the early history of the group.

The importance of land ownership, of "claiming" land in the earliest time.

And of course the concept of the adaawk itself dating back to this early period.

So we have here certain of the key components of what you have now heard is the contemporary, the modern Gitksan and Wet'suwet'en society or Gitksan society are reflective in these ancient, ancient stories.

The second section I wish to deal with is the founding of Temlaxam. I am sorry, the founding of the Fireweed.

> "The ancestors of the Fireweed were present in the northern area paired with the Frog/Raven clan probably in the earliest times. Unlike the Wolves, Eagles and Ravens, whose ultimate clan origins may well go back beyond memory, the Fireweed place their creation as a clan in a historical context recording an account of

1 their origins in one of the most famous adaawk
2 in northcoast histories.
3 The ancestors of the Fireweed appear to
4 have been coastal in origin, and like other
5 such groups they moved inland during
6 deglaciation and formed alliances with the
7 people they encountered there. One of these
8 encounters with a group of the Raven people,
9 that's the Raven/Frog, took place near the
10 headwaters of the Nass and Skeena Rivers.
11 There they settled together in villages across
12 the river from each other, allied by ties of
13 marriage, but divided by intense rivalry over
14 wealth, which often took the form of ritual
15 gambling. Quite early in this period, however,
16 the alliance became strained, violence erupted
17 and the ancestral village of the Fireweed, and
18 almost all of its inhabitants were destroyed at
19 the hands of the Raven people."
20
21 Now, there is a couple of points there that -- one
22 is that in this description, as I said, the
23 Wet'suwet'en say they were always there. So we have
24 the Wolf and the Raven, not a description of origin,
25 but in this inset of Exhibit 358-1 you have the
26 creation of the Fireweed, and of course where we were
27 talking, my lord, is up in this area, up in a similar
28 area between the Nass and the Skeena at the area
29 around Lakwiiyip where these events occurred.
30 And then we have the dispersal after these events
31 occur. This situation occurred and was described in
32 evidence by several witnesses, principally by Gwaans,
33 Mrs. Ryan. But -- and the creation of the Fireweed in
34 her evidence in volume 17 is cited there for your
35 reference. This is the account of the young women who
36 survived the defeat of her people and married the
37 spirit and her children became known as the Sky
38 children, returned to earth bringing their adaawk and
39 crest as their grandfather had instructed.
40 In this excerpt and in Ms. Marsden's report in
41 which it's not her words, but it's the words of
42 earlier informants, for example, Herbert Wallace, the
43 description is given in substantially the same way.
44 And just as an aside, my lord, if you look at an
45 adaawk and you see the name Gispewudwada, as on page
46 73, Gispewudwada is the same as Fireweed. It's the
47 coastal name for the Fireweed, and their origin is

described as the same. That's why coastal groups also give this adaawk. But in any event, Gwaans described after describing this adaawk the crests of her house, including the rainbow and the stars and also the crests of Guxsan, the moon crest, and of course the name Guxsan is gambler. That name is traced back to this Ska'wo adaawk.

Now, if you go over to page 74 or refer to the founding of Temlaxam. It appears from the analysis of all of the adaawk and what the chiefs have said in evidence that the -- there were groups in the Temlaxam area already, but it appears also that the Fireweed are often referred to as the founders of Temlaxam.

Now, let's be clear about Temlaxam. On page 75, as Ms. Marsden explains from her review of all of the adaawk, it's that Temlaxam is a broad area, variously described, but it ranges some people say as far as Kispiox to Kitsegukla and in between, but focused primarily to the west of Gitanmaax. And of course your lordship flew over that area and recalls the flat in the area west of Gitanmaax, but it is spread wider than that.

THE COURT: We did more than that. We drove through it as well.

MR. GRANT: And we drove through it. That's right. That's right. But the concept includes going up as far as Kispiox on that road, as well as down as far as across from Kitsegukla.

Now, these on page -- Emma Wright, this is a -- gave a description of this adaawk in which the four brothers built -- the last of that quote:

> "... built four houses exactly like the houses they had left on the Nass River. As they became larger and powerful, also the other clans began to grow."

