In the Supreme Court of British Columbia

(BEFORE THE HONOURABLE THE CHIEF JUSTICE)

No 0843
Smithers Registry

Vancouver, B.C.
6 March 1989

BETWEEN:

DELGAMUUKW, also known as KEN MULDOE, suing on his own behalf and on behalf of all other members of the HOUSE OF DELGAMUUKW, and others,

Plaintiffs;

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA and THE ATTORNEY-GENERAL FOR CANADA,

Defendants.

Proceedings At Trial

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APPEARANCES:

STUART RUSH, Esq., PETER R. GRANT, Esq., MS. LOUISE MANDELL, M.D. ADAMS, Esq., and D. PATERSON, Esq.,	appearing for the Plaintiffs;
D.M.M. GOLDIE, Esq., Q.C., C.F. WILLMS, Esq., NORMAN J. PRELYPCHAN, Esq., JAMES M. MACKENZIE, Esq., and MS. THORA A. SIGURDSON,	appearing for Her Majesty the Queen in Right of the Province of British Columbia;
JAMES A. MACAULAY, Esq., Q.C., MS. MARVYN KOENIGSBERG, MICHAEL W.W. FREY, Esq., and MS. LORYL RUSSEL,	appearing for the Attorney-General of Canada

INDEX OF WITNESSES FOR THE PLAINTIFFS

NAME	PAGE
ANTONIA MILLS	
In chief by Mr. Rush on Qualifications	12841
Cross-exam by Mr. Mackenzie on Qualifications	12847
Cross-exam by Ms. Koenigsberg on qualifications	12864
Re-exam by Mr. Rush on qualifications	12865
Submissions by Mr. Mackenzie	12869
Submissions by Ms. Koenigsberg	12870
Ruling by the court	12871
In chief by Mr. Rush	12872

INDEX TO EXHIBITS

umber	Description	Page Number
03	Curriculum vitae of Antonia Mills	12866
04	Social anthropology article - E. E. Evans-Pritchard	12872
05	Tab 2 - Contract	12873
06	(Reserved)	
07	Article myths of the Carrier Indians of British Columbia by Diamond Jenness - 1934	12895
08	Jenness Article - The Carrier Indians of The Bulkley River Their Social and Religious life	12899
09	Interview by Alfred Joseph of Mary George dated April 23, 1981	12900
10	Interview of Mary George and Gloria George by George and Alfred Joseph dated August 26, 1981	12901
11	Bulletin:No. 61 - Totem poles of the Gitksan, Upper Skeena River, B.C.	12910

INDEX TO EXHIBITS

Number	Description	Page Number
903	Curriculum vitae of Antonia Mills	12866
904	Social anthropology article - E. E. Evans-Pritchard	12872
905	Tab 2 - Contract	12873
906	(Reserved)	
907	Article myths of the Carrier Indians of British Columbia by Diamond Jenness - 1934	12895
908	Jenness Article - The Carrier Indians of The Bulkley River Their Social and Religious life	12899
909	Interview by Alfred Joseph of Mary George dated April 23, 1981	12900
910	Interview of Mary George and Gloria George by George and Alfred Joseph dated August 26, 1981	12901
911	Bulletin:No. 61 - Totem poles of the Gitksan, Upper Skeena River, B.C.	12910

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08	Jenness Article - The Carrier Indians of The Bulkley River Their Social and Religious life	12899
09	Interview by Alfred Joseph of Mary George dated April 23, 1981	12900
10	Interview of Mary George and Gloria George by George and Alfred Joseph dated August 26, 1981	12901
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1 6 March 1989
2 Vancouver, B.C.
3
4 THE REGISTRAR: Order in court. In the Supreme Court of British
5 Columbia; Vancouver, this Monday, March 6, 1989.
6 Calling Delgamuukw versus Her Majesty the Queen at
7 bar.
8 THE COURT: Can we talk about scheduling?
9 MR. RUSH: I think so.
10 THE COURT: Thank you. What do you propose, Mr. Rush?
11 MR. RUSH: Let me deal first with the month of April.
12 THE COURT: Yes.
13 MR. RUSH: We will call the following expert witnesses on the
14 dates that I understand are available to the court in
15 the month, and they are, in the week of April 10, Mr.
16 Hugh Brodie; in the week of April 17, Mr. Marvin
17 George; and in the week of April 24, Mr. James
18 Morrison, each of those witnesses for one week, and I
19 understand that the week preceding April 10 is a
20 non-sitting week and the week following April 24 is a
21 non-sitting week; that is to say, that the first week
22 of May I think beginning with May 1st is a non-sitting
23 week.
24 THE COURT: Is that -- I will just check that. Well, I have to
25 be away on the week of the 24th but I can be here the
26 week of May 1st.
27 MR. RUSH: Yes. I am advised, my lord, that we can make that
28 adjustment from our standpoint although I must say
29 that my learned friends probably were working on the
30 assumption of running three weeks straight but that's
31 satisfactory to us. We can make that a week off in
32 the week of April 24, and go with Mr. James Morrison
33 on the week of May 1st.
34 THE COURT: I am confused already.
35 MR. RUSH: Your lordship said that the week of April 24th was a
36 non-sitting week so far as you were aware.
37 THE COURT: No, I think that I have --
38 MR. RUSH: I may have misunderstood you.
39 THE COURT: Yes, I think so. I have to be away the week of
40 April 3, so that's not a problem.
41 MR. RUSH: Yes, that's right.
42 THE COURT: Then we are here the week of the 10th, 17th and
43 24th.
44 MR. RUSH: The weeks of the 10th, 17th and 24th are available to
45 the court?
46 THE COURT: Yes.
47 MR. RUSH: That's fine then.

1 THE COURT: But then you wanted not to sit the next week I take
2 it?
3 MR. RUSH: Well, I was working on the assumption of three weeks
4 of sitting time and one week of non-sitting time.
5 THE COURT: Well, that may be wise. Let's see where we go from
6 there. So if we don't sit -- if we are off the week
7 of May 1st, down, all right. Thank you.
8 MR. RUSH: So the week of May 1st would be a non-sitting week.
9 THE COURT: Yes.
10 MR. RUSH: And I understand that your lordship is to be
11 available in the next following three weeks with the
12 last week of May as a non-sitting week when your
13 lordship is not available.
14 THE COURT: That's correct. That would be -- we would sit the
15 8th, the 15th.
16 MR. RUSH: Now, I'd like to defer the scheduling of the trial
17 witnesses for the available court weeks in May until
18 the end of this week.
19 THE COURT: Yes, all right.
20 MR. RUSH: And I understand those weeks however to be as I have
21 indicated and I hope to be able to advise your
22 lordship by the end of this week of the schedule for
23 the month of May and, if I can do so earlier, I will.
24 THE COURT: All right. Keeping in mind May 22nd is a four-day
25 week.
26 MR. RUSH: Yes, but our present view is that the following
27 number of witnesses would not take more than one week
28 each so that I don't think we will have another
29 two-week witness, it is our present view.
30 THE COURT: Then we are down May 28th.
31 MR. RUSH: Yes.
32 THE COURT: All right. Monday is the 29th. Are you able to
33 speak about June?
34 MR. RUSH: I cannot, not at this point.
35 THE COURT: All right.
36 MR. RUSH: Except to say that on the present course of the
37 trial, our expectation continues to be the same, that
38 during the month of June the plaintiffs will finish
39 its case.
40 THE COURT: Yes. And we can -- I think that counsel can assume
41 that I will be available for the whole of that month.
42 MR. RUSH: The whole of the month of June?
43 THE COURT: Yes. I don't have any commitments that I am aware
44 of, and I don't propose to make any if I can possibly
45 avoid it.
46 MR. RUSH: Your lordship at one point indicated your
47 availability in the month of July and, while that was

1 two months ago, perhaps your lordship might indicate
2 what your intentions are with regard to July because I
3 think that if it is the court's intention to sit in
4 the month of July, that would certainly impact on the
5 plaintiff's ability and necessity to schedule for the
6 cross-examinations which would no doubt begin sometime
7 in July.
8 THE COURT: All right. Well, I am assuming from what I have
9 been told that the plaintiff will complete its case
10 during the month of June and that's still a reasonable
11 expectation, is it, Mr. Rush?
12 MR. RUSH: Yes, it is.
13 THE COURT: Then I have to ask the defendants whether they are
14 ready to proceed with their defence assuming we have
15 some time left in June and, secondly, what counsel's
16 views are about the month of July. I have some plans
17 for July which are not firm, which can be cancelled
18 and, if we should sit in July, then we are prepared to
19 do so.
20 MR. RUSH: I don't want your lordship to consider the comments
21 that I have made in raising your availability for July
22 that the plaintiffs are eager for you to sit in July.
23 THE COURT: I understand that. Well, I am really more concerned
24 with the end date for the completion of the defence
25 than I am with when we start. If we can conveniently
26 complete the defence in the fall, then probably we
27 shouldn't on the grounds of common sense abuse
28 ourselves by sitting in July. But on the other hand,
29 if we can't finish the case, the evidence, and of
30 course I have to think also about rebuttal, then I
31 think if we can't finish those matters in the fall
32 then I think we should sit in July so that we may.
33 And I think I should perhaps ask Mr. Mackenzie to
34 speak to that part of the case.
35 MR. MACKENZIE: Thank you, my lord. The Province's defence will
36 take an estimated two to three months in time, and we
37 are -- we were anticipating not sitting in July and
38 August this year except insofar as would be necessary
39 to complete the plaintiff's case beginning of July.
40 We were anticipating commencing our witnesses in
41 September, the first sitting week in September. So
42 that's our present view as far as July and August and
43 the length of the defence is concerned, my lord. If
44 your lordship wished a further submissions on July and
45 August, I think I'd have to take more instructions but
46 that's the present situation as I am advised.
47 THE COURT: Ms. Koenigsberg?

1 MS. KOENIGSBERG: The Federal defendant's case is still
2 anticipated to take approximately six weeks of court
3 time and it was my understanding, although Mr.
4 Mackenzie can perhaps assist if I am incorrect, that
5 he included in the estimate of the Provincial
6 defendant's case as the counter-claim?
7 THE COURT: Yes.
8 MS. KOENIGSBERG: And if that's so, then we have accounted for
9 essentially nine weeks that we would have assumed
10 would be taken up and I put it that if my friend is at
11 eight weeks for the Provincial case including the
12 counter-claim, then I don't know if he means eight or
13 ten or more. I had counted on approximately 14 weeks
14 of trial time for both defences.
15 THE COURT: Well, that can't be done in four months if we --
16 MS. KOENIGSBERG: Not at three and one. It wasn't our
17 assumption that we would be sitting in July unless it
18 was to finish the plaintiff's case; however, I think
19 we probably all have to think about scheduling and how
20 long it is going to take.
21 THE COURT: Well, I think that counsel should consider the
22 matter further and speak to the matter again later
23 this week. I am troubled about the prospects of
24 trying to squeeze that many weeks into that few
25 months. The problem I have which is partly a personal
26 one is that there is a substantial cultural festival
27 going on in Cambridge in July that I was thinking of
28 attending, but I am not at all committed to it and I
29 think -- but a decision has to be made and because of
30 things like -- well, if I am not going, somebody else
31 wants the spot, they are entitled to know whether they
32 are going to go or not. For that reason, I think we
33 have to look seriously about sitting through the month
34 of July and I would like counsel to instruct
35 themselves on that question and speak to it again
36 later this week. If there are serious reasons why we
37 should not sit in July, I'd be glad to hear what they
38 are, but I am inclined very strongly of the view that
39 it's -- that this case has to come ahead of any other
40 less urgent matters.
41 Can I ask counsel whether they have thought about
42 argument and what they had in mind and when, assuming
43 I think with the best we can do that we will finish
44 the evidence in December? On that basis, when will
45 counsel be ready to argue?
46 MR. RUSH: My lord --
47 THE COURT: I might say this, and again this is a partly

1 personal matter, but I can't just go and sit on the
2 trial list when we are down because I need two others
3 with me now and I have to prepare next year's rota. I
4 have to know whether I will be available or am not
5 going to be available, and it makes a big difference
6 in scheduling both for myself and for the rest of the
7 court, so I have to start preparing next year's
8 schedule for the Court of Appeal very soon and that's
9 why I have to get some indication of when we might get
10 to the argument. Sorry, Mr. Rush, you were about to
11 burst into submissions.
12 MR. RUSH: Yes. I was just about to suggest to your lordship
13 that as far as the plaintiffs were concerned that we
14 would certainly need no less than one month between
15 the end of the evidence and possibly as many as two,
16 and we had anticipated as I think I indicated to you
17 before that we would -- we think that it is desirable
18 to have argument in some written form supplemented by
19 oral submissions for your lordship and I think there
20 had been some talk that the argument might well take a
21 month.
22 THE COURT: Yes.
23 MR. RUSH: At the moment I don't think I can say much more than
24 that but I think that it's the plaintiff's view that
25 we would certainly need at least a month, possibly
26 two, before we would start the argument and, with that
27 being the case, I could see our starting the argument
28 this time next year.
29 THE COURT: Yes. Well, I must say -- well, I better hear what
30 Mr. Mackenzie and Ms. Koenigsberg says first.
31 MR. MACKENZIE: As Mr. Rush said, my lord, these are very
32 preliminary comments and estimates, but the Provincial
33 defendant estimates that approximately one month would
34 be required for its complete argument and that assumes
35 that the written argument with oral highlighting.
36 MR. RUSH: For the defendant?
37 MR. MACKENZIE: Yes.
38 THE COURT: One month to prepare I think you said.
39 MR. MACKENZIE: One month between the close of the evidence and
40 the beginning of the plaintiff's argument. We agree
41 with Mr. Rush as far as that's concerned and then --
42 well, that's what I am saying, and then two weeks
43 between the end of the plaintiff's argument and the
44 beginning of our defence argument and then our
45 argument itself, a very preliminary estimate, we are
46 looking at a little under a month, that's four weeks,
47 four trial weeks; very preliminary estimate.

1 THE COURT: Ms. Koenigsberg?
2 MS. KOENIGSBERG: Well, our estimates weren't quite so great.
3 We have discussed that one month would be a reasonable
4 amount of time from the close of arguement -- I mean
5 from the close of evidence until argument began. We
6 had anticipated that there would be an exchange of
7 written argument between the plaintiffs and the
8 defence a week or two weeks; that is, the plaintiffs
9 would provide their written argument and then the
10 defence would provide theirs, and there be then no
11 break, that we would go ahead and argue. And if
12 written argument is complete as I would imagine it
13 will be, that it would take no more than three weeks
14 in total if it in fact is a highlighting of the
15 written argument and more responsive to your
16 lordship's concerns than just an attempt to summarize
17 the evidence. I would anticipate that the summary of
18 the evidence is the lengthier part and then applying
19 the law and that, if that's done in writing, it might
20 not be quite so necessary to go so long. I would have
21 anticipated approximately three weeks or a month
22 between.
23 MR. MACKENZIE: My lord, is Ms. Koenigsberg saying three weeks
24 for everyone?
25 MS. KOENIGSBERG: Yes, I am, on the assumption that we have
26 exchanged written argument and had some time for the
27 defence argument to be responsive, if I can put it
28 that way, to the plaintiff's argument.
29 THE COURT: All right. Well, I think first I have to get some
30 definition of what counsel propose to put in writing.
31 Mr. Rush, are you proposing an outline or are you
32 proposing the conventional written argument that is
33 for the written portion of your argument?
34 MR. RUSH: The written portion of the argument would be more
35 akin to the conventional form of argument. It would
36 be more than that. At the same time I find myself
37 situated somewhere between the Province and Federal
38 Government here because I think that my friend's
39 estimate, Mr. Mackenzie's estimate, is too long and
40 perhaps my friend, Ms. Koenigsberg, is too short, but
41 certainly I think that we would want to be somewhat
42 more expansive in the written argument than we were
43 outlined.
44 THE COURT: You wouldn't propose to read the argument?
45 MR. RUSH: No, no.
46 THE COURT: All right. Well, I have to say that I don't find
47 what I will describe as a request by the plaintiffs

