April 20, 1990

(PROCEEDINGS RECONVENED AT 9:30 A.M.)

THE REGISTRAR: Order in court. Supreme Court of British Columbia, this 20th day of April, 1990. Delgamuukw versus Her Majesty the Queen at bar, my lord.

THE COURT: Mr. Grant, I wonder if you would be good enough to convey my compliments to Mr. Jackson and tell him that I spoke with Madam Justice Southin this morning and I think there was a suggestion of criticism to all of us that we didn't know the source of the year 1189, the time against which the memory of man runneth not to the contrary. She made it clear that she thought we should all know that it was the death of Henry II and the commencement of the reign of Richard II which had nothing whatsoever to do with the fixing of that date, but rather it comes from the Statute of Westminster of 1275 which, as you will recall, was the date when it was decided that certain real property actions should be commenced, by the beginning of the reign of Richard II who followed Henry II. And it is for that reason that 1189 was chosen. It had nothing do with the death of any king, and she thought we should all know that.

MR. GRANT: I appreciate that, my lord.

THE COURT: Thank you.

MR. GRANT: Focusing on time immemorial in my aspect of the argument, I always appreciate that.

THE COURT: She thought at home we should be speaking of little else.

MR. GRANT: My lord, I was at, last night, at the institution of the feast. But I have provided you --

THE COURT: What page are you?

MR. GRANT: Well, that was at page 274.

THE COURT: Yes.

MR. GRANT: Because of an approach of -- you may note that when I dealt with kinship relations, I did not deal with the village. And after page 61, this insert should go in, that I provided you, and which is our analysis of the village. And if I may just stop there for a moment. It is out of sequence in terms of oral presentation, but I felt that I should deal with it now rather than just leaving it entirely to reply.

THE COURT: So this will be -- in effect, this will be 61-A or something like that?

MR. GRANT: Yeah, 61-A.
THE COURT: All right.
MR. GRANT: And I will have it incorporated onto the disk accordingly.
MR. PLANT: My lord, that raises a matter of some interest to us, which doesn't have to be dealt with now, but I would hope that somehow or other when this appears on the disk, it won't disrupt the pagination.
MR. GRANT: The page -- I appreciate -- your lordship already indicated that you were making your notes on the hard copy and I thought it would be problematic if all the pages changed, so I think I'm going to arrange that it will have 61-A following, and the pages will not change.
THE COURT: Yes, all right. I do not have the diskette for this section yet, do I?
MR. GRANT: No. What we've been doing, of course, is if there is an erratum or other things, citations, we've been taking them out. For example, I intend, and what I will do is put in substitute pages for my friends and your lordship. There were two references which I didn't argue were admissible, that is reference by Tonia Mills, I believe, under one of the areas yesterday, and by Dr. Daly, which my friend raised was objectionable because they were individual references. And I -- those pages I intend to substitute the reference from the witness to avoid that kind of problem. I would give you substituted hard pages, pages of that as well, my lord.
THE COURT: Yes, all right.
MR. GRANT: So the disk will -- I thought I had caught all of those when I had reviewed the summary, but apparently I missed those two.
MR. PLANT: Could I just add to that, that we are operating on the assumption that the final argument of the plaintiffs consists of what we've called here the hard copy as it's been added to from time to time. The transcript, obviously, isn't complete because Mr. Grant is referring to parts of his written submission and elaborating on other parts, but it's -- well, I guess it would be the combination of the transcript and the final written argument, as opposed to the disk -- the diskette.
THE COURT: Yes. I should think that the diskette is no more than an aide-memoire of what was the basis for the oral argument.
MR. GRANT: Right.

THE COURT: Your argument is what counsel says, and I think the hard copy, the final copy.

MR. GRANT: And that's why I say that if there is something that I see is a significant -- where in this copy there has been a reference to something that really shouldn't be here, like hearsay, I would provide you with a substitute page or a page to go in at that place, that's all.

THE COURT: Yes. All right.

MR. GRANT: And the other point is that I've also mentioned and in some cases there should be a citation and I said I would provide it, and that's what I have done on the disks and the earlier parts. The citations are there, but the -- in any event, my lord, I would like to focus now on the villages.

There has been a suggestion made by the provincial defendants in their argument -- and this is at part four, section two, page 20, paragraphs 53 and 54 -- that the central organizing unit of the Gitksan and Wet'suwet'en is the village and, to use their words, as presently constituted by bands under the Indian Act. They also suggest in this section that the majority of the plaintiffs reside in one of the present villages. With respect, my lord, both of these suggestions are misleading. For both the Gitksan and Wet'suwet'en, the plaintiffs say the villages are important places. They are where the people congregate and live together based on access to the territories. Both present villages as well as old villages such as Kuldo, Kisgagas and Anlagemsimdax --

THE COURT: A-N-L-A-G-E-M-S-I-M-D-A-X.

MR. GRANT: -- are located at prominent fisheries.

And you may recall, my lord, Anlagemsimdax is the village that was slightly downstream of Kisgagas on the Babine River. And more will be said of that in terms of the historical record by Mr. Adams this afternoon.

The villages of the Gitksan and Wet'suwet'en, both traditionally and today, are places of residence where the basic kinship groupings, the Houses have long resided seasonally and carried out group-to-group, socio-political interaction.

But my lord, the village is not the central unit of organization. This becomes patently obvious when one considers who is Gitksan. A Gitksan person is a member of a House and a clan by virtue of birth or adoption. Every person born of a Gitksan mother, or

adopted by a Gitksan, has a House. The -- for example, the former Amagyet resided in Vancouver for several years until his death. He was brought back for burial to Kispiox. There was never any suggestion that because he resided in Vancouver he was not a member of a House or a Chief. And that description was given by Mrs. McKenzie in here evidence, my lord.

From the perspective of Gitksan organizational criteria, some of the persons of Gitksan origin referred to by Solomon Marsden in evidence, who married out of the Gitksan area and resided on the Nass, among the Nishga, retain Gitksan citizenship and are actual Gitksan House members of Kitwancool and Kitwanga village origin. Others are Nishga adoptees and have ceased to be Gitksan. And this is the explanation in that citation by Solomon Marsden, that he explained.

Another example is Art Matthews Jr. who testified that his wife and children are Coast Tsimshian even though they reside in Gitwangak. Mr. Matthews testified his wife and children will be adopted by his father's kinsmen so that they will be able to enjoy full Gitksan citizenship. In this case, they will not be Gitksan -- Gitwangak citizens because Art Matthews Sr. is a Frog clan Chief whose House is located in Kitwancool, but Mrs. Art Matthews Jr. and her children will continue to reside in Gitwangak.

Therefore, you can see in that example, that when they -- that presently they are not Gitksan, they have no Gitksan rights. When adopted, Art Matthews Jr.'s children will be Gitksan, but they will be Gitksan from the House of Art Matthews Sr. from Kitwancool.

And that's a very interesting juncture because you see there, that although Art Matthews Jr. is a plaintiff in this action, Art Matthews Jr.'s children are not.

Now, my lord, the village is thus the on-the-ground place of residence: it is not a unit of social organization. As I explained earlier, the units of social organization remain the Houses and their wilnadaahl extensions -- that should be "d" there -- to the level of the clan. The Houses have indigenously been located near points of optimal salmon fishing along the river systems of the territories. The Gitksan Houses rooted in a specific village own and control territories contiguous with one another. Now that explains, my lord, that much

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was made of the "Kitwanga land claim" that was commenced and aborted almost immediately thereafter. But that map was tendered by the defendants. What it was, was the House groups of chiefs of Gitwangak, but it wasn't -- we don't say that was properly constituted as a band, because it was the House chiefs.

Now, the Gitksan Houses -- the Wet'suwet'en focal fishing locations at Moricetown is some distance from many of their House territories. Consequently, their Houses and clans had additional seasonal settlements out on those territories. Evidence has been presented as to the types of houses and totem-poles located on Wet'suwet'en territories. And you may recall that the evidence such as, I believe, Johnny David, if I recall rightly, and Basil Michell, was that there were totem-poles actually on their territories. This contrasts with the Gitksan who have their totem-poles in their central villages. Still, the Moricetown village remained the focal point where inter-House and inter-clan business was conducted, especially during the summer fishing season.

Now, my lord, some of these villages have changed locations at different points in history. You have heard adaawk and archaeological evidence of changes of location, as well as historical, ethnographic and lay evidence as to the relocation of the Wet'suwet'en at Hagwilget following the rock slide about 1820. Now, I want to emphasize here, my lord, there is no suggestion in the evidence that Moricetown was abandoned at that time. The people moved up and intensified fishing at Hagwilget but Moricetown remained a village. And I say that here because I believe -- I believe it was the federal defendant's, in their argument, suggest there was an abandonment at Moricetown. That's either of the defendants, but I'm pretty sure it's the federal defendants.

Similarly, the northern Gitksan village of Kuldo was established by people from further north at Gitangasxw. Kuldo later moved to New Kuldo. These moves occurred in pre-European or pre-contact times. Today, no one lives at Kuldo although the regeneration of this village and that of Kisgagas -- which is utilized today for winter trapping by a few, and by many for summer fishing -- is contemplated by Kuldo and Kisgagas Houses, whose members now live in other villages. And you heard evidence from Pete Muldoe

Submissions by Mr. Grant of -- of him going to Kuldo and using the fishing sites there, and I believe it was his -- if I remember rightly, his nephew or his grandson who was going there now on a seasonal basis.

It is quite convenient for the defendants, my lord, to utilize the concept of village as the central organizing unit. The reason for this is that -- because the defendants claim the villages are transitional. For example, 50 years ago, there was a large active community at Kisgagas.

Despite the present depopulation of these village locations -- that should be northern village location, my lord -- all of the Chiefs and House members from Kisgagas and Kuldo retain their House membership, their clan membership and recognize that their territories are located near Kisgagas and Kuldo, demonstrated on the map. They remain socially sanctioned although Kuldo and Kisgagas Houses, because it is the lands of Kisgagas and Kuldo which legitimate their House rights in the society at large. The fact that they now only commute to Kisgagas by 4-wheel drive and, in the winter months, by snowmobile, does not lessen their House membership, their clan membership or their exclusive possession of their territories near those villages. My lord, this was made patently obvious when Westar decided to cross the Babine River and commence logging operations on the Kisgagas chiefs north of the Babine. The style of cause of that action and the claim is that those chiefs, those Kisgagas chiefs came together and sought the relief of this court to protect the territories while they were in the process of seeking the declarations in this particular action.

This relationship to the territories was dramatically explained by Mrs. McKenzie. She explained how Gyologyet has moved from Kuldo to Kispiox. The Kispiox chiefs accepted Gyologyet at Kispiox. However, unlike special arrangements made in earlier times for Geel and Wiigyet of Gitsegukla, nobody moved aside to make room for the Kuldo chiefs at their table. The Kuldo chiefs have their own table and seat in the feast hall. And I'm thinking here of Luus and Gyolugyet, the Wolf chiefs. Mrs. McKenzie explained that her pole could not be raised in Kispiox or Gitanmaax. Her pole remains in Kuldo. When Gyologyet raises another pole, that pole will be at Kuldo. And that pole is, of course, photographed in

The villages are the place where the chiefs signify their ownership of the territories through the raising of the poles. My lord, the federal defendants have suggested the "abandonment" of Kuldo implies that the people have abandoned their territory. The movement of these Kuldo chiefs to Kispiox was, in no sense, an abandonment of their territory. Right up to today, chiefs or House members go to Kuldo territories. And I've already referred you to Pete Muldoe's evidence with respect to that.

In other words, although a chief may be considered to come from a particular village, the village locations are, over the span of history, relatively transitional. Old Kuldo can move to New Kuldo. Within 20 years there may be another New Kuldo at a different location in the area. However, Gyologyet, her House and her territories remain constant. The members of her House know they are members of the House through the history and the custom of the matriline. This unit of social organization is constant. It has existed long before contact and continues today. And I ask you to take that into account when you hear what the province and the federal defendants say about villages.

Now, moving into the institution of the feast, at page 274, and I would like to just introduce the concept -- or concept which you are very familiar with.

THE COURT: I've heard of it.

MR. GRANT: That's good.

As I was reviewing this, my lord, I couldn't help but thinking how much easier it would have been and how much shorter it would have been if, during the time of the viewing, there had been an occasion for you to observe a feast. But, one of the things I think is important, because of some of the -- tie back to what Mr. Jackson was saying, was the -- for you to keep in mind, of course, that because of the nature of the Inuit system, the evidence you've heard of the institution of the feast, no similar such evidence would have been presented before Mr. Justice Mahoney because the Inuit do not have that feasting system. And, of course, that's an aspect of Gitksan and Wet'suwet'en society which is unique when contrasted with a group such as the Inuit. The Inuit have institutions, I'm not suggesting they don't, but they

Submissions by Mr. Grant certainly don't have the feast complex or the feast institution.

Now, my lord, the feast is the central institution of the Gitksan and Wet'suwet'en society. And it's been referred to as a kinship institution through which ongoing relationships between local matrilineal kin, both inside and between societies are legitimated.

I believe in this case I just refer to the characterization of Dr. Daly, who, I submit, that his Chapter 8 of his report is probably one of the most detailed analysis of the Gitksan feasts that's ever been written.

He characterized the feast in this way:

> [It] is a multi-faceted ceremonial institution in which through the public giving and receiving of objects, relationships that simultaneously have to do with law, morality, kinship, economics, politics and the psychic and spiritual, are reaffirmed according to style and tempo of the Gitksan and Wet'suwet'en cultures. This is the tempo of nature and society, by which one generation succeeds another, the tempo according to which the lands and fishing sites, the names, crests, histories, laws and traditions of the two cultures are legitimized for yet another generation.
>
> Holding a feast allows a House group to settle its affairs, repay its debts and publicly present its history, land boundaries and succession to title for ratification by its peers.

And I ask, my lord, that when you consider the feast and the significance of the feast that you find that as a fact, because it's -- it's replete throughput the evidence.

Now, Dr. Daly then went on to explain the feast as a competition. And going over to the next part of this citation -- for brevity of time in oral argument I'm not going to, of course, repeat it all, but this extract, I submit, is a good summary of the feast, in terms of an analysis of it, for what it is.

But on the top of page 275, he continues:

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> communities and peoples the feast entails formal and diplomatic relations which emphasize the highly decentralized nature of decision-making. Feasting is informed by a set of laws and procedures with which members of the Gitksan and Wet'suwet'en societies are socialized, and which their leaders are expected to learn in detail. The ceremonial exchanges emphasized in the feast reiterate the principles of sharing and reciprocity around which much of the body of Gitksan and Wet'suwet'en law is formed.

And he goes on to explain how:

> Each House group...can effect public affairs only by means of its own members' demeanour and example.

As I say, my lord, this is a comprehensive summary of the feast. And the evidence of the Gitksan and Wet'suwet'en chiefs with respect to the feast, proved the process described by Dr. Daly.

The feast -- the significance of the feast for your lordship in the considerations you are giving, is that it is the institution where the chiefs exercise jurisdiction and ownership to territories. And of course, in this context, it is -- it is made possibly easier for you to deal with the claims of the plaintiffs -- or to deal with the issues of the plaintiffs, because this institution is a more formalized structure than what Mr. Justice Mahoney would have had to deal with. And of course, I think, as you referred to, Mr. Justice Mahoney was only dealing with the hunting rights of the Inuits as well, which is the other distinction.

The types of feasts were set out by Mrs. McKenzie in evidence and they include the marriage feasts, divorce, adoption, shame -- I've already referred to the shame feasts -- funeral feasts, headstone feasts, pole-raising feasts, and drawing of the pole feasts. Of course there are also settlement feasts both internally among the Gitksan or internationally.

Now, the feast seating is a significant aspect of it, and I asked Madam Registrar to pull Exhibit 2, I believe it is, and exhibit -- is it all in one?

THE COURT: Yes.
MR. GRANT: This is Exhibit 2-2.
THE COURT: Is this Exhibit 2, Madam Registrar?
THE REGISTRAR: Yes, my lord.
THE COURT: Thank you.
THE REGISTRAR: But in the court exhibit I have some extra documents. I don't know if you have these. I don't know what you are going to refer to yet.
MR. GRANT: Exhibit 2-2.
THE REGISTRAR: There is a tab 2 in Exhibit 2.
MR. GRANT: That would be -- that would be --
THE COURT: My copy doesn't have anything in tab 2.
MR. GRANT: Oh, your copy has nothing. It would be this one here. Now, you don't have that, my lord. I can --
THE COURT: Sorry?
MR. GRANT: It appears in my copy there are two.
THE COURT: All right.
MR. GRANT: Now, this is the Fireweed Feast at Kispiox. And it's interesting to see how the seating is arranged here. The concept of 'Nii Dil, which was referred to later in evidence, would be from the door looking into the far end, and you see at that end, you see Kliiyem lax haa, the Wolf chief, and Delgamuukw, the Frog chief. Now Kispiox is a rather unique situation because the three clans are all represented there, unlike the western villages. Delgamuukw and Kliiyem lax haa would be considered as the 'Nii Dil in that situation.

Now, what's also dramatic is that you see that Gyologyet, Mary McKenzie -- and her evidence was that Luus sits with her, and Luus is another House, is at the bottom close to the door, but a separate table.

You see over on the -- that, of course, is what I was referring to as Gyolugyet coming from Kuldo, and that's the Kuldo Wolves. You see up at the top right-hand -- the left-hand side, Miluulak, Alice Jeffreys, and Wii minosik, Bobby Stevens. And those, of course, are Frog chiefs from Kisgagas. And once again, they have a separate table for the Frog chiefs of Kisgagas.

Over on the -- you have over on the right-hand side Niist and Baskyelaxha and those are the northern Wolves. They are not Kuldo Wolves, they are historically, as I recall, Kisgagas Wolves. So again, they have a separate table.

And then you have -- when you move in, you have Gyetm galdoo, Sylvester Green, that would be the Frog clan from Gitanmaax. And on the opposite side, you

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have Spookw, Guuhadak, Yagosip, who are the Gitanmaax Wolves. And then, of course, as I've already said, you have Kliiyem lax haa, Martha Brown, and Delgamuukw, Ken Muldoe, as the Wolf and Frogs respectively from Kispiox there in the centre.

At the back, that's the place of highest authority. They are the home -- the opposite side of the House -- of the clans from Kispiox. And I just should point out here, my lord, that of course you may recall that Kliiyem lax haa resided in Glen Vowell, but Glen Vowell is not a traditional village at all, and the chiefs of Glen Vowell generally are considered those people from Kispiox.

You go down to the middle.

THE COURT: What clan is Spookw?

MR. GRANT: Wolf.

So what you have is on your -- if your lordship was at the door, you would find on this side, your right-hand side would be the Wolves and your left-hand side would be the Frogs, if this was a Fireweed Feast in Kispiox.

Down in the centre you find the Lax Gibuu and that's wolves, Wii gaak, Neil Sterritt Sr., Nii Kyap and Gwinin nitxw and those are the Kisgagas Wolves.

And over on the far -- the far left as you are facing from the door, you would find Gwoimt and Tsiwuus, and Gwoimt and Tsiwuus are the Kisgagas Wolves as well.

Then you go down and you see there is tables for the visitors, which are -- for example, you see Lax See'l and Lax Gibuu, that would be of Kitwanga, people from the western villages, if they attended, they would be seated there.

The strength of this is it demonstrates that each of the clans are demonstrated, the head chiefs are demonstrated, the village of origin is demonstrated as opposed to their village of residence. Of course, Mary McKenzie lives in Gitanmaax but it makes no difference. She is a Kuldo Wolf and everybody knows that. And her -- the village that took her in was Kispiox. She moved -- she lives -- resides in Gitanmaax because of her husband who is a Frog chief of Gitanmaax.

Now, that demonstrates it and if you look at Exhibit 2-3, which I believe would be in the next tab.

THE COURT: Yes, I have that.

MR. GRANT: Do you have that?

THE COURT: Yes.
MR. GRANT: You find once again, this would be a headstone feast hosted by the Frog clan in Gitanmaax. And so the formulation of the feast hall is different, for one reason, the feast is -- it's in a lateral hall. But again, you go to the centre and here we have the two clan villages, the Frogs and the Wolves, and you see the Frogs hosting the feast. So who is in the centre at the back, of course, is the Wolves of Gitanmaax, and you see Spookw and Guuhadak there. Of course at the time this was prepared, Guuhadak was alive, Thomas Wright was alive.
THE COURT: I haven't found this.
MR. GRANT: Okay. I hope you have the same one I have. It's right at the back there.
THE COURT: No, I don't have that. Have you got an extra copy, Mr. Grant? I have tab 3.
THE REGISTRAR: Tab 3 isn't the same as this.
MR. GRANT: I see. These are -- I'm sorry, my lord. These are exhibits added to Exhibit 2. It's diagram 3. I see what's been done here. Anyway, Madam Registrar has it. I'm sorry, it's not within the binder.
MR. PLANT: Well, one of the complications may be the fact that when these documents were first tendered, I think there were quite a few notes made on them during the evidence and then there were later versions prepared by my friend. I don't know which of these are now being referred to, but it may be that the agreed upon revisions never made their way into your lordship's --
THE COURT: This is Exhibit 2 figure 3, I gather?
MR. GRANT: That's right. Exhibit 2 figure 3, that's right. And as my friend says, Mrs. McKenzie explains certain of the names, and it was -- and then what I did was I had them put on it as she explained it in evidence, so the 2 (3) reflects her evidence.

Now, here you can see Spookw, my lord, at the top.

THE COURT: Yes, right.
MR. GRANT: And of course the significance of that is, once again, a reflection of the 'Nii Dil concept among the Gitksan. And again, you see on both sides you see -- or throughout the back you see the frog -- the wolves. So how do the Gitanmaax people incorporate the Wolves from Kisgagas? Well, what they do is they put them in that place in the front of the 'Nii Dil, but of course they are still in the Wolf section, if I may call it that. And then you can see -- you have Mary McKenzie

Submissions by Mr. Grant and Martha Brown, the Kuldo and Kisgagas Wolves

respectively. And then you have the Fireweed and the Fireweed are all from outside of Gitanmaax. So you have Geel, Tsibasaa, those tables there are all from Kispiox. And then at the far right you have Wiigyet and Wii seeks, and of course that's the Fireweed from Kisgagas.

These charts, my lord, demonstrate that any person knowledgeable, and all of the chiefs know when they walk into the feast hall, they know who a person is even if they don't know the person by name, they know what House and what clan that person comes from. Well, I should say they know what clan the person comes from and what wilnadaahl the person comes from, because sometimes more than one House is seated at a table. But at a glance, the chiefs can appreciate what wilnadaahl and what village and what clan the person is from.

THE COURT: And Miss Mandell adds "and what territory".

MR. GRANT: Yes. In certain cases they know what territory, but what I'm saying is -- and that applies -- I think Art Matthews Jr. described that in Gitwangak -- but to the extent the territories, of the proximity of the territories, they would know the territory. But, that's not necessarily what always occurs.

THE COURT: Would region be more accurate?

MR. GRANT: Certainly, certainly.

THE COURT: Yes.

MR. GRANT: Because they would know that the -- like, when you look at Mary McKenzie's table, you would find that you would have Mary McKenzie there and Luus there and you would have these northern Wolves from this area. Now, this Wii'goob'l territory is as a result of some relationships earlier, but you would have these Wolves you would know, and similarly, you would find Niist and Baskyelaxha together, you find Wiigyet, this whole group, Luus and Gyolugyet are together as I say. So you see the proximity with the Kuldo people.

Now, I hope this is in the book. It's 2-3 and it should say "Modern Seating".

THE COURT: Yes, I have that.

MR. GRANT: You have that? It's a one page --

THE COURT: Tab 3 in my book? No, I'm sorry, I think I have --

MR. GRANT: Tab 3-A maybe?

THE COURT: No, sorry. I have "Old Seating", I don't think I have "New Seating".

MR. GRANT: There should be -- yes, it is -- there are two pages

there, my lord. There is a Modern Seating on tab 3, 3-A and 3-B, be the second page in.

THE COURT: Yes, you are right. Doesn't say "New Seating", though.

MR. GRANT: Sorry. It says "Modern Seating".

THE COURT: No. It says "Mary McKenzie".

MR. GRANT: Right. And laterally on the table it would say "Modern".

THE COURT: Oh yes, in the middle of the page, yes.

MR. GRANT: "Modern Seating".

THE COURT: The centre piece.

MR. GRANT: Right.

And of course what this is, this is the seating of the table of Mary McKenzie to demonstrate the inter-connection between the House or the Houses. And of course the significance there is that you have Mary McKenzie, Gyologyet, and Jeff Harris, Luus, beside her, the other House, the Wolf House from Kuldo. You also find down on the right side, of course, Kwamoon, Pearl Trombley, very close to the top. That, of course, was a House that was once separated and has amalgamated, so that's a high chief in the House. And you find the same with Hlo'oxs, Fedelia O'Brien, and of course the name Suuwiigos is held by a member of the House and that's the Suuwiigos name of the adaawk.

The interconnection -- this goes again to the geography of the people and the territory, my lord. That you have the two Houses and you have them reflected at the table, so it's sort of like -- if I describe you coming into the feast hall, you had a wide-angled lens shot of it, now here is a telephoto lens shot of one of the tables which shows more dramatically the relationship of the House members, those who are the chiefs and the order of them. And again, the knowledgeable person walking in, any of the chiefs walking in, would be able to tell that Fedelia, Violet Brown, Pearl Trombley and Ben McKenzie Jr. and those people down on that side were subchiefs or wing chiefs in the House of Gyologyet. They would also know that Luus has a separate House, Jeff Harris Sr. being Luus, and that the people going along the Luus House -- or the Luus side of the table are from his House. And of course Dorothy Weget, you -- one of the feasts that I will refer to and Mrs. McKenzie referred to was the feast at which Dorothy Weget took the name An Hloo'o, a name formerly held by her mother. And that's where the nax nox and everything is performed.

Submissions by Mr. Grant 1 Now, I just like to take you to one Exhibit 62-2.

This is a -- one seating of the Wet'suwet'en.

THE COURT: I only have this 62 marked for identification. That has been straightened out now, has it?

MR. GRANT: Yes.

THE COURT: What tab number?

MR. GRANT: Tab 2. It would be like this, with "Gitdumden" at the top.

THE COURT: Yes, yes.