Now, the villages or settlement areas, joined or founded at by these two groups, are graphically displayed in Exhibit 358-1, and that's the overlay map and on the inset.

And you see, my lord, if you have it, you see in the inset, you can see Temlaxam. I'll show it on this. You can see Temlaxam here, which is a -- the Fireweed clan being the red dispersed, and came down there. Also the Raven clan dispersed down there. But you can also see Gitangasx, you can also see Baskyats'inhlikit near where Kuldoe is now. It's just

up of Kuldoe, Kisgegas, Dizkle. And this map is a reflection of those communties, those places that became more apparent in this era of the descriptions of adaawk. And these people migrated, of course, down to the Nass as well.

Now, these descriptions in this migration, there is many references to the antiquity of Temlaxam. It was a large and ancient village or settlement area, as Antgulilibiksxw described it on page 76.

> "A It's a village and I was told it was on both sides of the Skeena River. It was so big until it gets to the Hazelton where the junction of the Bulkley and Skeena River is ... It almost get to Kispiox too.
> Q Do you know where Carnaby is on the Skeena River?...
> A That's part of the -- they call it a city it's so big."

Carnaby is of course downriver, just upstream of Kitsegukla.

When asked about the time period of Temlaxam, Mary Johnson -- Mrs. Johnson replied:

> "A...I was told it was happened what they call la'ooy. Grandmother, great-great grandmother used to pronounce it whenever she talks about things...Ahla oo'y, that means thousands and thousands of years ago. That's the reason why they also call the dirge song Limx'ooy. See how the word is the same...these songs are composed thousands and thousands of years, and passed onto many generations."

Now, what's significant at Temlaxam is the evolution of the socio-political and cultural institutions resulting from the creation of the Fireweed and the establishment of Temlaxam. And this was reviewed extensively.

I am just going to go over to page 77 for one part. And this is a synopsis of what the adaawk reflects.

> "At Temlaxam a people was founded in the fullest southern coastal sense,"

THE COURT: Who is it --
MR. GRANT: This would be out of the report of Mrs. Marsden.
THE COURT: Yes, thank you.
MR. GRANT: Exhibit 1050 is the Marsden report.
THE COURT: Thank you.
MR. GRANT:

> "Here we find the wedding of two cultures. As the Fireweed clan, the southern coastal culture comes into its own right within the overarching northern inland system. Here not a single semi-divine ancestor, but several, established houses embodying the powers o the Sky itself to protect and sustain their people. Here the crests painted on the house fronts not only marked a supernatural power and a moment of cultural creation but did so within a span of history that was already begun. With the creation of the Fireweed no new cultural elements were created, but previously latent or underveloped elements combined in such a way as to create a new and powerful integration of elements which were to make them a major factor in Northcoast history."

So what you have at Temlaxam, prior to, of course, the dispersal, is you have the clans, all of these features we have already had. Also what you find is the crests and the division of the Fireweed into the house groups with their own crests. And that was reflective in Hanamuxw differentiated between her crests or Gwaans and Hanamuxw crests and Guxsan's crests.

Section 2 deals with the adaawk, that the adaawk record in a chronological order of the wilnat'ahl. These often involve in one way or another the relationship of the wilnat'ahl with their lands. Adaawk also record historical events that result in significant societal and cultural change.

This is one of the easiest aspects of the adaawk for us to understand, is that it is major, major events they record. Of course if there is hundreds or thousands of years of stability, as in the chronology of the Men of Mediik and Wars of Mediik becomes apparent, there is not a lot to talk about in a conventional historical sense. So there is not a large adaawk about those periods of stability. It may

be in one line. Similar to our society of the hundred year war described as a hundred year war, and the fact that there would have been peaces in between, of course a lot isn't made of that when you look at history in that sense.

The law of respect, and this is the foundation of course for what we say is the fundamental constitutional or underlying principle of the Gitksan and Wet'suwet'en system. The law of respect for the animal world is a fundamental law for the Gitksan and underlies their relationship with their territory and animal species there. The adaawk of the Fireweed clan chronicle three events that occur over the span of many generation of Temlaxam in which the laws are broken and a natural disaster follows. In each case, it says Temlaxam, the Temlaxam people it should be, learn new rituals of respect and new hunting or fishing practises, and in each case a crest and limx'ooy commemorate the event. The first of these events was described in evidence by Xhliimlaxha, Martha Brown, and the extract from her evidence is described there. This, of course, is the famous mountain goat adaawk that happened on Stekyooden mountain.