1 for two months from the close of evidence to prepare
2 their submissions unreasonable at all or in any way.
3 I think that I would like to have Mr. Rush consider
4 whether it isn't possible to have that argument in the
5 hands of their friends say six weeks from the close of
6 evidence or, put it another way, two weeks from the
7 commencement of the argument because we might finish
8 the evidence in early December which I still wouldn't
9 think that we should advance the date for the
10 commencement of the argument if that should occur. I
11 think we should instead fix a time when we can assume
12 the argument will begin, and I think your friends
13 should be assisted by having at least a draft of your
14 submissions two weeks before the argument begins. If
15 they have that, I don't think your friends should need
16 two weeks after the close of your evidence; I would
17 think a week would be reasonable, probably take a week
18 anyway. It would be -- I am not sure that I want -- I
19 can do justice to argument if I sat consecutively for
20 something in excess of even for three weeks or
21 something in excess of three weeks without a break, so
22 I would think that if the draft of the argument is in
23 the hands of the defendants two weeks before the
24 argument begins that they should be ready to proceed
25 one week after the completion of the plaintiff's
26 argument and I wouldn't see any reason for a gap
27 between the arguments of the two defendants but it may
28 be if the defendants take two weeks to argue or more,
29 I don't at this moment plan to limit anybody strictly.
30 We will be taking a week off anyway and they might
31 have that week but I don't think it should be
32 scheduled other than as down time for rest and
33 recreation, little of either probably in sight.
34 All right. Well then, I think we should plan that
35 we will start the arguments at about the 1st of March
36 while we can fix the time more precisely when we get a
37 1990 calendar, and we will proceed on that basis. I
38 think that we should give some thought and speak again
39 to the question of the scheduling in about a month's
40 time to see if we are all with the same view but, in
41 the meantime, as I said a moment ago, I'd like to hear
42 from counsel about July and my present inclination is
43 that we should sit July unless the time estimates
44 change from what I have heard. All right.
45 MR. RUSH: My lord, just like to throw into the mix for your
46 consideration that it would certainly be helpful to
47 the plaintiffs if there was some requirement of the

1 defendants to produce at least a draft of their
2 argument in advance of their commencing their argument
3 for the purposes of our reply. I certainly think that
4 would assist us in the preparation of that reply so it
5 is simply --
6 THE COURT: I tend to think -- well, I better hear what your
7 friends have to say. Mr. Mackenzie, is that a
8 problem?
9 MR. MACKENZIE: My friend is saying that --
10 THE COURT: Equity loves equality.
11 MR. MACKENZIE: Well, my lord, my friend is saying that he will
12 be replying of course after our oral argument, he
13 wants our written argument or some outline of our
14 written arguments by the time he starts his reply?
15 THE COURT: No, he wants it before you start your argument.
16 MR. MACKENZIE: Oh, before we start our argument or at least a
17 little time before the reply.
18 MR. RUSH: Yes.
19 THE COURT: Yes, a week before you start your argument.
20 MR. MACKENZIE: My lord, as far as I am not specifically
21 instructed on this point but I presently advise I
22 don't see a problem with an outline being provided to
23 my friends in advance of their reply.
24 THE COURT: Ms. Koenigsberg?
25 MS. KOENIGSBERG: I see no difficulty. I would anticipate
26 before we begin our argument we would have provided
27 you with written argument and we would have had to
28 file it with my friends, so as a practical matter --
29 THE COURT: My present thinking that Mr. Rush should have
30 whatever you are going to give me in paper which in
31 neither -- with respect to neither party will be cast
32 in stone, one week before you begin argument. All
33 right, thank you. I am sorry, Mr. Rush, when will you
34 be able to speak to the scheduling for June?
35 MR. RUSH: Well, I would prefer to go in steps, my lord, if your
36 lordship pleases on this point. I would be able to
37 speak to May by the end of this week. As to June, I
38 will advise you at the end of this week if I may.
39 THE COURT: Thank you.
40 MR. RUSH: Thank you. Now --
41 THE COURT: Could I just be told what are the disciplines of
42 these witnesses? Brodie is --
43 MR. RUSH: Social anthropology. Mr. George, cartography, and
44 Mr. Morrison is a historian.
45 THE COURT: That's not same James Morrison as that I heard
46 before?
47 MR. RUSH: No.

THE COURT: All right, thank you.
MR. RUSH: It is the plaintiff's intention now to call Dr. Antonia Mills and we are going to ask her to be qualified as an expert in the following area of expertise: She is being called to give evidence of the social and cultural anthropology of the Wet'suwet'en people and her area of expertise includes the social, cultural and economic organization and institutions of the Wet'suwet'en. And this will be with reference to first, kinship; second, the nature of the feast system; third, the relationship of the Wet'suwet'en among themselves to their neighbours, to the land and to the spiritual domain; fourth, the relationship of the Wet'suwet'en institutions to the land; fifth, the laws --
THE COURT: I am sorry, just a moment, please. The relationship of the Wet'suwet'en institutions of land.
MR. RUSH: Yes.
THE COURT: Thank you.
MR. RUSH: Fifth, laws of the Wet'suwet'en; and sixth, the linkage of the oral tradition to the institutions and territorial ownership of the Wet'suwet'en.
THE COURT: I am sorry, the linkage of oral tradition --
MR. RUSH: To the institutions and territorial ownership of the Wet'suwet'en.
THE COURT: Thank you.
MR. RUSH: And I'd like now to call Dr. Antonia Mills to the witness stand. Dr. Mills, would you please come to the witness stand here.
THE REGISTRAR: Take the bible in your right hand, please.

ANTONIA MILLS, a witness called on behalf of the Plaintiffs, having been sworn, testifies as follows:

THE REGISTRAR: Would you state your name for the record, please?
THE WITNESS: Antonia Mills.
THE REGISTRAR: Thank you. You may be seated.
THE COURT: A-n-t-o-n-i-a?
THE WITNESS: That's right.
MR. RUSH: I'd like to pass volume 1 of document books for the evidence of Dr. Mills.
THE COURT: What's the position of the defence on the qualification, Mr. Mackenzie and Ms. Koenigsberg?
MR. MACKENZIE: My lord, we wish to restrict Dr. Mills' qualifications to speak on some of the subjects in her

report but certainly don't deny that she has academic training in social and cultural anthropology.

THE COURT: Thank you.

MS. KOENIGSBERG: It is our position that she is qualified as an anthropologist and she is qualified to give expert evidence on the general topics of that topic. We have submissions on notice and things like that.

THE COURT: All right. Well, I don't know if that's any assistance to you, Mr. Rush.

MR. RUSH: Not very much. I will just proceed, my lord.

THE COURT: I think you can take it you don't need to qualify the witness academically or from an experience point of view.

MR. RUSH: I have some guidance in that. I wonder if you'd please open this volume number 1 to tab number 1.

THE COURT: Is this a report?

EXAMINATION IN CHIEF BY MR. RUSH ON QUALIFICATIONS:

Q No, my lord. This is a book of documents, and I'd ask you if you will please to identify for the court that the document at tab number 1 of this book of documents is your curriculum vitae?

A That's correct.

Q And it sets out your educational background?

A Yes.

Q The honours and awards that you have obtained?

A Yes.

Q And on page 2, the fieldwork that you have done?

A Yes.

Q And your professional experience on page 2?

A That's correct.

Q And the publications and papers on page 3 which you have authored?

A That's right.

Q And you indicate that you have a Ph.D from Harvard University obtained in 1982. Was that in the field of anthropology?

A That's right.

Q And was your undergraduate degree in anthropology?

A Yes, it was.

Q And among others, did you study with Dr. Richard Lee?

A Yes.

Q Dr. David Maberley Lewis?

A Yes.

Q Dr. Dubois?

A Yes.

Q And am I correct in assuming that that is D-u-b-o-i-s?

1 A That's right.
2 Q And Dr. Whitey?
3 A Yes.
4 Q Thank you. In your curriculum vitae you indicate that
5 you did fieldwork among the Beaver Indian people, this
6 is at page 2. It indicates that between the summer of
7 1964 and the summer of 1984, that you worked with the
8 Beaver Indians in the northwest part of British
9 Columbia. Is that so?
10 A Yes.
11 THE COURT: You will forgive me of not knowing where the Beaver
12 Indians are located.
13 MR. RUSH:
14 Q About to ask Dr. Mills. What part of British Columbia
15 is the place that the Beaver Indians inhabit?
16 A The Beaver Indians are in northeastern British
17 Columbia, they are from the towns of Fort Saint John
18 to Fort Nelson, in that area. Some of the Beaver
19 Indians are also found in Alberta.
20 Q Now, perhaps I could just ask you, the Beaver people,
21 are they associated with a particular language
22 grouping?
23 A Yes. The Beaver Indians are Northern Athabaskan
24 speaking people.
25 Q And in terms of the organization of Beaver society,
26 can you state for his lordship what the nature of the
27 organization of the Beavers is?
28 A Yes, the Beaver Indians have bilateral bands. They
29 are subarctic, they are considered exemplary of
30 subarctic peoples.
31 Q And the tongue that is spoken among the Beaver?
32 A It is called Beaver. It is an Athabaskan language.
33 Q And the neighbours of the Beaver people are who?
34 A To the north are the Slavey, other Athapascans; to the
35 west are the Sekani, who are also Athapascans, to the
36 south are -- there are some -- a few Cree's place
37 there and then some Senacian speaking people.
38 Q While you were working among the Beaver people, did
39 you use a technique of fieldwork known as participant
40 observation?
41 A Yes, I did.
42 Q What did that involve with the Beaver?
43 A Participant observation refers to going to a people
44 and living among them and finding out what the nature
45 of their life is like and what categories they find
46 important. So with the Beaver Indians, I went to the
47 Beaver Indians and lived with them for various periods

1 of time at different times and it involved going with
2 them to their hunting camps, they were initially quite
3 nomadic; moving camp with them, seeing what their
4 seasonal round was like, and participating in a life's
5 scene, what activities they carried out, what their
6 daily life was like -- their seasonal round was like.
7 Q Their seasonal round?
8 A Yes.
9 Q Now, in your C.V. it indicates from June of 1965 to
10 August of 1966, you were with the Beaver Indians of
11 B.C. Was it for that period of -- appears to be
12 almost 14 months were you living and working among the
13 Beaver Indian people in the manner that you have
14 described?
15 A That's correct. It allowed me to see what a total
16 year's cycle looks like.
17 Q And participant observation as a technique among
18 anthropologists, is it a common technique utilized by
19 anthropologists?
20 A Yes. It's become the hallmark of anthropology.
21 Previously people relied on accounts that came from
22 travellers or fur traders or missionaries in
23 non-Western peoples but then when anthropology emerged
24 from this period of armchair anthropology into a
25 period when people would go and observe carefully what
26 was happening among these native peoples, so
27 participant observation is indeed one of the criteria
28 of modern anthropology.
29 Q And following the first time that you went to work and
30 live among the Beaver in the summer of 1964 to 1984,
31 can you advise his lordship some of the areas that you
32 studied during the course of your participant
33 observation?
34 A I studied at a number of different features of the
35 Beaver Indians, their way of making a life, I studied
36 their hunting techniques and the ratio of success to
37 attempts at hunting, distribution of meat; I studied
38 their kinship system, gathering genealogies for these
39 people; I also recorded the oral tradition of these
40 people and became interested in their religion,
41 their -- the prophet dance tradition and the
42 ceremonialism; the prophet dances which they continued
43 to practise and observed these. I studied
44 child-rearing techniques among the Beaver Indians. I
45 think that covers a lot of it.
46 Q Yes. I neglected to ask you, but I will now, were you
47 specifically trained in your education as an

1 anthropologist in fieldwork techniques?
2 A I was.
3 Q And, as a result of the fieldwork that you did among
4 the Beaver people, did you commit to writing or
5 publish the results of your work?
6 A Yes.
7 Q Could you advise his lordship what it was that
8 resulted in your fieldwork?
9 A Well, a number of different things have been
10 published. The -- one of the first things was The
11 Inner Eye of Totemism and Shamanism which was a joint
12 publication with Robin Ridington.
13 Q Who is Robin Ridington?
14 A Robin Ridington is a fellow anthropologist, another
15 person who is an Athabaskan scholar; he is a professor
16 of anthropology at the University of British Columbia,
17 and with whom I conducted fieldwork among the Beaver
18 Indians from 1964 until 1972.
19 Q Okay. And as an aside, it would appear that from your
20 C.V. that from 1972 you continued to do fieldwork
21 among the Beavers in '76 and '84?
22 A That's correct.
23 Q And are there other publications that have resulted
24 from your work among the Beaver people?
25 A Yes. I also wrote my Ph.D thesis on the Beaver Indian
26 people. That's not published in the formal sense but
27 all Ph.D theses form a part of the scholarly documents
28 available.
29 Q Yes. And if you will just turn please to page 3 of
30 your C.V., can you identify for his lordship other
31 publications, either in print or about to be in print,
32 which have resulted from your fieldwork among the
33 Beaver?
34 A The Meaningful Universe: Intersectiong Forces in
35 Beaver Indian Cosmology and Causality.
36 THE COURT: I am sorry, Dr. Mills, you're going to have to slow
37 down or you're going to wear our reporters out any
38 moment now. In addition, I don't think counsel are
39 able to hear everything you are saying.
40 THE WITNESS Are these microphones?
41 THE COURT: I don't know if they work or not.
42 THE REGISTRAR: They are on.
43 THE WITNESS: I will speak up.
44 THE COURT: All right. Mr. Prelypshan way over there wants to
45 hear what you say, I am sure he does.
46 MR. RUSH:
47 Q If you could just turn to page 3, you mentioned The

Meaningful Universe: Intersecting Forces in Beaver Indian Cosmology and Causality, and could you now refer to other publications there that resulted from your fieldwork?

A Yes. The -- A Preliminary Investigation of Reincarnation among the Beaver and Gitksan Indians is in press with Anthroplogica.

Q Yes.

A And a Comparison of Wet'suwet'en Cases of the Reincarnation Type with Gitksan and Beaver is in press with the Journal of Anthropological Research.

Q Any other publications?

A The rest are just -- remain as papers that were delivered that have -- I have not yet seen into publication.

Q Thank you. You have indicated that you were involved in studying the oral traditions of the Beaver people. How in fact did you as an anthropologist utilize the oral tradition in your study of the Beaver?

A Used them to assess something of the history of the Beaver Indian people and of the categories that were important to the Beaver Indian people and are important to the Beaver Indian people largely.

Q Okay. Now, did you also evaluate the ethnography or the histories of the Beaver people when you were involved in your fieldwork?

A Yes. I reviewed all the written records about the Beaver Indians which include the accounts of Sir Alexander MacKenzie passing through the area and early fur traders. I also went to the archives at Victoria to unearth the first records of missionaries, oblate missionaries arriving with the Beaver Indians which were in French, I translated them into English.

Q Is it common among anthropologists in studying people to review the ethnography and history of the area end of the people?

A Yes, it is. And then the ethnography for the Beaver Indian people included a study by Earl Pliny Goddard, an early anthropologist who collected some of the oral tradition of these people, and the only other person who had done work with the Beaver Indians was a physical anthropologist who went into the study of the shapes of their scholists.

Q Did you have occasion to refer to the work of Diamond Jenness as you studied the Beaver people?

A Yes. Diamond Jenness had studied the Sekani people who are just to the west of the Beaver Indians, so I

1 referred to all of this material and also of course to
2 the ethnographic tradition of other surrounding
3 northern Athabaskan peoples, work of John Honigmann on
4 this, for example.
5 Q With regard to the studies that you made of the oral
6 tradition of the Beaver, did you evaluate those oral
7 traditions to determine the reliability of the
8 information which was contained within them?
9 A We were interested in learning about the oral
10 traditions and the ways that the oral traditions were
11 transmitted and were taught by the Beaver Indians
12 about the way that they learned their oral tradition,
13 and we recorded the oral tradition from numerous
14 different people on different Beaver Indian
15 communities. The Beaver Indians live in four
16 different communities and four different bands and so
17 we collected the oral tradition from these different
18 bands and compared them and learned that the
19 importance of the oral tradition to these people as
20 recording their history so that there were people in
21 each community who were validated by their community
22 as being the people authorized to tell the oral
23 tradition. The concept was that you do not tell the
24 oral tradition unless you have been well trained in
25 that tradition. You have listened to it as it is
26 spoken by people who themselves are authorized by
27 having learned it very carefully and only after you
28 have committed it to memory very perfectly do you --
29 are you authorized then to transmit it.
30 Q Were there other ways that you, if I can use this
31 word, evaluated the reliability of the information
32 contained in the traditions that were given -- were
33 spoken to you orally?
34 A Well, some of the oral tradition of the Beaver
35 involves historical times when you can cross-reference
36 it to historical accounts but a great deal of the oral
37 tradition is involving a time period before that.
38 Q All right. Now, in terms of the ethnographic and
39 historical literature that you examined when you did
40 your fieldwork with the Beaver, were there ways that
41 you evaluated the reliability of that material when
42 you studied it?
43 A Certainly.
44 Q And what were some of the ways that you evaluated
45 that?
46 A One evaluates the material by seeing when it was
47 recorded, by whom it was recorded, and for what

purpose it was recorded. For example, there is usually no reason to suspect that the information written down is not accurate, except in some cases where you find very, very obvious value judgments being made about the material. For example, the first missionaries to visit the Beaver Indians in some sense record an absolutely invaluable record of what they were doing at that time but they couch it with such -- in such terms with disapproval that one wonders what else they may have seen that they didn't record and whether it influenced their recording.