MR. GRANT: Now, you may recall -- there is a difference, of course, with the Wet'suwet'en, is that they seat along the sides of the hall and each of the clans are along the side. So this is looking at one side of the feast house. And the wall -- where the word Gitdumden would be, would be the centre of the hall, and behind Alfred Joseph, Gisdaywa, would be the wall. And again, what they do is they utilize the -- they combine the Houses and, as you recall, the three Houses of each clan, and they combine them together in the feast hall so they are sitting together, but they can tell who is the head chief of each House. As you see, Madeek, Gisdaywa and Woos are all shown seated together, and those are the three Houses of this clan. And then you go next to Madeek, George Naziel -- I take it you have these -- the Wet'suwet'en names on this, my lord?

THE COURT: Yes. Yes, they are here.

MR. GRANT: Next to Peter -- or George Naziel was Peter Alfred. Of course at the time that this evidence was given, Peter Alfred was alive. And he is Kanoots from that House and Alfred Joseph described that. You see next to Roy Morris, Gordon Hall, Gyolugyet, this is the Wet'suwet'en Gyolugyet, and he, of course, is chief in the House of Woos. And so on it goes down on both sides, you see the connections.

Far down the left side you see Adeline Holland, Sowiis. Her feast was a feast described in detail by Alfred Joseph, and of course he participated in that feast and helped to run it. And then next to her is Mable Forsythe, that is the subchief I referred you to yesterday with respect to the shame feast and the settlement.

So once again here -- and this is dramatically presented as I showed, when you see the Madeek, the Gisdaywa and the Woos territories reflected here in the feast hall, is the connection of these three Houses and their proximity of their territories as demonstrated.

And of course what you have in the front is the selected or the anticipated successor to the chief's name and that's where you have that front row; Jack Mitchell in front of Alfred Joseph, Jerry Arsaunault in front of George Naziel, and Fred Joseph in front of Peter Alfred. But of course, as I've already explained, that may or may not end up in modern times being the real successor because of the ultimate selection at the time of the passing of the chief. And I think the example of Russell Tiljoe was given to you. He was not selected at the end.

My lord, the seating of the chiefs, I say, permits everyone to know from the seating which chief owns and exercises jurisdiction over particular territories, and the chief's House and clan relationships. I believe that Stanley Williams most eloquently described the role of the seat of the chief:

> The seat of the chief is very important, we don't leave that outside. We have great respect handling the seat of the chief and this is -- the seat holds all the laws of our people, and this is why we look at it and we handle it carefully, and this is where the chief sits. All the other chiefs have their seats, and I'm not the only one that has this. All the head chiefs have their own seats that they take care and this is where the laws are contained and they look after it.

THE COURT: Where are you reading from, Mr. Grant, please?
MR. GRANT: Oh. Page 276 at the bottom, my lord.
THE COURT: Thank you. Yes, thank you.
MR. GRANT: That's what I --
THE COURT: Yes.
MR. GRANT: And Mrs. McKenzie testified to the importance of the seating as well, and at the top she describes that:

> The seating of the chief shows the rank, because there is always the head chief...and the subchiefs.

And she says that you know what house the people belong to if you attend the feast.

Alfred Joseph described it similarly for the Wet'suwet'en and that the seating was related to rank. It's interesting how -- and you can see with that

Submissions by Mr. Grant 1 Gitdumden seating chart, how -- what Alfred Joseph described on the bottom, it assists the high chief to conduct the business of the feast in consultation:

> A. One of the important -- the way that the three head chiefs is seated together is that they -- there is always something happening on the floor, and witnesses sitting there have to analyze what is happening, and they have to analyze the things that are happening in our own clan, things like giving -- a person taking a name or transferring a name. I've heard Madeek and Kanoots --

And you can see where they sit in relation to Mr. Joseph.

> -- who are sitting side by side to my left, talk about young chiefs that are coming up, and it's happening throughout the hall.

And you see here that there is -- that the head chiefs do have an opportunity to consult over the business that's happening in the feast.

And then, of course, there is the principle of the importance of the feast, and if there is an error made in seating, the chief and the hosting clan must hold a feast at a later date because it will bring shame on and show a lack of respect for the guest chiefs, and Mrs. McKenzie referred to that.

And of course this is particularly with respect to the western Gitksan, that the House chiefs are grouped according to arrangements which have been fixed at earlier feasts.

And Art Matthews explained this in reference to his own seating:

> The seating arrangements were fixed in the feast halls; that it was there and we follow it today; that the Lax Gibuu and the Lax Skiik sit side by side. From there they migrated up to Skeena up towards what's known as Kitwanga today. They lived across the river from what is known as Kitwanga today to a place the village they started again. They call it Ant gii iss.

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And that Ant gii iss, of course, is that -- what is the fishing site across the river from Gitwangak.

Now, my lord, what's important here is -- I'm not urging upon you a frozen -- an artificially frozen concept of the seating. What it is here that Mr. Matthews is talking about is that the Eagles and the Wolves are together, and they sit side by side. But the seat of the high chief, even, can change at a feast, and I believe Mrs. McKenzie talked about this in her evidence. Also, the seat of the wings of the house may be arranged to suit the high chief, and this is done in consultation with the chiefs of the House and the clan and at the feast. And Mrs. McKenzie explained this with respect to Violet Brown who sits beside her, and she explained that the decision was made by the wilnadaahl and by Gyolugyet who approached the other chiefs. And the decisions are made and "everybody feel that that is the right way to have our table set this way".

So within the House, they could make this arrangement and then they would announce it at the feast that this person is moving up closer to the chief.

Gwoimt, Kathleen Wale, also arranged the seating of the wings of her House.

Alfred Joseph testified that among the Wet'suwet'en chiefs, the seats remain fixed but the position of the wings may be varied by the House chief.

Now, my lord, the significance of this, this point of the feast, recognizes what I say is a jurisdictional principle, that the chief has the authority to manage his or her own House affairs without interference from other chiefs, so long as the internal House affairs do not affect the authority of other House chiefs.

And it's -- it's an analogue, if I may say, that you see that the wing chief -- that the head chief can move the wings within the seating of the feast hall, but -- but the head chief couldn't move himself in relation to other head chiefs because he starts to affect their authority. So that's where the balance has to be kept.

A seat will remain empty if a chief has not been selected to take the name. And that's been explained by both Mrs. McKenzie and by Mr. Joseph. But I refer you back, and I would ask you to note my comments on

argument. I'm not going -- just you
can make a note at the top of page 281, under the reference citation of Alfred Joseph, to refer back to page 89 of this argument. And I already explained to you and referred to Miss Wilson-Kenni's evidence that other persons were given the name Spookw to hold the seat in the feast hall while Johnson Alexander was away. And that's an example of this, of how this can be dealt with as well.

And again, this part of the feasting shows that the chiefs together would maintain the timeless quality of feast names to protect ownership and jurisdiction associated with the names. And of course, a House -- another chief or House member can manage the territory until the name is passed on, and I've referred to you that already in the case of Charlie Smith and the case of Johnson Alexander.

The host clan has specific tasks to perform and is not seated. And of course I believe that was clearly enunciated in the evidence of Mrs. McKenzie and Mr. Joseph. I don't think there is any ambiguity about that for both the Gitksan and the Wet'suwet'en.

The hosting and attending of feasts. Stanley Williams, my lord, gave one of the -- I say one of the most dramatic explanations of the feast. He explained over a number of pages of his evidence, uninterrupted effectively, what happens. And I'll just highlight some of this which -- this quote is not highlighted but I will in part --

THE COURT: Oh yes it is.

MR. GRANT: I see it is on page 2, but page 1, I'll just refer you to certain parts of it, my lord.

At the beginning he says that:

> The law is very important in the house of the simoogit. It is not only the simoogit that uses the law, it is the law of our people. All the Gitksan people use this law.

And then at the second paragraph, he refers to a spokesperson at the end of the first paragraph known as Galdim algyax:

> He is the spokesperson of the chief that has passed away and he tells the plans of the house and who will be called to cremate the chief's body. This is when they -- have the smoke feast.

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Now, this is the person from the House. And then he refers to -- that the "younger people..think that we are called to the smoke feast just to smoke." And he explains the importance of the smoke feast:

> ...when all the plans are told to the house members and also to the people that are present what is going to happen. The former chief's spokesperson is the one that is telling these plans that are going to be put into action.

Now, my lord, you may recall in Mrs. McKenzie's evidence and in Stanley Williams' evidence, that -- that at a feast, often the head chief does not speak but has a spokesperson, and this is who Mr. Williams is referring to.

Now then, he refers to the cremation and the decision as to who will be the successor, and the spokesperson talks because the chief, that is the successor chief, is not supposed to talk.

In page 283, Mr. Williams goes on to refer to the respect to be shown to the chiefs. That the prince, this would be the successor, of course:

> ...makes himself seem small in front of these chiefs as he seats them at their houses, calling himself a servant.

And then he gives himself as an example and he describes what he would do when Gwagl'lo, his 'Nii Dil, comes in. And of course he refers to his nax nox being performed, and the host chief puts power on the other chiefs.

And there is -- then Mr. Williams refers to the successor putting on his regalia:

> ...he puts his hat on and on top of his hat he has the sea lion's whiskers, and after when he puts his head wear on and then he puts the eagle down on top of his head wear, and while this is going on the people behind the curtains are singing. And what he does is he comes out jumping, dancing, and he's doing his halayt. While he's doing this, the feathers are flying out to the head chiefs.

And then he explains about the serving of the

ground hog, known as Gwiikxw, and they mention where the food has come from and where the ground hog hides have come from.

Now, I may say, my lord, that this is not, of course, recent, and there are references in the -- in the early historical material to the use of the ground hog in the feast hall.

Now, half-way down page 284 --

THE COURT: Do I understand that a halayt is different from nax nox?

MR. GRANT: Yes.

THE COURT: How would you define a halayt?

MR. GRANT: The halayt would be the medicine or spiritual power. The nax nox would be more the performance of a name.

THE COURT: All right.

MR. GRANT: Like Baskyelaxha, that name is a nax nox name. The halayt -- Baskyelaxha at any given time may or may not be a halayt.

THE COURT: All right. Thank you.

MR. GRANT: Half-way down page 284, Mr. -- oh, and what I want to say here is that in the first half of page 284, Mr. Williams refers to the respect of the fishing sites, the territories, that's one of those references. But half-way down, he talks about the cremation of the chief about a year later, and this is the reference -- it says -- it's misspelled in the transcript, my lord. It's the Baxmaga, B-A-X-M-A-G-A.

So part-way down he is actually going into the next step of the feasts, and it's a different feast, and I just want you to know that for that later reference. And of course he again gives fisher and martens to the high chiefs.

And then he says -- this is when they are going to erect a totem-pole, and this is when the new chief is finally going to sit on the seat of the former chief:

> After the pole is going to be erected, they call this new chief to finally sit where the former chief sat. This is when they call out his name.

And then on page 285, he reiterates the importance of the seat.

And the second paragraph that I've highlighted there, my lord, is that Mr. Williams explains something -- and I can only analogize by what sometimes -- what happens in our own process with the

> When the chief enters the feast house where the seat of his grandfather is, he leaves everything behind outside. He leaves the -- like take me for example, if I was outside and I talk to people, I joke with people, I laugh with people. But when I enter the feast house, I will leave this all behind and be really serious in the feast house because our ancestors really take the feast house really seriously and our laws seriously. This is why we take everything in that is said in the feast house. We listen closely and we pay attention closely. We learn what is going on in the feast house.

And he is there explaining the solemnity of the feast hall, not that there isn't humour at times, as even in a trial of this length that happens. But there is the seriousness of the -- of what's being done within the feast hall.

At the end he talks about the -- he -- the territory, and in the next paragraph. And then, of course, he talks about why the Gwiikxw was given out. and the money is today:

> ...that you are protecting your land. It's just like the tax that the government charges. This is how it is with our people. What we get from our land, we give into the feast house.

Now, moving over, my lord, as I said, the different feasts require different procedures to be followed and you've seen that in terms of you had described to you marriage, divorce, adoptions, shame feasts, pole-raising feasts, funeral feasts, headstone feasts, you've -- there is ample evidence of distinction. The funeral and headstone feasts outline the main procedures, laws and ceremonies which will be invoked in most feasts. And a pole-raising feast, of course, has procedures unique to it, and these distinctions are set out by many of the witnesses and summarized by Dr. Daly in Chapter 8 of Exhibit 884-2.

I'll just briefly -- referring to the smoke feast, this first part is with respect to the Wet'suwet'en. And Basil Michell and Alfred Joseph

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gave reference to the smoke feast and what occurs there. It -- as Alfred Joseph explained, it can occur at a time after the chief's death. He says on page 287:

> It also happens -- when a person dies in another village. And in the past when news comes from village to village and there is a death in Babine or Moricetown and there wasn't -- the communication wasn't that good and transportation wasn't that fast, in those days when the word comes, then they have a smoke feast at that village, even though the funeral isn't going to be held there. There may be a smoke feast at Babine; there may be a smoke feast in Hagwilget when there is a death in Moricetown. So -- the dead chief in Moricetown (the) relatives at Hagwilget will put up a smoke feast and the same thing in Babine or Burns Lake.

And here, the significance of this, my lord, is the connection between the Babine and Moricetown. And as I've said yesterday, quite frankly, the Babine are Wet'suwet'en and they are interconnected to the Wet'suwet'en Houses at Moricetown.

The territories of the Babine chiefs are not claimed in this action and it is not a subject to this action, but they are Wet'suwet'en people. And Alfred Joseph said that as much in his evidence.

Now that's important also, my lord, for you to keep in mind in light of the early records of persons like William Brown which you will be referred to.

Now, Alfred Joseph described the functions performed at the smoke feast for the Wet'suwet'en in much the same way that we heard Gwis gyen, Stanley Williams, describe for the Gitksan. The announcing, the passing of names, the clan themselves meeting and discussing what is going to happen.

And what's important here is he talked about the clans meeting where decisions are made in "a consultative way". There is no majority vote. It must be agreed and concurred with by all of the chiefs and the subchiefs from the clan as to what the decision is to be made.

And that was vividly described, my lord, in Florence Hall's evidence where she talked about how

there was a discussion or debate about how -- whether she would take the name, and it was finally resolved at the feast itself.

The key points on page 288 are set out, that -- with respect to the Wet'suwet'en there is a collection sometimes; there is -- the obligations are announced; and sometimes the decision regarding a successor may be made at a Gitksan smoke feast.

But what does happen, as I say on page 289, is that the Gitksan and the Wet'suwet'en do direct that tiits or messengers hired to invite the high chiefs to the funeral, headstone or pole-raising feast, to commence the process of inviting the guests to the funeral feast, or to whichever feast, and Mary McKenzie described that in her evidence.

Now, you've heard much about that formality of invitations to the feast. It is significant, my lord, because it -- it's -- it must be done properly because of the seriousness that all of the chiefs are brought together. When I say "all of the chiefs", I, again, am not saying literally all of the chiefs, but all of the principal Houses from those villages which are connected to the House which is hosting the feast.

And as I say, the inviting initiates reciprocal circulation of wealth and labour which is realized through the feast.

The giving of the tiits obligates the host House and the guest House to return the giving in the feast and it is as much as saying, "Yes, I will come or I will be represented."

As I point out at the bottom of page 289, the use of tiits to invite guests has its roots in great antiquity. The adaawk of the One Horned Goat, one of the key elements of that adaawk is the tiits.

Now, Mrs. Johnson didn't -- she didn't give a very, very long version such as you heard from Art Matthews, but you can recall what he said is that at certain points in the adaawk when it's taught they would say, "Okay, this is what is done." So the tiits would be -- this particular adaawk would be used for training the Fireweed, the younger Fireweed as to what they are to do when the tiits comes.

And Stanley Williams described the inviting. He says:

> ...I'll give you an example of myself. I would go with the messengers who we call as Tiits,

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> and I would go to Kitwancool and I would enter Xamlaxyeltxw's House --

And that's Solomon Marsden.

> -- and I would say, "Simoogit, Simoogit, you are going to be watching me. You are going to be seated there when the simoogit is created." He goes around to the villages and he calls all the head chiefs until they're all invited and he says the same thing.

Now, once again, Mary McKenzie explained that kinship relationships from -- on the tiits obligation are important and this is -- she, for example, was part of the wilnadaahl, as you can see from the sitting chart of Clara Weget from the Luus House. So she attended and went from village to village. And once again, when they go to the other villages, you have to invite the chiefs in a specific order, having respect for the rank of the chief in the village. So she explained:

> ...when the Teets approach..[in] Gitanmaaxs, they approach the House of Gyetm Galdoo first, because he is the head chief of the frog clan in Gitanmaaxs.

You see that reflected that he is at the head of the table. He would be reflective of the wilnadaahl of his table, which would include other Houses of the Frog clan in Gitanmaax.

And then the description of the limx oo'y, which you heard, and the saneel, belonging to the Wet'suwet'en House is given at the time of the tiits. And Johnny David gave evidence of that with respect to the Wet'suwet'en. The song serves as a crest of the spiritual power which belongs to the hosting House and clan.

The responsibility for properly inviting the guest is "on the shoulders of those who are going to take the name". Alfred Joseph explained this in the case of the House of Cassyex, that's Woos' House, when Roy Morris acted as spokesperson for the people they were inviting. Now, of course, this is in the clan of which Gisdaywa himself is, but it was the obligation -- principal obligation was on Roy Morris,

bringing in.

Chief Woos, to do the

And again, the Wet'suwet'en will hire people from the father's side who will accompany the successor to do the inviting and they are repaid at the feast for providing this service. And of course this means, and the evidence was clear, my lord, I submit, that in the case of the Wet'suwet'en, they would go to Burns Lake, they would -- they would travel all over to bring in those who they want to invite into the feast, and to -- because there are Wet'suwet'en chiefs in Burns Lake -- and of course also to Babine.

The Wet'suwet'en chiefs are also invited to some of the Gitksan feasts. This inviting across political borders was the subject of evidence by many of the chiefs. And I believe one of the most dramatic examples is Basil Michell who took the name Hatakumex, and he did the inviting of people in Babine and he also went with his Uncle Phillip Austin and invited the Skeena River people. By that he meant the Gitksan. When Basil Michell referred to the "Skeena River people", he is referring to the Gitksan.

Johnny David recalled at the age of nine going to a feast in Kisgagas:

> The people from Kisgagas would come to Hagwilget where they would spend three days inviting all the people and it was when most of the people were back in Hagwilget that people would come to invite them.

My lord, I would like you to note that because that contrasts with the evidence -- or the implication made by the federal defendant for Mr. Loring, that these things were all dying every year. This is around -- this is during the Loring era when Johnny David was nine years of age and right in his backyard at Hagwilget, the people of Kisgagas were coming and having a three-day tiit ceremony to invite the people to Kisgagas. And Mr. Adams will have some more to say about Mr. Loring.

This was done in the winter after the Christmas season when the rivers and lakes were frozen. And that, of course, was the time that they were able -- the Gitksan, as I referred to, would be feasting in the winter months.

Now, I've already pointed out that people -- as Tonia Mills said, the feast she attended, people from

Babine and Burns Lake would attend the feasts.

The eagle down is the commencement or conclusion of peaceful relations, and it was still used by some tiits today. It's blown by the tiits to those whom he invites, and the word for it -- the Wet'suwet'en word is "k'es". It's an affirmation that the jurisdiction of the chiefs to be brought together in accordance with either the Gitksan or Wet'suwet'en laws.

Now, the reason, of course, you have this inter-connection with the Wet'suwet'en and the Gitksan, you see, through -- for example, through intermarriage like Gisdaywa, Alfred Joseph, his wife, Helen Joseph is now one of the -- one of the Gitksan plaintiffs, Waiget, having replaced Elsie Morrison. And that inter-marriage of chiefs requires Gisdaywa to have obligations in Kispiox as well as in -- as well as in Moricetown and Hagwilget.

My lord, I submit at the bottom of page 293 that the invitations reveal an aspect of ownership and jurisdiction of the Gitksan and the Wet'suwet'en. When the limx oo'y and the saneel are sung, the song connects the authority of the host chief to the territory and compels chiefs from other clans to gather at a feast to exercise their authority together according to law. The blowing of the eagle down initiates the system of reciprocity where the host and guests engage in an exchange of wealth and reciprocal obligations which, once again, underpin both the organized society and the economies of these peoples.

And my lord, you may remember that the song of Mary Johnson was a song connected to the territory of the Fireweed at Kitsegukla. And the different songs, these limx oo'y and saneel connect to the territories. And Alfred Joseph, I believe, and Madeline Alfred also gave evidence of that, as did Johnny David.

Now, Mrs. McKenzie testified to the form of invitation extended to those at the gravesite. Now this is a second step and the chiefs are addressed formally, and she explains it there. I just want to point out that the reference, of course, to Simgi gyet, Sigidim hanak and Kubuu Wilsasxw, is a reference to the male and female chiefs and their successors.

Now, going to the feast itself, that is at the bottom of page 294. Among the Wet'suwet'en, the name is not formally passed until the headstone feast, and a headstone feast is held about a year later. This is different than among the Gitksan. If a high chiefly

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name is to be passed at a headstone feast, the feast will be held when the successor's House and clan have assembled the food, goods and money required to host the feast. I'm there referring, of course, to the Wet'suwet'en.

And in the Gitksan concept -- I just want to be clear that the distinction isn't just black and white. In the Gitksan concept, my lord, the name is passed but it's like there has to be a perfecting of the name through the headstone feast. And you heard evidence of that in certain contexts such as An Hloo'o, Clara Weget, who held -- the headstone feast was held in which the name was perfected. And it affects the chief's dax gyet if they don't do this. If they just ignore it, then it is a weakening, and that's one of the points that you heard in the evidence. I refer to that on page 295, and I go on to the Gitksan -- with respect to the Wet'suwet'en.

And as I say on page 296, my lord, with reference to Mrs. McKenzie's evidence as well as Dr. Daly's explanation of the feast, that unlike the Wet'suwet'en, the Gitksan in many cases recognize the new holder of the name at the conclusion of the funeral feast. However, this may not be the case if the settlement of the names has not been completed at the funeral feast. It is also recognized that the holder of the name must complete his name through the holding of a headstone feast.

Do you have Exhibit 62? I'm going to refer to exhibit -- I wondered what your intent was in terms of our break?

THE COURT: Oh, another ten minutes.

MR. GRANT: That's fine.

THE COURT: Exhibit 62?

MR. GRANT: Sixty-two, yes. Exhibit 62, tabs 12 and 13, my lord.

Now, here what you have is the -- I'm going to refer to this in the context among the Wet'suwet'en and the pulling of the headstone.

The grieving process ends with the headstone feast. Now the deceased chief is bid good-bye and the attention turns to the successor. And it's amazing, my lord, to attend one of these events, and the contradiction -- the apparent contradiction from our social perceptions of gravity and humour which marks Wet'suwet'en ceremonies held before the headstone feast.

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The headstone is brought into the hall to be viewed. And as Alfred Joseph testified:

> -- if there is a crest on it, they view that and it is treated the same as when the totem pole is erected. If usual crest is there, that is very important to the Wet'suwet'en chief.

Now, after viewing that headstone, it is taken to the graveyard to be put into the ground. Florence Hall identified a photo showing the pulling of the gravestone to the graveyard.

Now, Exhibit 62-12, my lord, is such a photograph of the Wet'suwet'en people pulling the gravestone. And you can see everyone involved in pulling the headstone into the -- to the graveyard.

And she explains it that the:

> In the past it has been tradition that when they take the gravestone to the graveyard that they pull it with a rope and in our case we brought two big rolls of yellow rope which we tied to a sleigh to pull the stone up. And another thing that's also a part of the tradition and ceremony that the spouses and their children they put money on the stone. Sometimes there is so much money on there that some of it falls off to the ground. And that is some of the things that they did traditionally.

The pulling of the rope:

> Is an occasion where there is a lot of joking going and lot of fun being had...sometime when they start feeling really good they pull the rope in both ways opposite one another. Sometimes they really get into it. You can hear them a long ways having fun while they're doing this.

And she described this at her mother's gravestone:

> When they're pulling that rope at my mother's gravestone the people are really getting rowdy and they were pulling on it and then Andamnuk or spouses of the host clan come running in

there while they're pulling it opposite each other. Andamnuk come and cut the rope on them and then they all fell down and then everybody broke out in laughter.

Then at the end, they take the rope, they cut it into "sizeable chunks" and distribute it to:

> ...the people that participated at pulling the stone...and after they finished distributing the rope from there they go back to the hall and that's where the feasting begins.

And of course this is again part of the reciprocity, the symbol of giving, and it's -- it parallels the -- what happens to the ropes that are used to raise a pole, they are cut up and given to all of the participants. Now, 62-12 is a photograph of such a pulling of the pole -- pulling of the headstone, I should say.

62-13 is one that was referred to by Alfred Joseph and you can see the headstone being pulled to the graveyard in that photograph. And he describes -- Alfred Joseph describes who the people are:

> The one with the drum is passed on and he's the late Jimmy Joseph from Moricetown, and the one on the left with the banjo is also passed on and I have known him as Charlie Tommy, and the one in the middle is still alive and he's Charlie Pete.

And these are the musicians participating in the pulling of the headstone to the gravesite.

So it's a time of seriousness and a time of humour and it's that counter-balance that works within the context of the society. And I pause to say, much different than our -- generally what we do, socially, in terms of burials. And of course this is maintained till today.

Now, the performance of nax nox and the kungax. Mary McKenzie testified that at a headstone and pole-raising feast opens with the performance of the nax nox. And I've referred you to that already.

Art Matthews explained why the nax nox is performed at the feasts of other chiefs:

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> The spiritual relation you have with your territory is what we call it. You relate yourself spiritually to the territories you own in various nax nox, like was taught in the Biis hoon -- (Adaawk).

And that's the adaawk to which I made reference to briefly and will, with respect to the territories. It's a model of how the territories are connected to the adaawk. Alfred Joseph for the Wet'suwet'en explained:

> After you've shown your kungax, it is announced there why it's done, to display your crest, to display the song and that has been used, sung at that time, the history of the song, when it was created and by whom it was created. And the land, the land of Gisdayway is also announced, any history that goes along with it.

What happens here, of course, in this performance of both the nax nox and the kungax, and Mary McKenzie explained it for Clara Weget's feast and Alfred Joseph and Madeline Alfred for the Wet'suwet'en feasts. I believe Alfred Joseph referred to Sowiis' feast, is that you have the host performing the kungax or nax nox and you have the guests responding and performing, and so you have this back and forth, my lord. And what it is, is that the host is showing the power of his territory and the guests respond by showing the power and the knowledge of their territory, and at the end it is performed. And one of the most dramatic performances of this occurred at the -- at the -- in evidence, the Guxsan pole-raising feast which was testified to, and also at the funeral feast for Gwis gyen, Stanley Williams, last fall.