And I am not going to at this point review that, but it is present, and of course, my lord, it's also referred to in Ms. Marsden's report at pages 111 to 113, where she gives other references to the mountain goat adaawk, and there are many of the Beynon accounts that are of this mountain goat adaawk. And of course Gwaans, Olive Ryan, also testified to this adaawk.

What I would like to spend a few minutes with though is the Mediik adaawk. And here I say this adaawk happened approximately 3,500 years before the present. This adaawk of the Mediik or the Mediigemtsa'wee'aks is about the young maidens at Seeley Lake showing the disrespect for the fish there, and it was described in evidence by Mary Johnson and Antgulilbix and Gwisgyen, Stanley Williams.

The Mediik crest and limx'ooy both of which are referred to -- I'm on page 81, my lord.

By Gwisgyen in his evidence were given as a result of this adaawk.

In considering this evidence there are a number of features that should be taken into account. Firstly, the oral histories, as given in evidence by the Hereditary Chiefs. Mary Johnson described the Mediik

Adaawk:

"After all the fishing is finished and all hunting for -- mountain goats and groundhogs, and the mountains and all the berry-picking is finished, then they got nothing to do, so the maidens would go and make the camp at the lake, at the foot of Stekyooden..."

She identifyed the lake at which these events occurred at Seeley Lake.

And she then goes on to describe the event of the Mediik.

"They left the lake and the people watched where the noise comes from, and they've seen some great trees were throwing about the top of the rest of the tall trees, and they just stood there wondering what happened, until it comes - there is a little stream that runs from the lake and goes into the Skeena River, and that's - and this thing followed the little stream, tramping down the trees. And finally they see this great, huge bear, grizzly bear that they have never seeen before. And the chiefs send messengers throught village to - after warriors, to have the warrior ready, which they did. And not long after the messenger went out, all the warriors came out with their spears and arrows and bow and arrow, and hammers that are made with stone, all those from weapons that strong young men use. They all come out barely to meet this grizzly bear. And he gets to the water and swam across and - and they went in front, they all went in front of him, but he is, he is a supernatural grizzly bear. They call him Mediik, and whenever they are shot him with an arrow, the arrow flies way up high instead and fall back down again and it hit the warriors, and they were wounded. And this grizzly bear tramped them until they were crushed to the ground, and goes throuh the village and kills a lot of people. And after that he - he came - he turned and go into the water again, follow the stream where he came from the first place. So the brave warriors went to - to see where he went, and it goes

1 into the lake, disappeared into the lake."
2
3 Walter Wright in the Men of Mediik describes the
4 same adaawk, and the Men of Mediik I will come back
5 to, because of the interesting way in which the Men
6 of Mediik came to be, that is the written book. But
7 he says, and just that middle paragraph:
8
9 "On the far shore a creek emptied into the
10 river, the creek that ran from the Lake of the
11 Summer Pavilions. On the south bank the giant
12 cottonwoods made a fringe of brilliant green.
13 Behind them the primeval forest of conifers of
14 a more sombre hue stood rank on rank. Fear
15 came into this peaceful scene one day. Ominous
16 events were taking place far back in the
17 forest. These soon attracted the atention of
18 the people. As they watched they saw great
19 trees thrown high above the top of the forest.
20 The disturbance came nearer. Some gigantic
21 fore was coming down the valley of the creek.
22 As it came the forest was torn apart, trees
23 uprooted, trampled down. A wide gash in the
24 greenery told of its passing.
25 Closer and still closer to the river came
26 the turmoil. At last a bear came out on the
27 river's margin. A bear - but it was unlike any
28 bear the people had ever seen. A giant grizzly
29 bear; one capable of uprooting trees; of
30 snaping giant trunks as though they were blades
31 of grass. The bear paused and glared at
32 Tum-L-Hama. Then he moved down the bank and
33 into the river..."
34
35 And then he goes on to describe the battle and the
36 bear returning to the forest.
37
38 Isaac Tens, adaawk number 25 from the --
39 it's Exhibit 1047. I believe it's the Raven clans
40 adaawk. They got back to Temlaxam.
41
42 This is the maidens.
43 THE COURT: Whose adaawk is this please?
44 MR. GRANT: This is Isaac Tens. Isaac Tens was Nikadeen.
45 THE COURT: Thank you.
46 MR. GRANT: Tens is a name of Nikadeen. And this is reflected
47 in the Temlaxam, the land of plenty, which is the