Q Okay. Now, in the course of your fieldwork and your studies of the Beaver people from 1964 really through to 1984, did you study the Wet'suwet'en people before undertaking -- or during the course of your research with the Beaver?

A I became very familiar with the literature on the Wet'suwet'en people because my Ph.D thesis, I decided to compare the Beaver Indian religion and philosophy with that of ten other North American Indian tribes and one of them was the Carrier.

Q And in doing that comparison, what was it that you did or what literature did you review?

A I reviewed the literature on the Carrier Indians which includes Jenness, Steward, Morice, Vern Ray, Goldman. Those are the primary sources.

MR. RUSH: Thank you. My lord, I'd like to ask the C.V. be marked as an exhibit and that Dr. Mills be qualified as an expert in the field of expertise that I have so described.

THE COURT: Thank you. Mr. Mackenzie?

CROSS-EXAMINATION ON QUALIFICATIONS BY MR. MACKENZIE:

Q Dr. Mills, you characterize your discipline as cultural anthropology; is that correct?

A That's right.

Q And can you agree that that's -- that is considered in academic circles to be a discipline separate from ethnology?

A No. The distinction is not at all clear. The two are completely overlapping.

Q Okay. The task of ethnology is to classify people on the basis of their racial and cultural characteristics and then to explain their distribution at the present time or past times; is that correct?

A That's not the usual use of the term ethnology. May I point out that the Canadian Ethnology Society is the

1 equivalent of the American Anthropological
2 Association. The term ethnology used particularly
3 in -- by the French in a specific sense but ethnology
4 is the study of non-Western peoples and, though it
5 does indeed involve their distribution, it also
6 includes their culture.
7 Q But you could agree with me that although ethnology
8 and cultural anthropology make their studies largely
9 among the same range of peoples, they have very
10 different purposes?
11 A No. I wouldn't agree to that.
12 Q I am handing to you an article entitled -- an article
13 or chapter from a book entitled Social Anthropology by
14 Professor Evans Pritchard. Can you agree that
15 Professor Evans Pritchard is an eminent authority in
16 this area?
17 A He is -- yes, he is an exemplary of the British
18 school.
19 MR. MACKENZIE: And referring to page 4 of that article, in this
20 article Professor Evans Pritchard is discussing the
21 scope of social anthropology and, on page 4, he shows
22 the difference between social anthropology and
23 ethnology, and the second full paragraph, he says:
24
25 "It is important to appreciate, however, that
26 though ethnology and social anthropology make
27 their studies very largely among the same range of
28 peoples they make them with very different
29 purposes."
30
31 Does your lordship have that reference?
32 THE COURT: Yes.
33 MR. MACKENZIE:
34 Q Dr. Mills, did you see that reference?
35 A I see it.
36 Q Do you disagree with that?
37 A Well, I don't know what different purposes he is going
38 to explicate.
39 Q Well, further on in that paragraph he says:
40
41 "The task of ethnology is to classify peoples on
42 the basis of their racial and cultural
43 characteristics and then to explain their
44 distribution at the present time, or in past
45 times, by the movement and mixture of peoples and
46 the diffusion of cultures."
47

1 Do you agree with that?
2 A I agree that that's what he says.
3 Q Do you agree that that's different from the task of
4 the social or cultural anthropologist?
5 A Social and cultural anthropologists are not always
6 exclusively concerned with the past diffusion and
7 mixtures of people, but it is one of their concerns as
8 well, definitely.
9 Q Well, you will agree with me that Diamond Jenness' --
10 Diamond Jenness' work on the Carrier -- both the
11 Carrier Indians is considered to be a work of
12 ethnology?
13 A It's considered cultural anthropology and social
14 anthropology equally.
15 Q Okay. Over the years of your fieldwork and your
16 writing that you have described, your research
17 interests really have been primarily focused on
18 psychology, symbolism and the religion of North
19 American Indians; is that fair to say?
20 A Largely, though I would --
21 THE COURT: What were the three, again?
22 THE WITNESS: Pardon?
23 THE COURT: What were the three again?
24 MR. MACKENZIE:
25 Q Psychology, symbolism and religion of North American
26 Indians?
27 A I would like to qualify that by pointing out that I
28 have done a study of the material culture of the
29 Beaver Indians as is referenced in my curriculum
30 vitae, and that the paper on Sex Roles in a North
31 American Indian Hunter-Gatherer Band: The Economics
32 of Being a Beaver Indian Woman also involves economics
33 and other elements less than psychology, et cetera.
34 Q But to the academic community, you describe your
35 research interests as primarily psychology, symbolism
36 and religion of Indians; is that correct?
37 A That's correct.
38 Q And you have mentioned in your comments that your
39 fieldwork up to 1984 was primarily with Beaver
40 Indians?
41 A Yes, not exclusively, but primarily.
42 Q That's a period of 20 years in which you spent a
43 considerable amount of time with the Beaver Indians?
44 A That's correct.
45 Q And for much of that time you were working with Robin
46 Ridington?
47 A That's correct.

1 Q He was your husband for most of that time?
2 A Yes.
3 Q The writing that you and Robin Ridington did related
4 to the Beaver Indians, is it fair to say, falls within
5 those categories that I mentioned a minute ago,
6 psychology, symbolism and religion of the Beaver
7 Indians?
8 A Largely, not exclusively.
9 Q And most of your writing, is it fair to say, most of
10 your writing deals with reincarnation?
11 A Some of it does.
12 Q Can you agree with me that most of it does?
13 A It doesn't form a part of my Ph.D thesis, for example.
14 Q Okay.
15 A Which is, I consider, a major piece of my work.
16 Q But most of the writing is set out on page 3 of your
17 curriculum vitae relates to reincarnation, doesn't it?
18 Is that fair to say?
19 A Let's see.
20 Q Well, let me just --
21 A I will take a -- if I look at -- I would say about
22 perhaps two-thirds.
23 Q Two-thirds. Yes?
24 A Mm-hmm.
25 Q If the first and most recent work that you have done,
26 the first work listed on page 3 and the most recent
27 work you have done was in India and that dealt with
28 cases of reincarnation there; correct?
29 A It was a study of children who are said to be
30 reincarnated, yes.
31 Q That was 1988, correct, just last year?
32 A That's correct.
33 Q And the second article you mentioned is a comparison
34 of Wet'suwet'en, Gitksan and Beaver cases of
35 reincarnation; correct?
36 A That's correct.
37 Q And the third article that is mentioned is a
38 preliminary investigation of reincarnation among the
39 Beaver and Gitksan; right?
40 A That's correct.
41 Q And you speak about reincarnation as one of the
42 subjects in the report you have done for this case,
43 haven't you?
44 A Yes, I do.
45 Q Yes. And as a matter of fact, you were employed by
46 the tribal council between about 1985 and 1987; is
47 that correct?

A That's correct.
Q And during that time you also had a postdoctoral fellowship at the University of British Columbia in the Anthropology Department; correct?
A It was administered through the University of British Columbia.
Q That appears on page 1 of your curriculum vitae?
A Yes, it does.
Q That's the Social Sciences and Humanities Research Council of Canada Pellowship?
A That's correct.
Q And that fellowship was related to the studies of reincarnation among the Wet'suwet'en people; correct?
A Among the Wet'suwet'en, Beaver and Gitksan people.
Q And you mentioned that on page 2 of your curriculum vitae that during that period you did research in the field on Gitksan and Wet'suwet'en reincarnation; correct?
A I did.
Q And you conducted 44 interviews during that time related to reincarnation?
A With the Wet'suwet'en you mean?
Q Yes.
A Yes.
Q And none of those interviews appear in the field notes that have been made available to us through your counsel. Are you aware of that?
A I am aware of that. I had asked my counsel if that's -- about that before I came from Virginia and at that time we hadn't perceived that it might be useful to submit those. After arriving here we thought that perhaps we should and have sent away so that that material is going to be couriered to us but, to my knowledge, it hasn't arrived.
Q Is that a substantial amount of material?
A It is a substantial amount of material.
Q And your present research interests at the University of Virginia relate primarily to reincarnation; is that fair to say?
A Not entirely, but in part. My position there is a joint position with the Division of Personality Studies in the Department of Anthropology. My curriculum vitae doesn't express that perhaps very clearly. I teach for the Anthropology Department and I conduct research for the Division of Personality Studies.
Q What do you teach?

A I am teaching a course called the Cross-Cultural Study of Reincarnation.
Q And what are your research subjects?
A The research subjects are, I am studying a comparison of North American and Indian cases in which a person is identified as someone reborn.
Q Continuing down page 3 in your curriculum vitae, the next publication is Eagle Down is our Law. That's the report that you prepared for this litigation; correct?
A That's right.
Q And you have completed that in February 1987?
A That's correct.
Q The next paper is The Meaningful Universe, and that deals with Beaver Indian symbolism and religion; is that fair to say?
A Yes.
Q And, as you mentioned, you did a report on the Beaver Indian Material Culture for the National Museum?
A That's correct.
Q And that's -- that was one -- that was the first study that you had done in the Material Culture up to that time; wasn't it?
A It's the first compendium that's collected like that. When I did my fieldwork with the Beaver Indians previously, prior to making that study on that subject, I had equally gathered material on that subject.
Q You were -- and in fact in your report you mentioned that you were surprised at how much of the material was new to you. Didn't you say that in your report?
A Yes. It shows that I hadn't -- yes, that there was a great deal more to be learned. I had previously concentrated on hide working more than the other elements.
Q Now, you had been working with the Beavers for about 20 years by the time you wrote this report; correct?
A Yes.
Q And you said in your report that in the past you have studied a number of different aspects of the culture, particularly, the psychology, mythology and traditional religion; is that fair to say?
A Yes.
Q You were speaking about the Beaver Indians?
A That's correct.
Q Yes. And by the way, in that report you also said that you were not a linguist; is that correct?
A That's very correct.

1 Q And you do not consider yourself to have an expertise
2 in archaeology?
3 A That's correct.
4 Q Now, the next publication on your list, page 3,
5 relates to North American Indian philosophy and that
6 really deals with the prophet dance and other types --
7 prophet dance could be called a type of Indian
8 religion; couldn't it?
9 A Yes.
10 Q Yes. And that was the subject of your Ph.D thesis?
11 A That's right.
12 Q Yes, and as is indicated on your curriculum vitae. So
13 I am going to suggest to you that your research over
14 the years with the Beaver Indians was concerned
15 primarily with their spiritual culture. Can you agree
16 with that?
17 A It is very true that it was. I would like to put on
18 the record that I made extensive genealogies of all
19 the Beaver Indians. I, with Robin Ridington, worked
20 out the kinship structure of the Beaver Indians which
21 hadn't been fully understood previously. I took
22 copious notes on the hunting practise of the Beaver
23 Indians, particularly as regards to the -- as I
24 already said, the ratio of attempts at getting game
25 to -- getting game. Prior to doing the study of the
26 material cultural, I had participated and been
27 interested in the women's trapping practises, the
28 small traplines for small game. I don't think that
29 the fact that I -- indeed much of my work involves the
30 religion should be used to obscure the fact that I had
31 done substantial work on these other aspects of the
32 Beaver Indians as well.
33 Q Yes. But your publications deal primarily with
34 religion and spirituality?
35 A True.
36 Q Yes. And can you also agree that during your
37 fieldwork with the Beaver Indians, you and your
38 husband and later fellow anthropologist Robin
39 Ridington consciously and deliberately attempted to
40 suspend your western thought processes in order to
41 understand the Beavers' religious views?
42 A Sometimes consciously; sometimes what one would do
43 basically is try to understand what the Beaver Indians
44 were meaning when they said various and sundry things
45 and often that required repeated questioning, asking,
46 attempts to understand what they were thinking, yes.
47 And I would like to say also that it is very important

1 for anthropologists to perceive that what is being
2 said by a non-Western people is not always obvious to
3 them, that it is useful to see what assumptions the
4 anthropologists themselves is making in evaluating
5 this material, and then attempting to find out what
6 is the assumptions that the native people are making
7 so that you can understand it and it is not an easy
8 process and this interface between a way of thinking
9 that's familiar to us and a way of thinking that's not
10 familiar to us, and the role of anthropology to a
11 large extent is to exemplify this so that people from
12 our own culture can understand the meaning of
13 non-Western people.
14 Q You and Robin Ridington in your work and in your
15 writings attempted to show how the Beaver mythic
16 reality, the myths lie within the reality of their
17 everyday experience?
18 A That's right.
19 Q The myths are regarded as real?
20 A That's correct.
21 Q The supernatural is part of the Indians' life and this
22 is what you show in your writing?
23 A That's correct.
24 Q You and Robin Ridington were aware of the inevitable
25 misunderstandings or inaccuracies that, as
26 anthropologists, you had in your observations about
27 the Indians?
28 A We tried to be aware. It is a never-ending process.
29 It is not as if one arrives at a point of perfect
30 understanding of the non-Western culture. Are
31 constantly attempting to understand it more
32 completely.
33 Q And your interview -- when you were interviewing the
34 Beaver Indians, you were aware that they were part of
35 the Treaty Eight area?
36 A I was.
37 Q And your interviews and your work with the Beaver
38 Indians was not done to support any land claims by the
39 Beaver Indians, was it?
40 A No.
41 Q No. You were not preparing material during your time
42 with the Beaver Indians that was related to any court
43 work or litigation, were you?
44 A That's correct.
45 Q Yes. Now, about the Beaver Indians, you didn't speak
46 the language, did you?
47 A No, I never became fluent.

Q No. And you don't speak Wet'suwet'en?
A No.
Q And all your interviews with the Wet'suwet'en people were with interpreters or based on English transcripts?
A That's right.
Q And you attended ten feasts during your time with the Wet'suwet'en?
A More than that.
MR. RUSH: My lord, this really doesn't go to qualifications, does it?
MR. MACKENZIE: It is directly related to qualifications.
THE COURT: I think that it might.
MR. RUSH: All right.
MR. MACKENZIE:
Q You were with the Wet'suwet'en for 15 months?
A Longer than that.
Q Just in your report on page 29?
A Oh, yes. I was there after I had written my report as well.
Q Just going to -- and you made notes of some of the feasts that you were present at during that time?
A I did.
Q But you didn't understand the speeches that were given in Wet'suwet'en during the feasts?
A I don't understand Wet'suwet'en. The pronunciation is Wet'suwet'en.
Q Wet'suwet'en, yes.
A However, people often translated for me the speeches that were made in Wet'suwet'en.
Q Many of your field notes simply say, "Speech in Wet'suwet'en, contained no details"?
A That's right.
Q Now, the Beaver Indians, you will agree with me that they are highly nomadic?
A Yes.
Q They can be characterized as typical hunter-gatherers?
A More or less. That's a very broad category. If you -- one said North American subarctic hunter-gatherers.
Q I am just quoting from your thesis.
A All right.
Q And you will agree with me they lack lineages and clans?
A I certainly would.
Q And you will agree with me that they have an impoverished, material, and ceremonial life?

A No.
Q That's what you say in your thesis. Let's look at that. You don't agree with that?
A No, I don't.
MR. MACKENZIE: You say that --
MR. RUSH: Well, I think if my friend is going to put the passage, he should first show it to me and then put it to the witness.
MR. MACKENZIE:
Q I will deal with that later.
And you will agree that the Beaver Indians have been relatively isolated and that's the reason that you chose them as a group to study?
A In part, yes.
Q And you will agree that there have been drastic changes in the Beaver Indian society from the mid seventeen hundreds onward as a result of the fur trade?
A Drastic? I would say perhaps the construction of the Alaska Highway was more drastic than the coming of the fur trade.
Q You say in your thesis:

> "It is impossible to over-emphasize how drastic these changes were to a people whose lifestyle have been carefully adducted to a stable environment over an immensely long period of time."