Now, the food at the feast, the guests at both the Gitksan and Wet'suwet'en feasts are always severed a full feast. Food from the territories are distributed to the chiefs. It's an integral part of the feasts that the foods from the territories must be announced.

The hosting House and clan have the obligation to provide the food to the feast. And, for example, Mary McKenzie explained that:

> The Wil'na t'ahl of Luus house and Gyolugyet's

 House, and the food is provided by these.

And also the people from Kliiyem lax haa's House helped to contribute to the food. Remember -- although, if the feast is held by Gyolugyet, the Kuldo Wolf, the Kliiyem lax haa, the Kispiox Wolf chief, will also participate. So the connection between the clan is maintained and will also help out.

Mrs. Wilson-Kenni explained it as well:

> When a clan puts on a feast the clan members... anyone of these villages contribute whatever they can contribute...sometimes it's in cash sometimes it's in food sometimes in goods and sometimes in every category.

And she refers to the feasting book.

Dr. Mills observed that a person taking the name by the deceased contributes according to his needs and the cost of the feast and the money to pay back the predecessor's father's clan both at the funeral feast and at the headstone feast. And she goes on to explain the monetary payments that she saw, which I will return to.

Now one of the points we've stressed in evidence, my lord, and I think it's very significant for the feast, is the announcement of where the food comes from. As Dr. Mills says, from the feasts that she observed:

> The berries have been picked in berry patches belonging to the hosting clan or with the permission of the clan that holds that territory.

She says:

> The obligatory beaver meat is provided by the deceased's clan. The beaver meat comes from the territory that belonged to the deceased. Passing it out to everyone reaffirms that the land that it came from belongs to that clan and to particular high chiefs in the clan.

Now, my lord, although that's from her report, the -- that is repeated over and over again by the -- several of the witnesses, almost everyone that talked about the feast. And Stanley Williams, I've put in

himself as an example of this.

Now, this utilization of the Gwiikxw -- I say marmot or ground hog -- it's called ground hog by the Gitksan and Wet'suwet'en and marmot by Dr. Hatler -- has continued in the feast hall since the first observations of William Brown. And that should be -- the reference I'm going to give you is actually Daniel Harmon, my lord, and that -- the citation is Exhibit 913, page 249, and I believe Daniel Harmon's was in 1811 or 1812.

This continuity of the importance of Gwiikxw is a testament to the importance of the alpine parts of the territories to the Gitksan and the Wet'suwet'en continuously from pre-contact times until today.

Now, each chief must be carefully served according to rank and no one may be overlooked. I've summarized the evidence at the top by pointing out that it is the responsibility of the high chief of the hosting clan to ensure that the serving is done according to proper practice. If a chief has overlooked or caused embarrassment by the improper serving, a host chief must take up a collection and correct the wrong done.

Again, this emphasizes the solemnity of the occasion, my lord. It emphasizes the importance and the care with which one must treat one's guests. You cause trouble if you don't. You will be spoken about. You will lose dax gyet or diniizee. You will have to rectify the wrong. So the chiefs have to be very careful.

Now, Alfred Joseph explained this so clearly, I say, because he even explained the Wet'suwet'en terms for it. He said, on the bottom of 303:

> Q. You made mention of your responsibility at a feast to be sure that no one is overlooked, and I understand that there is a Wet'suwet'en term if someone is overlooked at a feast?
> A. Yes.
> Q. And do you recall what that is?
> A. Tuts hah teez nik.
> Q. And you also indicated a moment ago that there was a collection that occurred if indeed someone was overlooked as a way of wiping out the shame or restoring the respect to the person overlooked.
> A. Yes.

Q. And is there a term in Wet'suwet'en for that in terms of an apology to that person?
A. It's K'aa nee yat'lii.
Q. Now, what I was asking again, Mr. Joseph, if you can -- if you know if there is a term used in Wet'suwet'en whereby the respect of a chief is restored as a result of the collection that is made in a situation where that chief has been missed at a feast?
A. It's just the same.
Q. Is that term?
A. Yes.
Q. And do you know of examples where that has happened in recent feasts?
A. Not recently. I have seen it happen with my aunt, Mrs. Mary George around 1969 I believe.

The attention, my lord, paid to serving the guests properly, has its basis in the law of respect for the chiefs. This is the reciprocal respect for the chiefs.

Now, among the Wet'suwet'en, the sugar is provided by the host House and is always distributed at a feast. Madeline Alfred testified that sugar is distributed to the invited guests.

I just like to refer you, my lord, to Exhibit 312. I note the time. Maybe it's time to take the break. I thought I put it on the earlier list.

THE COURT: All right. We will take the morning adjournment now.

THE REGISTRAR: Order in court. Court stands adjourned for the morning recess.

(PROCEEDINGS ADJOURNED AT 11:00 A.M.)

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

_____

Toni Kerekes, O.R.

(PROCEEDINGS RESUMED AT 11:15)

THE REGISTRAR: Order in court.
THE COURT: Mr. Grant, I hear we have a fan on.
MR. GRANT: I hear we have a fan.
THE COURT: Do we need it? I don't need it, and I find it very distracting and it's blowing cold air at me. Can we not put it in the back of the room somewhere. I don't think we need it, we've got along fine for three weeks.
MR. GRANT: Maybe it should be blowing cold air on me, my lord.
THE COURT: Part of the balance you've been talking about, Mr. Grant?
MR. GRANT: Right, right.
THE COURT: Sorry if it's inconvenienced anybody, but it would be very disturbing to have that going all the time. If it can be put at the back of the room, I don't care, but not down there, I'm sorry.
MR. GRANT: Okay. My lord, I was referring you to Exhibit 312, which I believe madam registrar has there for you, 312, tab 5, I believe it is, which is a photograph of Sarah Layton. And it's demonstrative that in her case, taking the name Knedebeas, one ton of sugar was distributed, and this is common among the Wet'suwet'en to utilize large quantities of sugar, and these of course would go to utilize them at the feast hall, and these would be given out to the chiefs, each of these large sacks of sugar. And I just wanted to mention that and refer you to that particular place. As I say --
THE COURT: I have a note that this was to be distributed to guests at Christine Holland's stone feast, I think is what --
MR. GRANT: That's right.
THE COURT: Yes, all right.
MR. GRANT: That would be the former Knedebeas, my lord.
THE COURT: Thank you.
MR. GRANT: And Sarah Layton, of course, took the name at that point. As I referred to, the berries are distributed as well. And at the bottom I refer to the extensive evidence of distribution of meat and fish in the territories which is holding the feasts, of the territories of the wilnaadahl. I referred to that throughout the evidence and some witness who are mentioned are Mary McKenzie, Stanley Williams, this is on page 305, at the bottom there, my lord.
THE COURT: Yes.

MR. GRANT: Mary McKenzie, Stanley Williams, Madeline Alfred, and Alfred Joseph. And also, my lord, the longevity of this is emphasized by a Harmon, who reported this at Exhibit 913 page 253, and Mr. Adams will refer you to that more specifically. Now, my lord, the next aspect of the feast of course is introducing the chiefs, and I've just summarized it that after the guests have been fed both Gitksan and Wet'suwet'en now introduce the new chief, and this procedure must be performed according to the law and in this function the procedures of the feast described by Mr. Mackenzie and Mr. Joseph, and the crests are placed on the person, and I would just refer you to how Hanamukw, Joan Ryan, referred to this and the obligations taken on her and the concern she had in taking the name Hanamukw. If you go over to page 307 of my written argument, Mary McKenzie there described the placing of the blanket on now the former chief, Ken Muldoe, at the funeral feast of Albert Tait, and she describes that Beverly Anderson, this would be from his father's side, from Gitludahl, who Wii Seek's, Pete Muldoe's house, page 307, my lord.

THE COURT: Yes.

MR. GRANT: Sorry, part way down the page, Mary McKenzie reference:

> "Beverly Anderson was called to put on the button blanket on Ken, and he walked out and then a song was, limx oo'y, is sung, and then when this limx oo'y is finished Elsie Morrison --"

That's the former Waiget, now Helen Joseph:

> "(went) to call Ken in, and as I repeated before, the same thing, called Ken in by his infant name, and I say it in English this time, he said "Ken, are you there."

And of course they would use his child's name, and of course the uncle was the late Delgamuukw. And Elsie Morrison is Waiget. And that -- and it's explained that Bev Anderson is in the house of Waiget, and that is Ken Muldoe's father's side, and that really would be the Wilsxalexs, which is the Wilnaadahl of the father's side. Now, at the headstone feast the chief is introduced in full regalia, and Mary McKenzie

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described this with respect to Clara Weget, and I'm referring to page 308, my lord. And she was succeeding to the name. I've put the explanation there for your reference. Alfred Joseph testified that:

> "The person taking a high Chief's name will come into the Hall, after they have been announced by the Luu liil and they will be wearing the regalia of the House."

Now, the significant aspect here is the renaming of the chief, a section I've called the "Renaming the Chief", and this is where the names are passed on. And as Dr. Daly summarized, and this is reflected in the evidence of many of the chiefs or the witnesses giving evidence about the feasts, that:

> "Intervals are utilized to announce new successions to names within the host wilp" --

Or house:

> "There are a number of levels of names: baby names, child's names, young woman's puberty names, adult names, woman and chief names. There are also kubawilksxw names, names of those who one day will inherit chiefly names. A person in a chiefly line of succession may wear four or more names in the course of a lifetime, or may pass smaller names on to others.
>
> All the high chiefs must keep abreast of the change of incumbents to house names all over the community and in other villages so that in future feasts their ranking configuration can be correctly maintained despite the constant changes brought about by the life cycle. When a person moves up to a name of a higher status, the old name is on the same occasion, 'floated' to a new incumbent, except that people generally retain their baby names and will sometimes resume them in advanced old age."

And you've heard evidence of that by Mary McKenzie, where I believe it was Martha Brown actually retired

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and she held a feast and -- or maybe it was Jessie Sterritt -- both of the -- Jessie Sterritt, both them retired, I believe Martha Brown described this in her own evidence, and they basically held the feast and did all of the business, and then they said that was it, they were not going to be speaking at the feast, and they still attend the feasts, attend at the feasts, until Martha Brown died, but -- and Jessie Sterritt still does, but they don't -- they don't do everything themselves as the head chief.

Now, my lord, going to page 310, what -- it starts at the bottom, is that the name taker -- I'm sorry, 309, the name-taker stands up at the head of the hall with a senior member of the house, who announces to the guests that names will be put on this person or persons, he explains who the person is, what his or her qualities are, who the relatives are and what the new name is the person will wear. He explains the name's origin or relates anecdotes about previous holders to the name. He will conclude by saying the person is the legitimate heir to the name because of his or her position in the kinship configuration because the person is kubawilksxw, "of the lineage".

Now, my lord, I would ask you to note Exhibit 702, just -- I'm not pulling it, but Exhibit 702, which is the extracts from Mr. Sterritt's notebooks where he made notes at the feasts, and although I make reference later on in this section to part of it regarding the money, the other thing that is very noteable there is that he recorded many of the different names that are being passed at a feast and what they meant and who they went to, and you could see that by a review of Exhibit 702.

Now, money that is paid to the guests for calling out the name of the successor is a direct payment from the chief and is not taken from the Tsek or pot. So when, for example, the name Delgamuukw was announced when Ken Muldoe took it, was -- it was money that he put in separate from the money that was collected from the tsek or the main pot, which is the large collection of money, and that's something to keep in mind when we look at the amounts of money that goes in, so it's over and above that. But this is explained how this works by Mrs. McKenzie on page 311. She said, regarding the An Hloo'o feast, after explaining that, she said:

"At a feasting, like with my feasting, the Lax Gibuu feasting, my wilsxibagxws" --

And that is the father's side, my lord:

> "will lend me Monday. They give me money now, maybe $100, one person give me 50, 25, and that's a loan, and from what money I already have to put in the pot I add that to my amount to go into the pot. Now, that's a loan. Further on in any feasting of the Lax Gibuu I have to return that money to my wilxsibagxws and I have to do it in a feasting house and announce it, so the people will know that we've paid that, and when it's given to me at that time I have to announce it, who has given, has loaned me the money."

And then the court interjected about whether or not the feathers are returned it comes not from the pot but from the pocket. And that's the term -- is the term of feathers, which is the money that is given out when the names -- the name is announced by the head chief.

Going over to the next page, Alfred Joseph testified once again to the humour that occurs at this time:

> "When the guests are called upon...they say to the new chiefs that he or she will be called a name that link to the crest of the guest and if it's the Frog Clan and they are called upon they will say that the new chief -- will be called the Frog that sleeps too long or any other comments like that.
> It's a humorous time. It's the time when everybody are waiting for this chief's version of the new chief's name."

And the same applies and has been testified in evidence with respect to the Gitksan.

Now, my lord, at page 313 is an important concept that as part of this, in light of the issues before your lordship, that it is at this time that the territory passes to the new chief as described. And of course what I'm saying when I say "the territory passes", the territory is vested in the house, but the

chief is responsible for the territory, and in that sense the territory passes:

> "When a person receives a name at a Feast, the house chief would say that this person has now the privilege of using this territory, and that person can -- make use of this berry patch or a fishing site."

This particular description, my lord, is of the sub-chiefs. It's the access, and for example, at Tenimgyet's feast he announced that his mother would be responsible for the berry patches and the fishing sites. And this is confirmed with the head chief to make sure that the stability is maintained, but it's announced so people know who's in charge of particular parts of the territory within the house. And it may be, as in Tenimgyet's case, that he will -- really everything is -- all the responsibility of the fishing site is in his mother's hands, and she will make all the management and decisions with we respect to that, and that's important when one considers the management over the territory and how it's managed within the Wet'suwet'en and Gitksan systems. The same applies of course to the Wet'suwet'en, as Mr. Joseph explained, telling the adaawk at the feast, and the kungax. Mrs. McKenzie testified, and I want to emphasize here, because there's some suggestion that the adaawk or kungax are told at every feast, and that's not the case, they're told at specific times, such as the headstone or pole-raising feast, but Mrs. McKenzie testified that:

> "The adaawk tells, in a feast house, that who are the holders of fishing places, creeks and mountains that belong to each House of the Chiefs, where they get food, like berry picking, they have -- they tell the owner and the location and the feast house. So, through this, this is how I have my knowledge now is by attending the feasting of any chief, even if it is my own feasting, I hear the chiefs repeat or tell of the adaawk of theirs and ours. This is the importance of the feasting, that these adaawks are told."

Now, this is important in the context of the confirmation in the feast house of the ownership of

the territory, and you have an example from Stanley Williams of a correction of an adaawk given by a guest chief, and I believe Johnny David referred to that with respect to the Wet'suwet'en. Alfred Joseph testified as well that the witnessing chiefs must formally approve the history. I'm at page 315, my lord.

THE COURT: Mm-hmm.

MR. GRANT: And the witnessing chief always talks about the history of the past and the crest of the chief, the high chief that takes the name. That's told at the end of the feast, and they're told how the crests have been acquired by previous chiefs. So it's similar within both systems.

And the next aspect, and a very important aspect of the feast is the contributions by the house of clan, and the pay out of the goods and money. I would like to refer you to Stanley Williams' statement there as to what he says regarding this. He said:

> "Each time when I hold a feast I usually put in about 4,000 in the pot. And there's the rest of my house members that would put...some money in the pot. After all this is added together, that's what with the material, the food and the money would come to about 70 or 80,000."

And I emphasize this:

> "And we do this to protect our land. We do this so people will say that...if we don't do this, people will say 'Oh, they forgot about their territory. They don't care about their territory.' So this why we put all this... expenses in when we hold a feast, because of the territory that we hold, that we are responsible for. And at times we have about two or three feasts during the year. This is the reason why we have the head chief, he has the power and he...has his responsibilities to his house members. He will say who will use the territory and who and what and when they are going to have. And he has a saying to this, and he is the one that always reminds his house members of the laws of the land and their own laws. And this is why our law is still known today, because we've...everytime we've

had a feast we've put this into action."

Now, I have now listed after that contributions made at funeral feasts for different chiefs. Now, this is all taken from Exhibit 702, my lord, and of course I think that you can see, and these of course are not all the feasts, but feasts that are recorded. And at page 319 I would like to refer you to the citation I referred to on page 320, which is Exhibit 702, and I have a couple of comments to make.

THE COURT: Sorry, what is at page 320, what is that, Exhibit 702?

MR. GRANT: This listing of page 316 to 319 all comes from Exhibit 702.

THE COURT: Yes, all right.

MR. GRANT: You should note, my lord, I intended to put in that these are principally Gitksan feasts, because Mr. Sterritt attended principally Gitksan feasts.

THE COURT: Yes.

MR. GRANT: Now, it also, as I explain on page 320, reflects those who were not high chiefs, because he recorded for any feast he attended, and significantly lesser amount was paid at their headstone feast. So you see quite a variety. Also, there is some cases in Exhibit 702 in which only the cash is shown, and in other cases which the total amount is shown. Mr. Sterritt decribes this in his evidence. This is particularly true with the feasts between 1980 and 1984, therefore in the case of a feast for a chief you see there with a lesser amount indicated it is most likely that it is only referring to the cash contributions. Now, these of course are Mr. -- not from the feast books, they're Mr. Sterritt's own notes, and if there's a feast book in evidence which differs with this, the feast book would be the correct form. But certainly the analysis of these compared to the feast book, that these are quite close.

THE COURT: These on the list starting at page 320 are also from Mr. Sterritt's notes?

MR. GRANT: These ones are a reference back to certain of the feasts that are listed in there, yes.

THE COURT: All right.

MR. GRANT: Yes. I'm referring back to some of the ones that are listed earlier. For example, my lord, on page 316 James Woods, chief, 11,876, and that's listed there. What I've done on page 320 and 21 is pointed out to you that with respect to the payments, that should be

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the "payments", for the following chiefs that the contribution of money and goods was well over 10,000 to each of these feasts, and so there are out of the listing 25 feasts of chiefs in which the contribution was over $10,000 as reflected in the previous listing, my lord.

Now, on the next page I point out that you can see that there's a cumulative cost of fulfilling obligations and asserting jurisdiction by looking at James Woods, Sr. James Woods, Sr.'s feast had over 11,000 contributed at his funeral feast on November 1980 and a further 11,000 paid in and contributed at his headstone feast in 1987. So for the death of the one chief, where there was not a pole raising but a headstone, total of $22,000 was contributed. Now, my lord, I say that the assertion of ownership and affirmation of jurisdiction through contributions, loans and repayments is described by Dr. Daly in his report, and he breaks it down as to the contributions and obligations of the chiefs. I then go on on page 322 and 33 to the performance and the payment in, and Dr. Daly, in his opinion, this is part of chapter 8, goes and describes the different obligations that the debts that were incurred. And after the house contributes, the whole clan contributes and then the father's side contributes. I'm on page 324, my lord.

THE COURT: Thank you.

MR. GRANT: And that was explained by Mrs. McKenzie. And finally there is contributions by the spouse's side, and that's a humorous contribution. And she, Mrs. McKenzie, describes that there, and it's also a significant contribution. Now, you see here is the house whose territory is the subject of the chief's feast of the passage, the clan, the wilnaadahl, contribute, and the closely related houses will contribute more than the further-related houses. This is demonstrated, you can see, in the combination of Exhibit 702 and the wilnaadahl, the seating. For example, Luus will contribute more to Gyolugyet, Mary McKenzie's feast, that would be more distant wolf clan houses. The other point -- and that's because that they would then be sometimes given privileged access to the territory. The spouse's side as well, as I pointed out yesterday, would get access rights or privileged access to the territory, and they contributed and recognize the host clan, the host house's ownership of the territory. Alfred Joseph

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explained the Wet'suwet'en situation in the same way.

Johnny David really described quite well what I've tried to enunciate here on page 325, that:

> "The different members of the house or the clan are allowed to use the territory with the permission of the head chief and the person who is given permission to use the territory at a feast redistributes the meat or money to members of the house and this is our Indian law and it is not the white man's law."

And he's here talking about the permission to use and the access, which arises and is confirmed in the feast hall by contributions given.

I would like to just highlight for you, and I submit that this should be your finding of fact on this aspect of the feast on page 326. I haven't formulated as a finding of fact, but maybe -- but I would ask you to consider it in that way, that the integration between the ownership of the territory, the authorization for the access to the territory, the redistribution of goods and wealth from the territory, and the affirmation of authority over the territory and over the people all come together through the institution of the feast. And Dr. Daly has summarized the significance of the feast in the next passage. I refer you --

THE COURT: Didn't he say that in his opinion the most important function of the feast was to repay debts? I seem to recall him saying that.

MR. GRANT: The repayment of debts --

THE COURT: I haven't seen this anywhere, and I'm just relying on my memory, but I think I asked him that, I thought that's what he said. I notice he mentioned it here in one of his longer passages that you quoted.

MR. GRANT: Yes. He talks about the repayment of debts in his report.

THE COURT: And I thought he said that was the most important part of the feast.

MR. GRANT: Well, in the context of the -- he certainly said in the context of the kinship society and the reciprocity, it is important for the payment back, but it's not -- the feast isn't -- I don't recall him saying it in that way, but I -- certainly your memory on some of these points is --

THE COURT: This isn't one that I would want to bet the farm on.

MR. GRANT: I would like to go back to that. But my recollection was that yes, the repayment of debt is an important aspect of the feast because of the reciprocal relationships.

THE COURT: All right. Well, if you find it or if you think I'm wrong, you can bring it to my attention.

MR. GRANT: I will, my lord. I will note that and I'll bring it --

THE COURT: It stands out in my -- what I believe is my memory, because it seemed to me that he went -- when I asked him he priortized the functions of the feast and, my recollection, in the order that he put it in.

MR. GRANT: Right. Yes, I -- certainly the repayment, I know he did emphasize that the repayment was important, but it's in terms of the question of the relationship, the passage at page 326 from his report I submit explains it in part, when he says that:

> "On the other hand, members of a society whose guiding principles have been steeped by centuries of subsistence relations (living from the land), regard their feast-giving in a high feast as the major settling of the host's outstanding debts for his lifetime, or perhaps for his whole generation, where the fruits of the labour of the House and its closely associated Houses, together with the riches of their lands, are gathered so as to pay out all that is owing and then some."

Now, my lord, in this sense the repayment is important. In this way the hosts are vindicating the name and standing of the host and revealing the history of its songs, adaawks, names, its nax nox performance, the riches of its spiritual force, which combined with the collective power of the house members, the history and the territories constitutes the authority or daxgyet of the house and its spokesman, the chief, the territories and their ancient names are also revealed on these occasions and evoke the greatness and the anguish experienced by those who have held chiefly names before. They are so close to the chief they are considered to be parts of his body. Now, in the sense that the repayment back, if the house maintains a debt for a long time, as you recall, or another house has to come to its aid, it may even give up its territory for a time. So the

 repayment back in that sense is a very important part.

THE COURT: I notice at the bottom of page 321 there's a reference to it, I don't think it's one that I was thinking about, you mentioned a moment ago:

> "These then are the major contributions loans and repayments in a" --

I don't know what that next word is.

MR. GRANT: "In a baxmaga", and then "hed'nsimgan". That's a pole-raising feast is baxmaga, my lord.

THE COURT: And the other one a headstone?

MR. GRANT: Hed'nsimgan is the Wet'suwet'en word for it. So pole-raising headstone would be the baxmaga, that's the culminating feasts.

THE COURT: Yes, all right.

MR. GRANT: The hosts -- yeah. As he says:

> "The hosts have gone into their heritage and history, their crests and songs and their territories, their treasure boxes, the place they store their wealth. Here they have used the power and energy of their whole matriline and its links to other Houses through marriage, their whole wealth and estate, which has been needed to fulfill their social responsibilities. If everything has gone according to the law, the guests will go home saying of the hosts: 'They have paid back, they have truly broken the wealth that they have gathered from their land and distributed it according to the law, it will come back many times over."

So in the context that the payback and the repayment of debts at the feast is demonstrative of the establishment or reaffirmation of their authority of the house. It certainly is important, but it's not -- as I'm going into the payback section, it's certainly not just such as when a person loans twenty dollars and they appreciate it when you pay them back, it symbolizes much more than that, and that's what I'm trying to emphasize, and it's my submission that that's what Dr. Daly emphasized.

THE COURT: Well, it's really a matter of emphasis, Mr. Grant. I'm not sure these are mutually exclusive on page 326. You're stressing the connection between the feast and

MR. GRANT: Yes.
THE COURT: And not necessarily derogating from that in any way, I thought Dr. Daly said that from the overall point of view the principal function of the feast, at least in modern day Gitksan social organization, was the public recognition and discharge of obligations, and this is what made a Gitksan person comfortable with himself, was that he had acknowledged and/or repaid his debts and obligations. Now, I'll find that passage myself to --
MR. GRANT: Yes.
THE COURT: But that's the sense that I was left with after that part of his evidence. You correct me if I have a misunderstanding of it.
MR. GRANT: Yes, I'll look at the passage as well, but all I'm saying is that it goes to that whole concept of daxgyet, I think we talked about yesterday, and it -- it goes to the concept of the house connection with the territory, because where -- and I think that's most strongly demonstrated where a house can't bring together the wealth to bury the chief to pass the name, and they have to borrow, and then you've heard much evidence of where they actually may get to the stage where they have to let another house utilize their territory or a portion of it as a recognition of their aid at that feast. And so that connection is there.

In terms of the payback, my lord, the hosts will pay back to all those to whom the house is indebted, and these of course arise from the burial, and usually this is primarily to the father's side. I say to the burial there, but of course it also arises in the pole raising or in other concepts as well, such as when a name is given and the father's side helps out from a previous name that was given earlier. Mrs. McKenzie explained the difficulty of the distribution of the money. There has to be a balancing with respect to all of the money that is given out. As I say on page 328, after relying on Mrs. McKenzie's evidence, here the one person is involved in the distribution of the money, because the authority in the feasting house must be witnessed by the guests for its validity, great care must be taken not to offend the guests at the time of payback. And Dr. Daly did a careful summary of the payments, and I have listed from his report the summary of payments he makes on page 328

and 329. Mrs. McKenzie also explained the payment for services rendered at a funeral feast by reference to Exhibit 3, and she said that every person, primarily on the father's side, is repaid for services rendered. And I have listed there the services for which repayments are made may include, not always, but may include all of those items listed there, many of which are referred to by Mrs. McKenzie, many -- some of which are referred to by Mr. Joseph, Knedebeas, Sarah Layton and Miss Wilson-Kenni. Doctor Mills also referred to those obligations in the business transactions on the Wet'suwet'en side, and I've put in the transcription -- in the argument the transcript of hers.