collection of the Fireweed clan adaawks by Beynon. And when it says number 25, it's in that -- it is the 25th adaawk in that sequence. And this of course isn't the summary by Barbeau, this is what Isaac Tens said.

> "They got back to Temlaxam which was now a village four miles long. It was the home of all the people who were saved from the flood. The berries were again growing and the women went to gather them. These women were the sisters of several brothers."

And he names then.

> "Among these women were members of their houses. The women, the sisters of these men, got lost. So the men went in search for them. They arrived at a lake, and found the place where they had been picking berries. But the lake had risen considerably, and they felt sure that their sisters were drowned."

And then this version of the adaawk, that is Isaac Tens, describes how the Mediik engages in battle in the lake which rises again when the Mediik is slain.

Now, in order to assist Your Lordship in analyzing the adaawk and appreciating the historical component of the adaawk, something was done in this case that has never been done before. Dr. Rolf Mathewes, one of Canada's leading paleocologists and fossil pollen analysts, gave evidence of analyzing what, if anything, had occurred in the Seeley Lake area.

The events recorded in the Gitksan adaawk pertaining to the Mediik can be interpreted as related to a momentous physical event which occurred during and in the aftermath of the Chicago Creek debris avalanche, adjacent to Seeley Lake southwest of Hazelton.

Modern accounts of debris avalanche and debris flows attest to the impressive, often overwhelming aspects of these events. If the Mediik adaawk do record the Chicago Creek avalanche and torrent as part of what happened, then they are testament to events which occurred about 3,600 B.P.

Dr. Mathewes and Dr. Gottesfeld independently of each other presented evidence which strongly suggested

debris avalanche occurred, which blocked the outflow of Seeley Lake, caused a large rock and mud disturbance down Chicago Creek and caused a distinct inflow of clay sediment and a disturbance of plant life in Seeley Lake. Organic matter relating to this event was radiocarbon-dated by Beta Analytic Inc. for both experts. The dates -3380 +/-90 B.P. and 3580 +/-150 B.P., both within the range of carbon 14 error, are in effect contemporaneous.

Now, I refer to and review Dr. Mathewes' sources and Dr. Mathewes' explanation on page 85. But on page 86 Dr. Mathewes concludes as follows:

> "...I would feel very strongly that this clay band was formed by a sudden rise in water level at the time of around 3,380 years ago, which caused mineral matter to be washed into the lake and deposited as part of clay one."

At the time of the deposition of this clay band there was the greatest residue of terrestrial plant debris of the whole core. Dr. Mathewes concludes in his evidence:

> "This suggests that something was bringing a lot of plant debris and detritus into the lake, which settled to the bottom, and that again is consistent with a landslide disturbance of the water."

He found that there was the highest occurrence of alder immediately following the clay deposit one. This is consistent with the landslide because alder grows on the type of disturbed soil surface that a landslide would generate.

He also concluded there was probably no ice covering the lake when this disturbance occurred, as a disturbance appears to have cut loose shoreline acquatic plant life. If the surface had ice protection at the time of the landslide, this would not have occurred.

That statement, of course, is consistent with the visual description of the women going up either after the berry picking or -- and of course they were misusing the trout, the bones of the trout that they had caught, or at the time of the berry-picking in the Tens version. It's consistent with the time of the

year that it would have been at the time when there would have been plant life there.