Do you recall saying that?
A You also --
MR. RUSH: Excuse me, excuse me. I wonder if the passage can be shown to me first, my lord, and then it's obviously made reference to something that is said earlier in the passage and I think if it does, it should -- all of it should be put to the witness if I can see it first.
THE COURT: Yes. I didn't know from that quotation, Mr. Mackenzie, whether the drastic changes that can't be over-emphasized are the fur trade or the construction of the Alaska Highway.
THE WITNESS: Or "these", there is a "these" to it.
THE COURT: It may be both.
THE WITNESS: There is a reference there that we need to clarify.
THE COURT: Perhaps while you are looking --
MR. MACKENZIE: It says, "Historical changes in the rise of the

prophets".

MR. RUSH: My lord --

THE COURT: While you gentlemen are reviewing the doctoral thesis, we will go and review the judges at rest.

THE REGISTRAR: Order in court. This court is in recess.

(PROCEEDINGS ADJOURNED AT 11:15 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.

TANNIS DEFOE, Official Reporter
United Reporting Service Ltd.

(Proceedings resumed following short recess)

THE COURT: I regret to have to announce, Mr. Justice Robertson, formerly a judge of this court, died yesterday, which is a great regret to us all. I have to advise counsel that I am informed that the funeral will be at 11 o'clock on Wednesday morning, in which event we will have to adjourn early and try and make up the time somewhere else. I think I should say no more at the moment until the arrangements have been finalized in that regard. But that possibility is looming large at the moment. Thank you.

MR. RUSH: Just before my friend starts, my lord, I believe I only had the privilege of appearing before Mr. Justice Robertson on one occasion but I would like to express on my behalf and on behalf of my colleagues our deep regret at his passing.

THE COURT: Thank you Mr. Rush. I had the pleasure of appearing before him several times and associated with him in the practise of law for a short time and his loss is deeply felt by us all.

MR. MACKENZIE: My lord, we have had a very, very close relationship with Mr. Justice Robertson and words just cannot express the loss from the people in our law firm.

THE COURT: I am sure that's so, Mr. Mackenzie. Thank you.

CROSS-EXAMINATION BY MR. MACKENZIE: (Continued)

MR. MACKENZIE:

Q Dr. Mills, I have the more precise reference on the point I was asking you about before the break. Perhaps I could just ask you this: Can you agree with me that Beaver Indian ceremonial life was necessarily less elaborated than that of the more populous North American tribes to their south and west?

A Less elaborated was your words?

Q Yes.

A Perhaps.

Q Can you agree with me that the very poverty of their material and ceremonial life had the advantages of making the underlying philosophy of their religion stand out in relief?

A Can you repeat that?

Q The very poverty of their material and ceremonial life has the advantages of making the underlying philosophy of their religion stand out in relief?

A I would concur with myself about the relief, that the

1 philosophy stands out because there is not a great
2 deal as much elaboration in some domains. However, I
3 would not like that passage to be interpreted that
4 their material or ceremonial life was entirely
5 impoverished. That would be a misrepresentation of
6 what that passage means.
7 Q Would you agree that that passage was in your thesis?
8 A I don't recognize it but it probably was.
9 Q Well, we will give it to you to --
10 MR. RUSH: I think the passage should be placed before the
11 witness. It might be of assistance to her.
12 MR. MACKENZIE:
13 Q This is page 17 of your thesis, just placing it there
14 before you. You are just describing the Beaver
15 Indians at that point. And I read to you some
16 passages from that paragraph there. I just want you
17 to confirm that those passages are what you wrote in
18 your thesis?
19 A Yes, it is what I wrote in my thesis, and if one read
20 the whole paragraph, the sense of it would be much
21 more clear than just reading the sentences in
22 isolation. Should I read the whole paragraph
23 therefore?
24 Q No, I think you have qualified your answer.
25 A All right.
26 Q Now, in your thesis also you speak about the
27 historical changes created by the fur trade and the
28 arrival of the Hudson Bay Company, I am just referring
29 you to page 44 of your thesis and you're speaking
30 about the indirect influence, the Cree Indians coming
31 with trade goods?
32 A I do, indeed, speak about that.
33 Q And then you talk about the Beaver Indians having been
34 spatially dislocated?
35 A I agree.
36 Q And they also shifted the base of their subsistence
37 economy from traditional hunter/gatherer to ones based
38 on trading furs and meat?
39 A Yes, there was a shift though, in general, the
40 anthropological understanding is that the coming of
41 the fur trade did not drastically disrupt the
42 subsistence base of subarctic peoples, it was
43 something that they could incorporate within their
44 aboriginal subsistence pattern.
45 Q Yes. And then later, just the next sentence, you say,
46 "it is impossible to over-emphasize how drastic these
47 changes were to a people whose lifestyle had been

1 carefully adapted to a stable environment over an
2 immensely long period of time"; is that correct?
3 Sorry, perhaps I should say, that's what you wrote in
4 your thesis?
5 A I see the sentence there, yes.
6 Q And have your views changed since you wrote the
7 thesis?
8 A I stand corrected by a number of scholars such as
9 Michael Ashe and Beverly Gartrell that much of the
10 change came after the fur trade to subarctic peoples,
11 that, as I just stated, hunter/gathering peoples were
12 able to accomodate the fur trade within their previous
13 way of making a living and more drastic changes came
14 after that.
15 Q And can you agree with me that the Beaver Indians had
16 no contact with the northwest coast culture?
17 A Basically, they had almost none except through the
18 interface of perhaps of the Sekani, but very little.
19 Q And the Beaver Indian of course did not have the
20 salmon resource upon which to base its subsistence?
21 A That's correct.
22 Q Your experience with the Beaver Indians was, of
23 course, can you say -- can you agree that it was with
24 an aculturated people by the time you got to them?
25 A Aculturated? Obviously they were not living as they
26 had before white man reached North America, their
27 culture had changed in some ways, but one of the
28 elements that my research has been germane to is the
29 perseverence of older religious forms in their present
30 day life.
31 Q And you were dealing with groups that could be
32 characterized as remnant bands?
33 A Whose word is remnant?
34 Q Well, would you agree with that characterization of
35 the Beaver Indians with whom you dealt?
36 A No, I wouldn't say they were remnant. They are bands,
37 yes. The Beaver Indians definitely have a band level
38 organization, not to be confused with district, the
39 DIA band conception.
40 Q And the Wet'suwet'en, as you say, were in a stable
41 situation with their culture intact, as you say, in
42 the same place, since time immemorial, that's your
43 view?
44 A That the Wet'suwet'en have been in place in -- where
45 they live now is where they have lived, yes.
46 Q And the Wet'suwet'en society is village-based,
47 primarily, or has some village-based aspect to it?

1 A It does.
2 Q And it has many -- it has borrowed many attributes and
3 institutions from the northwest coast system?
4 A That's a statement one would have to make with
5 qualifications in a certain sense. There has been
6 borrowing back and forth, the Wet'suwet'en culture has
7 been formed, as my opinion report says, by interaction
8 with the other people who are characterized as
9 northwest coast, but it's not a simple borrowing or a
10 one-way borrowing.
11 Q And the Wet'suwet'en economy is based in large part on
12 the salmon resource?
13 A The salmon resource is an important part of the
14 Wet'suwet'en subsistence.
15 Q And as a result of that, there is a much larger
16 population than other interior nomadic people?
17 A That's correct.
18 Q And as you say, also they have territories, discreet
19 territories, the Wet'suwet'en?
20 A That's correct.
21 Q Now, can you agree with me that although an
22 anthropologist might have general knowledge of many
23 ethnographic regions, he can be an authority in only
24 one or two of those regions?
25 A Are you speaking of geographic regions?
26 Q Ethnographic regions and sociological disciplines?
27 A There are many excellent anthropologists who can
28 address a wide sphere of domains.
29 Q Can you agree with me that as in all fields of
30 learning as knowledge increases there takes place
31 specialization in social anthropology?
32 A There sometimes is specialization, but again I would
33 like to point out that some of the very best
34 anthropologists are specialized in a very broad -- are
35 experts in a very broad number of fields.
36 Q And can you agree with me that the anthropologist,
37 besides restricting his research to certain regions,
38 have to devote himself primarily to one or two topics
39 if he is to master them?
40 A Not necessarily. David Aberle stands as an example of
41 an anthropologist who has written on a wide variety of
42 fields and has the highest reputation in all those
43 fields. There are a number of anthropologists like
44 this.
45 Q I am reading from doctor -- Professor
46 Evans-Pritchard's chapter at page 14 --
47 A Is this part of what you have given me?

1 Q Yes.
2 A What page?
3 Q Page 14, please.
4 A I see.
5 Q And the first full paragraph on page 14, just about
6 halfway down, Professor Evans-Pritchard says: "It
7 stands to reason..." Do you have that paragraph?
8 A I do.
9 Q "It stands to reason that though an anthropologist may
10 have a general knowledge of all these different
11 ethnographic regions and sociological disciplines, he
12 can be an authority in only one or two of each.
13 Consequently, as in all fields of learning, as
14 knowledge increases there takes place specialization."
15 Do you agree with that or disagree with that?
16 A There are a number -- I would like to know exactly
17 what these regions are. Looking down in the
18 paragraph, he seems to be talking in part about
19 geographic regions. It's true that many
20 anthropologists are specialized in a particular
21 geographic region but typically they are well-trained
22 in other areas of the world and often take on another
23 geographic area of the world as well. My particular
24 expertise, what I was examined on, was North American
25 can Indians, however now I am also broadening my field
26 work to India, but this is following the lead of many
27 anthropologists, for example, Cora Dubois was an
28 eminent anthropologist with whom I studied, who also
29 specialized in North American Indians and then also
30 included later on in her career, studying making
31 detailed studies in Southeast Asia and India as well.
32 Perhaps you are not referring to geographic areas and
33 in you are, you may specify so.
34 Q The commonality, if I may call it that, between your
35 North American Indian expertise and your research in
36 India on this reincarnation business?
37 A That's the topic that I have been studying in India,
38 yes.
39 Q And page 15 of Dr. Evans-Pritchard, about eight lines
40 down, he says -- do you have that? "Also the
41 anthropologists..." do you have that?
42 A Yes, I do.
43 Q "Also, the anthropologist, besides restricting his
44 researches just to certain regions has to devote
45 himself primarily to one or two topics if he is to be
46 master of them and not a jack of all trades."
47 Would you agree with that?

1 A Again, I would like to qualify that there are a number
2 of -- most anthropologists qualify themselves rather
3 broadly. And a number have done research in a variety
4 of fields.
5 Q And then he, Professor Evans-Pritchard carries on:
6 "One cannot adequately make a comparative study of
7 primitive legal systems without a good background of
8 general law and jurisprudence."
9 Do you agree with that?
10 A He is saying then that to understand primitive law you
11 need to know western law, I would take it.
12 Q Well, however you interpret it, can you agree with
13 that or disagree with it?
14 A Well, it would certainly be useful to be able to
15 address both how legal systems are dealt with and
16 thought of in western culture before approaching them
17 in non-western culture.
18 Q Have you had any training in law?
19 A No, not other than studying law as it applies to
20 anthropology. For example, Hubble's Primitive Law.
21 No, I am not a lawyer.
22 Q Yes. Very fortunate in that respect.
23 THE COURT: Oh, yes. Unheard of these days.
24 MR. MACKENZIE:
25 Q I take it -- is it fair to say that you don't have a
26 general -- you don't have a background in general law
27 and jurisprudence?
28 A I just said I am not a lawyer. I am aware of the
29 legal system in my own culture and, as I say, I have
30 read the literature on the study of law in non-western
31 peoples, not only regarding North America but the
32 South Pacific as well.
33 Q You have a chapter in your report on Wet'suwet'en law,
34 don't you?
35 A I do.
36 Q Now, finally I want to ask you, at -- is it true that
37 despite numerous years of field work with the Beaver
38 Indians you were not aware of the numerous specific
39 cases of reincarnation until you concentrated on
40 inquiring about that subject?
41 A That's correct.
42 Q So, the point is that -- and you were with the Beaver
43 Indians, as you said, for long periods of time over 20
44 years?
45 A That's correct.
46 Q So that is it fair to take from that generalization
47 that your observations as a participant observer, the

1 results of your observations, really, flow from the
2 questions you're asking, the subjects you're studying?
3 A In the course of numerous years of field work with the
4 Beaver Indians, the fact that reincarnation was an
5 important category to them, had been made manifest to
6 me by the Beaver Indians. The paper that I gave at
7 the Canadian Ethnology Society meetings that's
8 described on page 3 of my curriculum vitae, Towards an
9 understanding of North American Indian philosophy: A
10 fresh look at the Beaver Indian prophet dance and
11 related movements among North American Indians shows
12 my attempt to understand whether the Beaver Indian
13 conception of reincarnation, which they had made
14 apparent to me, typified any other North American
15 Indians and I found that the reportage on the topic
16 was sporadic but that belief in reincarnation of
17 animals was reported by my sample of ten societies
18 representative of the ten culture areas in North
19 America. But indeed I did not learn as much about the
20 subject of reincarnation among the Beaver Indians
21 until I specifically asked about the topic.
22 MR. MACKENZIE: No further questions. Thank you, Dr. Mills.
23 THE COURT: Thank you. Ms. Koenigsberg?
24 MS. KOENIGSBERG: I just have a couple of questions. I think I
25 can ask them from here.
26
27 CROSS-EXAMINATION ON QUALIFICATIONS BY MS. KOENIGSBERG:
28
29 Q Ms. Mills, your research, the result of which is
30 incorporated into your reports before this court on
31 the Wet'suwet'en, was conducted from when in 1985?
32 A I began doing library research about the Wet'suwet'en,
33 a review of the literature, in March, 1985.
34 Q And you have conducted among the Wet'suwet'en what you
35 have described as participant observation from when?
36 A I arrived in July, first of July, 1985, and continued
37 after the writing of this opinion report.
38 Q So through 1987?
39 A Yes.
40 Q And you attended with Wet'suwet'en people some of the
41 court proceedings, discoveries and commission
42 evidence?
43 A Yes.
44 Q And you participated by way of some interpretation for
45 them in the the giving of their evidence?
46 A Interpretation?
47 Q Or spelling?

A Yes, I was asked to assist the court reporter with the spelling of Wet'suwet'en words in some of the commission evidence that took place.
Q And did you have -- did you play any part in the preparation of the witnesses for the giving of their evidence?
A In some times I sat with them to help them understand what the lawyers' questions were as an interface, yes.
Q And you did that from July of '85?
A There was no activity regarding legal ramifications until the commission evidence began.
Q Where did you live when you were conducting this occupation?
A I was living -- in a cabin about 14 km from Smithers and about 25 from Moricetown.
Q Were you living on a reserve?
A No, I wasn't.

MS. KOENIGSBERG: Those are all my questions. Thank you.

THE COURT: All right. Thank you. Do you have any re-examination?

MR. RUSH: Yes, just a couple of questions.

RE-EXAMINATION ON QUALIFICATIONS BY MR. RUSH:

MR. MACKENZIE: Before my friend starts, my lord, perhaps we could mark that article that I was referring to as an exhibit, the first exhibit.

THE COURT: All right.

MR. RUSH: Well, perhaps it should be the second exhibit. I thought that I had asked but perhaps I didn't --

THE COURT: I was wondering whether this should be given a reserved number. Are you going to be having a book of your material, Mr. Mackenzie, during the cross-examination?

MR. MACKENZIE: Yes, I will be handing up a binder to put those in as Mr. Willms --

THE COURT: I would like to suggest we leave that until then and mark it as one of that collection. It will be so much easier to find it then if I have these things grouped together in some way. All right. Mr. Rush? You want first the CV to be marked, I take it?

MR. RUSH: I had asked for it to be marked, I think.

THE COURT: Surely no objection to that? It will be the next exhibit.

MR. MACKENZIE: No, my lord.

MS. KOENIGSBERG: No, my lord.

(EXHIBIT 903: CURRICULUM VITAE OF ANTONIA MILLS)

MR. RUSH:

Q Dr. Mills, you agreed with Mr. Mackenzie that most of the writing that you had done dealt with reincarnation, and my question to you is: As a social and cultural anthropologist, can you study reincarnation separate from the social and cultural institutions of the people under study?

A No, it's integral to the social and cultural study of the people.

Q You also advised or agreed with Mr. Mackenzie that you were not a linguistic and you are not an expert in archeology. My question to you is: Are linguistics a part of what you would take into account or study as a social and cultural anthropologist?

A Yes, they are, and in fact I did receive training in linguistic field methods which I used both with the Beaver Indians and with the Wet'suwet'en.

Q Did you acquire some facility in respect of both the Beaver tongue and the Wet'suwet'en tongue? That doesn't mean to say I am suggesting you were a fluent speaker.

A I did become somewhat conversant in both languages; more so in Beaver.