I would like to refer you now to page 335. I'm not -- I'm going over these, they're significant in our argument, but I don't want to read each of them to you, as long as you see what they're concerning. On page 335 you see a reference to five feasts attended by Dr. Mills in which she records them. The first four are Wet'suwet'en feasts, the fifth is a hybrid feast. And by "hybrid feast", it's a Gitksan and a Wet'suwet'en feast, similar to what was held when Alfred Mitchell passed away last summer, him being a Gitksan and being a Wet'suwet'en, and that's the type of feast she's referring to there, a hybrid feast. And finally there's a Gitksan feast she attended in June of 1986, and she explains the Wet'suwet'en value, the assistance they received, and the value repaying it generously. My lord, I point out to you here in response to a theory proposed by the Federal defendants, that these paybacks and reimbursements are recognized by the Department of Indian Affairs, at least with respect to the Gitksan and Wet'suwet'en, as Mr. Atkinson testified in his evidence and his affidavit. Most debts of the deceased are paid for the feast and not through the Department of Indian Affairs, that is the estates of cession, and this has been well recognized by the department for several years. Now, at the conclusion of the payout, usually late in the evening or early in the morning, there's the confirmation of the territory and the caretaking. And Dr. Mills explained that one of the -- and this is evidence that reflects Madeline Alfred and Alfred Joseph's evidence, and Johnny David's:

> "One of the important functions of the feast

system is to make public who is recognized as
the chief of particular areas whether he is there as the hereditary chief or the caretaker. There is a consensus that as long as everyone knows who is the caretaker or the chief of a territory, the system functions. Even if the caretaker is not from the proper clan, as long as everyone knows who has authority over the territory everything works out."

Now, this is a really interesting example, my lord, because she goes on to explain, and this is -- you see this in the evidence of Johnny David, because he talks about his role, but of course he's a participant in this. In the cases of the North Bulkley territory of Smolgelgem, that's the one I pointed to you yesterday.

THE COURT: Yes.

MR. GRANT: North-east of Houston, Maxlaxlex, Johnny David, and you recall his father was Smogelgem:

"Was made caretaker of the territory, because his father's heir was too old to use the territory."

That was Old Mackenzie, the grandfather, Ben Mackenzie:

"and the territory was registered under his name. By rights Johnny" --

And this is by Wet'suwet'en rights:

"Johnny can be the caretaker until his death. In the meantime he passed on trapline registration and the use of the territory to his son, Moses David, who predeceased him last fall."

This would have been in the fall of '85 or '86:

"Johnny has sought to have his grandson, Peter David of the Gitdumden clan become user of the territory."

Now, Johnny was a person -- of course Johnny is too elderly to utilize it himself, but Johnny was the caretaker, it was understood he would be the caretaker because he took care of the burial for his father, and

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since Johnny is still alive he has the right to do so, although he knows as well as everyone else that the territory by rights should revert to the current chief Smogelgem upon his death. Now:

> "Neither Smogelgem or Johnny David miss an opportunity to press their rival claims at the feast hall. They are making public what they want to have happen."

The ultimate decision, my lord, will be made after Johnny David's death when his stewardship of the territory officially ends. Both parties recognize, however, that the decision is not only theirs but a consensus of all the head chiefs who assemble at the feasts, and the decision must be made in conformity with Wet'suwet'en law. The real debate here, my lord, is, as Johnny David explained in his evidence, because of his -- Old McKenzie was elderly, he, Johnny David, took care of the burial of his father, it was recognized at that feast that he would have rights and access for the balance of his life to his father's territory. It's highly unusual, because you have Johnny David approaching well into his 90's, and of course he -- he delegated his son Moses to take care of the territory. Moses predeceased him, now it's a question of his grandson taking care of it. Meanwhile, Smogelgem says "I want the territory returned". The place at which this will be clarified will be whether Smogelgem pays back, and in that sense what you say about the importance of repayment pays back in the feast hall to Johnny -- to Johnny's house for what Johnny has done at the time of Maxlaxlex's death. Johnny of course is in the Hagwilnegh house. I want to say that and stress it, because it's not an aberration, it's not a change of the system, it's none of those things, it's the kind -- it's the kind of situation that shows how these obligations and reciprocity works out with respect to the territory. Now, Alfred Joseph testified that at this point in the feast such land questions are raised and discussed. He says:

> "Well, it's always -- I always bring up, when I'm speaking, that we are in -- in the process of going to court or we bring up the land, our land. Our ownership and jurisdiction over the

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> land has to be talked about, and that is always touched on. And the chiefs -- when -- other clans will talk about the same subject. Like I said before, they've been brought up in the past, but it was only brought up by two or three chiefs in a Feast, and it wasn't -- it was just a reminder by these chiefs, and that kept on, but now, today, it is much more. You could -- it's much more visible what we are doing, so it -- it is brought up at every Feast."

Now, here he's not saying a renaissance of territoriality in my submission, my lord. What he is talking about here is it's at the pole raising or the headstone feast that this occurs. This is not common, these feasts are not common. The context of the people's concern over the territory, the increased impact on the territory, and I say that it's a fact, it's the impacts that you have observed in the viewing, it's the impacts of the witnesses who have testified to raises the concern of the territory, but the point is that the chiefs, like Johnny David and others, there are key words and names that we'll come to that trigger the territories, and that has been passed on. After this comes the speeches and public witnessing, and of course they begin with the host clan describing territory and authority, which they understand has to be passed to the chief at the headstone or pole-raising feast. Each chief according to rank and from each clan speaks in turn and corrects or concurs with the understanding of the host clan. Stanley Williams described this in his evidence, and I refer you to that quote which I've highlighted on page 338. I'm not going to read that quote. Alfred Joseph testified to it from the Wet'suwet'en side at the bottom of 338, and he said:

> "When a head chief's name is passed, and the person that takes the name is told of where that chief's territory is, and he's told that he is responsible for that territory. He's told that he is responsible for the house that he's the head of and he's told of the boundaries and what areas the territory is. And it is repeated by all the head chiefs, the sub-chiefs of that clan are giving their

support of this -- to a new chief, and they're asking the guests at that time to speak to what happened."

In the case of a sub-chief there's mention made of the territories by witnessing chiefs. Yes, sorry, I'm on page 339, my lord.

THE COURT: Yes.

MR. GRANT: And you recall this at the Sowiis feast. Sowiis you remember being Madeline Holland, who's seated down along the same side as Alfred Joseph:

> "Well, it's -- the guests always give this same advice to them, and they are told that the clan that -- whichever clan is speaking agrees with that's being done, and that it is the proper way to conduct the business, and that they're always reminded of the past, of how the territory was used by the House chiefs, and that they -- they should do the same, they should take care of the land, take care of whatever territory that they are going to use."

And then he goes on to say:

> "And they are told that if they have never been on a territory, that the previous owners or the father, if they happen to be on their father's territory and they're moving to a new area, they are told that they should ask for advice from whichever clan is speaking if they know of their territory."

And this is an example that Emma Michell, that will be referred to later, and Alfred Mitchell, the cross-over of being on the father's territory, so sometimes the father's side who is sitting as guests in the feast know as much of the territory as the host house in a particular generation. And then, of course, finally on page 340 Mr. Joseph describes how they are told how the crests have been acquired by previous chiefs, and they're always reminded they're responsible to their house and to their father's clan. Finally, my lord, in the feast is the seating of the new chief. I had not highlighted, and I thought I had. At the bottom of page 340 Mrs. McKenzie explains that the witnesses have the opportunity to correct the proceedings during

this part of the feast. That's where it's very important for the guests to correct either the proceedings, and by that I mean of course also the announcements of the territory and the passage of the name, and I believe I've already referred you to two cases, my lord, one in which the wolf clan stopped the passage of a name of the frog clan in Gitwangak by announcing at the feast, and Art Matthews gave evidence of that, and the other is Stanley Williams, where he stood up in the feast and he corrected the adaawk. And also, the Haalus fishing site where a feast was held, and the discussion was made with the guests of the 'Nii Dil side, the wolves spoke about the Haalus', frog chief, fishing site. And that was in the evidence of Stanley Williams. Finally, my lord, is the seating of the new chief, and at the next feast where the new chief is a guest, the host clan will seat the chief. This will often be the father's side that will do the seating.

My lord, if I can turn you to page 342, many of the laws and procedures of the feast, as outlined above, relate directly to the affirmation of rights of ownership to the territories and to the exercise of jurisdiction by the chiefs to their territories. And the components of the feast which specifically affirm ownership and jurisdiction will be referred back to in the argument on ownership and jurisdiction, but I've endeavoured to encompass them here to show how they fit into the whole feast system. I submit, my lord, that the significance -- that the feast system is a fundamental component of the exercise of jurisdiction and authority by the Gitksan and the Wet'suwet'en hereditary chiefs and it's the whole question of payback, the whole question of all of the obligations in the feast are reflected of the relationship to the territory. That's of course not all, but that's certainly a significant aspect for your lordship.

When my learned friends argue about duress, abandonment and as acquiescence I wish you to keep in mind that there was a 64-year prohibition from 1887 to 1951 of the feast system, and yet the Gitksan and Wet'suwet'en maintained the feast. And I just point out to you the Wet'suwet'en feasts of Hagwilget in 1922 was attended by Jenness, which he refers, and it's in his exhibits. The 1933 feast of Johnny Smith, and the 1945 feast at Kitsegukla recorded by Beynon and Johnny Smith's feast was described in evidence,

and Johnny Smith was jailed for it by Mary McKenzie.

THE COURT: Not quite.

MR. PLANT: I don't think you mean that.

THE COURT: She didn't jail him at all.

MR. GRANT: No, I didn't mean that. Johnny Smith held the feast, it was described by Mrs. McKenzie, and he was arrested for that by the R.C.M.P. or the B.C. Provincial. The survival of the feasting process of the Gitksan and Wet'suwet'en stands as a further testament to the continued exercise of jurisdiction by the Gitksan and Wet'suwet'en chiefs. And I point out to you the significance of the feast process is in the context of their society shows the jurisdiction respect to the territory is demonstrated through feasting and relationship of the feast, wealth and territory. It is the institution, my lord, of collective jurisdiction by the Gitksan on the one hand and by the Wet'suwet'en on the other hand. And of course it's a demonstration of the continuity and adaptibility of the Gitksan and Wet'suwet'en societies to modern change, and I ask you to consider what I say there in terms of your ultimate findings of fact.

THE COURT: Can you sometime give me the reference to this 1887 provision, which has been much discussed in the evidence but I've never seen the statutory language --

MR. GRANT: Yes.

THE COURT: -- that's said to bar the feasts. I would like to see precisely what they said.

MR. GRANT: I believe it may even be in our authorities, but I'll provide you with a reference.

THE COURT: Yes, thank you.

MR. GRANT: Otherwise I'll provide it. Now, my lord, I'm moving into the last section of the argument relating to the nature of organized society. And this is the question, my lord, of adaptability of Gitksan and Wet'suwet'en societies. My lord, the testimony -- it is our submission that these aboriginal rights, titles and practices and the organized society are not frozen in time, they have long adapted, changed and consolidated in the face of changing social, economic and political conditions. I submit, my lord, that the testimony of the chiefs overwhelmingly demonstrates the vitality and adaptability of the Gitksan and Wet'suwet'en through history, and particularly, throughout the lifetime of those who testified. Certainly changes have occurred, and some of these will be outlined below. However, but what's important

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is the chiefs continue to maintain their institutions, their laws and traditions in relation to their territories and to the feast. The ownership of the territories, including the adaawk, the kungax, the crests and the songs, the succession of chiefly names, the perpetuation of house and clan, the laws and the the feasts, these remain fixed points in the moving changing world of the Gitksan and Wet'suwet'en. And I submit, my lord, that the organizational heart of the society lies in the territory. Without the territories, my lord, the adaawk, the crests, the totem pole, the laws and ultimately the feast itself will become frozen artifactual remnants of the past, the stuff of archives and museums. As these incidents all demonstrate, the cultural and social institution, the connection to the land remains intact. And I would like to just give you some examples of the vibrancy of these societies and their maintenance.

First of all, the cultural adaptation and change before the chiefs' lifetime. The Gitksan and Wet'suwet'en witnesses you've heard stated that a feature of their authority and their way of life, customs, laws and rights is the right to adapt their institutions so as to progress and respond to changing conditions and to do so from within the context of their ancient cultures and histories. Here, my lord, I'm referring to the evidence you've heard, such as Pete Muldoe engaging in the logging, such as James Morrison and his utilization of resources, Art Matthews and his reference to the utilization of pine mushrooms and suddenly realize that this new wealth from his territory that his grandfather never thought about, the pine mushrooms.

THE COURT: I thought that came from Mr. Morrison.

MR. GRANT: The pine mushroom came from Art Matthews.

THE COURT: Did it?

MR. GRANT: Yes.

THE COURT: All right.

MR. GRANT: And then he said -- then he understood what his grandfather meant when he told him the territory -- I believe he used the words it was like an ocean that ebbed and flowed, I think is the terms he used. But there would be further wealth there that he didn't know of. Now, the pre-European histories and cultures of both Gitksan and Wet'suwet'en have not been eternal and not changing. I'm here, my lord, am challenging the Rousseaulian(sic) idea of the noble savage. The

idea that we have some idyllic world pre-contact that our clients, the plaintiffs, are seeking to return to. In the face of shifts and changes in the regional biogeoclimatic conditions as well as social, political and economic conditions, the Gitksan and Wet'suwet'en have managed to develop and maintain the complexity which makes up their cultural identity as distinct peoples, and they have done this within a wider community of peoples who have long interacted on the basis of leavening conflicts with gift-giving, reciprocity and feasting. Now, these principles have prevailed through changes of technology, climate, market and conquest, because they possess the flexibility necessary to adapt to changing conditions. And I say, my lord, that is reflected in the adaawk, and my analysis of the ancient history and the more recent history, the Men of Medeek, for example, Exhibit 898, and the adaawk which I believe is Exhibits 1046 to 1048.

Now, my lord, this process was at the same time conservative, and traditional in the true meaning of conservative, and malleable and innovative. Both have been essential and notable features of the people's heritage. Both have been at the core of the development and dynamism of the general north coast culture. Today, my lord, this right, both to maintain their historical and customary institutions, and to adopt these to new conditions, is upheld by the Gitksan and Wet'suwet'en chiefs. It is seen quite consciously as an essential component of their aboriginal rights and duties. Stanley Williams, up to the time of his death, used a modern fishing vessel to get fish with which he provided people such as the people of the House of Spookw. He was exercising his aboriginal right and his obligation as a high chief to protect those others and to take care of them. The general -- chief's rights and duties to act as guardians to cultural continuity through adaptation and change is not a new concept, my lord, it's the general theme of the history, both ancient and modern, of both peoples, and I refer here to the adaawk and the kungax, which chronical the disjunctures of clan and house experience over a long sweep of human history. Now, this history, my lord, does not attest to an eternally balanced, unchanging, and I say pre-contact society and culture, even though within that history there were lengthy periods of stability.

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Mrs. Marsden alluded to this in this way from her review of the adaawk:

> "An ada'ox begins with an account of the wilnat'ahl (matrilineal group of kin with common historical roots) original home in the Northcoast area, and of its earliest socio-political alliances with neighbouring groups. It goes on to tell of the major historical events in the life of the group that have taken place in the ensuing millennia. These events were often shared with other wilnat'ahl, and gave their character to the outstanding eras of Gitksan and Northcoast history, eras of peace or wars, political upheaval or stability, natural disaster, migration and economic expansion. As these eras unfolded, each event helped to shape the group's identity and establish its landholdings while, at the same time, weaving it more intricately into the complex network of kinship and alliance that was to become Northcoast society."

The adaawk histories of the clans attest to the dramatic change of climatic, economic and social conditions to which the people were forced to adopt. And I refer you there to the Medeek adaawk, which tell of the changing political, climatic and population factors in different eras of the clan's history, and to Dr. Daly's evidence at page 12 and his report.

Now, my lord, Miss Marsden found, for example, that the Fireweed-Killer Whale clan migrated into Gitksan history and territory from the coast. They moved inland during the period of early deglaciation, made alliance with the Raven People, were destroyed by these allies in a war that broke out over gambling. The descendants of the only survivor of Fireweed destroyed the Raven People and initiated a period of fission and migration. Of course, that destruction was that destruction at that early village, it wasn't the destruction of the entire Raven People. They then created a social and political institution by combining their coastal heritage of house and crest institutions with inland tradition of clan building, and of course Temlaxam described as the place where there was a flowering of this. In other words, my

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lord, natural and social upheavals have characterized certain periods of adaawk history, and these conditions have led to the development of new traditions which, over the centuries, all contributed in their way to the rich identity of the overall north coast culture. Similarly, the archaeological record indicates the ability of the people to adapt to changing conditions and to change and transform their cultures and social institutions to meet new challenges. Dr. Albright assessed the watershed from Moricetown to Kitselas, and I'm not going to read that to you, but you can see from the evidence, and I've referred to it earlier at the time of discussing the ancient histories with you, that the record indicates at the bottom of 349, a pattern of existence had developed by 3500 B.P. in the Gitksan and Wet'suwet'en areas and among their western neighbours. This way of life involved the construction and use of well-appointed villages composed of large wooden houses, seasonal fish production and storage activities, as well as seasonal hunting, gathering and trade activities. Then there's a reference to the trade and the presence of obsidian, and the sharing of technological traditions during the earliest phase of excavated history. I would like -- and I refer then as well to the trade trails, which are long-standing trails, and I reiterate what I discussed with you yesterday with respect to the trade routes.

My lord, I now would like to consider, and I think it is of assistance to you, the cultural adaptations and changes in the lifetime of the chiefs. And I don't think that I am overstating it here, my lord, to say that the cultural adaptation and changes in the lifetime of the chiefs is a centre piece of the federal defence and the federal attack on the continued existence of the Gitksan and Wet'suwet'en rights. So in that context, as well as the provincial defendant alludes to it, I submit that the effect of reserves, I asked you to take this into account. My lord, as you've heard in evidence, in the lifetime of the chiefs, eagle down was used to invite guests to feasts. In the lifetime of others, eagle down or swans down is still used, but whether it is used or not, my lord, the ceremonial and formal protocol of the occasion has been maintained. Whereas in the past a small gift would be given by the prospective guest in order to signal his or her acceptance of the

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invitation. Today a sum of money fulfills the same function, and during the invitation the inviters, the teets, still sing their songs. My lord, in the lifetime of the chiefs, the hides of animals, beaver, ground hog, moose and caribou were distributed to the guests at feasts to pay for services performed by the father's side and to the guests, who are paid to witness the business conducted by the hosts. Today, my lord, I may say that although I say their money, clothing and other commodities are used, hides are still used to a certain degree, but certainly not as much as formerly. However, the chief's obligations continue to be fulfilled within the old system of gift-giving and reciprocity. The chiefs and through them their members continue to pay and be paid, to give and to reciprocate in order to validate and maintain their ancient chiefly titles to the feast. My lord, in the lifetime of the witnesses, chiefs stored feast foods in wooden structures above ground. Today they use freezers and preserving jars, a point made much by the defendant in cross-examination as to whether there was electricity and windows and other features in people's houses. None the less, the old values are maintained. The food is stored, it's distributed at feasts by the host to their guests.

My lord, I refer to the father's side in the lifetime of chiefs who have given evidence would cut the hair of the bereaved children of the deceased. This is a sign of deep mourning. Today, while the people forego the haircuts, the providing of services to the bereaved by the father's side continues. Haircut service has been replaced with gift in cash to the bereaved house group. My lord, this does not end the feast, this does not end what has been going on since the time of William Brown and before. At one time, still in the life span of the chiefs, loose tobacco was passed around smoke feasts which even today are held a day or two before the funeral feast. Today, cigarettes, candies and chocolate bars are distributed instead. However, both then and now the chiefs meet upon the death of a house member, they choose a successor, they plan the funeral feast and the distribution of gifts to witnesses. Similarly, even today, the father's side prepared to organize its contributions to the funeral and the subsequent feast, as do the andimhanak, the spouses of the members of the deceased house and clan.

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My lord, you saw a photograph this morning of headstones taken to the cemetary by sled. Today a truck is generally used, and Mr. Joseph and Miss Alfred, Madeline Alfred, describe this. No matter which way the chiefs pull the headstone to the graveyard, they accompany it and salute the spirit and memory of the deceased. The andimhanak, that is the spouse's side, accompany the headstone with their singing. My lord, in the lifetime of the chiefs, feasts would be held in the longhouse. The Gitksan, for instance, would be seated on the floor, on benches or raised platforms, according to the rules of the old seating, and I believe it's Exhibit 2, tab 3 that shows the old and the new seating. Today the feasts are generally held in the community halls or community centres. The Wet'suwet'en continue to seat their guests parallel with the walls, some on raised platforms, but they use chairs. Their gifts and food stuffs are placed on unrolled paper in front of them. The Gitksan seat their guests at tables, and that has affected some of the ordering of the seating, as Mrs. McKenzie explained. But notwithstanding these technical changes, the old pattern of seating the chiefs and others by name, by house and by clan continues.

Now, my lord, within the lifetime of the Gitksan and Wet'suwet'en witnesses, non-native people were never -- or were not adopted into the house groups. Mary McKenzie explained:

> "Adopting a white person is a fairly new thing. It became that way when the young people started marrying white people. However, adoptions continue as they have been performed in the past, used to maintain the stability and the survival of the houses."

And I may note here that although that the marriage of young people to white people is recent, the marriage of Gitksan to Nishga and Gitksan to Wet'suwet'en is not recent, and that's how the adoption was utilized there, and it hasn't changed. Today, while non-native people are adopted, many of them are linked to the respective families by marriage. Whatever the specific context for adoption, this practise continues to be used by the chiefs to maintain strong houses, and, my lord, as Art Matthews explained, to bring the

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children of chiefs into the Gitksan system, why his wife will be adopted. My lord, within the lifetime of the chiefs people assume non-native names. They passed them to their children through the male line. Alfred Joseph took his the name, "Joseph", from his father, who in turn took it from Alfred's grandfather Joseph Nahloochs. However, houses continue to pass on their chiefly names in the old manner; namely, through the matrilineal line of the house. Thus, Alfred Joseph, the individual, will live his life, hopefully for over a century; then he and his personal, English name will pass away while Gisdaywa, his house's high chief name, which has lived on through the centuries, will continue to live after him. That's exactly what Stanley Williams described in his own evidence. In the lifetime of the chiefs, the Gitksan language has evolved. Mary McKenzie testified that in the last ten years the term "old Gitksan language" is used. Younger children have cut short words in the language. Nevertheless, my lord, the Gitksan language continues to be used, new words and concepts are evolving, as are new ways of teaching and learning. And I refer to Glen Williams and Olive or Joan Ryan's evidence of the Gitksan emersion in Gitwangak.

My lord, it's absurd, I say, just as absurd as to suggest that the French language is somehow lessened by the word of television in French, so it is with Gitksan and Wet'suwet'en. Within the lifetime of the chiefs the Gitksan women process their fish with the use of shell and stone-bladed knives. Today they use steel knives, but they continue to organize in family groups to process the winter's supply of fish. Within the lifetime of the chiefs, fish traps or weirs were used for catching salmon. Also, the Wet'suwet'en used --

THE COURT: I wonder, Mr. Grant, if we shouldn't adjourn. It's time the witnesses should be using some of those knives and forks you're talking about.

MR. GRANT: I'm almost completed, I wonder if -- I certainly don't -- as I said, I intended to complete at noon hour, if -- if you're up to it, your lordship, I'm prepared to take a shorter lunch.

THE COURT: No, I don't think so. I think we're going to be sitting late, and I think that's enough.

MR. GRANT: Fine, my lord.

THE COURT: All right. Two o'clock.

THE REGISTRAR: Order in court. Court stands adjourned until

two o'clock.

(LUNCHEON ADJOURNMENT TAKEN AT 12:25)

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

Graham D. Parker
Official Reporter
United Reporting Service Ltd.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

THE COURT: Mr. Grant.

MR. GRANT: My lord. I was talking about the changes as the adaptability in recent times. And as both Basil Michell and Richard Benson refer to the fish traps or weirs were used for catching salmon and the Wet'suwet'en used a plant called laylak to make nets both for fish and for snaring animals. Today, commercial nets are used by the chiefs and their House members continue to fish much as their ancestors have done, and where their ancestors had fished. They continue to be nurtured by the fish both materially, culturally and spiritually. By that I mean, of course, the fish are -- the fishing sites, which I will come to in the context of the territorial ownership, are substantially many of the same fishing sites are used. And I may say, my lord, that the implementation of the by-laws of the direction of the chiefs was a further effort of the chiefs to take control back of how they fished and, of course, those by-laws allow for fishery by the use of weirs once again.

Within the lifetime of the chiefs, the Gitksan people recall cutting firewood with stone implements. Mrs. Ryan explained how James Weget cut poles for railway use by hand. Of course, today people use steel axes, chain saws and in the case of a person such as Pete Muldoe, have operated sawmills. James Morrison, Neil Sterritt Sr., and others. Emma Michell and her husband. Yet these changes in technology have not eliminated the peoples' needs and practices of using and manufacturing wooden materials, tools and shelters as well as totem poles, masks and bent-wood boxes from the forests around them. And I say and urge on you, my lord, that one of the resources considered under ownership is the timber resource which has been used by the people both since long before contact.

Within the lifetime of the chiefs, my lord, people have travelled to the coast by canoe. By the turn of the century they were travelling by paddlewheeler, and after 1910, by railway. Today, of course, they travel by car. But, my lord, no matter how people travel, they have found it necessary to their way of life to continue the old practice of going to the coast to

regional goods, their skills, for trade their surplus goods and wealth items from the coastal region, items valued in the context of the family, that is the House, and the feast system.