Dr. Mathewes concluded why there was an abundance of acquatic plant life immediately above the clay deposit:

> "One of these could be the question we were discussing about the possibility of plants breaking up from the shallow waters and moving into the middle of the lake. And another possibility is that the clay itself, or this mineral matter washed in to form this clay band one, had a fertiizing effect on the lake."

Dr. Gottesfeld, a geologist, soils analyst and geomorphologist also gave evidence. And he was qualified to talk about the nature, age and size of landslides in the Stekyooden region and in particular the nature, age and size of the debris lobe at Seeley Lake.

He concluded that the western lobe of the Chicago Creek landslide dams Seeley Lake. The soil on this slide is Mid, Holocene, which means it is between 3,000 and 8,000 years before the present.

He then took from a test pit 14, a sample which was dated at 3,580 years before the present.

Dr. Gottesfeld concluded:

> "I believe that the date from the edge of the Seeley Marsh, that is one at No. 14, is more accurate, and that that date of 3,580 dates a time within a few years of the occurrence of the landslide, I think within a few years."

This was the largest single event in the map area. That is the area of his study. And he concluded the event dammed the outline of Seeley Lake and raised the water level two to three meters.

And of course Dr. Gottesfeld gave you his description of what he perceives he would have seen if he was standing at a safe point watching this debris fall. And of course his description is very similar to the type of description given by the other -- given by the adaawk.

My lord, I want to make a note for Your Lordship, that at the end of Dr. Gottesfeld's evidence, at volume 145, page 9241.

THE COURT: Line 45?
MR. GRANT: Yes.
THE COURT: Page?
MR. GRANT: Page 9241.
THE COURT: Thank you.
MR. GRANT: Your Lordship, after Dr. Gottesfeld evidence was completed, asked some questions, and you asked:

"Q Is it your evidence that part of the Chicago Creek slide took place 3,500 years ago?
A I believe that it did very shortly before that date of 3580.
Q And this was based largely, or entirely, upon the radiocarbon analysis of organic material taken from -- well, I'm sorry, from radiocarbon analysis of two samples?
A Correct. Well, the physical presence is based on looking at it on the ground.
Q Yes.
A The dating is based on two samples which both provide minimum dates.
Q Yeah.
A But I believe the older date by the nature of the context, that is the nature of the sediment that's enclosed in it, looks like the material washed out at the end of the debris slide. I think it's very close within a year or two or three of the age of the slide.
Q You think the older date is the more reliable one than the newer date?
A Yes. I have a strong feeling that that date, that from the context of the older date that it should be very close to the true age, and that the other material could well be thousands of years younger.
Q And is it your evidence that the slide caused a damming or backing up Chicago Creek and that that in some way brought the clay deposit to the underbed of Seeley lake?
A I think it's very likely. As I read Dr. Mathewes' report the lithology of his clay pan one match the lithology of the clay deposit that I dated from among the boulders at the edge of the Seeley swamp. I think it is the same layer.
Q What is the mechanism that causes -- that explains the presence of clay pan from damming

of the creek and the possible raising of the water level?

A Well, what I would imagine happened was there was this great bulge, this big massive deposit came in and filled the valley, that Chicago Creek was then running all over the deposit, or quite disorganized fashion aross the top of the deposit, numerous channels washing out the fine crushed rock material from among the boulders and making the lake white with white ground up granite material that came from the debris -- from the debris flow and placement, and then that clay and silt would be distributed throughout the lake and gradually settle down and be incorporated in sediments throughout the lake.

Q That theory then depends upon Seeley Lake and the blockage being relatively at the same elevation?

A Yes, but that was certainly so.

Q And you say that is so, is it?

A That is so. That debris material now forms the edge of the lake. And you can see the present Seeley Creek cuts through several meters; two, three, four meters of the little ravine cutting across that debris lobe.

Q So you say the back-up from Seeley Lake, that the back-up at the dam site spread back upstream, as it were, to Seeley Lake?

A Right. So Seeley Lake may well have extended to that place in the past. I don't have a record of the swamp -- the antiquity of the swamp right there. If it did not already exist at the moment the slide was in place or within a few weeks the lake level would have filled up and flooded and started overtopping the debris deposits and then Seeley Lake would have been considerably enlarged both on the east side and on the west side.