Q And so far as archeology goes, is that a discipline or a component of what a social anthropologist would study or take into account in the course of his or her investigations and field work?

A Yes, it is. And I did also have some training in archeology. I have never participated in an archeological dig but I have taken courses in the subject and like most cultural and social anthropologists, am in a position to read and understand the material moreso than a non-anthropologist.

Q Did you do that with respect to your field work among the Beaver, that is to say, take into account the archeological literature or findings that were relevant to the Beaver?

A Yes. At the time that I began the work with the Beaver Indians, there had been no relevant archeology in their particular area but since then there has been.

Q And you indicated to Mr. Mackenzie that you had investigated and written upon the material culture of the Beaver people?

1 A That is correct.
2 Q And I wonder if you would explain for his lordship
3 what you meant by the material culture?
4 A The material culture involves the objects and
5 artifacts that are used by a people that exist on a
6 material level that can be gathered, collected, looked
7 at and produced, and I made a studyh, this study for
8 the Museum Of Man in Ottawa and I also gathered
9 materials for the Museum of Anthropology at the
10 University of British Columbia. I have done that
11 twice for them, in '76 and then again in '84.
12 Q All right. You agreed with Mr. Mackenzie that your
13 publications dealt with religion and spirituality?
14 A Many of them do.
15 Q And I would ask you if it's possible, as a cultural
16 and social anthropologist, to study the religion and
17 spirituality of a people, in this case, the Beaver,
18 without also studying the social and cultural
19 institutions and perhaps the laws of those people?
20 A They are integral.
21 Q You agreed with Mr. McKenzie that one of the
22 reasons -- I should say you agred in part with Mr.
23 Mackenzie that one of the reasons that the Beaver
24 people were chosen by you for study was because of
25 their isolation. And I wonder if you had another
26 reason or other reasons for undertaking the study of
27 the Beaver people because of the use of your qualifier
28 in part?
29 A One of the reasons that the Beaver Indians were chosen
30 as a people with whom to do field work was that also
31 this was an area that had not been largely studied
32 previously, so it seemed that it would be useful to
33 fill in the ethnographic record with these people who
34 had not been well studied. That was one of the
35 criteria that --
36 Q And were there other reasons that were in your mind at
37 the time of embarking upon your field work with the
38 Beaver?
39 A I was interested in North American Indian group, this
40 was a group that had not been well studied.
41 Q You were referred to an article entitled Social
42 Anthropology by Professor Evans-Pritchard, a 1951
43 monograph, and in particular to page 14, where a
44 passage was read to you and you asked Mr. Mackenzie
45 whether or not the passage was intended to encompass a
46 geographic reference to the area of specialization
47 contemplated by the reference. What was not read to

1 you was the next following portion of page 14,
2 beginning halfway through the major paragraph in the
3 middle of the page and I quote: "The anthropologist
4 becomes a specialist in African studies, in Melanesian
5 studies, in American Indian studies, and so forth. He
6 then no longer attempts to master the detail of
7 regions other than those of his choice, except in so
8 far as it is embodied in monographs explicitly devoted
9 to general problems, perhaps religious or legal
10 institutions, in which he is particularly interested.
11 There is already a sufficiently abundant literature
12 on, for example, the American Indians or the African
13 Bantu for a scholar to devote himself exclusively to
14 one or the other." Does that help you in determining
15 what the reference points were for the learned author?
16 A It does, and I would like to say that again
17 anthropologists, North American anthropologists, would
18 perhaps take exception to Evans-Pritchard in this
19 regard. There is one of the eminent American
20 anthropologists, George Peter Murdock, who has
21 compiled an ethnographic atlas of all the cultures in
22 all the areas of the world and some familiarity with
23 cultures in a broad perspective around the world is
24 part of the training of anthropologists on this
25 continent, at any rate. Indeed, anthropologists could
26 perhaps specialize only, so that they only became
27 experts in one particular area, but that is not by and
28 large what is done. For example, Richard Lee has done
29 a great deal of field work in Africa, but that has not
30 restricted him from broadening his areas to other
31 geographic areas and other problem areas as well. And
32 that's typical of anthropologists. My own mentors,
33 Dr. John and Beatrice Whiting, have been among a team
34 of people who have done cross-cultural research in six
35 cultures, specifically so that you can compare
36 different features in cultures in six widely dispersed
37 culture areas. And that again is typical of
38 anthropology.
39 Q And finally, on a point I would direct your attention
40 to, you indicated to Mr. Mackenzie that you had no
41 training in law, and I want to ask you if you consider
42 law among native people, in the case of the Beaver and
43 secondly, in the case of the Wet'suwet'en, to be an
44 institution of those people?
45 A Yes, I do.
46 Q And is it common for anthropologists, social and
47 cultural anthropologists, to study institutions like

1 law as part of the study, the field of study of the
2 institutions of a people?
3 A It is, and I have been trained in the study of law
4 from the anthropological perspective.
5 MR. RUSH: Thank you.
6 THE COURT: All right. Thank you. Mr. Mackenzie?
7 MR. MACKENZIE: My lord, as we have said before, we have no
8 dispute with Dr. Mills' academic training but it's my
9 submission that as apparently all anthropologists, she
10 has really limited herself to a specialization. Her
11 experience has been overwhelmingly, overwhelmingly
12 directed to a study, participant study of the Beaver
13 Indian culture, a culture and a group substantially
14 different from the Wet'suwet'en, from the Wet'suwet'en
15 people. Not only has her experience been limited
16 primarily to the Beaver Indians, which are much
17 different than this Wet'suwet'en group, her
18 specialization within that has been restricted to
19 psychology, symbolism and religion, with the sole
20 exception of one paper she -- one report she did or
21 one report she did at least published for the National
22 Museum on material culture. In that report, as
23 indicated, she said that over the previous 20 years
24 she had not really looked into the subject of that
25 particular report. So that she was surprised by some
26 of the things that were coming out. But that shows --
27 and from Dr. Mills' later comments, is that 20 years
28 of experience is really limited to a specific area.
29 And that's really all that your expertise can be said
30 to be, based on your experience.
31 She, in my submission, she cannot give evidence,
32 expert evidence on the laws of the Wet'suwet'en, a
33 culture substantially different than the Beaver
34 Indians, and a substantially different situation, she
35 cannot comment on the feasts of the Wet'suwet'en, she
36 only attended ten of them, or nine of them, after
37 having been -- in comparison to 20 years' experience
38 with the Beaver Indians, in which she has recognized
39 expertise.
40 Her former experience has really been participant
41 observation, without the overwhelming impact of land
42 claims and litigation. She has been involved in
43 observations with a society in which she was actually
44 living and observing the natural seasonal round
45 without this other influence. In my submission,
46 she -- and furthermore, she agreed that she had no
47 expertise in archeology and linguistics.

1 Her expertise is dealing with comments on current
2 world views and spirituality of the Beaver Indians and
3 possibly of other North American Indians. In my
4 submission, she cannot comment on the changes over the
5 years or the historicity and time depth of the
6 institutions as she does in her report. She cannot
7 comment on the laws of the Wet'suwet'en in view of her
8 expertise, in my submission, and looking at the table
9 of contents of her report, in my submission, chapter
10 one say that lies within her expertise in the nature
11 of Wet'suwet'en society. Chapter five -- correction,
12 chapter six -- chapter four Institutions Of The
13 Wet'suwet'en. I say that she can give a description
14 of what she saw when she lived for those 15 months. I
15 say that she can also speak about the Wet'suwet'en
16 interface with the world, which deals primarily with
17 the religious and spiritual aspects of Wet'suwet'en
18 beliefs and has several passages on reincarnation.
19 I say that she has not the expertise as a result of
20 her experience to comment on the genesis of the
21 Wet'suwet'en, on the archeological-historical accounts
22 and history of the Wet'suwet'en and I say that she
23 cannot speak from, on the basis of her expertise, on
24 chapter five, Wet'suwet'en law.
25 THE COURT: Thank you. Ms. Koenigsberg?
26 MS. KOENIGSBERG: My objection, my lord, is of a different
27 nature than my friend, Mr. Mackenzie's, and it goes to
28 a matter which was canvassed rather broadly with the
29 previous witness. And it goes to the admissibility
30 and not the qualifications of this witness.
31 We have, again, the matter of participant
32 observation being the basis of the opinions which are
33 to be advanced and that participant observation has
34 taken place during this litigation and in fact
35 involving participation in this litigation. For the
36 very reason that such participation has taken place
37 and is not available for replication, but in addition
38 involves again the duplication of evidence and
39 involves the issue of the lack of objectivity and the
40 taking into account of the land claims process, and in
41 my submission that renders her opinion to the extent
42 that it rests upon participant observation,
43 inadmissible.
44 In addition, there are numerous facts upon which
45 the opinion would appear to be based which have either
46 been disclosed as of 9 o'clock this morning or have
47 not been disclosed yet. We can deal with those as the

matter comes up, I suppose, but I raise it at this time because it would appear that it is going to be substantial disclosure. We have had some disclosure of approximately a month ago of notes of this witness. The previous disclosure was of material upon which this witness relied but which weren't her actual notes. And there is an undetermined amount of material which is -- the authorship of which appears to be this witness which has not yet been disclosed, and I am not speaking of, I think there were 44 interviews with Wet'suwet'en people, but interviews which it has become apparent this witness has relied upon and which have not been disclosed but which were part of a report by Ms. Murdock.

And, in addition, we received about a three quarters of an inch of material this morning at 9 o'clock and have not had a chance to go through it. But it is obviously interviews and genealogical-type of information, and it is the notes of this witness.

So we will be objecting as we, I guess, go through the opinion, about admissibility based on those.

THE COURT: All right. Thank you. I don't need to here you Mr. Rush.

I think that the general area is one which qualifies for opinion evidence. I am alive to the distinction to be drawn between a case like this and one where someone is being advanced to explain something anyone of ordinary common sense should be able to understand. That's not this case. This is quite a different situation. I think that there may be areas where her expertise does not qualify her to give opinions. She may not be able to give opinions on the operation or interpretation of Wet'suwet'en law but that's a matter I will have to deal with as it arises. I think that there is another area and that is that the law as an institution is a matter upon which she as an anthropologist may be able to give an opinion, and I will have to await the unfolding of the evidence before I can rule more fully on that.

The other objections that have been made to her qualifications, both by Mr. Mackenzie and Ms. Koenigsberg, in my view, go to the question of weight rather than admissibility and for that reason I am going to rule that she is qualified to give opinion evidence on the areas generally described by Mr. Rush at the commencement of today's proceedings. And I will hear counsel if they have specific parts of her

evidence as they are adduced.
Mr. Rush?
Well, Mr. McKenzie, I have been thinking that I don't think there is any great risk of marking this exhibit now, in case we forget. This is the Social Anthropology by Evans-Pritchard, and we can just put it in the collection when it starts to be assembled. If we remember to do that. But rather than forget, I doubt that, but you can correct me if I am in error on this, Mr. Rush, there is no magic in these numbers, in that your next exhibit number will be 904 or anything like that?

MR. RUSH: There is no magic in that. There is a matter of facility of marking, you might want to mark by volume, but it might be that I will want it to marked.

(EXHIBIT 904:SOCIAL ANTHROPOLOGY ARTICLE - E. E. EVANS-PRITCHARD)

THE COURT: And then it can be put in Mr. Mackenzie's collection and serve the two purposes. First, we won't forget and second I will know where to find it. Thank you, Mr. Rush.

EXAMINATION IN CHIEF BY MR. RUSH:

MR. RUSH:

Q You were asked to perform work on behalf of the Gitksan-Wet'suwet'en Tribal Council in March of 1985; is that right?
A That's correct.
Q And what form of work were you asked to perform at that time?
A I was asked to do two different things: I was asked to review the literature on the Wet'suwet'en and to assist the lawyers in understanding that literature. I was also asked to do research with the Wet'suwet'en to prepare me to write an opinion report for this court case.
Q And did you enter into a contract with regard to your -- the work asked of you to be performed?
A I did.
Q And is that at tab 2?
A Yes.
Q It's not signed by you, but is that one that you did sign and entered into at some later date?
A Yes.

1 Q And how did you first become involved in --
2 THE COURT: Do you want to mark it, Mr. Rush?
3 MR. RUSH: Yes.
4 THE COURT: 905.
5
6 (EXHIBIT 905: TAB 2 - CONTRACT)
7
8 MR. RUSH:
9 Q How did you first become involved in performing
10 research on behalf of the Gitksan-Wet'suwet'en Tribal
11 Council?
12 A I am not sure what you mean by that.
13 Q When did you first become connected with or were
14 called or how did you become involved?
15 A I see. I was contacted by the Tribal Council and
16 asked if I would be interested in performing some
17 research for them.
18 Q Who contacted you?
19 A Don Ryan.
20 Q And you actually embarked upon that research in March
21 of '85?
22 A That's right.
23 Q What did you first do when you started that task?
24 A I began by doing a search of the literature,
25 refreshing myself, reading the material on the
26 Wet'suwet'en and the Carrier, surrounding peoples.
27 Q And what literature did you refresh your mind with?
28 A Harmon, Morice, Jenness, Stewart, Goldman, John Adams
29 on the Gitksan, I read some more of the surrounding
30 peoples of the Tsesaut and Tahltan, Emmons on the
31 Tahltan. That kind of literature.
32 Q And that's ethnographic literature?
33 A Yes, it is.
34 Q And did you then, having reviewed that ethnographic
35 literature, did you then review any other material
36 that you had available to you?
37 A I went to the Oblate archives in Ottawa to see what
38 they had on Morice, to see if any field notes existed
39 from his time with the Carrier Indians, I read the
40 letters, unpublished letters that are in the Oblate
41 archives of Morice and also his predecessors, Father
42 LeJacq and Father Nobili.
43 THE COURT: What was the second name?
44 A LeJacq and Nobili.
45 THE COURT: And did you say that this was at the Oblate
46 archives?
47 A Yes, in Ottawa.

1 MR. RUSH:
2 Q Did you also go to the Museum Of man while you were in
3 Ottawa?
4 A Yes, I did. I was desirous of finding out if there
5 were any field notes extant from Diamond Jenness field
6 work with the Bulkley River Carrier so I went to the
7 Museum of Man and learned that they didn't have any.
8 They put me in contact with his son, having heard that
9 the son had found some hitherto unpublished works of
10 the father, and unfortunately any previous field notes
11 of Jenness were not among these. I also --
12 Q Before you pass on, why was it important to you to
13 determine if there were field notes of Diamond
14 Jenness's?
15 A I was particularly interested in finding out if there
16 were any additional pieces of information about the
17 Bulkley River Carrier, in particular, because in his
18 publication of the oral tradition, The Myths of the
19 Carrier Indians, he does not cite who his informants
20 were or name, in many instances, villages which are
21 referred to and I thought if perhaps I could find his
22 original material it would be more specific than the
23 published material. I also --
24 Q Just a moment, please. Did your investigations end at
25 the Museum of Man with regard to these field notes or
26 absence of them?
27 A I missed the question.
28 Q Where did you do your investigations with regard to
29 the field notes?
30 A At the Museum of Man in Ottawa, and also at the
31 Smithsonian Institution in Washington, D. C., since
32 his monograph on the Bulkley River Carrier was
33 published by the Smithsonian, I thought perhaps they
34 had additional notes that accompanied the original
35 manuscript but they did not.
36 Q You have been referring to the Bulkley River Carrier,
37 who do you mean?
38 A I mean the Wet'suwet'en. I refer to the Bulkley River
39 Carrier only because Jenness does it in his monograph
40 of 1943.
41 Q Did you conduct any other investigations at any other
42 institutions in Ottawa while you were looking at the
43 Oblate archives?
44 A I also went and viewed their Carrier or Wet'suwet'en
45 collection of material items, that they have in the
46 museum archives, which are not on public display.
47 Q And by material items, what do you mean?

A Included feast blankets, some of them that are pictured in Jenness were gone on the Wet'suwet'en, -- formed part of the collection of the Museum of Man. So I viewed those.

THE COURT: These feasts blankets are at the Museum of Man, not the Smithsonian?

A At the Museum of Man, yes.

MR. RUSH:

Q While at the Museum of Man, did you have occasion to talk to Dr. George MacDonald?

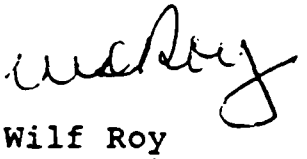
A Yes, I did. He is the director of the Museum of Man and I went and saw him. I was particularly interested in seeing the drafts that he was working on of maps showing the trade routes between the Wet'suwet'en and Carrier and the other northwest coast peoples, including the Gitksan and Tsimsian, which he was preparing for publication in the new atlas of Canada. So Dr. MacDonald showed me these maps and I viewed them. And he also showed me some material that he had.