Now, similarly today, my lord, I referred you to the trails yesterday. Many of these highways through the Bulkley, Skeena, Kitwancool and Kispiox Valleys follow the routes of the old Gitksan and Wet'suwet'en trails. In the past, people visited on foot, following the ancient pathways; today they follow the same pathways. And the Highway 37, the route over to Cranberry, what's known as Cranberry Junction to the Nass, those are examples of the routes. The route up the Kispiox Valley and now crossing over to Meziadan parallels the old trail referred to by George MacDonald. And, of course, Highway 16 as well through this territory matches the routes recorded by earlier traders and also by George MacDonald in his work on the trails.

In the memory of the chiefs' immediate families, there was a cable crossing of the Bulkley River at Hagwilget.

Before the present generation of witnesses, the Wet'suwet'en constructed a bridge at Hagwilget, using logs, boards and telegraph wires. And you have seen not the photograph I have showed you yesterday, but you've seen the photographs the Hagwilget bridge. The principles employed in this bridge are consistent with the cantilever bridge construction that I referred you to yesterday.

Today's steel bridges facilitate the social and economic interaction of the Gitksan and Wet'suwet'en across the river much as did earlier spans at river narrows along the trade lines of the grease trails. Johnny David recalled that prior to the bridge construction at Moricetown Canyon, the Wet'suwet'en felled trees across the canyon, or pulled them over to span the waterway. People would then cross the river on foot, along the log. And the two photographs were exhibited, showing the bridge which the Wet'suwet'en built over the Moricetown Canyon, and one showing a bridge built by non-Natives. And one of the photographs is Exhibit 131, my lord. I believe the other one is Exhibit 132, the one I showed you yesterday.

Within the lifetime of the chiefs, Christian religions and Native spirituality have coexisted,

 despite pressures to abandon old spiritual ways.

Christianity is widely accepted, yet the ancient beliefs of the Gitksan and Wet'suwet'en peoples outside of the context of the Church continues to be highly meaningful to the overall spirituality of the Gitksan and Wet'suwet'en. Art Mathews Jr., a member of the Anglican Church stated:

> "I go to Church but that doesn't mean I give up my spiritual beliefs and my territory."

He later testified as to how the Church recognized the spirituality of the Gitksan and their distinct cosmology. The Church then sought to interweave Gitksan and Judeo-Christian systems of meaning to reconcile the two traditions. And he said:

> "Like when the missionaries came, that these missionaries would compare our very system with the Bible system.... What these missionaries did was they asked, and they found out all about these nanox and the stuff they talked about, and they compared with the Bible. And they could see that the spiritual belief in prayer is part of the naxnox of the simooget laxha (The Creator), and in doing so they are... the whole of Gitwingax was told, 'look, you guys youth got tribes - here's a person in the Bible that has the twelve tribes of Isreal.' So in these ways that's why we are interconnected today, that our beliefs were met in these situations. Another good example is our people having never given up our totem poles or cut them down, or burning of anything. They - they kept both - two together".

Now, when he says "never given up our totem poles or cut them down," there has been evidence of that. But he's referring, of course, to Gitwangak in that situation and of course, your lordship has had the opportunity of seeing photographs and the actual poles themselves at Gitwangak.

The Federal lawyers directly asked the late Stanley Williams if he believed in Jesus Christ. On re-examination Stanley Williams explained:

> "Q. You were asked yesterday by Ms. Koenigsberg

about membership in the Anglican Church and your spiritual beliefs and you were asked if you believed that Jesus Christ was the son of God. And you were also asked something about whether Jesus was your savior. Does your membership or does your belief in Jesus change your beliefs in your, that you have described earlier, your beliefs about your spiritual relationships with the territory and the beliefs you described earlier such as through the Sisatxw?"

And he had explained, of course, the Sisatxw. I think you recall that, my lord. The answer was:

> "In the ancient times, before the white man came, we always believed that there was a creator, which we know as Simoogit lax ha, and when there was any suffering amongst our people they would make an offering, they would build a fire and make an offering and put food in the fire and they would pray. As the smoke is going up they would pray and they would pray to the Simoogit lax ha, saying we are poor, look down upon us, look down and help us out, and this is the prayers that were said by our people.
> Q. Do you still believe in the Simoogit lax ha?
> A. I have always believed in this, in the Simoogit lax ha, and he gave us our lives, and he gave us the good that we survive on and it's the same with the white people, they were given their lives and they were given food to survive, but when he gave us food it didn't come in cans, we had to get our foods. Today, I am a member of the Anglican Church -- "

And this is what I emphasize:

> "-- but I will never forget my grandfather's laws, which I hold together with the member of -- as a member in that church, I hold it together with that church and my grandfather's beliefs."

And of course, at his own funeral the co-existence

Submissions by Mr. Grant between the Christian religion and his spiritual beliefs was demonstrated in the feast hall, as with the feast for Delgamuukw and many others. And you have heard the feast of Delgamuukw, where evidence has been heard, there was a huge feast at where the naxnox was performed. I am referring there, of course, to the feast of Delgamuukw, the late Albert Tait, and the regalia of the Gitksan and Wet'suwet'en was utilized.

A workable coexistence between the Churches and the Gitksan and Wet'suwet'en has been possible, my lord, because the Church bodies could and did recognize the authority of Indian nations to their land and livelihood. In other words, the Churches, my lord, were not in the business of directlt taking the lands. The co-existence of the authority of the Churches and the authority of the chiefs is shown in Exhibit 69, a photograph of Bill Nye, Madeek, and Thomas George, Gisday wa, both Wolf Clan chiefs, together with a priest, Father Paul. And I just ask that you note when you consider this, to note the photograph. Bill Nye is shown displaying one of the crests of Madeek, the tracks of the grizzly bear. Both chiefs are wearing dance aprons which are part of their chiefly regalia. On the bottom of Gisdaywa's apron is a caribou. Hoofs fringe the bottom of the apron. The priest is wearing the traditional dress of the Church. The three men had their photograph taken while attending a pole-raising feast for Satsan at Moricetown - before the rescinding of the Potlatch Law. That is before 1951.

Mary MacKenzie testified that the chiefs' crests are displayed in church on the occasion of a chief's funeral, when the crest blanket of the deceased chief is taken from the casket of the former name-holder and draped over the shoulders of the new name-holder. And she referred to this in terms of An Hloo'o, Clara Weget:

> "It belonged An Hloo'o. In recent years, some of the chiefs, they take their blessing inside a church today. So, when that has happened, like Mrs. Weget would go forth with her wilxsibagxws - that's her father's family. They take the blanket off and drape it around her, and then she is blessed there by the minister and by the head chiefs at the same time."

Madeline Alfred, Dzee, testified that the priest at Moricetown wears a deer-skin robe at mass made by Madeline. Beaded into this garment are the crests of four clans of the Wet'suwet'en.

Now, my lord, just as these people sought to amalgamate aspects of Christianity with aspects of their own spirituality over the lifetime of the chiefs, so too within the lifetime of the chiefs, the people adopted an earlier form of literacy from the priests. And here I refer to the early written language which enabled people to study Christian texts and assess them cross-culturally, in the manner described above by Art Mathews. Early forms of Native language transcription also provided a convenient form of communication between families in the course of their seasonal round, as indicated by the reports of the early surveyors in the Wet'suwet'en territory who noted Tinneh or Dene characters along the grease trails down to the Kemano area. That's one of the routes that goes through the territory, and I referred you to the source of that yesterday.

Alfred Joseph explained that while Joseph Nahloochs, his grandfather, could not read or write English or French, he did know and understand, quote, "the other system," the syllabic language introduced by Father Morice. Johnny David produced in his Commission evidence the syllabic Bible of Father Morice, a copy of which he had. Joseph Nahloochs possessed a prayer book written in the Morice system which he studied. So in other words, literacy as in a written word has been taken on by the Gitksan and Wet'suwet'en, but that does not take away from their rights.

Today the Gitksan and Wet'suwet'en want formal education for themselves and their children and this transitional phase and the effect or not effect of it on its rights I submit was best stated in point by Miss Wilson-Kenni in her cross-examination. She said:

> "I've always wanted to have more education myself. And we are not against progress. No one has ever said to us that we were against progress.... you know, in the same way that the non-Indians (who) came here, (at one time) they had to live in tents before they had these skyscrapers in Vancouver. You don't expect

 them to live in tents, do you? It's the same with us. We've progressed, just like everybody else."

Now, here what Yagalahl, Miss Wilson-Kenni, is saying, is that the local traditions, whether in relation to education, material culture or technology, respond to general changes in the social world of any era or epoch. These responses can be made without threatening the existence of the cultural heritage or the rights of the people; and in this case, of course, the rights of the Gitksan and Wet'suwet'en to their land.

Further, from the perspective of cultural continuity and change, Dr. Daly presented evidence on this question as well when he spoke of the past century of changes to the negative sanctions against trespass on the House territories:

> "In the past hundred and fifty years punitive systems of most peoples and nations have undergone great changes. The Gitksan and Wet'suwet'en no longer kill trespassers on their lands, just as the destitute of Europe are no longer executed for the theft of a loaf of bread. The general climate of punitive law enforcement has been leavened by social reform. Sanctions once deemed appropriate among the Gitksan and Wet'suwet'en, as among the people of any civilized society, are no longer deemed proper. Today, proportionate punishment tends to have supplanted ultimate punishment."

And Alfred Joseph specifically explained the modern utilization of the trespass law among the Wet'suwet'en, and he suggested that the offender is warned, there is social gossip and ostracism, and by social gossip it is meant here the social pressure on the person. And then he says:

> "If it's continued, that person will have to - is invited to a feast and it is taken up at that - in that place... then the chief would say why the feast is held, and he would be told that he is - he or she is not supposed to be on a certain place, not supposed to be taking food out of - food or any animals off that

territory - in front of the witnesses."

In other words, the person would be publicly chasten and would be embarrassed.

Now, my lord, in concluding on this section, the question is: Are the cultures and laws and rights embodied with them at any one point in time more traditional or less traditional than at another point in time. And I say that individuals in all cultures distinguish between traditional and non-traditional values and practices. Tradition is seen as unchanging heritage, while the violation of these customs is seen to be a fall from tradition. This discernment is a phenomenon found in all societies and cultures. It is an unprofessional folk model view of the social world and ought not to be taken as a paradigm or a model for understanding social and cultural process and change.

Now, my lord, I say this is something that the Federal defendants have relied on extensively. The nostalgia with which Mr. Macaulay questioned witnesses about the existences of the longhouses is an example; that if only the longhouse had survived, then there would be something of the great tradition, the tradition of the people. But I say the Federal defendants have ignored the viability and the vibrancy of the society as demonstrated in the evidence today. The reason why this traditional/non-traditional dichotomy is misleading is not complex: all societies at all times are faced with varying stages of degrees of stable "tradition" and new or non-traditional challenges to that stability. An accurate model of social, historical, cultural reality must account for both these facets of societies and culture. And as Mr. Brody referred to this in discussing the tradition, he says:

> "The continuity that has led the people themselves to insist at every turn that they are who they say they are, that they have the rights that they claim as theirs - notably, the right to territory rather than to any particular form or way of making use of these territories - is possible only if we move away from an ossified notion of "tradition." We can then more easily recognize the extent to which the Gitksan and Wet'suwet'en systems are intrinsically open and adaptive....

> For the chiefs and elders, tradition is what used to happen; but cultural anthropology urges the realization that chiefs in the future will call today's activities 'traditional.' The economic mix occurs on lands, and for the most part in relation to resources, that are defined - by the cultures themselves - as the territories from which the people always have and always must earn a living."

My lord, in the post-contact experience of the Gitksan and Wet'suwet'en, non-Native initiatives have provided conditions both for tearing down the old traditions, especially in relation to the economy, and for building new, adaptive traditions.

This experience is consistent with challenges to social and cultural stability in pre-European times. Cultural adaptation, then, is an integral part of aboriginal rights, duties, laws and values at any point in the history of a society and a region. And of course, this is the very question that you had asked, I believe, Mr. Jackson near the end of his argument: Change is just as much a pre-contact phenomenon as a post-contact one; similarly, periods of stability in the pre-European era were relative to the on-going cultural processes of conflict resolution and the technical ability to deal with natural disaster.

THE COURT: Well, do you say that aboriginal rights are immune from change? No, I haven't put that very well. Do you say that aboriginal rights will survive any change? Let's take the extreme case where the entire Gitksan community turned into American enclave specializing in service industries, financial service industries, banking, finance, insurance, do you say that these kind of aboriginal rights would survive that kind of a change?

MR. GRANT: If there is a Gitksan people, there is a Gitksan -- there are Gitksan rights, those aboriginal rights will survive. The example I thought you may be considering would be the Huron, for example. The Huron were wiped out through wars between the French and the English and the Iroquois in that whole dynamic, so that the Huron and of course even the Beothuk, and the issue in Newfoundland as to whether there is any group that has aboriginal rights there.

THE COURT: Well, let's just take the situation where a community evolves from the kind of community the Gitksan had at the time of contact into a totally urban community. You say --

MR. GRANT: An urban community still here?

THE COURT: Well, yes, here, yes. All right. Yes. Do you say that these aboriginal rights that we have been talking about in this case would survive in that kind of a change?

MR. GRANT: The aboriginal -- so as long as there were Gitksan people and they were based in their territory, yes, they would.

THE COURT: Not using it at all? You see, this is a big territory. You can't live on it all.

MR. GRANT: No. But of course, the concept of possession which the concept being on the territory is a concept that there are groups that are much less connected to territory.

THE COURT: Well, I see you are arguing that there had been all these changes.

MR. GRANT: Yes.

THE COURT: Yes. And my problem that I am exploring is that is there some point where change will overcome the continued existence of those rights.

MR. GRANT: Well, if you wish me to -- this is the hypothetical that possibly --

THE COURT: Yes.

MR. GRANT: -- that may happen.

THE COURT: I never thought of it until five minutes ago, so --

MR. GRANT: Well, no. If I could -- I'll pose to you possibly a hypothetical. If the descendents of the Gitksan and Wet'suwet'en totally disconnected themselves from their territory, stopped their feasting, stopped their passage of the names and the relationship of those to the territory, never went on their territory for hundreds of years, there was no passage of the territory and under ownership we will focus on that is the passage of the knowledge of the territory, if they did all those things for a long period of time there may be some attenuation of the rights, yes, because there would be no connection after a long period of time. But that's not the situation, of course, that your lordship has. There has been changes. What I am saying is it's like in the Symonds case, it's not the fact that he used the rifle and that, of course, was a hunting rifle. And I think that if I recall, I believe I was in court when you raised that, you said

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well, who would suggest that? Well, the Provincial Government in that case suggested that all the way to the Supreme Court of Canada. That was the right. And the Federal Government here is suggesting that all of these changes, I mean their rights have been gone. But they still -- they still know their territory and much is made of the fact that, well, they haven't been out on -- there has been -- there has been less usage since the 1950s. My lord, in the context -- in the context of this case and of the evidence you've heard, that is like that. 40 years is no time at all within the context of the Gitksan and Wet'suwet'en siding. That's why I say in a long long period of time if you went generation -- you went a couple of generations and there was no knowledge of the land passed on, no connection to the land made, then you might say well, what have I got here? And maybe that's what you were referring to with the mercantile economic entirely urban not disconnected from the land analogy.

THE COURT: So you are arguing that change doesn't matter? I am merely trying to explore the outer limits of that proposition that you are advancing. Are there any outer limits to your proposition?

MR. GRANT: If I -- and I am not answering your question yea or nay, but let's make an example. Let's make analogy. If I have a piece of land in Oklahoma that my great grandfather had and there is an old piece of paper that we've even lost, somewhere down in Oklahoma in their registry system it's registered in my great grandfather's descended name, there would be no suggestion that although I never saw it, I only knew it was somewhere in the State, that I didn't --

THE COURT: Well, that's a form of what I call Euro-western ownership. That's not aboriginal rights.

MR. GRANT: That's right.

THE COURT: I don't think it's a true analogy.

MR. GRANT: But what I am saying is that in that context the ownership is there. This is the distinction. If there is no connection, as I say, over a long long period of time to the land so that Kliiyem lax haa did not know where her land was -- Kliiyem lax haa was on that land. I am talking about in the far north. Googlaht's House members have been on the land in the far south. These lands have been utilized by people --

THE COURT: See, your proposition, then, is that any continuing connection or associates with the lands preserves the

 average rights.

MR. GRANT: And that connection is through the naming. The old piece of paper in Oklahoma, which I may not even know about, shows some connection, but in this system, and this is where I agree with you, that it isn't a true analogy, is the naming of the land, the knowing of the names and of the boundaries of the lands and the passage of those in the feasts is the continued confirmation, the passage of exchange of tens of thousands of dollars to confirm that ownership over and over and over again, over the last hundred and fifty years is confirmation of that.

THE COURT: All right. Thank you.

MR. PLANT: My lord, since there was an interruption, I am just wondering, referring back to page 360 for a moment, because my friend referred there to something which there has been one or two other references to that, leave me at a loss. The reference there is to Stanley Williams' funeral and I really don't know what the evidence is in this court of what happened at Stanley Williams' funeral and if there is some evidence about that, I'd like to know where it is so I can go and have a look at it.

MR. GRANT: Stanley Williams' funeral completed after the close of the plaintiffs' case in evidence.

MR. PLANT: So there is no evidence of it.

MR. GRANT: On page 366 at the bottom, I refer to Hugh Brody's analysis of some of the post-contact Gitksan and Wet'suwet'en practices that have developed over the past two centuries. Mr. Brody says the people view the social and economic activities that they carried out during these periods as being central features of, quote, "traditional" ways. But look at what he considered: Fur trapping, commercial fishing and cannery work and small-scale logging. He found that these resource-based, market-oriented economic enterprises were considered by the people to be an integral part of their old way of life, even though they were obviously post-contact developments.

Similarly, Dr. Daly found that nineteenth and early twentieth century economic initiatives taken by the Gitksan and Wet'suwet'en peoples were consistent with the existing seasonal round of production and exchange activities, and he stated:

> "They did not disrupt the seasonal rounds of hunting and fishing... cordwood cutting and

garden preparation were done in the spring while people got ready for river fishing season...Road work, gardening and later, cannery work at the coast, entailed intense labour, generally for a number of weeks in the summer.

None of these activities eliminated the seasonal round, though some, like cannery work, involved some adjustment of labour within the extended family to ensure that all the needed goods were procured to see the family through the winter..."

And persons like Peter Muldoe and Emma Michell described those in their evidence, their involvement in these kinds of enterprises, but it was integrated into their utilization of the territory and the resources and the seasonal round continued.

In other words, my lord, the pre-contact economy possessed a family division of labour such that some members were people of the river while others were keepers of the territories, and others engaged in trade and diplomacy. And I mean by the family there the House.

This division of labour had been integral to the earlier economy with its varied production and exchange tasks and duties. It subsequently facilitated certain post-contact economic developments. Alfred Joseph gave evidence that some of his family members lived year round on Gisdaywa's territory at Owen Lake. This signals the family possessed the division of labour necessary to take advantage of seasonal employment or contact work without seriously disrupting the seasonal round of production and exchange. And in this case, of course, other members of his House would go to Moricetown for the fishery.

Now, my lord, those who divide the social reality of aboriginal peoples into "traditional" and "modern" sectors focus, I say, the Federal defendants take in their argument, make an unwarranted assumption that pre-contact society concerned itself strictly with food-gathering subsistence. Archeological, ethnohistorical and other data suggest that the Gitksan and Wet'suwet'en pre-contact societies were never totally subsistence-oriented, nor were they totally pre-contact, as they interacted with or

 "contacted" peoples from other regions, that is their neighbours, at least over the past six to nine thousand years. Even in these early times they had fully rounded economies incorporating both production activities for subsistence, and for exchange, so as to obtain needed goods and services from other communities, economies and ecologies. And I believe, my lord, that even in Sheila Robinson's evidence she conceded that trade was ongoing before contact, which triggers the sense that they had surplus goods. Brody's evidence, in the context of the rigorous trade networks in the waterways during the past century, was that the Gitksan and the Wet'suwet'en and their neighbours did indeed have economies that embraced production for both subsistence and exchange, and possessed the infrastructure for such economies. And he stated:

> "But the larger pattern of mobility and trade - the dispositions, habits and trails which made it possible for the Tsimshian to move into their brokerage role - "

This was the rise of these power chiefs at the coast,

> "appears to pre-date the arrival of whites in the region by a very very long time.
>
> It follows that if we equate tradition with subsistence, the Gitksan and Wet'suwet'en have not been traditional since time immemorial! The absurdity of this conclusion is some indication of how misleading the use of the categories 'traditional:non-traditional' can be. They blind us to the way in which Gitksan and Wet'suwet'en economies, like those of many other Indian groups, are open and mixed. The element of subsistence is part of a continual but ever-changing economic balance. As far as the Indians themselves are concerned, 'traditional' is whatever they happen to think has been important to them at any particular moment in their history."

Today, in keeping with the principles of Gitksan and Wet'suwet'en ownership and jurisdiction House chiefs are continuously (sic) building on the old principles

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and traditions, so as to deal with the new conditions of life that their people face. These new conditions involve goals for realizing their ownership in the eyes of the wider society. These conditions involve wedding old Gitksan and Wet'suwet'en laws and values regarding the sacred relationship between the people and the land, with contemporary concerns of the wider society for sustainable harvests and ecologically sound practices of forest management.

And Dan Michell gave evidence as to the age-old principles governing the owing House group's relationship to the land:

> It was handed down to us by our forefathers. And we are brought up in those territory where we know that we belong to the land and the land belong to us. That is one way of putting it, and all the resource in it we are entitled to it. And that is why we are taught to respect the land and everything that's in it."

Dan Michell continued by outlining some of the management duties of the chief who both owned and is owned by the land:

> "He don't clean it out and get it empty. He always took care of it and just use so much of it, and leave the rest for like safe keeping. You look after it, eh? You don't kill off all the moose and all the other animals. YOu always took just what you need off the land. And the same with the berry patches. They really protect that."

Now, my lord, these principles are being renewed and applied in the course of on-going economic and political work by House chiefs in the present era. And I refer to Miss Ryan, Hanamuxw's evidence.

In order to build on, and reinforce these ancient principles of the land stewardship and managerial rights of the House chiefs, the hereditary chiefs commissioned a forest reconnaissane study in 1986 in response to forest management practices of the Ministry of Forests and its licencees in the Gitsegukla Valley. And that's at pages 280 of Exhibit 884-1.

The chiefs explained their philosophies and laws

 to the forest consultants they contracted. And the philosophical statement - I am at the bottom of page 371 - of the planners distinguishes itself from that impled by the practices of the Ministry of Forests, which is implementing a plan to domesticate timber production. The chiefs and ecologists have a different view, one which is simultaneously ancient and modern, spiritual and scientific, traditional and non-traditional:

> "The alternative philosophy is that we are part of the land. This statement imples that people are not bigger than nature and do not control the universe. The land is a living organism, a vibrant interweaving of movements and changes. Humans are part of this activity. We are subject to its changes and receive its gifts... The philosophy of being part of land is a sustainable approach. Nature is whole rather than a set of compartments or competing potential uses. Such a holistic approach does not have to try to integrate uses in the conventional sense, because it sees nature as integrated."

Now, my lord, in this instance, the ancient laws, philosophy and tradition of the Gitksan and Wet'suwet'en which have been passed down through the millennia, until today their wisdom and the wisdom of the forest, is combining with that of the modern scientific world, to create for tomorrow another new tradition. This is one aspect of today's tradition-making by the Gitksan and Wet'suwet'en chiefs and their Houses. The same general process has been unfolding for a long time.

For instance, the first half of the present century saw Gitksan and Wet'suwet'en fully engaged in a mixed economy which included both fishing, hunting, and gathering botanical foodstuffs, for use and trade, as well as commercial ventures that included fur trapping, coastal fishing and cannery work, and small-scale logging in the forests - especially for poles and rail ties - and small sawmills.

In 1950's and 60's these small enterprises, which I say were supplanted by large-scale forest enterprises, rationalized production in the fishing industry, low fur prices, and reduced habitat for

fur-bearing species. Suddenly a way of life based on earlier experience and contemporary adaptations came to an end. Old people now look back on the years before 1950 as "traditional" Native life when family, House and clan values guided and constrained people's behavior better than they do now. As Brody stated:

> "Many elders now recall the 1950s and '60s as a period of extreme, sometimes frightful social disarray. What they now term a traditional life faltered an staggered under the blows of 1950s economy and ideology."

Now, my lord, that is reflected in the evidence of some of the chiefs in cross-examination. For example, Pete Muldoe's description of the disruption occurred with large-scale forest ventures pushed him and others out and Neil Sterritt Sr., I believe, also made reference to that as well as Neil Sterritt.

The elders look back on a Native socio-economic tradition, a prominent part of what was small-scale, market-oriented, resource-based enterprises which actually came into existence - out of a previous set of old and new activities and values - as recently as the 1890s.

And then, my lord, I go to the question of what is customary and traditional. And the evidence -- I believe Mr. Brody refers to this, that the use of champagne in Europe and North America, a celebration which seems to us eternal, began in the nineteenth century. The laying of the wreaths at the Tomb of the Unknown Soldier started after World War II. Although these are recent practices they are considered traditional over much of the world today.

And dividing the world into "traditional" and "non-traditional" components ignores the way a living society devlops its traditions.

And before concluding, my lord, I want to say this in response to your question, that what I say is that it's like the principle in our system that every man is equal before the law.

THE COURT: Every person.

MR. GRANT: Every person is equal before the law. Thank you. And every person is equal before the law. A principle that is long standing within our society. But when one looks back to a hundred years ago, for example, that principle was still there, that principle was

part of the common law then. And yet when one reads or considers the writings of persons such as Dickens, it would be hard to imagine that we would say in fact that principle was operating in the real world of those people of whom Dickens writes. Now -- but the principle, the rights, that right of every person equal before the law we say is a right that remains until today. The change in our society has not changed that right. That common law right remains. But what I am saying is, is that in 1850 --

THE COURT: The common law rights don't remain static either.

MR. GRANT: Well, the principle of every person is equal before the law is an example that has.

THE COURT: You just said it isn't.

MR. GRANT: I am saying that we from our view would say, well, we apply it better today than it was applied a hundred years ago. But the principle is there. The right is there. The right was there. And the aboriginal right remains. And these changes -- these people have done nothing. They haven't signed away their rights. They haven't given up their rights and the right remains.

Now, my lord, I just wish to conclude that there is an unseen but very material core to the Gitksan and Wet'suwet'en cultures and laws which persists over time. And this is -- this is what is the core of the rights: It's the rights and duties of the House groups to their lands and fishing sites to their crests, their histories, their songs and their poles. These rights are culturally meaningful among the Gitksan and Wet'suwet'en and in this general area. They have a commonality of an operation and an historical and emotive power which accumulates through generations.