Q And on that theory I suppose one should expect to find a clay band not just under Seeley Lake, but throughout the whole floodplain area?

A Yes. Yeah, if it was not removed by some subsequent erosion or event it should be a marker horizon to the interface."

Now, Dr. Gottesfeld and Dr. Mathewes, their

1 description, and Dr. Gottesfeld refers to his dating,
2 and his event being the date as Dr. Mathewes. But
3 they did independent research. You couldn't, as I
4 believe Your Lordship commented at the time, you
5 couldn't get further removed from an anthropological
6 analysis of an adaawk, than to have this kind of
7 scientific dating. The final reference is:
8
9 Q Did you find clean pan in any of your test
10 holes?
11 A There was more than one -- well, I mean,
12 this deposit which this piece of wood came from
13 which is dated is a silty gray clay, and I
14 think that is the band. I also made another
15 hole within a few metres of it looking around
16 for a sample, perhaps two other holes, and that
17 layer was present there too.
18 Q A concave band?
19 A Oh, yes, right at the interface of the
20 debris slide and any overlying lake sediment."
21
22 My lord, those questions from Your Lordship at
23 that time crystallized the conjunction between
24 Mathewes' and Gottesfeld's work, in terms of the
25 dating, and of course it's consistent with the adaawk.
26 It's consistent with the Mediik adaawk given by Mary
27 Johnson, Walter Wright, Isaac Tens and Stanley
28 Williams. It was of significant event in the history
29 of the Gitksan at the village of Temlaxam. This
30 analysis was done not from some doubt that what the
31 Gitksan chiefs were saying was true, but as
32 corroboration of the adaawk in a way that the Court
33 could appreciate the veracity of the history of the
34 adaawk.
35 The third event at Temlaxam took place at the
36 close of this era of peace, and it is referred to
37 further below, but it is the -- described by Mary
38 Johnson, Martha Brown and Stanley Williams, and it
39 deals with the great snowfall.
40 I am moving into section three now, my lord. I
41 don't know what you --
42 THE COURT: Well, I am in your hands, Mr. Grant. Whatever you
43 want to do.
44 MR. GRANT: I'll deal with the first part and get up to the
45 Temlaxam area. That's fine.
46 THE COURT: Thank you. As you know, I am quite content to sit
47 longer if you wish.

MR. GRANT: Yes. I think that we'll be -- we wanted to see some sense of flow, and we'll come back to you tomorrow with that.
THE COURT: Yes.
MR. GRANT: The events recorded in the adaawk that take place in the same era, if taken together, can depict settlement patterns and intra and the inter-group relations. At this time the Temlaxam era we are calling, there were three main areas inhabited by the Gitksan, the northern area, Temlaxam, in its broadest sense, and the west.

And of course there was also Dizkle in this period of time among the Wet'suwet'en, which I'll come back to later.

The summary with respect to the west and the north is reflective of the evidence, but in the north at this era they ranged over large territorial areas. Like the ancestral Tahltan, among others, they appear to have had a centralized location where they regrouped annually after which they named themselves. For the northern Gitksan it was Gitangasx. Unlike the Tahltan, however, the northern Gitksan had significant and stable villages elsewhere in the north, at Blackwater, Kisgegas, Galdo'o and Ts'imanluuskeexs. Luuxoon and his relatives are from Gitangasx. Luuxoon, of course, is a Frog chief at Kitwancool today.

And the summary there refers to, among other chiefs who are plaintiffs from Gitangasx, Miluulak, Wii Minoosik, Haiwas, are connected or the same house group today.