THE COURT: Is it convenient to adjourn, Mr. Rush?

MR. RUSH: Yes, it is.

(PROCEEDINGS ADJOURNED AND RESUMED FOLLOWING LUNCH BREAK)

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



Wilf Roy
Official Reporter

1 (PROCEEDINGS RESUMED AT 2:00 p.m.)
2
3 THE REGISTRAR: Order in court.
4 THE COURT: Mr. Rush.
5 MR. RUSH:
6 Q Thank you. Dr. Mills, you told Ms. Koenigsberg that
7 you moved to a cabin and resided in a cabin some
8 distance away from Smithers in the summer of 1985. Is
9 that so?
10 A That's correct.
11 Q And whereabouts was the cabin located?
12 A It was on Driftwood Road which is about 14 kilometres
13 from Smithers and about 24 from Moricetown by the
14 Telkwa high road to Moricetown.
15 Q And what was the month that you moved there?
16 A July.
17 Q And throughout the period of time that you were
18 undertaking your investigations with the Wet'suwet'en,
19 were you living at this cabin?
20 A Yes, I was.
21 Q All right. And can you tell his lordship what amount
22 of time that you spent at Moricetown and Hagwilget?
23 A The month of July I spent almost exclusively at
24 Moricetown; in fact, I didn't begin occupying the
25 cabin at that day so I spent the first month of July
26 in Moricetown per se. Then after my children joined
27 me in August I began occupying the cabin and
28 thereafter I would go to Moricetown daily, and I was
29 there usually from 8:30 until four o'clock in the
30 afternoon when I went back when my children got off
31 the school bus. And I also of course went to all the
32 potlatches or the feasts which took place in
33 Moricetown which were typically weekends.
34 Q All right. When did you move from your cabin on
35 Driftwood Road?
36 A In July '87.
37 MR. RUSH: Okay.
38 THE COURT: You moved out of the cabin?
39 THE WITNESS: I moved out of the cabin.
40 MR. RUSH:
41 Q From there where did you move?
42 A No, I am sorry, that was last year, July '88.
43 Q July '88, and from there you moved to?
44 A To Virginia, University of Virginia.
45 Q Is that when you took up a teaching position at the
46 University of Virginia?
47 A That's right.

1 Q Now, you indicated that you attended at Moricetown and
2 as well at Hagwilget in respect of a number of feasts?
3 A Yes.
4 Q And do you recall the number of feasts that you
5 attended?
6 A Oh, it was over 15 feasts. They were at Moricetown,
7 one at Gitanmaax, one at Kitwanga, one at Kispiox.
8 The Hagwilget feasts tend to take place in Moricetown.
9 Q What was the importance, if any, to you of attending
10 these feasts?
11 A I really wanted to document and learn how feasts take
12 place and what they are, what is done at a feast and
13 to see the variety, by looking at not just a single
14 feast or a few, but the whole range of feasts that
15 took place while I was there.
16 Q And did you make observations while you were at these
17 feasts?
18 A I certainly did.
19 Q And did you record what occurred at these feasts?
20 A I did.
21 Q You indicated that some of what you learned at the
22 feast was translated to you in that you were not a
23 fluent Wet'suwet'en speaker?
24 A That's right. Some of the proceedings were in English
25 and some were in Wet'suwet'en and, when it was in
26 Wet'suwet'en, I often had someone to translate for me
27 but there were other times when I did not. There were
28 sometimes when I could only ask after the fact what
29 had been said.
30 Q And apart from attending at feasts at Moricetown, did
31 you attend feasts at other locations in the community?
32 A Well, as I mentioned, I attended the feast at
33 Kitwanga. That was the -- a pole-raising feast of a
34 chief.
35 Q It was a Gitksan feast?
36 A That's right.
37 Q Were there members of the Wet'suwet'en community in
38 attendance there?
39 A Yes. Perhaps you are referring to -- I also attended
40 a feast at Burns Lake, a funeral feast, and I also
41 attended the All-Clans feast at Burns Lake.
42 Q Did you attend any other Gitksan feasts apart from the
43 one at Kitwanga which you have just mentioned?
44 A Yes, I attended the funeral feast of Albert Tait,
45 Chief Delgamuukw, at Kispiox.
46 MS. KOENIGSBERG: I am sorry, I am not being able to hear.
47 MR. RUSH:

1 Q I wonder, Dr. Mills, if you could try to raise your
2 voice a bit and perhaps repeat your last answer,
3 please?
4 A Yes. I attended the funeral feast of Albert Tait,
5 Chief Delgamuukw at Kispiox, and I also attended two
6 feasts at Burns Lake. Was that part of that last
7 answer? One was a funeral feast and one was an
8 All-Clans feast.
9 Q Thank you. And did you record the feasts which you
10 attended at Moricetown of the Wet'suwet'en?
11 A Yes, I did.
12 Q Did you record these in a handwritten form and in a
13 typescript form?
14 A I wrote handwritten notes at the time and many of them
15 I put into the word processor later.
16 Q Now, your opinion here was submitted in February 1987.
17 After that time did you also attend at feasts in the
18 Moricetown area?
19 A Yes, I did.
20 Q And from February 1987 through to the time that you
21 gave up your cabin in the summer of 1988 and moved to
22 Virginia, did you attend feasts at Moricetown?
23 A I did.
24 Q Apart from your attendance at feasts, what else did
25 you do by way of obtaining information and data about
26 the Wet'suwet'en?
27 A I went to the Wet'suwet'en, when I first arrived in
28 July 1985, I went and introduced myself to the head
29 chiefs of the houses and told them that I would be
30 conducting research, and I went out with various
31 chiefs to their territories. I observed the fishing
32 that was ongoing at Moricetown.
33 Q Just if you can pause there. Is that the fishing that
34 occurs in the canyon, are you referring now?
35 A Yes, I am.
36 Q Is this the summer inland fishery that you are now
37 referring to?
38 A Yes, correct.
39 Q Go ahead, please?
40 A I interviewed a number of chiefs in their homes and I
41 reviewed the transcripts of interviews that had
42 already been made, in some cases ask the chiefs
43 questions or further -- for further information about
44 what they had said.
45 Q Are these transcripts of interviews with Wet'suwet'en
46 chiefs that you are referring to?
47 A That's correct.

1 Q Did you travel at all in your fieldwork with the
2 Wet'suwet'en?
3 A I travelled to territories with the -- with some of
4 the chiefs. I also went with the chiefs when they
5 went to Burns Lake and Topley Landing to invite people
6 to the Wet'suwet'en All-Clan feast of April 1986.
7 Q Did you attend at that All-Clans feast in April 6,
8 1986?
9 A I did.
10 Q And did you obtain information with regard to the
11 genealogies of Wet'suwet'en people?
12 A Yes, I did. I asked for genealogical information from
13 a number -- a large number of Wet'suwet'en people.
14 Q When you say that you asked for genealogical
15 information, can you expand on that? What do you mean
16 by that?
17 A I asked them to explain to me how -- how their
18 relatives and how they were related to different
19 people and to explain their descendants and their
20 ancestors, and I recorded this information. There was
21 genealogical work which had already been done when I
22 arrived. Much of it had been done by Heather Harris,
23 but there -- since there was a tremendous amount of
24 genealogical work to be done, I was one of the people
25 who participated in that and conducted some of this
26 genealogical research.
27 Q Were there other people who did that as well?
28 A Yes, there were.
29 Q Who was that?
30 A Victor Jim, Chief Misalos.
31 Q That's a Wet'suwet'en person?
32 A Wet'suwet'en, conducted --
33 THE COURT: I am sorry?
34 MR. RUSH: Victor Jim, and his name is given, Misalos,
35 M-i-s-a-l-o-s.
36 THE COURT: Thank you.
37 THE WITNESS: And Alfred Joseph I believe has conducted some,
38 and Chief Gisdaywa and Dora Wilson Kenny, chief
39 Yaga'lahl.
40 THE COURT: Now, I am sorry, but every time you use one of those
41 names, we have got to have a spelling.
42 THE WITNESS: Is there a number?
43 THE COURT: Yes, there is, but the reporter can't stop to do all
44 that.
45 THE WITNESS: Yes, I am sorry.
46 MR. RUSH: If you will just pause there while I do that.
47 THE COURT: Madam reporter will know some of them but she can't

be expected to keep all of them in mind.

MR. RUSH:

Q Yes, 417 is the number there. And Yaga'Lahl is 260, and that's on the Wet'suwet'en list, my lord.

I am going to hand up two further binders, my lord, volumes 2 and 3. Would you please show Dr. Mills volume 2? Now, you indicated that you wanted to say something further in one of -- in response to one of my questions?

A Yes. For the record, I'd like to say also that I attended a feast in Gitanmaax that was of a resident of Hagwilget and this was -- this is referred to in my report and is part of the feast notes. I had failed to mention that.

Q All right. Was that a Wet'suwet'en or a Gitksan feast?

A The person is Yaga'Lahl, Dora Wilson Kenny, someone who fits one Gitksan house but is also considered Wet'suwet'en.

Q Now, would you please turn now to volume 2 of this document book. Just ask you, if you would please, to look at tabs 1 through 15 and would you just kindly review each one of those quickly? Now, firstly, are you the author of these notes which appear in tabs 1 through 15?

A I am.

Q And some of these are typescripts. Were you the person that typescripted the notes?

A Yes.

Q And the notes that appear in handwriting, are they notes taken in your handwriting?

A Yes.

Q And just to refer you to tab 4, it is not readily apparent from the photocopy which regrettably is a poor copy; nonetheless, is this a copy of notes which you took of the funeral feast for David Kenny on December -- in December of 1986?

A That's correct.

Q All right. And tab 6, if you will just refer to that, that appears to be notes at a funeral feast which you took on March 1, 1987, at the feast of Jim George?

A That's correct.

Q That would be after the report was completed, after your opinion report was completed?

A That's correct. You may note also that I did not take notes at the Gitksan feast that I attended because I had not been authorized by the Gitksan chiefs to do so

1 but although I had been invited to attend those
2 feasts.
3 MR. RUSH: Now, these notes are the notes -- I am sorry.
4 MR. MACKENZIE: Is Dr. Mills the author of number 1?
5 MR. RUSH:
6 Q Would you please refer to the first tab? Mr.
7 Mackenzie inquires if you were the author or at least
8 the -- did you firstly transcribe these notes?
9 A I did.
10 Q Okay. And did you take notes at the feast?
11 A I did. In some instances my son helped me transcribe,
12 my elder son.
13 Q What do you mean helped you? Did he do the typing?
14 A He typed, took the transcript.
15 Q Do you verify these as notes that you took at the
16 feast?
17 A Yes, I do.
18 Q The notes, were they taken on the dates that are
19 indicated on the transcriptions or the handwriting of
20 the notes?
21 A That's right, that's right.
22 Q And you have reviewed these notes, have you?
23 A Yes.
24 Q Do they reflect so to your understanding the
25 occurrences, the observations, and the events which
26 transpired at the feasts that are recorded in these
27 tabs 1 to 15?
28 A Yes, they do.
29 Q Now, some of the recordings that you made here, do
30 they result from observations which you made at the
31 feast?
32 A Yes, they do.
33 Q And some of these recordings, are they of what was
34 said at the feast?
35 A That's correct.
36 Q If you look please to tab 1, there are a number of
37 amounts or apparent amounts beside certain names.
38 What does that represent?
39 A That represents money that was contributed at the
40 feast.
41 THE COURT: What do I take from the third one?
42 MR. RUSH: The third page, my lord?
43 THE COURT: No, third item, Rusty's contribution.
44 THE WITNESS: Five dollars.
45 THE COURT: Five dollars?
46 THE WITNESS: There is a decimal point. I don't know why there
47 is so many decimal periods afterwards but the decimal

1 points indicates the amount.
2 THE COURT: So those are decimal points and not commas?
3 THE WITNESS: They are not commas, yes.
4 MR. RUSH:
5 Q In the case to the reference of Taljoe, that's a $50
6 amount; is that right?
7 A That's right.
8 Q All right, thank you. In a number of places there are
9 names which appear to be Wet'suwet'en names and I
10 direct you, for example, to page 6 of tab 1. At the
11 bottom of the page under the title Distributed to the
12 following as Negaldezut's, that's N-e-g-a-l-d-a-z-u-t,
13 there are names such as Noostel and Wigetemskol. Are
14 these your renderings of the Wet'suwet'en names for
15 certain individuals?
16 A That's right. Their names were called out in the
17 feast hall in this form.
18 Q Okay, and Noostel is N-o-o-s-t-e-l and Wigetemskol is
19 W-i-g-e-t-e-m-s-k-o-l.
20 At the feasts that you attended, did you also make
21 observations and render, in the form of a recording,
22 recording your observations the seating of the people
23 at the feast?
24 A I did.
25 Q And why was that important to you if it was?
26 A Well, the Wet'suwet'en had informed me that the
27 seating order was very important at the feast and
28 therefore it was -- it seemed important to record how
29 the seating took place and the number of particular
30 instances so that one was not only getting the perfect
31 or idealized form but many examples of specific
32 seating at specific feasts as a way of assessing
33 whether the -- an idealized form conformed to the
34 actual seating, and also to assess how it had changed
35 if it had changed, since Jenness had recorded how the
36 seating was done at feasts.
37 Q Now, Jenness had recorded this at sometime, had he?
38 A In 1924, '25.
39 Q Now, Dr. Mills, in terms of the methodology that you
40 have used and references to the various investigations
41 and interviews and participant observation that you
42 took as a result of that, did you then prepare your
43 opinion in respect of this -- of the subject matter
44 for which you have now been qualified?
45 A Yes.
46 MR. RUSH: All right. My lord, I am going to tender two copies
47 of Dr. Mill's opinion.

1 THE COURT: Thank you.
2 MR. RUSH: And if I could just -- just ask Dr. Mills if she
3 would look at the document that I handed up to your
4 lordship.
5 MR. MACKENZIE: My lord, before my friend goes on, Mr. Rush
6 hasn't asked to have it marked as an exhibit yet
7 obviously because Dr. Mills is examining it but we are
8 going to be objecting to the admission of this report.
9 THE COURT: Thank you.
10 MR. RUSH:
11 Q I'd like your lordship to reserve a number for this
12 report in the event that my learned friend's
13 objections are not sustained.
14 Dr. Mills, if you look at the document that's been
15 placed in front of you entitled The Feasts,
16 Institutions and Laws of the Wet'suwet'en, is this the
17 opinion report that you prepared and identify it as
18 such?
19 A Yes, it is.
20 Q Thank you. I'd like you to, if you will please, to
21 turn to page 56 of this document and this document at
22 page 56 has as Chapter 3 the title Genesis of the
23 Wet'suwet'en and, Dr. Mills, can you say for his
24 lordship how the Wet'suwet'en perceive their genesis,
25 please?
26 A The Wet'suwet'en see themselves as having been in the
27 topography --
28 THE COURT: I am sorry, I didn't --
29 THE WITNESS: The Wet'suwet'en perceive themselves as having
30 been in situ in the location where they are found now
31 since the very earliest times.
32 THE COURT: What do you understand that to mean? What do you
33 understand them to understand that means?
34 THE WITNESS: I understand them to mean that they have been
35 there for such a very long period of time that this is
36 basically their homeland. This is their homeland.
37 MR. RUSH:
38 Q And is there a village to which the Wet'suwet'en
39 people trace their origins?
40 A Yes, there is. They call it Dizkle. It is called
41 Dizkle.
42 MR. MACKENZIE: Excuse me. My lord, we are going to be
43 objecting to all this evidence. It's -- my friend is
44 bringing out this evidence referring to the report,
45 but it's -- and the objection to the report is
46 partially based on the objection to the contents of
47 the report so if my friend is proceeding as apparently