These rights and duties, centred I say, my lord, on ownership and jurisdiction, have remained constant and consistent from a time long before the coming of Europeans to the region. However, the manner in which this ownership and jurisdiction is renewed, affirmed and manifested in each generation is less consistent.

This renewal and affirmation of authority depends upon the human and natural conditions prevailing during an era. In each generation the exertion of jurisdiction and ownership involves an accommodation with, and a simultaneous resistance to, the conditions of the time. The way yesteray's leaders affirmed their authority, given their conditions of operation, becomes today's tradition. Today's affirmation

becomes tomorrow's tradition.

Throughout this long, on-going process, the fundamental principles and concept of Gitksan and Wet'suwet'en ownership and jurisdiction are renewed and reaffirmed. One generation of chiefly name-holders passes on, leaving its tradition and experience to enrich the overall heritage. The experience of that generation helps the next generation of name-holders to reaffirm or requicken the principles upon which the two cultures and two societies are based.

Now, my lord, I just say that in conclusion the example of Hanamuxw's pole where the pole is being reraised, but that crest of the father's side changes, so the pole that was raised much earlier and reraised in 1945 now is being changed because there is a new father's side. So the visual display if you look at the entire pole is somewhat different, but the ownership and jurisdiction that it reflects is the same. And it's still exercised. Those are my submissions on the nature of the organized society, my lord.

THE COURT: Thank you, Mr. Grant.

MR. GRANT: And Mr. Adams is prepared to commence and proceed with his argument with respect to organized society of contact.

THE COURT: Thank you. Does this belong in this same book, Mr. Adams?

MR. ADAMS: It does, my lord.

THE COURT: Oh, all right.

MR. GRANT: We will provide tab separation.

THE COURT: All right. Thank you. Whenever you are ready.

MR. ADAMS: My lord, this is a not a lengthy argument by our recent standards, nevertheless it's 90 pages of material. But it really has a single proposition and that's the one stated in the first sentence of the introduction, and it is: Upon contact with the Gitksan and Wet'suwet'en in the early 1820s, and earlier as will be seen with people near them, the Hudson's Bay Company traders encountered organized Indian economies and societies with elaborate and long-established systems of territorial ownership, feasting, trade and political authority in the hands of hereditary chiefs. And I hope, my lord, that after hearing Mr. Grant's most recent argument that those elements will sound familiar, because the proposition is that those elements were present at the first

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them and they continue to be present today.

Now, I draw a contrast in this same introduction between the Province's argument about what these societies looked like at contact and before which we say depend on layer upon layer of speculative assumptions. And we draw a contrast with the plaintiffs' argument in this section where the central emphasis is on the facts recorded in the documentary record. And what we say, my lord, is that in the plaintiffs' evidence there are really three converging streams on this question.

You've heard in the first section of the argument the evidence of the oral histories that we say tells you what was there on contact and what was there long before. Now, the documentary record that I propose to review today is quite distinct from that, and we say is independent proof of some of the same propositions. What it doesn't establish and doesn't purport to establish is the absolute time depth of these features of the societies. What it does establish, we submit, is that they were there, that they had the features I've outlined and that they had clearly been there for some very considerable time. And then the other stream of the plaintiffs' evidence that I will cover in the later part of this argument is there is also, broadly speaking, linguistic evidence that gets you to the same point. That is, that you have elaborate long established societies of the plaintiffs in place. Now, the contrast that I have suggested between the speculative assumption based argument that the Province makes and that documentary fact based argument that the plaintiffs are making here today have been casting about for appropriate analogies to try to capture what we say is going on in that contest. And there are two that occur to me and I want to suggest they are not perfect analogies. They probably can't be pressed, but they give some sense of what we say is going on here. And the first is that I recall reading fairly early on in the upheavals in the Soviet Union recently, the comments of a scholar, a criminologist, who was complaining essentially there was no room for his brand of expertise any more because all the kinds of information he was accustomed to divining from reading the Official Press and examining photographs to see who was there and who wasn't and what position they were standing in, that

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that wasn't helpful any more because all the kinds of information that that was supposed to produce was there for the asking now. And we say that analogy has some relation to these two competing ways of trying to decide what was going on in these Indian societies at and before contact, because it's possible to take the speculative theoretical approach that Dr. Robinson, among others, did, and we say that's analogous to the criminologist. We say when you have detailed records right on the points of what the societies, what the features of the societies were, it's self-evident that you prefer the hard data. And then there is one other analogy, which in my submission is appropriate, in the same connection, and that is since we have all been in Smithers watching the news in connection with an inquiry into the Air Ontario crash and there was intense expert speculation about what it must have been that caused this plane to go down and then somebody says the reason we are having to do all this is the flight recorders were damaged beyond repair in the crash. And again, without pressing the analogy too far, our submission is what these bay records is is an equivalent of the flight recorders that make some of the speculation, some of the elaborate conjecture unnecessary when you are trying to figure out what was there and what was happening.

Now, to come back into my written argument, I am on the first page, and the focus of this argument and the focus of Professor Ray's evidence was the Hudson Bay documents out of the Babine Fort beginning in the 1820s, but there is in evidence still earlier account that of Daniel Harmon who was at Fort St. James on Stuart Lake and came into contact first with the Stuart Lake Carrier and then with the Babine Lake Carrier who were the same people Brown began writing about, but earlier, in the period 1810 to 1812. And we say what you can see in Harmon's accounts is that territoriality, feasting, chiefmanship and trade were in full flower in those places quite independently of the European fur trade. And I have set out on page one and going over to the second page, to the third for that matter, fairly extensive extracts from Harmon. But the ones I want to draw your particular attention to are highlighted at the bottom half of page two. And this is what Harmon says generally about the New Caledonia Carrier. He says at the beginning of his page 249:

> "... They hunt the beaver and bear, more for the sake of their flesh than to obtain the skins; for it is with the meat of these animals that they make their feasts, in remembrance of their deceased relatives."

And I say even in that sentence you find animals being used for food and for feasts and not for the fur trade. And he goes on:

> "At such festivals, they cut up as many dressed moose and red deer skins as they can well procure, into slips, about eighteen inches long and twelve inches broad, and distribute them among their friends and relatives... "

And there, my lord, you have the distribution of property at feasts. And he carries on on his page 250:

> "The people of every village have a certain extent of country, which they consider their own, and in which they may hunt and fish; but they may not transcend these bounds, without purchasing the privilege of those who claim the land. Mountains and rivers serve them as boundaries, and they are not often broken over."

And there I say, my lord, you have territoriality, you have laws of trespass, you have the content of boundaries.

And then going over to page three of my argument and 252 of Harmon's account, in the highlighted passage:

> "The person who makes the entertainment,"

And here he's speaking about feasts, and it might be noted in passing that he says there are feasts for the dead and there are also feasts for entertainment, so there is a variety of reasons for feasting. But he says:

> "The person who makes the entertainment, who is always a Chief, boils down or roasts several

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> whole beavers; and as soon as his guests are seated around a fire, which is in the centre of his house, he takes up a whole beaver, and with a raised voice, relates how and where he killed it, that all present may know that it came from his own land."

And there, my lord, I say you have chiefs and you have ownership of land and the particular significance of this is not that it is directed precisely at the plaintiffs, because it is not. It's that the theory advanced by the Province in this case, which I will deal with in some detail as we go along, is that these features of the Indian societies first of all spread from the coast inland and secondly, that they were responses to the fur trade. And what you have in Harmon in the passages I've just read is a description much earlier than the Brown materials that I'll be coming to and further inland than the plaintiffs were living and all this is supposed to have happened and been elaborated to this degree sometime between the 1790s and approximately 1810. And in my submission you didn't need Professor Ray's opinion that that was highly unlikely, or Mr. Brody's, although they both gave that opinion to come to that conclusion.

I deal at pages three and four with Dr. -- Professor Ray's qualifications because his opinion, and in particular the records that he assembled and introduced your lordship to, are central to this argument on the documents. And I simply note on page four his position as a Senior Professor in the Department of History at U.B.C., his experience at York for ten years, his teaching of courses on the Native History of Canada, a graduate course in ethnohistory, and his teaching historical geography course at York on the Native People in Canada. And the following paragraph I note his five books and 35 articles on the very subjects in general that he came to address your lordship on and give evidence about. And it's my submission that he was demonstrated to be a preeminent scholar in the area and that his opinion is entitled to significant weight and I say it's also significant that neither defendant cross-examined him on his qualifications. That gets me to page five of my argument and what --

THE COURT: Do you want to take the afternoon adjournment before you dive into your argument?

MR. GRANT: I am quite happy to do it now.

THE COURT: All right. Let's do it now.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

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

Laara Yardley,
Official Reporters,
United Reporting Service Ltd.

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THE REGISTRAR: Order in court.
THE COURT: Mr. Adams, I thought if it's convenient we would go about an hour and we would have a short break, and then perhaps another hour.
MR. ADAMS: I am in your hands, my lord. I'm not flying tonight.
THE COURT: Maybe we will go another hour after that.
MR. ADAMS: My lord, I was on page 5 of the written argument.
THE COURT: Yes, thank you.
MR. ADAMS: And I had come to the Hudson's Bay records and William Brown. And the significance of these records that the plaintiffs' point to is captured in Professor's Ray's statement is highlighted there on page 5, that these records, we say, are a base line for the bare outline of the Indian societies on contact in the 1820s in the case of the territories, the plaintiff's territories. And the significant thing that he pointed to in the availability of that base line is:

> "that had not been used previously by anthropologists, ethnologists or anybody else in any kind of detail,"

that it has become available and that work such as his has made it accessible. And I set out there a series of the principal exhibit numbers that are the Brown materials.

Professor Ray in the course of his examination in chief had something to say about who William Brown was. But for our purposes today, the critical observation that he made is on page 6 and is highlighted there where he says, after an assessment, that Brown:

> "Is as good an observer as we will get. He was not an infallible observer, none of them were. But he is an is a good one."

And we will come to some further passage where he explains some of the basis, in fact he does in the preceding passage on page 6 that Brown, in Professor's Ray's estimation, was somebody who would sift information, who would correct information as his

Submissions by Mr. Adams experience unfolded. And we say that assists in evaluating his reliability as an observer as well.

At the bottom of page 6, and going on to page 7, is a summary of Professor's Ray's sketch of what the societies looked like on contact. And he says at the top of page 7 inside the quote:

> "...the local natives were settled in a number of relatively large villages. The people subsisted largely off their fisheries."

And then a couple of lines down:

> "Summer villages were located beside their fisheries. Large game and fur bearers were hunted on surrounding, and sometimes on more distant lands. Hunting territories were held by "nobles" on behalf of the lineages they represented and these native leaders closely regulated the hunting of valued species. The various villages were linked into a regional exchanged network."

He described that in the passage immediately below as "a very well articulated system". And then he goes on at the bottom of page 7 to say that:

> "...the system that we have been over for the last two days is a very well-articulated system, which suggests to me a system that has been in place for some time."

And then, again:

> "...what is abundantly clear from Brown is that you have a fully-articulated feasting system with house territories, family heads."

In other words, the system -- the very system that the ethnographers describe, begin to describe with Morice some 60 years later is a system that essentially Brown has just given us the bone outline for in 1820. And it was put to him in his cross-examination by Mr.

Submissions by Mr. Adams 1 Willms, for the province, that Barbeau's view was
2 that:
3
4 "...at least for the coast, it was the fur
5 trade that led to the crystallization of
6 the social organization?"
7
8 And Professor Ray acknowledged that that was Barbeau's
9 view. But he disagreed with it clearly because he
10 said that, in his capacity:
11
12 "...as an expert on the fur trade, that
13 other areas where the fur trade had an
14 effect on the native tenure system, which I
15 think we can all agree is a crucial system
16 to any economy, those transformations took
17 far longer than 40 years and they occurred
18 in a situation in which the trade impinged
19 more directly on the basic subsistence
20 economy than did this trade."
21
22 THE COURT: That passage from the transcript on page 8 is
23 cross-examination, is it?
24 MR. ADAMS: That's cross-examination.
25 THE COURT: Yes, you say that here.
26 MR. ADAMS: Yes. There is a mix of styles. This is a composite
27 document. But, generally, it will be identified
28 whether it was direct or cross.
29
30 Now, Brown's records deal with the Babine, that is
31 the people in the area of Babine Lake who are close
32 relations literally of the Wet'suwet'en, with the
33 Wet'suwet'en, and with the Gitksan. And the next
34 section extracts from the Brown records what he is
35 able to tell us about the Babine and Wet'suwet'en in
36 the early 1820s. And what Professor Ray found in both
37 the Brown reports and in Ogden, which is exhibit 914,
38 were descriptions of a place called Hotset,
39 H-O-T-S-E-T, which Professor Ray identified as the
40 principal Wet'suwet'en village, in the area of
41 present-day Moricetown. And in those descriptions
42 again were references to feasts, territories and
43 chiefs.
44 THE COURT: Do you accept that I can read Moricetown for Hotset?
45 MR. ADAMS: There is a controversy in the written arguments. It
46 is a one-sided controversy so far. Yes, I say that
47 you can. The province, as I read their argument, says

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that sometimes it was in the vicinity of present-day Moricetown, and sometimes it was in the vicinity of present-day Hagwilget. That's a dispute that I believe the plaintiffs will take up in their written reply. It's fairly involved and it doesn't deserve, in my submission, a lot of court time. But the position of the plaintiffs is, yes, when you are seeing Hotset, you are seeing a reference to the vicinity of present-day Moricetown. In either case, no matter where it is, you are seeing the Wet'suwet'en village.

THE COURT: Well, is that so? Oh, I suppose so. I suppose the Wet'suwet'en had moved to Hagwilget by 1820, I think it was.

MR. ADAMS: Well, that's partly what the controversy is, my lord. Brown says in 1826 that Hotset is the principal resort of the -- principal resort of all the Indians of that quarter.

THE COURT: Yes.

MR. ADAMS: And he is clearly distinguishing Hotset from the place where the rocks came down. And that is part of the written argument that we will make.

THE COURT: Yes.

MR. ADAMS: This Hotset stays where Hotset is. And, in fact, the Wet'suwet'en did not move en masse abandoning Hotset to move to the area of present-day Hagwilget.

THE COURT: All right.

MR. ADAMS: Now, in his 1823 district report, which was really his first pass at explaining the people that he was encountering, he said -- and I am now in the quotation on page 9 in the written argument. He is referring here to Hotset.

> "...there are twenty chiefs of different gradations and sixty-seven married men whom they they denominate as being heads of families and possessors of lands. The following is a list of the chiefs according to their rank and as they are placed at their feasts."

And I just pause there before I talk a little bit about the names that are on that list. This, in my submission, is much more than a casual identification of some sort of gathering with the feast. This is in great detail a connection of name and chiefly rank to places in the feast. And, of course, your lordship

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has heard exstensive evidence of the more recent operation of that system.

And I point to it here because we say it's present in that elaborated form on the very first exposure to the Hudson's Bay traders. And because it's present in that developed form, we ask you to infer from that that it had been there for some considerable time. And, again, I say these records are not going to tell you how long. That's a matter for the oral histories, the archaeology, the variety of other evidence. But we say it can get you as far as saying, this is not something that sprang up like a mushroom when the fur trade arrived on the coast.

Now, as to the names that Brown lists among the Wet'suwet'en, we say that 170 years later you can see a string of them who, on reasonable inference, are the names of present-day Wet'suwet'en chiefs. And there is a list set out there at the middle of page 9. There are names that we say are the equivalent of Woss, of Smogelgem, of Kweese, of Mutt, of Kloumkun, of Madeek, and of Googhlat. And then I have added as well Noostell who appears in a different list of Brown's.

And then at the bottom of page 9, this is in Brown's 1826 report, and that is Exhibit 964-12. And all of the documentary references that are in this argument have been described for convenience. But I commend to your lordship looking at this one of the originals from time to time because it is legible, for starters, and because it's the most complete of the records that Brown has left us. And I have asked Madam Registrar to have available those binders.

What he says about the Wet'suwet'en at Hotset in 1826 is that:

> "The Village of Hotset is situated on the Banks of the Ochil cho or Simpson's River - and is it is the most populous of all the Babine Villages, it being the principal resort of all the Indians of that quarter."

And he gives an estimate of the population that is 750. Then he repeats the passage that I have already

Submissions by Mr. Adams referred to from his 1823 report suggesting that:

> "They reckon twenty Chiefs of different gradations, and sixty seven married men,"

and that the feature of these people of great interest is that they are "heads of families and possessors of Lands". And then he goes on to say, and this is on page 10 of my argument:

> "The lands of these people are exstensive, and well stocked with Beaver - Martins - Fishers - Musquashes, et cetera."

And then he makes a more general comment about the New Caledonia Carrier which would include the Babine and the Wet'suwet'en. He says they:

> "...have certain tracts of country, which they claim an exclusive right to and will not allow any other person to hunt upon them."

Then he goes on to say this may be great for the beaver, but it hurts the trade.

THE COURT: Do I recall correctly that trader Brown never got to Hotset?

MR. ADAMS: No. The indications from the records are that he was there in 1823, although we don't have an on-the-spot account of that trip.

THE COURT: All right.

MR. ADAMS: But he refers later to having been there in 1823.

THE COURT: All right.

MR. ADAMS: Just on that passage about the New Caledonia Carriers, it is suggested -- and this will come up in considerably more detail in a later part of the plaintiff's argument. But it is suggested by the province that this concept of territoriality of exclusive rights to tracts of country, as opposed to spots, was an invention of just about anybody except the Gitksan and Wet'suwet'en. And there is a whole section of the province's argument that attributes this view of the world to the missionaries. And I simply say at this point it is foreshadowing in the later argument that there is no suggestion that it is missionaries who produced this conception.

And then Professor's Ray's comments on the

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passages that I have just read to your lordship is highlighted at the bottom of page 10. He says that:

> "It indicates to me a very well established rank society here. First of all ... we've got 67 family heads who own territories. In addition there are another 20 ranked chiefs who would also hold territories, and these are finally ranked from 1 to 20 in the order that they sit around the -- in their place at the feast. So the whole feast complex structure is laid out here, which is really quite extraordinary."

And then he goes on on page 11 of my argument to say:

> "This is the first instance where I ran across Bay traders talking like this about men of property and possessors of lands, which struck me straight away that they're dealing with a very different system here than they were used to dealing with."

And, my lord, it is at that point that we say that it's significant that Professor Ray is not somebody who came cold to these records, that he is an expert in the records of the Hudson's Bay Company, and covering the area from Quebec west, at least.

And he was asked in his direct examination about this term "men of property". And he said in the quotation towards the bottom of page 11:

> "They're heads of families who control territories of those families and regulate the use of land, hence the term 'men of property'."

And then a little later the chiefs are ranked:

> "...all the men of property -- all the heads of family are men of property, and the men of property regulate access to those properties."

And then further on page 12, still from Professor's Ray's evidence in chief, he, referring to Brown, talks about bands and tribes.

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> "But it's clear no matter how you slice the record that he's dealing with extended family groups and larger groupings. And I read that comment 'or influential outside of their own tribes' as being groups of those houses, whether you want to call them clans or clan segments, or give them some other name, they're groups of related houses, and some of these leaders stood out from the rest in that they had influence beyond their own immediate relatives. They influenced a larger group of people, i.e. probably all of those collective -- all the collective group."

And what we say the significance of that sort of observation is, is that there is political and economic authority in the hands of chiefs in these societies.

And Professor Ray had more to say about the economic authority of the chiefs beginning on the bottom of page 12. And he had observed that the people Brown characterized as "nobles" were the ultimate recipients of the bulk of beaver pelts taken off their lands. And he said in that connection, this is Professor Ray:

> "I think it is a reflection on it, because if you look at the number of heads of men and the total value of returns from that post, it's clear that the majority of the fur was passing between chiefs and the company. ... [T]here are a number of instances on the list where [Brown will] say so and so has passed his prime as a hunter, but he gets most of his furs either trading with his relatives, in presents from his relatives or in gambling from his relatives. So, in other words, he gets them from the relatives one way or the other and the fur from the territory is passing through his hands to the trader."

And I would add to that, my lord, in Brown's accounts of trading, if it is with the Bay or with other Indian groups, that is not restricted to fur. It is the chiefs on this record who are doing the trading and controlling the resources.

Now, on page 13 of the written argument I take up another point that the province advances in its summary in references there. The argument is, as I quote there, that it is the village and not the house or the clan that is "the natural unit of identity". And it is not possible to tell from the argument why that's natural, but that's the assertion.

And what we say out of this record is that that isn't so in the presence of evidence that there are feasting and trading links connecting relatives and others across the Babine, the Wet'suwet'en and the Gitksan villages. And an example of that among the Babine is set out beginning in the quote in the bottom of page 13. And what you have here is an identification of the Babine villages, beginning with one called Nah tell cuz. And the chief there by the name of Casepin. And he is a chief, but not the principal chief of his tribe. And then you have a second village Nass chick, and a chief called Cabbah. And it turns out, according to Brown, that Cabbah and Casepin belong to the same tribe, but they clearly live in different villages. And then there is a further reference in this passage to a Chief Ack Koo shaw who is said to be the principal chief of the Indians of the lake. And the indications here are that he has influence over that whole area at least.

And what we ask you to infer from information of this nature is that these villages are more than isolated self-contained units. There are clearly kinship in other relations among them. And it is not possible to be certain, reading Brown, precisely what the references to the kinship groups are. He does, with one exception, they use the word "clan". He seems to use tribes, bands interchangeably.

But, in my submission, a fair inference from a passage like the one I've just reviewed is that when Brown is talking about tribes and chiefs in the same tribe, he is between villages, he is talking about the clans. And then there is a parenthetic note --

THE COURT: Well, Mr. Adams, while you're -- this word Casepin, is it too speculative to suggest that that relates to the Chief Casepin that we heard so much about?

MR. ADAMS: I think your lordship is probably thinking about

THE COURT: Caspit, all right.
MR. ADAMS: Who is a Wet'suwet'en chief.
THE COURT: Yes.
MR. ADAMS: I have had a certain amount of after-the-fact coaching about what the equivalence might be. The fact is that for the most part those are not in evidence. What I can say is that most of the names that are thrown up in Brown can be identified with contemporary either Wet'suwet'en or Babine chiefs.
THE COURT: But Caspit's territory is down at Moricetown, near Moricetown. And what am I to draw from that? Or should I say that's just too much speculation and not draw anything from it? He is obviously talking about somebody whose territory, if he has one, is on a small island a quarter of a mile from the fort.
MR. ADAMS: Well, there are two possibilities. First of all, the fact that he is living in a village, that will not necessarily, or at all, tell you where his territory might be. The other wrinkle in this may be that it is in evidence that some names are present both among the Wet'suwet'en and the Babine, same name. And you may be seeing the Babine Caspit, or you may be seeing somebody unrelated. This is not an exact process trying to link the names, as Brown spells them, with the names that have been given in evidence.
THE COURT: But then when I see Ack Koo shaw is the principal chief, and I don't recognize that name at all. One would think the principal chief's name would be continued.
MR. ADAMS: No. My instructions are that that is a current name among the Babine. But I don't think that has been given in evidence.
THE COURT: I see.
MR. PLANT: My lord, there is a Casepin or Caspit territory. There is evidence of one in the Blunt Creek area.
THE COURT: Where?
MR. PLANT: Blunt Creek.
THE COURT: Oh, yes. We heard weeks about it -- we heard about it for weeks. We have a sketch map. I think Blunt Creek is -- yes, that's the same one. It's just north of -- north of Moricetown on the other side of the Bulkley River.
MR. PLANT: On the east side, yes.
THE COURT: East side of the Bulkley River, yes. Yes, all right.
MR. ADAMS: And still on the subject of names, my lord, on page

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plaintiff's educated guesses about three -- the only three Gitksan chiefs who are referred to by name by Brown. And those, we say, on a reasonable inference are Niigyap, Gwoimt and Tsabux. And Brown does not identify them as Wolf chiefs. The fact is the people holding those names belong to that clan. And that all three have territories in the vicinity of Kisgagas which is where they are encountered in 1826. And I will have more to say about them when I get back to the Gitksan.

THE COURT: Yes.

MR. ADAMS: Now, still on page 14 and back with the Babine and Wet'suwet'en. In Brown's 1826 journal, which is Exhibit 964-14, there is a striking example of succession to names and ownership of territories and of the links among the villages. And this story is -- comes in bits and pieces through the journal. And I have tried to highlight the pieces that will tell the story. He says that:

> "Jack Kay one of the Chiefs of Hotset died this Morning at Nass Chick...",

which is one of the Babine villages.

> "...Ash shaw..."

and that's a name, as I've noted, that Brown gives twice, one from Simpson's River or the Bulkley, and once from Babine.

> "...started for there with all his Moose Skins in hopes of getting his place. ... The death of the Indian mentioned yesterday..."

he is speaking of the next day now,

> "...I am doubtful will prevent all those in the Neighbourhood for some time from hunting - as I understand messengers have been dispatched all over to assemble them to the burning of the Body."

And then he refers to another Babine person:

> "...Set an ilth yai arrived from below to invite the Indians to the burning of the body

of -- Jack Kay -- which will stop them from going off as I expected."

And then:

> "Ash shaw has been Made a Chief to supply the place of the defunct whose Lands he is to take the possession of -- Yai ben eld tak has got the place of Ash shaw -- There was six large Moose skins cut up on the occasion - with plenty of Bears Meat - oil - Berries - Salmon, et cetera, which has given all the Indians a high opinion of Mr. Ash shaw's generosity --"

And there, again, my lord, there is not just the bare mention of the feast, there is some of the detail that has been covered in a portion Mr. Grant has done on the organized societies including succession to names, the link between the names and the territories, the dispatch of messengers across the country to invite people to a feast. And, not least, the importance of the feast when it's being lined up opposite the supposed pull of the fur trade. Because it's apparent that William Brown's experience is when there is a choice between hunting and going to the feast, that is hunting for him for fur and going to the feast, that the Babine and Wet'suwet'en are going to the feast.

And there is a further example that's set out halfway down page 16 of the arguments of feasting and trading involving the Gitksan and Wet'suwet'en in the Babine. And this is in the 1825 post-journal. And it is another account that has to be followed through in bits and pieces.