> "The Wolves said to be from Gitangasx are now considered the Kisgegas and Galdo'o Wolves, such as, for example, Gyolugyet, while the Fireweed from there, Wiigyet, Geel, Dawamuux, Xkyadet are those who remain in the north after the war there between the Sky Children and the Raven people.
>
> That these groups are often identified with two places of origin indicates one or both of two situations. Gitangasx would well have been originally like Dehldan, a central or meeting place where groups that spent much of their time hunting and fishing on their territories gathered seasonally. In another era, Gitangasx was probably a village, perhaps very large and

1 centralized, spread out along the flat there.
2 This village site lies halfway, almost exactly,
3 between the central fishing and hunting
4 villages of the Blackwater Frog clan, and that
5 of the Galdo'o Wolves to the east. The
6 Fireweed were both somewhat to the south of the
7 wolves and to the north of the Frog clan is
8 presently owned territory is an accurate
9 indication."
10
11 THE COURT: Whose --
12 MR. GRANT: This is the Marsden report.
13 THE COURT: This is Marsden again?
14 MR. GRANT: Yes, this is Marsden. Sorry, but when we were --
15 now, John Brown, Kwiiyeehl, who said in the 1920's
16 that Gitangasx was a Gitksan village even older than
17 Temlaxam, and those interviewed on the subject by
18 Emmons between 1908 and 1910 also discussed the age of
19 Gitangasx.
20
21 "Kit an gash 'People of the Place that Tastes
22 Bad' said to have antedated most of the other
23 villages, once on the divide between the
24 headwaters of the Nass and the Skeena just this
25 side of the Groundhog country."
26
27 Now that 1050 is an extract from the Marsden
28 report, but that is a reference, as is many of the
29 materials in the report are references to other
30 sources. That particular reference is from Emmon's
31 own field notes.
32 Now, I would like to close with the -- looking at
33 what you have in the Gitksan socio-political
34 institutions that are demonstrated in this era. You
35 have feasting, which is demonstrated through the
36 adaawk. You have Ksiisxw, that should be "ts",
37 Tsiisxwq or peace settlements which are demonstrated
38 through the adaawk as a result of the wars that have
39 occurred in this early time. You have the Limx'ooy.
40 You have pole raisings, which are described, and you
41 have crests.
42 The northern Gitksan at this time had active and
43 peaceful relations with their neighbours.
44
45 "In summary,"
46
47 And this is Ms. Marsden's summary.

"There were two large groups north of the Gitksan and Temlaxam era, the Tahltan and the Lax'wiiyip. These two groups were probably loosely allied at this time. They were both dominated by the Raven clan, who were then paired with the Wolf (Eagles). Only one, the Lax'wiiyip, shared their boundary with the Gitksan, primarily with their relatives of origin, the Blackwater and Bowser Lake Frog clan, and possibly at this time with their other relatives or origin, the Wolf(Eagle)/ Fireweed people."

I was going to move into -- well, I can just deal with Temlaxam. The Temlaxam area, my lord, is an area that there are a number of village names appearing in the adaawk. Descriptions of Temlaxam emphasize the density of population and frequently refer to annual harvest of fish, hunting of goat.

In the Temlaxam area the Fireweed and the Wolf were paired with the Frog/Raven, which combined for the first time the northern Frog/Raven with an eastern group said to be from Babine Lake and to identify themselves by the Loon. And that's reflected on the inset on Exhibit 358-1, the atlas, and you can see the inset -- I'm sorry, it's on the larger map. It is the green arrows coming in of the inland peoples moving in towards Temlaxam.

So socio-political and cultural characteristics at Temlaxam in addition to those already discussed included the first salmon ceremony demonstrating the fundamental law of respect, the relationship and respect for the salmon, and the large houses with painted house fronts depicting the crests, the dock or excavated houses, and the increasing importance of the feasts. The whole mountain goat adaawk of course refers to it in terms of the feast. The socio-political institution of the Gitksan at Temlaxham were influenced by their neighbours, the Wet'suwet'en as were their spiritual beliefs and practises.

And of course, without going through that quote, is that the evidence of Dizkle and the adaawk demonstrate a proximity and a connection between the Wet'suwet'en and the Gitksan at this time.

My lord, I am now moving into an area of

population shifts and dispersal starting at page 97.
THE COURT: Want to adjourn now. All right. Thank you.
THE REGISTRAR: Order in court.
THE COURT: Want to start at ten o'clock?
MR. GRANT: That's fine.
THE COURT: Thank you.
THE REGISTRAR: Order in court. This Court stands adjourned until ten o'clock tomorrow.

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
OFFICIAL REPORTER
UNITED REPORTING SERVICE LTD.