1 was done in other -- with other witnesses in going
2 through the report and eliciting the opinion evidence
3 from the witness, then perhaps it would be convenient
4 for your lordship to hear an argument insofar as the
5 evidence is concerned, prior to embarking on this line
6 of questioning.
7 THE COURT: Any objection to that, Mr. Rush?
8 MR. RUSH: No, not if my friend wants to make his argument.
9 THE COURT: All right. Thank you. Mr. Mackenzie, is your
10 argument different from the one that was advanced by
11 Mr. Willms with respect to Dr. Daly's report?
12 MR. MACKENZIE: My lord, to answer your question, generally it
13 follows the same line of -- I would say that generally
14 it follows the same line of argument that Mr. Willms
15 mentioned and, if your lordship wishes, I will --
16 that's a direct answer. There may be some slight
17 difference but, other than those, it will follow that
18 generally.
19 THE COURT: All right. Well, you must anticipate that I am
20 going to make the same ruling absent any reason to the
21 contrary.
22 MR. MACKENZIE: Yes, I understand that, my lord, and in that
23 light perhaps I could just summarize the headings of
24 objections that have been raised already to the
25 admission of these types of reports and the objections
26 that we raise with respect to this report.
27 My lord, the first point that will be made with
28 respect to the report itself is that under -- with
29 respect to the report and the expert evidence is that
30 under Section 11 of the Evidence Act, the facts upon
31 which the report has been based, the evidence is
32 based -- have not -- all the facts have not been
33 produced in our submission in this case prior to the
34 evidence being given. The second submission is that
35 not all the facts -- since not all the facts were
36 produced beforehand and since, in our submission, not
37 all the facts were recorded, it is impossible to
38 duplicate this exercise or this study or -- and
39 therefore to test it. Third heading is that the
40 report is interwoven with a mixture of argument,
41 statements of inadmissible hearsay, findings of fact,
42 non-expert inferences from certain observations, and
43 it's inadmissible for that purpose -- for that reason.
44 The fourth general objection is that this evidence and
45 this report clearly relies very heavily upon the oral
46 traditions of the Wet'suwet'en and has already been
47 argued to your lordship. That's a subject -- that's a

1 basis defence says is not reliable and a ruling will
2 be made later on by your lordship on that. The fifth
3 point is the point about participant observation which
4 Ms. Koenigsberg referred to. This purports to be
5 participant observation but it's clearly been
6 conducted after the commencement of the litigation and
7 is based upon documents prepared in contemplation of
8 litigation, and is characterized as being in
9 contemplation of land claims advocacy and, as a
10 result, from participation in feasts and other events
11 whose sole purpose is land claims advocacy and
12 resolution. Second sub point of that under
13 participant observation is, because of this situation,
14 it is impossible to duplicate or to test the evidence.
15 Sixth point is one that I understand hasn't really --
16 wasn't really made by Mr. Willms and that is that
17 insofar as this report contains a simple recitation of
18 chief's evidence, that that's already been heard by
19 your lordship and your lordship is in a position to
20 assess that evidence and draw inferences from it.
21 THE COURT: That argument was made before.
22 MR. MACKENZIE: Yes. I didn't see it directly in this -- on
23 this subject on a previous time when this argument was
24 made.
25 THE COURT: Ms. Koenigsberg argued it.
26 MR. MACKENZIE: Oh, yes, thank you. And --
27 THE COURT: That's six points. Have you got more?
28 MR. MACKENZIE: One more point, my lord, yes. Your lordship has
29 heard all these things before. This point your
30 lordship may not have heard in this context. Your
31 lordship has refused to hear evidence about events
32 after 1984, refused to permit the elicitation of
33 testimony regarding events after 1984. It is my
34 submission that the same reasoning applies to the
35 evidence that is being given in this report and the
36 evidence which is based upon Dr. Mill's studies, for
37 example, the All-Clans feast, it is based explicitly
38 and for the sole purpose of litigation and after 1984,
39 and therefore is not -- cannot be relied upon as
40 disclosing a situation untainted, if I can say it that
41 way, by the litigation or unaffected by the litigation
42 is probably a better way of putting it. And that
43 concludes my comments.
44 THE COURT: Well, Mr. Mackenzie, I am not going to allow you to
45 make all these arguments. I ruled on almost all of
46 them. I will hear you on the one, I think it was your
47 second one, the notice. If you have a problem with

1 notice, then I think that is a matter that is specific
2 to this report and I will permit further submission in
3 connection with this. I will be glad to hear you on
4 your submission on the question of notice but we have
5 got a week set aside for this witness and I am not
6 going to spend any more of it than I can be on hearing
7 arguments, but I think I am obliged to -- or where the
8 result is clearly visibly already ruled the same
9 before. What's the problem with notice?
10 MR. MACKENZIE: My lord, it is a little difficult to -- let me
11 just summarize. The problem with notice is that a
12 body of information which we now perceive to have been
13 consulted by the expert has not been produced or
14 disclosed by the plaintiffs and without asking the
15 witness questions about that body of information, it
16 is a little difficult to make the facts -- to make the
17 submission specifically. And the other point, as Dr.
18 Mills indicated quite candidly this morning, her
19 interviews with these Wet'suwet'en people on -- in her
20 reincarnation project relating specifically to a
21 subject which is detailed in her report have not been
22 produced and apparently are being sent from Virginia
23 and, my lord --
24 THE COURT: I didn't understand from what she said this morning
25 that these interviews relate to the -- what you have
26 just described as the reincarnation project. Is that
27 something different than the preparation of this
28 report?
29 MR. MACKENZIE: Yes, my lord.
30 THE COURT: When were these interviews, that is the
31 reincarnation interviews, undertaken, do you know?
32 MR. MACKENZIE: They were undertaken during the same time.
33 THE COURT: During the same period?
34 MR. MACKENZIE: Yes. And, my lord, if I can assist your
35 lordship, the other category of information that I was
36 referring to is a collection of interviews with the
37 Wet'suwet'en chiefs that was conducted during July and
38 August 1984 with the very chiefs which are the subject
39 whose words are repeated and who are the informants in
40 this report, and it is those 20 interviews with notes
41 and summaries that have not been disclosed by the
42 plaintiffs or produced in the case here.
43 THE COURT: All right, thank you.
44 MS. KOENIGSBERG: I don't know if I can add to this area but I,
45 my lord, have concerns about whether there has been
46 disclosure of matters which were in fact relied upon
47 by this witness in the preparation of her report and

specifically they are in the area of genealogies. We received, as I told your lordship this morning, some material that contains what looks to me on first glance to be of a genealogical nature. I don't know if that is all of the genealogical work which this witness has done. Albeit, I perceive that her report does rest in some part, though it is not clear exactly how, on the genealogical research that she did. When I say it is not clear exactly how, it is not -- there are no specific references to genealogical work, however, conclusions which are drawn would appear to derive in part from genealogical research. I don't know if we have production of all of the genealogical material which this witness in fact collected and upon which she relied. We will have to review that. Albeit, this morning production of that material would not constitute even close to adequate notice for this witness. That's one area.

The second area has to do with land claims interviews. We have had produced -- my friend sent us by letter a list of some 21 interviews that this witness relied on and I believe that they fall into that general category of land claims interviews. However, in a document which was produced on Friday to us being the draft -- a draft of this final report, there are many references to interviews which formed part of the draft and which I assume have subsequently been incorporated into the final -- although I haven't had a chance to do a complete check, and there are a number of land claims tapes referred to and quoted from and I have no record of having received at least a few of the ones that I have come across. So I don't believe that we have in fact received all of the land claims interviews which this witness has both relied upon and in fact at least in the draft quoted from.

The third area is one in which -- in the draft which again was produced to us on Friday. Upon quickly going through it there is reference made to a person by the name of Ruth Murdock and interviews and reference is made to materials collected by Miss Murdock. From the draft it would appear that that material was relied upon by Miss Mills. In the final report there is no mention of Miss Murdock, however, it is clear from the Murdock material that there are a number of interviews, 19 or 20, with the Wet'suwet'en chiefs which were relied upon by this witness and which have not been produced.

1 So that as we go through the final report, it is
2 my belief that we are going to come across
3 considerable amount of opinion upon which we don't
4 have the facts and I think I mentioned before that in
5 my submission that certainly goes to the
6 admissibility. What we are faced with here is of
7 course a question of time and how quickly we can
8 assimilate this material and see if it impacts
9 directly on our cross-examination is of some
10 difficulty since I anticipate we have got
11 approximately two days.
12 THE COURT: Mr. Rush? Mr. Rush, I am not sure I need to hear
13 from you.
14 MR. RUSH: I would like to make a reply.
15 THE COURT: You may want to say something after you hear what I
16 am going to say. I will be glad to give you the
17 chance. I think that we are in a position where we
18 cannot allow the procedural problems which counsel
19 have mentioned, even though they may bear directly on
20 the question of fairness, to stand in the way of the
21 progress of this case. I think at the end of the day
22 I am going to have to make a determination of how much
23 reliance, if any, I can have on this material if it
24 hasn't been properly supported by the timely
25 furnishing of the underlying facts. But I don't think
26 in view of the discussion we had regarding our
27 schedule this morning that I can allow the kind of
28 problems that counsel have just described to me to
29 stand in the way. It may at the end of the day lead
30 to a ruling that some of this material is not
31 admissible and it may lead to the ruling that it is
32 not entitled to the weight; in other words, it has not
33 been properly supported by timely disclosure but I do
34 not propose to stop the trial while we -- in order to
35 give counsel an opportunity to pursue other matters
36 that in fairness they may think they should
37 investigate.
38 I will review the matter when Mr. Rush is finished
39 his examination and if at that time counsel aren't
40 ready to cross-examine, we do have the luxury of
41 having next week and I am sure that counsel would, but
42 this has got to take priority, and it may be that we
43 will have to stand the witness down but I don't think
44 we will have to stand her down at this point. I think
45 we should carry on with the evidence and deal with
46 these other matters as they proceed.
47 It is totally irrelevant or almost irrelevant what

1 I am going to say but counsel may be aware when I was
2 in Smithers I was reading a book about the Agent
3 Orange case of the United States. I just learned this
4 weekend some remarkable rulings by the trial judge in
5 the proceedings of this case that surprised me
6 greatly. The Court of Appeal for the second circuit
7 upheld everything that happened, upheld the settlement
8 and disposed of litigation and the United States
9 Supreme Court declined to review it, so I think that
10 the learned judge in that case was somewhat in the
11 same position that I am in. We have to get on with
12 the problem and, if there is some bruising along the
13 way, I think that's just one of the risks that have to
14 be incurred. Fortunately, it is an adversarial
15 procedure and people expect to be bruised once in a
16 while. So with that little comment, I think I will
17 ask you to get on with your case, Mr. Rush, although I
18 won't deny you the wish to make a reply if you wish.
19 MR. RUSH: I do wish to make a reply, my lord. The dealings
20 first with the material that was referred to during
21 the examination of Dr. Mills regarding the interviews
22 which were done concerning the reincarnation paper.
23 It was not evident at the time that Dr. Mills, who was
24 communicating to me from Charlottesville, Virginia,
25 that there was a separate body of interviews and that
26 they would be needed for the support of the facts
27 which underly Dr. Mill's opinion. When we met
28 face-to-face it was evident that these were necessary
29 and we have asked that they be couriered to us. Dr.
30 Mills has indicated that and we will hope that we can
31 get a timely disclosure. I should point out to your
32 lordship that with reference to that there are two
33 sentences in the report that pertain to that
34 particular -- those particular notes, and albeit I --
35 there are those two sentences and should we wish to
36 lead evidence on that, then I think we have to produce
37 that evidence and I think we will do so.
38 Secondly, with regard to the genealogical notes
39 that my friend is concerned about, the notes that
40 are -- that have been taken are disclosed in the
41 material and there have been two substantial
42 disclosures and, regrettably, I say that one of them
43 was this morning but nonetheless those are the
44 disclosures that are available with respect to the
45 genealogical material. That's -- those are the notes,
46 the underlying facts upon which Dr. Mills relies so
47 far as those opinions pertain.

1 So far as the land claims interview transcripts
2 go, so far as I am aware and I have no reason to doubt
3 otherwise, every interview done with a hereditary
4 chief which was initially taken by way of a tape, for
5 those that have been transcribed, and my learned
6 friends well know that not all of the ones that were
7 taken in Gitksan and Wet'suwet'en have been
8 transcribed and there are untranscribed, a few I
9 think, untranscribed Gitksan and Wet'suwet'en tapes,
10 but those ones that have been translated and
11 transcribed have been disclosed, and there were full
12 disclosures on that. In fact, my learned friend wrote
13 to me asking if I could elucidate references made by
14 Dr. Mills in her report to those disclosures which
15 were made last November and that was done.
16 So far as the references to Ruth Murdock goes, my
17 information is, although it is not precise on this,
18 that the report of -- or at least the -- a draft
19 document written by Ruth Murdock was disclosed in the
20 spring of 1987, and in that document the references
21 are made to certain interviews that were undertaken by
22 persons under the direction of Miss Murdock and those
23 were not requested of me until last night, and I have
24 made efforts to try and ascertain if these interviews
25 are around, and so far as I am aware I have no
26 knowledge if they are available but, so far as this
27 witness is concerned, this witness made reference to
28 the report and, so far as I understand her evidence to
29 be, she made no reference to the interviews and they
30 don't in any way found a factual basis for the report.
31 So that having been stated I think that if there are
32 specific issues with regard to what I take from Ms.
33 Koenigsberg to be a supposition that there may be a
34 translated and transcribed hereditary chief interview
35 available that she knows of that hasn't been
36 disclosed, then I would like to hear about it. I
37 would like to know what she means by it. And if there
38 is a specific reference to an interview and a date, I
39 will do what I can to try and explain that or to get
40 it for her but I think that -- I think that my friends
41 should have available this information and I am doing
42 what we can to get this information for them but I
43 think I would be well assisted if this -- if these
44 requests had come to me and the kind of specifics that
45 would help me determine them.
46 Now, my learned friend Mr. Mackenzie asked for me
47 to produce these interview notes which apparently were

1 made in reference to the Murdock report. He did so
2 yesterday and I made my efforts this morning -- or
3 last night actually and further this morning to try
4 and get those to him, but I do think that if -- my
5 friend at least identified for me, though not what I
6 considered to be in a fully timely way, those portions
7 of Miss Murdock's report that he wanted and, fair
8 enough, I will try my best to get them for him.
9 THE COURT: You haven't persuaded me to change my ruling.
10 MR. RUSH: It wasn't intended to change your ruling, my lord. I
11 was simply trying to state for the record where we
12 stand on this, and that my friends may have left you
13 with an erroneous impression that efforts weren't
14 being made to meet these issues and I fully concur
15 with your lordship that, at the end of the day, the
16 question of fairness in terms of document and fact
17 disclosures will be weighed up, and I want my friends
18 to be satisfied that this information is available, if
19 they can ever be satisfied, and that may be a
20 tremendously big supposition on my part. Having said
21 that, my lord, and perhaps taking too many minutes of
22 the court's time, I am prepared to proceed if your
23 lordship wishes.
24 THE COURT: Yes, thank you.
25 MR. RUSH:
26 Q Thank you.
27 Now, Dr. Mills, referring you back to the document
28 which is before you and again you were ground to a
29 halt on page 56. You had indicated that it was the
30 perception of the Wet'suwet'en people that their early
31 origins were to a village known as Dizkle; is that so?
32 A That's correct.
33 Q And is there a tradition which is found in the oral
34 tradition or in the Kungax, K-u-n-g-a-x, regarding the
35 residents or habitation of the village of Dizkle?
36 A Yes, there is. There is -- in fact there are more
37 than one references to this as the origin of the
38 Wet'suwet'en.
39 Q In -- what's the form that the oral tradition takes
40 among Wet'suwet'en?
41 A The oral tradition of the Wet'suwet'en is called
42 Kungax. It is -- there are stories which are recited
43 by people who are considered validated to recite them.
44 Kungax also has other meanings, however. It brakes
45 down into several words. The kun means spirit or
46 spirit power.
47 Q That's k-u-n, is it?