> "...two Indians from Simpson's River arrived from below -- The two latter I have not spoken to -- They went immediately to Casepin's Tent - Whom they are come to invite to Quiltno's Feast."

Quiltno is identified in Brown's records as from Simpson's River, that is the Bulkley. And there is in Exhibit 964-12, which is the 1826 report that I had recommended, I think it's been put beside you, my lord. It should be the section of Dr. Ray's two volumes.

THE COURT: Yes.
MR. ADAMS: It will be the first tab in that volume, tab 12.
THE COURT: Yes.
MR. ADAMS: And at page 40, hand-written in the upper left-hand corner. It will be between printed 21 and 22.
THE COURT: 21 and 22?
MR. ADAMS: In the printed numbers, and 40 in the handwritten numbers.
THE COURT: Well, I can hardly read them. But I rather hoped I would never have to look for these page numbers again.
MR. ADAMS: It is close to the back of the tab, my lord.
THE COURT: Yes.
MR. ADAMS: It is about half a dozen pages.
THE COURT: Does it have a list of Indians who are indebted to the --
MR. ADAMS: Yes.
MR. PLANT: I'm sorry, I didn't get the exhibit reference.
MR. ADAMS: It is 964-12. Where people are identified as being from particular villages in the argument in square brackets. It is from that list that those identifications are arrived.
THE COURT: Yes.
MR. ADAMS: And that is how I infer that Quiltno, whose feast is being held on Simpson's River, is Wet'suwet'en. So Brown says toward the bottom of page 15 of the written argument:

> "I had a long talk with Casepin to prevent him from going to Quiltno's feast - but he seemed determined to go. I have done all my endeavours to prevent him, as we will lose his fall hunt & that of several other Indians who will follow him."

And then he records the leaving of a number of named persons, including Casepin. And then he says at the top of page 16:

> "Casepin says he will be absent 20 days. He informed me that all the Indians below are gone to the feast -- Cabbah, who I had been informed was out hunting, returned and made no hunt, he is gone with the others to Simpson's River."

And then several days later you can see it is now November 11, 1825, the same list of people arrive from Simpson's River.

"It seems that everything went on well at the Feast. The diff't Tribes who met there departed good friends."

And then there is a highlighted reference to:

"The Atnahs from the Main River have had as many...",

referring to beaver,

"...in Trade for Fish Oil and Dressed Skins."

And this is another controversy that is taking up a lot of paper, but shouldn't take up a lot of court time, as to what the Main River might be and where the Forks are, and whether there was a village there. For the moment, it is sufficient to say in a -- the plaintiffs' submission is the Main River referred to there is the Skeena.

THE COURT: You wouldn't think it would be the Babine from this perspective?

MR. ADAMS: I wouldn't think so, no. The problem is that, and Professor Ray went into this in some detail. And he actually drew on magic markers on the map to try to show then what the then names of the rivers were. And they didn't correspond river by river, name by name.

THE COURT: Yes.

MR. ADAMS: At the bottom of page 16 we get to the Gitksan in the Brown records. And what Professor Ray extracted from the records were indications that there were fundamental similarities between the Gitksan and Babine/Wet'suwet'en socioeconomic systems in the early 1820s. And we went to some of his references. But his summation of those points of similarity is there in his direct evidence at the bottom of page 16.

"...access to resources was regulated by a land tenure system in which tracts of landing were managed by 'men of property', the lineage or (house) heads. These men also controlled access to trails that traversed their house's territory."

And then he goes on at the top of page 17:

"In these fundamental ways it appears that the

social-economic system of the Babine and Wet'suwet'en was much like that reported at a later period for the Gitksan. Indeed, towards the end of his second visit to the Gitksan...",

and that would have been in 1826,

"...Brown remarked: 'From what I have seen of them, their character, manners and customs are much the same as the Carriers'."

And then set out and highlighted on page 17 is a passage that is Professor Ray amplifying his statement that Brown draws parallels in many instances between the Babine and Wet'suwet'en and the Gitksan.

Now, at the bottom of page 18 of the argument there is a quotation from Professor Ray quoting Brown. And there is the reference to the Gitksan chiefs that I had mentioned already, that is Gwoimt, Niigyap and Tsabux. He says of these chiefs that:

"Gwoimt acknowledged that on his lands there were few or no beaver. Needchip and Sojick on the contrary said that there were many great small Lakes and Rivers in the lands belonging to them, where beaver were abundant but they did not know how to work them."

And Professor's Ray's comment was:

"At least the natives would have had their own way to take beaver because it would have been important. What the Indians are saying is that they don't wish to trap them and trade them to the Hudson's Bay Company. ..And that's the way I would read this because we know in fact they hunted beaver."

Now, in its summary of argument, and again the reference is contained here, the province argues flatly that the "only resource use exclusivity or territoriality noted in the early historic records was with respect to beaver trapping". The province also asserts that beaver consumption at feasts would not have been important for the Gitksan because "the Gitksan considered the meat unclean". Now, if that was true, as Brown reported in 1823, and the record

does say that the Gitksan "never Kill them", beaver, because they "are impressed with the Idea, that the beaver is an unclean animal". But that raises for the province the difficulty of explaining what resources the Gitksan territories are covering when the province's theory is that they are beaver trapping territories. Because if you don't trap beaver, you don't have beaver trapping territories.

THE COURT: Well, let me just say -- well, why not ground hog?

MR. ADAMS: Well, indeed why not ground hog. But the theory advanced by the province through Dr. Robinson is that beaver was the only thing -- the only possible source of territoriality. And that's argued quite extensively in the province's summary. I just lifted a couple of lines here. And, in fact, whether or not the Gitksan killed beaver, and I will come to that question in a moment, Gwoimt at least clearly had territory that included, as Brown said, few or no beaver. And, again, I say it cannot very well have been a beaver trapping territory.

Now, in the end, in my submission, you have to reject the idea that the Gitksan didn't kill beaver, whatever the reason, because there is other evidence in Brown that -- and elsewhere that they did that. But to begin at the beginning, the report that the Gitksan considered beaver meat "unclean" was put out by Brown in 1823. And he cautioned there that his account was based on information from the Babine. At that point he had not been to see the Gitksan. And he later resiled in general from his 1823 second-hand account of the Gitksan, and the references are given in the arguments.

Now, in the first full paragraph on page 20, on at least two occasions Brown speaks of trading something called beaver coating with the Gitksan. And the references are given there. And on another occasion he has spoken of, that is Brown, as having procured "a small quantity of beaver" from the Gitksan. And the reference, which is missing in the written argument, should be to Exhibit 964-4, page 143.

THE COURT: Where should that be?

MR. ADAMS: That is the quotation "a small quantity of beaver"?

THE COURT: Oh, yes. What is the cite again?

MR. ADAMS: 964-4, page 143. And it is quoted more extensively in the written argument at page 32.

THE COURT: Yes.

MR. ADAMS: And what we say out of those references is that there is a strong suggestion that the Gitksan must have hunted beaver. And it casts further doubt on the assertion that they didn't eat it. And then I go on to say there was also evidence put to Professor Ray on re-examination of the Gitksan feasting on beaver. Albeit a later period, I believe in the 1850s. I think it is Downie, that's Exhibit 969-2, who talks about being served beaver meat by the Gitksan at a gathering.

So in the final paragraph on page 20 we set out our position on where this evidence ought to lead you. And we submit that the evidence suggests that the Gitksan probably both hunted and ate beaver, but that the Babine first told Brown that they considered the meat unclean and didn't hunt beaver in order to persuade him not to trade with the Gitksan directly. Because at the time he was being told this he has not got that far west. And then we adopt Professor's Ray's analysis that the reason that the Gitksan in 1826 told Brown they didn't know how to work the beaver was a polite means of telling him that they didn't want to trap beaver for the Bay. But, in fact, in the evidence that I have reviewed, they were trading beaver and beaver products, even with Brown.

On this view of the evidence, that is that the Gitksan both trapped and ate beaver, the Gitksan would have had similar pre-European fur trade reasons to husband the relatively scarce beaver as, I think conceded, for the Wet'suwet'en, and a similar reason to maintain territories without reference to the fur trade. And that's really what all this comes to, that there is a contest about whether independent of the European fur trade the Indian societies had a reason to maintain territoriality.

Now, there is a further assertion mentioned at the top of page 21 of the written argument where the province asserts that the only evidence of territoriality is related to beaver lodges. And our submission is that that restriction to beaver, and that restriction to apparently the little area around a beaver lodge, can't stand in the face of the evidence. And that, we think, is a matter for reply.

But I simply set out again that one of the passages from Harmon that was quoted at the very beginning of my argument. And there it is clear that even further east and south, and even earlier, the territories that are being talked about for the Stuart Lake Carrier are not beaver lodges, they are exstensive country. They apply to hunting and fishing. They have boundaries.

Now, beginning on page 21 of the written argument, there are exstensive passages first from Brown's 1826 journal. And this is him traveling from the Fort on Babine Lake north on to the Babine River, and following it down to the vicinity of Kisgegas. He doesn't get as far as the Babine/Skeena Forks. Even though he says his intention in setting out was to get to the Forks, with a capital F. And that, we will ask you to infer, is the Bulkley/Skeena Forks.

THE COURT: You say he didn't get as far as Kisgegas, or do you say he did?

MR. ADAMS: He got to the area of present-day Kisgegas.

THE COURT: All right.

MR. ADAMS: He named some of the villages.

THE COURT: Yes.

MR. ADAMS: He refers to other villages in the area.

THE COURT: But I don't think he refers to Kisgegas, does he?

MR. ADAMS: Not by that name.

THE COURT: Thank you. Is that a remarkable fact that he doesn't mention it?

MR. ADAMS: I don't think so. There is room for some doubt about what names which places went by at which times which is really all I can say in response to that. Some of the villages he doesn't name at all. He says that Niigyap has a village, Gwoimt has a village, and Tsabux has a village. But he doesn't say what the names of all those villages are. The same oral history that says that Weep sim, which is one of the villages, he mentions includes that name says that Kisgegas is Miluulak's village. And Brown doesn't refer to Miluulak, so it is somewhere where we can't get any further than this record takes us.

And it is in the course of this trip downstream on the Babine River from Babine Lake that he encounters Niigyap, Gwoimt and Tsabux. And it is apparent from his account that he has been in that vicinity once

before. But again there isn't an journal that we have in evidence of that trip. And I have just, as this account goes on, highlighted the names of the villages so it is possible to follow him and see the arrangement of the villages as he is going down the stream. So it is clear that the first village that he comes to that he names Niigyap, and that's towards the top of page 22. And at the bottom of page 22 he gets to a village he calls Chil do Kall, and identifies that with Sojick or Tsabux.

THE COURT: And what do you say that should be? Is that Kuldo?

MR. ADAMS: No. Kuldo is on the Skeena.

THE COURT: Yes, I know.

MR. ADAMS: And he does refer to a village beyond the Babine/Skeena Forks and up the Skeena.

THE COURT: Yes.

MR. ADAMS: And that, we will ask you to infer, is probably Kuldo, and that was Professor's Ray's guess.

THE COURT: Yes.

MR. ADAMS: And then the third village he refers to going down stream, this is in the middle of page 23, is the Village of Gwoimt. Now, in the passage on page 23 of the written argument where he says he is at Gwoimt's village. There is an account highlighted there in quite some detail of what we submit you can understand as the performance of Gwoimt's nax nox. And he describes his costume and his actions in some detail. But there's something particular in the passage highlighted that I want to draw your lordship's attention to. And that is where he says that Gwoimt:

> "...made his appearance dressed out with a number of trinkets, and in particular with a very fine plaid or blanket made of the mountain sheeps wool -- the colours of it were good and the figures similar to those on some of the Chin nock hats."

And that is the nearest you will get on reading Brown to finding identification of crests. Those figures on this mountain sheep's wool blanket. And it will become evident later in the argument that not only are the Gitksan hunting these mountain sheep on their territories, they are manufacturing these blankets cetera, and they are trading them as well.

THE COURT: You don't think I should read plaid literally?

MR. ADAMS: I don't --

MR. MACAULAY: It's a cloak, my lord. A plaid is a cloak.

THE COURT: Well, in Scottland it was. But I don't know what it was --

MR. ADAMS: Brown is a Scot, my lord.

MR. MACAULAY: He's a Scot. It's a piece that goes over your shoulder attached by a button.

MR. ADAMS: Now, on to page 25 of the written argument. And there are the passages in which it is made clear to Brown by these Gitksan chiefs that they are the owners of what must be, from the description, sizeable territories. For instance, Niigyap and Tsabux said:

> "...there were a great many small lakes and rivers in the lands belonging to them, where Beaver were abundant."

And then in the middle of page 25 there is another passages highlighted. And here he is describing something that is being told to him, not that he does. But he says:

> "From Sojick's Village over land to Chus ta too, where they go to hunt the Sifflus..."

and sifflus is ground hog,

> "...is a March of eleven days, the road winds through a Valley formed by two chains of high mountains, and is tolerable good."

And then he speaks of an even more exstensive journey that these Babine River Gitksan make.

> "From the entrance of Bear River to the Lake is a March of thirty one days -- following the River on the Ice."

The next highlighted passage at the end of that paragraph is what we say is the reference probably to Kuldo. That is he said:

> "There are an Atnah Village three or four days March up this River."

And he is referring there to the Bears River. And as I recall, Professor's Ray's explanation was that the river rising at Bear Lake and feeding what we now call

the Skeena and coming down the stream Brown is calling Bears River.

THE COURT: Do you understand him to be saying that it is a 31 day March from Sojick's village and about three or four day's march to Kuldo?

MR. ADAMS: Yes. Now, the lake he is referring to as the beginning of the 31st day March is -- it is not possible to tell. It might be a fair inference that it is Babine Lake, and that he is measuring his own journey and then can adding the account that he is being given. And he goes on to say:

> "From Quo ems Village to the one below it is a March of two days."

And now he is talking about going downstream on the Babine further.

> "...and from there to the Forks is a March of two days more -- There are three other Villages of Atnahs below the Forks, which are two days March asunder each -- From the upper of these Villages, there is a track over land leading to a large River, where the Nation called Ute sin nah reside."

And Professor Ray identified with the Nishga. And he is talking about the grease trails to the Nass.

THE COURT: Well, isn't there another name close to Ute sin nah for Wet'suwet'en? I don't remember what that word is.

MR. ADAMS: There is a passage elsewhere in the materials where he says that these people are trading with a Russian Fort. And it is partly from that that we ask you to infer the reference is to the Nishga.

THE COURT: All right.

MR. ADAMS: And on page 26 of the written argument it is apparent that he had set out to go down to the Forks, that is the Babine/Skeena Forks. He was dissatisfied with the state of the trade and the treatment he got from the Gitksan. And he made a decision which he followed up on to go back instead to Babine Lake.

And then on page 28 of the written argument is the passage that, and I have already referred to, about the similarities between the Gitksan and the Carriers as to Carrier's manners and customs. And then he carries on in that vein:

"They are also addicted to Gaming but I do not think to such a degree as the Carriers -- For I saw none of the young men naked as they are to be seen in every Carrier camp -- having in general good siffleux Robes - and Leggins of Carribeau skin."

And then he records his observation that the principal furs he thinks might be available from the Gitksan are not beaver but martin. And again on the bottom of page 28 of the written argument is another long extract, this time from his 1826 district report. And beginning at the top of page 29 -- and I should say, my lord, some of this is simply borrowed verbatim from the journal that we have just touched on. Some of it is further information, amplified information. He says at the top of page 29:

"OF THE ATNAHS IN THE BABINE RIVER - The two principal Villages of the Anahs who inhabit the upper parts of the Babine River - Are Weep sim."

And there is set out the connection we draw on the basis of the recorded adaawk with Miluulak's village and Chil do call.

"They are five miles asunder and lie about one hundred and fifteen miles to the West, or perhaps rather to the Northwest of our Establishment. There are a number of other Villages, within a short distance of them, where the different bands reside particularily during the salmon season."

And it is that concentration of villages which leads us to submit that he is in the populated vicinity of Kisgegas. As there is clearly a sizeable group of villages, both summer villages and otherwise.

THE COURT: It is not 115 miles from Babine Lake to Kisgegas, is it?

MR. ADAMS: It is not.

THE COURT: It is half that, isn't it?

MR. ADAMS: Well, Professor Ray gave some evidence about the inaccuracies of traveller's estimates of how far they were travelling in a day.

THE COURT: Yes.
MR. ADAMS: And I don't have that evidence at my fingertips, but it was my recollection that that was his recollection of their accuracy.
THE COURT: It depends whether they are going upstream or downstream.
MR. ADAMS: Well, he is going downstream. But when he is travelling in 1826, he is travelling on rocks and ice. And that account is set out in some detail in his journal. He does say of Weep sim and Chill do call, two of the Babine/Gitksan villages, that it is those two places where they assembled to make their feasts and perform all ceremonies of a general nature. So it is clear that the Gitksan too are feasting. And he says:

> "These Atnahs are a numerous race, last spring I saw at the Village of Weep sim..."

And that's why I say he has been there once before,

> "...about three hundred men, none of whom were past their prime."

And he then gives an estimate --
THE COURT: Should we take a short adjournment?
MR. GRANT: I don't want to be accused of causing a shortage of time.
THE COURT: It is almost time to take a short adjournment anyway.
THE REGISTRAR: Order in court.
(PROCEEDINGS ADJOURNED AT 4:13)

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

_____
LISA FRANKO, OFFICIAL REPORTER
UNITED REPORTING SERVICE LTD.

 (PROCEEDINGS RECONVENED AT 4:25 P.M.)

THE REGISTRAR: Order in court.
THE COURT: Yes, Mr. Adams, please.
MR. ADAMS: My lord, I was on page 29 of the written argument dealing with the Gitksan. And in the middle of the page there, Brown gives a population estimate for the part of the Atnah or Gitksan nation. It's not absolutely clear whether he is speaking about that portion of it on the Babine River or he is speaking of some larger area, but he again identifies the three chiefs that the plaintiffs identify with Niikyap, Tsabux and Gwoimt. And your lordship may recall in Mr. Grant's discussion a day or two ago about the wilnadaahl, there was a chart from Ms. Harris' evidence referred to as showing the wilnadaahl -- it's Exhibit 854-A -- of Kliiyem lax haa, and three of the houses that are in the wilnadaahl when it's understood as the entire Gitksan Wolf clan are Niikyap, Tsabux and Gwoimt. And I think it was also mentioned at that time that at the present day, Tsabux is Gwoimt's son.

He goes on at the bottom of page 29 in the written arguement.

THE COURT: Sorry, the estimate of numbers you said is about 300? You said, 300 men?
MR. ADAMS: He says that he has seen 300 people the last year at Weep sim.
THE COURT: Yes, all right.
MR. ADAMS: At the bottom of 29 he says:

> There are five more Atnah Villages which are described as large and populous - The first is two days march below Chil do call - and the second is at the Forks which is two days march further.

And the reason that's both highlighted and underlined is that it's suggested in the province's summary of argument that Professor Ray was clearly wrong in identifying the Gitksan village at the Forks. And it's my submission that all that Professor Ray did was correctly read his documents.

And then Brown goes on at the top of page 30:

> The other three are below the Forks, and are each two days journey asunder - From the upper of which there is a track over Land to another

And here we have the Ute sin nah resurface. And my understanding over the break is that "Oot seni" is a Babine word for the Nass River people.

THE COURT: Is it?

MR. ADAMS: And my further understanding, just as a point of information referring back, is that there is, among the Babine at the present day, a Casepin who is distinct from Caspit.

THE COURT: I see. Casepin is a Babine chief?

MR. ADAMS: Is a Babine chief.

MR. PLANT: I take it that's just Mr. Adams' instructions?

MR. ADAMS: That's correct.

MR. PLANT: Yes.

MR. ADAMS: It's often so none of us can tell whether something is in evidence or isn't, and I don't know, frankly, whether that is or is not, but it's something that I'm instructed.

It's in the middle passage on page 30 of the written argument where Brown corrects himself as far as his characterization of the Gitksan in his 1823 report. And he says there that he was relying on what he was told about them by the Babine. And in my submission, that supports the argument made earlier that the reason the -- that Brown is being told by the Babine not to bother going to the Gitksan, they don't hunt beaver anyway, is to preserve their trading relationship and cut out the Gitksan.

And again, he makes the statement that -- with some exceptions, that:

> ...their Character, Manners and Customs [of the Carrier and the Gitksan] are nearly similar.

And he gives an example, he says, "they", meaning the Gitksan:

> ...are in the Constant habit of burning their dead, and making feasts for them afterwards at the time they deposit the bones.

And then on 31, the highlighted passage, he gives his estimate which is mixed even within the passage. He says first:

> I do not think there are many Beaver in their

And here he is referring to the Babine River Gitksan.

> It being in my opinion too Mountainous -- [Gwoimt] acknowledged that on his Lands, there were few or no beaver -- [Niigyap] and [Tsabux] on the contrary said that there were a great many small Lakes and Rivers in the lands belonging to them -- Where Beaver were abundant, but that they did not know how to work them.

And I've already commented on that passage and suggested -- and adopted Professor Ray's interpretation that that is not to be read as being literally true in light of the evidence of the Gitksan both hunting and eating beaver.

And there is yet a further account in the Hudson's Bay records. This one not written by Brown. And there is a passage from that set out beginning on the bottom of page 31. And there was discussion in the course of Professor Ray's evidence and there is a reference in the provincial argument to whether the Atnah, as identified by Brown, really are to be identified with the Gitksan.

And you may recall that Professor Ray had said -- had acknowledged that "Atnah" was a Carrier word referring to outsiders in general. But in my submission, it's clear from this extract from 964-4, that whoever is writing this 1826 report of New Caledonia District report, is making very clear, very fine distinctions between the various groups that are being referred to as Atnah. And --

THE COURT: Do we know who wrote this?

MR. ADAMS: There is no signature on it. It's clear that it's not Brown only because Brown is referred to in a number of places in the third person and that's not his usual style. But beyond that it's not clear.

Among those three groups are those of the Babine River and they are identified on the second line on page 32. And of them he says:

> The Latter have been seen by Mr. Brown. They reside along the Babine River about three days march from the end of the Lake of the same name, and it is not known how far hence their

And there is the reference to Mr. Brown procuring a small quantity of beaver from the Gitksan and there is really a pessimistic evaluation of their prospects as far as the Bay is concerned.

Now, having dealt with first the Wet'suwet'en then the Gitksan out of these records, Professor Ray gave evidence about the larger region involving both, and he described this regional economy involving both the Gitksan and the Wet'suwet'en and others as:

> ...a delicately balanced system in which villages were linked together by kinship ties, trade, gambling and feasting activities.

And he was asked in the -- this is in his direct examination, and in quotation highlighted on page 33, he was asked this:

> Q. Are you able to say, from your examination of the historical record, whether in your opinion the -- what you have identified as fundamental elements, that the feasting, trading, territoriality were or were not established features of the economic systems that you described?

And his answer was:

> A. They certainly were a well established part of it at the time when these observations began, yes. I would say at the core of it.

And again, my lord, in our submission, that goes to the point of was this the instant creation of a fur trade that had only reached the coast significantly in the 1790's and was -- as we will come to the sea-otter trade -- had the influence of that trade really raced this far inland this fast and produced a society that has feasting, territory -- territoriality and trade as the core elements of it? And our submission is that that's highly unlikely.

Professor Ray gave some evidence about gift exchange with the chiefs as a means of establishing or

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cementing trading relationships. And he contrasted the situation facing the Bay traders here with the situation in the subarctic. And in the highlighted portion on page 34, having set out the subarctic version of it from the Bay's point of view, he says:

> [W]hat's interesting about this area is it is clear from Brown's account that there are exchange ceremonies going on here as you would expect. He even describes one in the Gitksan territory not between the company and him but between other natives. But he also does send presents. ...but the term trading captain and lieutenants does not appear in this literature. And I suspect, again I'm offering an opinion on that, the reason being that he came into a system where there was a well established authority structure, so you don't see the term captain but you see frequently the term chief. So there were men in the society with authority already.

THE COURT: What about nobles? Is that a term used by Brown or was it used by Ray or both?

MR. ADAMS: It was used by Brown without quotations. As I recall, it was used by Ray in quotes and he explained at one point that there was a discussion about whether they were or weren't similar to English and Scottish nobles. Professor Ray's explanation of the term was that that's what would have made sense to Brown in his scheme of trying to identify the position of people who are controlling land and resources.

THE COURT: No other early observer used the term, did they?

MR. ADAMS: Of nobles?

THE COURT: Yes.

MR. ADAMS: I don't recall it in Harmon.

THE COURT: Or anywhere else?

MR. ADAMS: Or anywhere else that I can remember seeing, no.

THE COURT: All right. Thank you.

MR. ADAMS: The critical aspects of those chieftainships that the plaintiffs rely on are that whatever the term, these people are identified as (a) possessing land, and (b) having political and economic authority. And it's our submission and this will be revisited when we come to talk about the history of assertions of ownership and jurisdiction, that when Gitksan and Wet'suwet'en chiefs in the 1820's tell the fur traders

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that they own lands and demonstrate their political authority, that that's at the first opportunity, the assertion of ownership and jurisdiction.

Now, in the middle of page 34 of the written argument, I go on to discuss Professor Ray's account of the feast between the Wet'suwet'en and the Babines to settle a murder. And he speaks there at the bottom of page 34 of a feast held to that end:

> There was an exchange of fur as one of the primary exchanges that took place at that time to -- presumably those furs were to avenge that death as part of a tribute. ...[I]t's clear again that establishing those peaceful relations between the people of the two lakes or of the lake and the river --

That is referring to Babine Lake and the Babine River --

> -- would have been important, given their frequent contact.

Now, beginning at the top of page 35, there is some further material that bears on the importance of feasting and compensation as a means of keeping the peace and settling disputes involving the Gitksan, the Wet'suwet'en and the Babine and even the Bay traders themselves. And the -- they get all tangled up in this passage. What happens is the text there indicates that an Indian in the employ of the Hudson's Bay Company was reported to have been murdered by Sekanis from Fort Simpson. And then in the highlighted passage in the middle of 35 he says:

> For the deceased having met his death while in the Comp.'s employ, his relations will look upon us as in some measure accomplices to the fact.

And then in the succeeding highlighted passages, we just follow the story out at the bottom of page 35:

> Mr. Brown partly through pity and partly to prevent the relations of the deceased from harbouring any revengeful feelings against the Comp.'s Servants, presented the old man with a

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three Point Blanket to soothe his sorrows, and

> in full of all demands -- The present was received very thankfully and the whole party went away apparently well satisfied.

And that's a passage that I'll come back to again in a later argument. But your lordship may recognize the precise parallel 60 years later with the killing of Mr. Yoeman (ph) at Hazelton. That is the notion that when somebody is killed in your employ, that -- the employer is responsible for that and is expected to compensate for the death.

Now, the second account, beginning at the top of page 36, again involves in various ways, all these groups. This is a conflict among the Babine over an accidental killing which took place in the Gitksan village, in Niigyap's village. And it begins with Brown saying:

> I am extremely sorry to learn that on Ackooshaw entering Needchip's lodge on their arrival at the Atnah Village - Bug ale made a false step, and his gun being cocked it went off when the contents went through the shoulder and arm of Bey eigh - and afterwards the body of Attee cheil who, supposing they were attacked by the Atnahs, fired his piece on them, and fell down dead.

He says in the highlighted passage:

> The deceased was burnt and his bones brought back to his relatives -- Both the dead and the wounded were Casepin's Nephews, who, on hearing the News, was so enraged that he immediately armed himself - met the Party and attempted to Kill Ackooshaw -- but was prevented by those who accompanied him -- Since which time several Presents have been made - but the whole are still in a state of commotion, and mutual dread of each other - which prevents them from Killing the few Salmon which comes up the River.

And there -- in the passage that is not highlighted there is an account apparently of a request coming to the Babine Fort that Mr. Brown go or

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send someone to try to deal with these difficulties, but it's apparent he's ill at the time and he sends Mr. Ross instead. But says at the top of page 37:

> I desired Mr. Ross not to attempt it --

That is, to adjust the difficulties.

> -- but simply to desire them to remain quiet during the Salmon Season.

And then what happens is that Mr. Ross goes there and comes back and reports to Brown the passage that is highlighted on 37:

> By Mr. Ross's report it appears that Ackooshaw's Band made a feast lately, and gave considerable Presents to the Principal of Casepin's People, which has in some measure restored tranquillity amongst them.

And then in the middle of 37 there is simply a quotation from the Historical Atlas of Canada authored by George MacDonald, suggesting the antiquity of the trade in this area.

And that brings me to the bottom of page 37, to a long section on what is really at the heart of this submission as to -- granting that these societies were in the shape that they were in as described by Brown in the 1820's, how did they get that way and how long have they been -- had the fashion in which they are described been typical of them?

Now, at the bottom of page 37 the province argues in its summary, and the reference is given, that "the historic records of Brown followed proto-historic influence by at least 16 years from the east and probably 40 years (possibly, when considering the Russian influence and the Asiatic influence, 150 years) from the west." And the plaintiffs' position is simply that there isn't any evidence of 40 years of influence from the west nor of the possibly 150 years from the Russians or Asia that could in any way account for the feasting, trading, territorial societies led by hereditary chiefs observed by first Harmon in 1810 and then Brown in 1822, or documented.

And in his re-examination, Professor Ray took up this thesis directly, that the Gitksan and

sociopolitical systems developed in response to the European fur trade. And he said this in the passage that's highlighted on 38:

> ...the coastal fur trade had a small impact on this area prior to 1800, and I doubt very much sufficient time had lapsed for the whole elaborate social-political territorial feasting system that we've seen in place, to have been put in place in such a short period of time. And in fact, even if we allow the alternative point of view and say, well, since the maritime fur trade began, I still would submit that even 40 years is probably premature or is not long enough, given what we are talking about. We are not just talking about little cultural details; the adoption of a pot or a gun or a knife. We are talking about fundamental social-political organization.

And again, my lord, I emphasize the point that this fundamental social-political organization had not just -- wasn't just in place among the Gitksan, wasn't just in place among the Wet'suwet'en, wasn't just in place among the Babine, it was, on Harmon's evidence, in full flower at Stuart's Lake in 1810.

And then I said at the bottom of 38, going over to 39, that this historical assessment of Professor Ray was corroborated from an anthropological point of view by Mr. Brody. And the suggestion was put to him in his cross-examination that the territorial and feasting system of the Wet'suwet'en in particular was inspired by the European fur trade, and borrowed from the Gitksan. And he made a parallel comment to Professor Ray's when he said:

> [I]t would take a very long time for an institution as complicated as that to establish itself at the centre of another culture's way of organizing itself.

And that reference to the complication of the institution in the next paragraph I've expanded on a little and pointed your lordship to some of the features of that feasting territorial institution. Again, it's not just a convenient term for some sort of gathering. What's to be found in Brown and Harmon

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is feast seating by rank, the practice of travelling to distant villages with invitations to the feasts, the practice of announcing from whose territory the food served had come, the distribution of property, the dances and the songs performed, and the variety of occasions, funereal or otherwise, on which the feasts were held, and the procedures for succession at the feast, both to names and to ownership of territories. And again, my lord, I say -- I say those are the very features that you heard about in detail in the plaintiffs' evidence that Mr. Grant has canvassed in the past few days.

Now, it's clear, beginning with Harmon, that beaver was important for meat for feasts rather than for skins, quite independently and prior to the presence of the fur traders. And he gives quite a detailed account of the technology of this beaver trapping for the New Caledonia Carrier in which he includes people at Stuart's Lake, people at Babine Lake. And he says, beginning on the bottom of page 39:

> The Carriers take beavers in nets, made of thongs of caribou skins, or in baskets made of young cypress stadles; --

And that's a word I haven't been able to find out what it means.

> -- and sometimes they shoot them with bows and arrows, or guns, and take them in steel traps, which we --

And that should be "sell"

> -- to them, and of which they begin to understand the value. Cats, martins, fishers, foxes, minks, etc. they take in a kind of spring trap, which consists of a large piece of wood, which these animals, by nibbling at the bait, cause to fall upon and crush them. Bears, swans and hares they generally take in snares; and the cat, also, they sometimes take in this manner. They hunt the beaver and bear, more for the sake of their flesh, than to obtain the skins; for it is with the meat of these animals that they make their feasts, in

 remembrance of their deceased relatives.

And the balance of that passage has already been quoted in the early part of the argument. Again, there is the reference to territorial boundaries, to fishing and hunting territories.

Now, it's clear from Brown that the Babine and the Wet'suwet'en brought furs to Fort Kilmaurs, which is the Babine fort, in exchange for leather, which was a central item in their feasting. And it's on this subject that Brown has perhaps more material than any other, because this, it seems out of these documents, is his constant campaign to persuade the company to provide him with sufficient quantities of leather because he is simply not able to trade furs for any other European goods.

And he says in the passage quoted at the top of page 41 on my argument:

> Our Indians --

And he is referring to Indians trading at the Babine fort:

> -- grumble hard at the scarcity of leather and we find it a very difficult task to satisfy them without it - for Leather - being their principal demand, they are not fond of giving their Furs in exchange for Articles they have no use for or do not immediately want. The Hotsett Indians are particularly troublesome.

And he goes on to say:

> I have tried all in my power --

And here he is talking specifically about Wet'suwet'en chiefs.

> -- to induce them to come to the Fort, but without success - principally on account of the want of leather, as they will not part with their Furs for any thing else.

And then beginning at the bottom of 41 there is a very extensive discussion of this subject from Brown's point of view.

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And he says at the top of 42 that it was

> pointless to make trips into the Simpson's, that is the Bulkley River area, unless there was leather available to trade. And he gives an example of Wet'suwet'en coming to the fort and finding out there was no leather and getting quite agitated which, by his account, he says:
>
> > In spite of all we could do, and everything we could offer them in the way of trade, they went off with their Furs giving us to understand that they would dispose of them to the traders from the Coast - on reaching Simpsons's River they spread the Report all over, of our having no leather, which prevented any of their Countrymen from visiting us. They had a great feast in the fall, when such of their Furs, as they could not barter with the Indians of the Lake, or Atnahs for Leather -- They gave away in presents at the feast in place of that Article.
>
> And he says:
>
> > When I went there the first time in 1823 --
>
> And it's from that, my lord, that I interpret he has been to Simpson's River, that is, to the Bulkley, before.
>
> > -- several of the Chiefs made me presents of Furs - In return for which I made them what I considered very handsome presents, consisting of Cloth Blankets, Shirts, et cetera -- But the following day they brought back the whole, and informed me that it was not to receive such articles as these that they had given me their Furs -- One of them, Smug gle tuem --
>
> Which we identify with Smogelgem.
>
> > -- from whom I had received about twenty skins - I had given two yards red Strouds --
>
> Which is the material that Hudson's Bay coats are made from.

-- one Ganah[?] shirt - one awl - one Fire steel - one Gun Flint - two needles - two Hanks Thread - two yards Gartering[?] - ten Ball - one half pound powder - one pound shot - and one sixth pound Tobacco -- Requested me to take back the whole again and give him a dressed skin in the place - On which I took the articles, and in their stead gave him two Middling Moose skins, as an equivalent for his Furs -- and the same arrangements I was obliged to make with the others -- after which they were all well pleased.

And there is a further reference highlighted on 43 again referring to the Wet'suwet'en -- I'm sorry, I think he must be referring to the Babines. He said:

> They instead of making a fall hunt went to the feast at Simpson's River, and by their return the season was over -- So that the Indians of this place did not in the course of the fall Kill ten Beaver amongst the whole of them.

And again, my lord, we say that's evidence that it cannot be the European Beaver trade that is driving these societies when you have people simply abandoning any prospect of hunting furs for the Bay and going off to the feast from the Bulkley River.

THE COURT: This is all a quotation from Brown's report, is it?

MR. ADAMS: This is all a quotation from Brown's report, from his 1826 District report. It's the one I have commended to your lordship as the most readable of the bunch.

And then in this extended account at the bottom of 43, Brown goes on to say that this importance of leather is something that's particularly important among the Carrier but even more so important in the Babine country.

And having spoken first about the Carriers in general in Western Caledonia, he says of the Babines this, and I'm at the top of 44:

> With the Babines it is different, the Leather they buy is not for present use, but to be put carefully past until the Death of a Relation and each skin is cut into three or four Pieces, and given away in presents at the Burning of

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2 finally to deposit the Bones & Ashs, then the
3 skins are given away whole -- It being
4 considered on these occasions as of great
5 importance to have fine Large white skins.
6
7 And then in the last highlighted passage on 44:
8
9 In fact it is only a very few individuals that
10 it is possible to prevail upon / at such times
11 as they have no feast to make / to part with
12 their Furs for either Cloth or Blankets --
13 These goods being mostly all disposed of for
14 Salmon and other Provisions.
15
16 And my lord, what's happening there is that the
17 Indians are trading for cloth and blankets, thus they
18 are trading salmon to sustain the Hudson's Bay Fort
19 rather than for the trade goods from which the Bay
20 expects to make a profit.
21 And again, my lord, I say on this evidence, that
22 there is every indication from this material that it's
23 not the European fur trade which is driving these
24 economies and these societies.
25 Now, there is a reference missing at the bottom
26 of 44 to Harmon, and it should be back in the argument
27 to pages 39 and 40, and that was to the trapping
28 technology. And your lordship will recall that there
29 was reference to beaver nets made of caribou, to
30 cypress baskets, to deadfall traps, to snares, and
31 what we ask you to take from that is that the
32 technology of trapping clearly long pre-dated the
33 introduction of steel traps. We submit that these
34 kinds of things and this variety of things are simply
35 not invented overnight. And we draw your particular
36 attention to the fact that these methods of taking
37 animals are adapted for many other animals than
38 beaver, and that at least at the time of Harmon's
39 observations, had not been replaced immediately upon
40 the arrival of steel traps.
41 MR. ADAMS: My lord, I have understood that we were going to
42 change reporters in midstream and this might be a good
43 point.
44 THE COURT: Sure. We can do it right now.
45
46 (CHANGE OF REPORTERS)
47

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

_____

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

MR. ADAMS: My lord, I'm at the top of page 45, and there I say it is clear from Brown's reports just how little interested the Wet'suwet'en were in European goods, except those which were required for their feasts and how difficult it was to persuade them to respond to the Hudson's Bay Company's hunger for furs. And that leads to a further aspect of this question of how far these economies and societies were in effect created in the form that Brown and Harmon are observing by the European fur trade, and we say that part of the answer to that question has to be if these European goods are said to be so significant and so quickly transforming these societies, then what's the evidence as to the volume of those goods coming into the territories. And in that connection Professor Ray said in his cross-examination that there were very very few Russian goods in the area before the 1780's and very little British and American shipboard trade before the 1780's, and that was mostly for sea otter. And it's apparent, not only from Brown but also from McGillivray, who follows him by a dozen years, that there were relatively few European goods among the Gitksan, Wet'suwet'en and Babine, even when Brown arrived in 1822 or McGillivray 11 years later in 1833. Now, as I understand it, the Province's argument is that European goods had an extraordinary immediate impact on the Indian societies and economies, and yet we say it's clear that these goods were only slowly, even at the comparatively late date of McGillivray's visit, coming into the area. And Professor Ray gave evidence about the relative scarcity of European goods that Brown observed and the relative independence of Gitksan and Wet'suwet'en from reliance on such goods for their subsistence. And then in the passage reproduced from his evidence on page 46, he says:

> "These people who are trading with coastal groups are not well equipped, i.e. in European tools for hunting and trapping, which suggests that all the trade is with the coast. These natives are neither dependent on the company for European goods, nor have they become dependent on coastal groups for European goods, because he makes it clear that they have relatively few of them."

 He goes on in the passage that follows to say that the

> Babine, Gitksan and Wet'suwet'en avoided the trap by becoming dependent on the Bay for credit and welfare, as he says in the highlighted passage:
>
> > "By avoiding this trap, the Gitksan and Wet'suwet'en were able to retain control over their local resources. In turn, by retaining control, they were able to manage those resources in such a way that they did not fall into a dependency trap at a later date due to problems of depletion."
>
> And your lordship will recall that we referred already today to Brown's observation that protection of beaver via territoriality was good for the preservation of the beaver but hard on the trade. And of course the incentive from the short-term point of view of the Bay is to take as much fur as you can as fast as you can, and unless the resource is managed on some other principle, then you do get depletion. At the bottom of 46, again quoting from Professor Ray's evidence, he says that this notion that the Gitksan and Wet'suwet'en were able to retain control over their local resources, et cetera, he says:
>
> > "I came to that conclusion on the basis of my previous work, which has focused very heavily on the area east of the Rocky Mountains where you found the fur trade coming in contact with a hunting and gathering society in which big game and small game were the mainstays and those became the primary commodities of trade. And very quickly the Europeans introduced guns, steel traps and a variety of tools, ice chisels, hatchets and what not that were used to -- that's replace the native technology to hunt and trap those items and thereby as technological substitution took place and the commercialization of that core of their economy, they very rapidly got themselves into a situation where they were increasingly dependent on the trading companies, especially as the overexploitation of those resources led to depletion."
>
> And then he contrasts that with the societies that

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he's giving evidence about, that is the Gitksan and Wet'suwet'en:

> "Here it's clear that with a fish-based economy basic subsistence was secure and they didn't acquire from the Europeans any technology that was required to exploit those fish. So to my mind that left them in a much stronger position to carry on their traditional ways than groups further east had been."

And again, I refer back to Harmon, where it's clear that even then the technology for trapping, not just fishing, but for trapping is preserved and is present when Harmon gets there in the vicinity of 1810.

THE COURT: But surely the introduction of just firearms must have completely changed the whole way of life of the hunter.

MR. ADAMS: It may have had an impact. There isn't evidence in these records of a dramatic impact.

THE COURT: Could it be otherwise?

MR. ADAMS: That depends partly on the prevalence of firearms.

THE COURT: How many have they --

MR. ADAMS: He talks about people being armed with spears, he talks about people being armed with bows and arrows. He also talks about people having muskets, he talks -- Desare talks in the passage we're just coming to on this page about old guns coming into the area.

THE COURT: Actually, I have no difficulty with your proposition at all, except the sense I have that firearms would make a dramatic change overnight in the efficiency and time required for hunting.

MR. ADAMS: All I can say, my lord, is two points in answer. First of all, that's not evident from these records.

THE COURT: No.

MR. ADAMS: And then the other point is that whatever the impact, and no part of the plaintiff's case to say that you have some frozen society that's been there in that form in -- unaltered for some incredible period, and then change starts happening to it, that's not the plaintiff's case at all. The significant point is that whatever the impact of firearms might have been, no one so far in argument or in evidence is pointing to that as the mechanism for creating territoriality, feasting chieftainship the way that the fur trade is being pointed to, and that's why this focus on European goods at large, because they are being said

by the defendant Province to have that effect. In the middle of page 47 Professor Ray goes on:

> "European goods are coming into the area from the coast; that they're by no means abundant among the Indians in the area and, for example, even the westernmost group like the Wet'suwet'en. We read passages earlier that make it clear that they did not have large quantities of metal goods, even though those are the ones that are coming from the coast."

And this is where he refers to an old gun, although I think his arithmetic is out by ten years. It should be a 20-year-old rifle. And then he carries on in the next highlighted passage:

> "The trade goods are not abundant in the territory. They're there. They're coming from both -- both the company and from the coast. They by no means saturated the territory. And not only are these Indians not dependent on the company for survival, they're not dependent on goods that are coming from the coast for survival either."

And this question of the volume and relative importance of European goods was raised again in Professor Ray's cross-examination by the Province. And he said this:

> "There is no evidence to suggest that from either the coastal direction or from the eastern direction the natives had acquired by this time European goods that had been incorporated into their economy that made them essential hunting tools, essential fishing tools, or otherwise essential for their subsistence. The general discussion of the coastal trade at this period is that it predominantly was a trade oriented to the feasting ceremonies."

And then he goes on at the bottom of 48:

> Brown, if you recall the comments we cited from Brown the other day, he said one of the

Submissions by Mr. Adams problems that the Babine had as far as trapping was most individuals did not have what he regarded the essential tools of a trappers equipment. That maybe between five or six of them they could collectively put together an equipment. But that suggests to me that the goods are there, they're in circulation, they have not reached what I would consider a level -- a threshold level of dependency."

And then he goes on in answer to your lordship's question to say that they avoided becoming dependent on the Hudson's Bay Company for subsistence technology. And then on 49 I refer again to McGillivray and quote from his 1833 account at Rocher Deboule where he says that:

> "The Gitksan had 'very little of European goods among them' and that he 'never saw Indians so destitute of European manufacture'."

And there's a further quotation with respect to the Wet'suwet'en that he saw no kettles among them except an old iron pot.

THE COURT: McGillivray established a fort at Gitanmaax, did he not, in 1833 or thereabouts?

MR. ADAMS: No. The first Hudson Bay post at Gitanmaax was in 1866.

THE COURT: What did McGillivray do in 1833?

MR. ADAMS: McGillivray was acting for the Bay, but he, on my reading of the account, seems to have been on an exploration rather than there with a view to setting up a post.

THE COURT: All right, thank you.

MR. ADAMS: Now, in the face of this evidence about the low volume and general lack of economic significance of the European goods coming into the area, the Province argues that it was the Indians' burning desire for European goods which induced the Gitksan and Wet'suwet'en, who adopted with lightning speed the entire complex of territories, chiefs, feasts, and trade relations which first Harmon and later Brown observed at the very centre of the Indian societies on first contact. And we say simply that that proposition is so unlikely on these facts that it was rejected by Professor Ray, it was rejected by the anthropologists, Dr. Daly, Dr. Mills, and Mr. Brody,

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and we say that argument on these documented facts simply offends common sense.

Now, there is another piece to this argument that I address at the top of page 50, where the Province argues in its summary quoting from Dr. Robinson's evidence that "the fur trade seems to have spurred the Gitksan occupation of the middle Nass and especially the Upper Nass and Upper Skeena", and that "where the resource is close at hand and there's no need to go beyond the village bases very far, then it's unlikely that people would have gone beyond in terms of their resource exploitation".

And in the following few pages, my lord, what I do is set out a number of items of this documentary evidence that suggests that however unlikely going beyond the village base very far was in Dr. Robinson's estimation, the fact is that people were doing that. If it was unlikely that people would have gone far beyond the village bases why, we ask, does Brown find the Gitksan in 1826 making 11-day marches north of Kisgegas to hunt ground hog to make clothing. And I set out the quotation that indicates first that's what they're doing, and second that's what they're doing with the skins. This hunt along distant mountain territories wasn't for beaver, it was for ground hog, it wasn't for European fur trade, it was to make clothing. Again, we ask on page 51 how did the Gitksan come to be making and trading crested blankets of mountain goat wool, such as the one worn by Gwoimt in 1826. And there is a further reference from Harmon to a blanket or a rug which was manufactured by the Atnas of the wool of the sheep that are numerous on the mountains in their country. And why, we ask, were the Wet'suwet'en reported in the Bay records as hunting ground hog in the mountains. You will see at the bottom of 51 Brown saying:

> "The people will all have left the village" --

That is presumably hot set(?), but certainly upon the Bulkley by that time in March, to hunt ground hog in the mountains. I'm going over to the top of 52. Again McGillivray, he encounters Indians from Simpson's River from the Bulkley who are on a hunting expedition for ground hog, and they're not in the vicinity of their villages, they're in the mountains. Why again were the Babine Lake Carrier, according to

Brown, "for this sometime in the mountains hunting the caribou" in March 1823. Why was Brown in 1826 calling the lands of the Wet'suwet'en extensive and at least one of the Babine chief's lands is very extensive. How was it, as I have already mentioned, that the Gitksan chiefs Niigyap and Tsabux in 1826 had "a great many small lakes and rivers in the lands belonging to them", and it's clear that those were -- in fact the quotation is "higher up the river adjoining the lands of the Siccanies and the Babine". And then for a later time why were the Babines of Rocher de Boule, that is the Wet'suwet'en, hunting and fishing as far east as Lake Francis in 1869, and the references from Father Lejacq and Dawson are given. Lejacq says:

> "There is not a village, properly speaking, at Lac des Francais; all the savages who fish or hunt on the edge of the lake belong to Rocher Deboule."

And then the passage from Dawson:

> "There are no permanent villages on Francois Lake, that part of the country belonging to the Wedzen Kwe people who visited periodically."

And I should add to that the exhibit reference, my lord, is 1171-22 page 30B. And then finally in this catalogue, why were the Gitksan in 1870 and long before that making lengthy journeys on foot with huge loads to obtain and trade oolichan grease. And the long quotation beginning on 53 is from Chismore, and I don't intend to read it all. It establishes clearly that what you have there is lengthy journeys on foot with large loads for the grease, but I point in particular to the passage near the end of the quote on 54, where he says, and he's talking about the trail coming down from the Nass and he ends up in Kispiox. He says on his way down that trail:

> "In one place the trail leads over the top of a hill denuded of soil, and is worn deeply into the solid granite by the feet of succeeding generations."

Now, the plaintiffs submit out of this list of examples, and they are only examples, that you are

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seeing long-standing wide-ranging resource use, and that there is no discernible connection between these examples and the European fur trade. And on that basis the plaintiffs dispute the Provincial argument that the fur trade is the remote-control engine that's driving all this, that's creating territoriality, that's creating feasting, that's creating the positions of the chiefs. And we say also that this catalogue of examples should put an end to the Province's argument that until the fur trade, the Gitksan and Wet'suwet'en were foraging about in the vicinity of their villages but with no reason to go far, no reason to go out of the river valleys. And the summary of the plaintiff's position on this section of the argument is set out beginning at the bottom of 54, where we say, relying on the Brown and Harmon records, that these observations, in the particular case of Brown, made by someone who had every reason to be attentive to the plaintiff's systems of land ownership and political authority, reflect organized societies with long-established systems of territorial ownership and political jurisdiction in the hands of the hereditary chiefs. And we say that these observations are the baseline, and that's what Professor Ray called it, against which all attempts to reconstruct how the societies might have been organized must be measured.

And in the succeeding sections of the argument we go on to talk about those more theoretical efforts to reconstruct the societies that we say are laid out in their essential details in the Hudson's Bay documents.

THE COURT: Have you finished that section, Mr. Adams?

MR. ADAMS: I have, my lord.

THE COURT: I think then this -- rather than start a new main topic tonight we might adjourn until 9:30 on Monday. I would tentatively, at least, think that we should plan on some evening sessions, I wouldn't think every night, but some evening sessions next week to try and get as much time in as possible. It seems to me that perhaps we ought to plan now and have an evening session on Monday, and then go on from there.

MR. GRANT: You would suggest one on Monday, would you say?

THE COURT: Yes. I think we should have. We'll all be fresh from the weekend.

MR. GRANT: Yes. I think that would be good.

THE COURT: We'll decide on the balance of the week as we go along. I don't think we should have a session every

night, I think we'll wear ourselves out if we do, but I think we should put a couple of evenings' effort into the early completion of the plaintiff's argument.

MR. GRANT: Just to clarify, my lord, before my friend speaks, I understand that you would anticipate if there wasn't an evening session we would continue with the extended days.

THE COURT: We'll work the extended days anyway.

MR. GRANT: Yes, that's what I understand, and we're assuming that schedule.

THE COURT: Whether we sit at night or not, we'll be sitting those hours, and those daylight hours are daytime hours.

MR. PLANT: Two things. Is it be 10:00 o'clock Monday morning or 9:30?

THE COURT: 9:30.

MR. PLANT: In view of the speed that Mr. Adams is proceeding with his material, I wonder what's next, because we'll be into what's next fairly early Monday morning, and it will be of some assistance to us over the weekend to get organized if our friends are able to tell us now what's coming up.

MR. GRANT: All of this was set out by Mr. Rush of course, that my friends have, so there is no surprise, the next section is the section, as I recall, I think it's labelled the section on "Ownership". And the other point, I wondered -- we had hoped we would have the Federal governmet's response to the counter-claim, which I recall was due on the 19th. I just wondered what the status of that is, if we could get it for the weekend.

MR. MACAULAY: My lord, I'm seeking instructions on some -- a particular aspect, not so much in connection with this litigation, but because one of the points we address comes up under action with the Province, and we want to make sure we get informed with them.

THE COURT: When can you give it to your friends.

MR. MACAULAY: I hope to be giving it to them on Monday.

THE COURT: All right. I'm sure they have other things to do on the weekend.

MR. GRANT: I think we'll find other things to do, my lord.

THE COURT: All right. Have a pleasant weekend. Thank you.

THE REGISTRAR: Order in court. This court stands adjourned until Monday morning at 9:30.

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(PROCEEDINGS ADJOURNED)

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

_____

Graham D. Parker
Official Reporter
United Reporting Service Ltd.