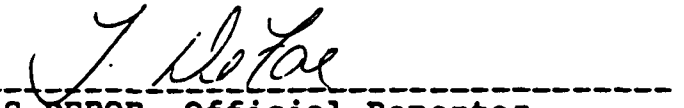
A Yes, the first part, and the gax added on means also the trail of song or trail of power, so there are several senses in which the word is used. It also refers to the enactment of crests or -- by the Wet'suwet'en.
Q And by enactment you mean?
A The dramatization of power typically associated with hereditary title. There is also a corpus of songs which are sung which are different from the recitation of a Kungax but same terminology is used for both.
Q All right. And the song, how does that relate to the recitation of the Kungax, if it does?
A A song may be used almost as the validation for a crest in place of an oral recitation by the Wet'suwet'en and often in the feast hall. Rather than an account being recounted, instead you have the enactment of a crest and the singing of a song.
Q In the sense that you have described the singing of a song or the kun, have you heard songs sung in that context at a feast?
A Yes, I have.
Q And in terms of a dramatization of the Kungax in the sense that the word is used there, have you seen such dramatizations?
A Yes.
Q And what would be one example of such a dramatization which you had observed?
A The dramatization we already have in the court record of Alfred Joseph describing Wahtahkeg'ht and his enactment with the hook.
Q What did you observe?
A This was at the feast that was taken where Wahtahkeg'ht took his name, I did not observe that one. I observed the dances, for example, when Chief Sowis took her name.
Q S-o-w-i-s?
A That's right.
Q And was that at the Mat Michell funeral feast?
A That's correct.
Q What, if you can say, is the subject matter of the Kungax or oral tradition of the Wet'suwet'en?
A The Kungax of the Wet'suwet'en portray their perception of their history and of their acquisition of crests and titles, their relations with other people, their wars and events that took place with other peoples.
Q Okay. And have the Kungax been recorded in a

systematic way by any ethnographers?
A Yes. Jenness did a very systematic recording of the oral tradition of the Carrier which he published in 1934.
Q And among those oral traditions, were there traditions that related to the Wet'suwet'en?
A Yes. The corpus of myths which Jenness recorded --
THE COURT: I am sorry, the corpus?
THE WITNESS: The corpus of myths which Jenness recorded, what he calls myths of the Carrier Indians, include 51 of the Wet'suwet'en and 31 of the Eastern Carrier approximately.
MR. RUSH:
Q Is there -- you indicated that his recording was systematic. Were there any deficiencies in his recording of the Kungax that you observed?
A Jenness is remiss in not having described in this monograph the circumstances under which he was told these -- the oral traditions, or the person who told him the oral traditions. We don't know whether the person told them in their native tongue and that was translated by someone, or whether that was told in English, for example. Other points of omission in the record that we have are that there are a number of places, rivers, villages, lakes, et cetera, which occur in the Kungax, and we don't -- Jenness does not provide us with a place name so that it is impossible to identify exactly where this -- these events took place. In some instances, he -- the place is recorded; in others, it is not.
MR. RUSH: Okay.
THE COURT: Excuse me, Mr. Rush. I am going to adjourn for a moment, but before I do, I wasn't sure that I got the word you used in relation to the crests. Did you say acquisition of crests or apposition of crests?
THE WITNESS: Acquisition.
THE COURT: Acquisition, all right. We will take the afternoon adjournment.
MR. RUSH: Yes, thank you.

THE REGISTRAR: Order in court. Court will recess.

(PROCEEDINGS ADJOURNED AT 3:02 p.m.)

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



TANNIS DEFOE, Official Reporter
United Reporting Service Ltd.

(PROCEEDINGS RESUMED FOLLOWING SHORT RECESS)

ANTONIO MILLS, Resumed:

EXAMINATION IN CHIEF BY MR. RUSH: (Continued)

MR. RUSH:
Q My lord, I wonder if we could reserve the next exhibit number, 906, for the document that has been tendered but not exhibited?
THE COURT: Yes.
MR. RUSH: Thank you. I one wonder now, madam registrar, volume three.
Q Please turn to tab 25, Dr. Mills. Can you identify the article that's located at that tab?
A Yes, I can.
Q What's that, please?
A This is Diamond Jenness monograph, Myths of the Carrier Indians of British Columbia, published in 1934.
Q Did you rely on the contents of this document in the formulation of your opinion?
A I did.
MR. RUSH: Can that be an exhibit, please?
THE COURT: Yes, 907.

(EXHIBIT 907: ARTICLE MYTHS OF THE CARRIER INDIANS OF BRITISH COLUMBIA BY DIAMOND JENNESS, 1934)

MR. RUSH:
Q And when Diamond Jenness refers in the title of this monograph to Myths of the Carrier Indians of British Columbia, what do you understand he means by the term myths?
A I think he means oral traditions.
Q Are these the Kungax to which you have referred?
A Yes, the same as the Kungax.
Q And Diamond Jenness, can you tell his lordship who was Diamond Jenness, what time he did his work, please?
A Diamond Jenness was a geographer from New Zealand who came to Canada on an expedition to do some work, and began doing ethnographic work, became one of the chief ethnologists of the Museum of Man. He is also the author of a book, Indians of Canada. He himself did considerable field work with North American Indians amongst the Wet'suwet'en and the Sekani.
THE COURT: Actually, his monograph, myths, he calls them tales.

1 MR. RUSH:
2 Q He refers to them as well, Dr. Mills, in the first
3 paragraph, "These tales were collected in the winter
4 of 1924-'25 at Hagwilget." He refers to them both as
5 tales and myths. Is there any significance in your
6 mind as to what the difference in those two words, so
7 far as you understand, what these recordings list?
8 A This is, unfortunately, all we are given about this
9 corpus of oral tradition. He doesn't say what he
10 means by tales or myths, all he does -- or anything
11 about the informants who told him these myths or
12 tales, or how he is defining the term or under what
13 circumstances this corpus was collected and under what
14 circumstances they were told. So, this, today, a
15 ethnographer collecting an oral tradition would record
16 these features.
17 Q This -- the number of entries with regard to the
18 Wet'suwet'en people are identified here under the
19 reference name of Hagwilget?
20 A That's correct.
21 Q And how many did you say there were?
22 A There were -- there are 51 that were gathered at
23 Hagwilget and 31 that were gathered among the Eastern
24 Carrier, either at Fort Fraser or I think Stony Creek.
25 Q And for the purposes of your study, you -- did you
26 analyze the ones that were in reference to the
27 Wet'suwet'en?
28 A That's correct.
29 THE COURT: Are they the only ones you used or referred to?
30 A I used the ones at Hagwilget for the Wet'suwet'en.
31 THE COURT: Only?
32 A Yes. I read the others but I didn't include them as
33 speaking to the Wet'suwet'en.
34 MR. RUSH:
35 Q Now, are you aware from your reading of Jenness how
36 Jenness accumulated this data?
37 A No, he doesn't give us any indication.
38 Q Are you aware over what period of time he collected
39 this?
40 A Well, we know that he collected this corpus at the
41 same time that he was doing field work with the
42 Bulkley River Carrier, who I will henceforth just call
43 Wet'suwet'en, and that was for four months in
44 1924-'25.
45 Q Was -- to your knowledge was that the only time that
46 Diamond Jenness undertook a recording of the oral
47 tradition of the Wet'suwet'en?

1 A It's the only time that he came to the area, yes.
2 Q In respect of -- you mentioned that Mr. Jenness did
3 not have or at least today there are not retained any
4 field notes with reference to the field trip that he
5 took in 1924 to '25, did your comments apply as well
6 to the collection that's found in this volume?
7 A That's correct. There is no original handwritten
8 notes available.
9 Q Now, Jenness recorded these oral traditions in 1924 to
10 1925, to your knowledge had there been any recordings
11 of Wet'suwet'en traditions prior to that time?
12 A Morice had gathered a few prior to Jenness's arrival.
13 Q This is Father Morice, is it?
14 A That's correct.
15 Q And are you able to put a date to the time that he did
16 that?
17 A He arrived in 1885 and it was sometime during the
18 period between 1885 and 1906 that he recorded some of
19 the oral tradition but he did not record a great deal.
20 Q And by some, are you able to put a number to the
21 quantity?
22 A He has one article in which he describes three myths
23 of the Carrier, for example, and I think that there
24 may be interspersed in his voluminous writing
25 references to a few more. In other words, Morice did
26 not undertake a systematic collection of the oral
27 tradition of the Carrier. Most of his work pertains
28 to the Eastern Carrier, who are quite distinct from
29 the Wet'suwet'en.
30 Q All right. Now, I will ask you, if you will, please,
31 turn to page 240 of this exhibit to an entry under
32 number 60, called Origin of the Tribes. I would ask
33 you if you made reference to this when you drew your
34 conclusions about the Wet'suwet'en perception of their
35 early origins at Dizkle?
36 A This was one of the sources that I used, indeed.
37 Q And would you refer his lordship perhaps on page 241
38 to what it was that you noted?
39 A In entry 60, there is a -- there are three versions,
40 A, B and C, -- D, there are four versions of the
41 origins of tribes as told by Jenness at Hagwilget.
42 And I have referred to these.
43 Q I refer you on 241 to item C, and this refers to there
44 being, "Long ago there were two villages, Dizkle or
45 Mosquito Flat 12 miles above Hagwilget on the Bulkley
46 River, inhabited by Carrier Indians, and Temlaham four
47 miles below Hazelton on the Skeena River, inhabited by

1 Gitksan Indians."
2 Is this the reference that you made, among others,
3 to the sourcing of the original homeland of the -- or
4 village of the Wet'suwet'en?
5 A Yes.
6 Q Now, are there other similar references?
7 A Yes, the version C, B, and D all refer to Dizkle as
8 the origin of the Wet'suwet'en. In addition to this,
9 Morice refers to it too, to Dizkle as the original
10 village in his collection of information from the
11 Carrier as well.
12 Q All right.
13 THE COURT: Where did you say there are other references to
14 Dizkle? In D there is a reference to Mosquito Flat. C
15 we have looked at. Where is the other one?
16 A Sorry, it's not B. C, Mosquito Flat is -- it's C and
17 D here, you're right.
18 THE COURT: Just C and D?
19 A That's right. B is another --
20 MR. RUSH:
21 Q Now, I wonder if you would please turn to page 234.
22 And I would ask you if during the course of your
23 review of the Kungax you made reference to the entry
24 at number 51, under the origins of the crests of
25 Guxlet and Kanoots?
26 A I did.
27 Q And can you just direct his lordship's attention to
28 this particular Kungax as it relates to the origins of
29 the Village of Dizkle?
30 A This -- this A, version A, under number 51, isn't
31 talking specifically about the origin of Dizkle, but
32 is talking about a renewal of Dizkle. Mosquito Flat,
33 as you will see, is referred to as the same as Dizkle.
34 This is talking about the origin of a chief, a chief's
35 name which is still extant among the Wet'suwet'en. He
36 is talking about the origin of Chief Goohlaht, and the
37 story recounts how at Dizkle there were people living,
38 and there was a war, enemies came, and all the people
39 were killed with the exception of one woman, and this
40 woman wandering in the wood unearthed a suppine figure
41 under the ground.
42 THE COURT: I have read this, if that's what you're repeating.
43 A All right. And from this, from this resurrection of
44 the man began the -- was the origin of the chief
45 Goohlaht, and at this time the village was
46 re-populated. They erected a totem pole at Dizkle and
47 in the versions -- there are several versions

1 described here, people -- there are wars with other
2 people, and in one of the versions the enemies who
3 Goohlaht does war with, he eventually invites to feast
4 with him and makes peace and that -- and with this
5 feasting, these people come and settle with him at
6 Dizkle.
7 Q Does Jenness himself comment on this particular oral
8 tradition?
9 A Jenness comments on this in his 1943 monograph.
10 MR. RUSH: Could I ask you, madam registrar, to place before Dr.
11 Mills volume one -- excuse me, volume two.
12 Q Please look at tab 24, can you identify the article
13 that's at that tab, please?
14 A Yes, I can. This is Diamond Jenness's monograph, the
15 Carrier Indians of the Bulkley River, their social and
16 religious life.
17 Q Did you rely upon this in the -- in the research that
18 you did, in the formation of your opinion?
19 A I did.
20 Q And the Carrier Indians of the Bulkley River, to whom
21 is Mr. Jenness referring?
22 A He is referring to the Wet'suwet'en.
23 Q And do you know on what information this monograph was
24 published, upon which it was based?
25 A It was based on Jenness's field work in 1924-'25 for
26 four months with the Wet'suwet'en at Hagwilget and
27 Moricetown.
28 MR. RUSH: I would like that to be the next exhibit.
29
30 (EXHIBIT 908:JENNESS ARTICLE - THE CARRIER INDIANS OF
31 THE BULKLEY RIVER THEIR SOCIAL AND RELIGIOUS LIFE)
32
33 Q If you could just turn, please, Dr. Mills, to page
34 476, over to page 477. If you would just review that
35 passage, please. And is it that to which you have
36 made reference with regard to Jenness's evaluation of
37 the oral record?
38 A Yes.
39 Q And to what is he referring when he makes reference to
40 the Guxlet, the residents of Guxlet at the bottom of
41 page 476 and 477, is that the same Kungax, oral
42 tradition, that you have just referred us to, his
43 lordship to?
44 A Yes.
45 Q Now, in terms of the early origins of the Village of
46 Dizkle, are there other accounts that you recorded or
47 referred to to determine the origin of that village?

A I have mentioned that Morice mentions Dizkle, Barbeau does as well. And there are contemporary accounts by the Wet'suwet'en people. The Wet'suwet'en people continue today to cite Dizkle as the origin of themselves, the first village in which they lived.

Q All right. Now, I just want to refer you, if you will, please, to tab 17, if you still have the second volume in front of you. I think --

A This one?

Q Yes. Tab 17 contains a transcription of an interview by Alfred Joseph of Mary George on April 23rd, 1981. Did you refer or at least, review this?

A Yes, I both reviewed it and I referred to it in my report. She also describes Dizkle as the origin of the Wet'suwet'en people.

Q Let me ask you if you also referred to the interview with Mary George at tab 16?

THE COURT: Sorry, where is the reference to Dizkle at tab 17?

A If you will turn to the third page, there are no page numbers here, but the third page and the first full paragraph.

THE COURT: Yes, I see that. And tab 16? Do you want to mark that?

MR. RUSH: Yes, I am referring the witness now to tab 16.

THE COURT: I am sorry, do you want to mark tab 17?

MR. RUSH: Well, it could be convenient to do that. I can do it now. Thank you. May that be the next exhibit, please?

THE COURT: Yes, tab 16.

(EXHIBIT 909: INTERVIEW BY ALFRED JOSEPH OF MARY GEORGE DATED APRIL 23, 1981)

MR. RUSH:

Q And tab 16, Dr. Mills, did you also refer to the interview by Leonard George of Mary George and Gloria George -- I should say by Leonard George and Alfred Joseph of Mary George and Gloria George, dated August 26, 1981?

A I believe I did.

Q All right. Thank you. And I would ask you if you would, please, to look at tab -- excuse me, page 13, and if you made reference to this portion of the interview?

THE COURT: Fourth line from the bottom?

MR. RUSH:

Q Yes, is your attention directed to page 13?

A Yes, it is.
Q Tab 16?
A Yes.
Q And I would ask if you would look at the M. G. reference, which is about a quarter of -- well, a third of the distance from the bottom.
A Yes.
Q It refers to "Duz dleh", do you have an opinion what's being referred to?
A I would agree that that's Dizkle is being referred to there.
Q My question is, did you review this transcript in the course of the preparation of your opinion?
A Yes, I did.
MR. RUSH: May that be the next exhibit?

(EXHIBIT 910: INTERVIEW OF MARY GEORGE AND GLORIA GEORGE BY GEORGE AND ALFRED JOSEPH DATED AUGUST 26, 1981)

MR. RUSH:
Q And Mary George, the evidence has been in this court case that her name was Tsibasaa, had she passed on at the time that you were doing your work at Moricetown?
A That's correct.
Q Okay. Now, in terms of other references to the original Village of Dizkle, did you encounter contemporary hereditary chiefs or Wet'suwet'en people who made reference to that?
A Yes.
Q Who might they be?
A Johnny David, Madeline Alfred, Peter Alfred, the late Peter Alfred, Bazil Michell, Emma Michell.
Q Okay. Now, I moved away from the monograph of Jenness's, which is at tab 24, but in perhaps a synoptic, could you tell his lordship what the subject matter of that monograph is that he did in 1943?
A The 1943 monograph by Diamond Jenness describes, as he says, the social and religious life of the Bulkley River Carrier, who are now identified as the Wet'suwet'en.
Q What aspects of the social life does he cover?
A He covers the clan system, the houses, the crests, feasting, the religion, including medicine men, he has some appendices in which he delineates hunting territories.
THE COURT: I am sorry, what kind of territories?
A Hunting territories, what he calls hunting

1 territories. I am looking at the table of contents.
2 But he did not travel out to these territories, he
3 just identified them from descriptions that were given
4 to him.
5 THE COURT: He is deceased now, is he?
6 A Yes, he is.
7 MR. RUSH:
8 Q Now, Dr. Mills, in your evaluation of the oral
9 traditions as recorded by Diamond Jenness and your
10 evaluation of the Kungax and oral traditions as told
11 to you by contemporary speakers and what you have
12 read, can you tell his lordship how you as an
13 anthropologist read these oral traditions in order to
14 determine what, if any, their significance is?
15 A Yes.
16 Q How would you approach it?
17 A The oral traditions serve as a recording of the
18 history of these people, as they perceive it, as well
19 as of the events in the past which are -- which were
20 important to them.
21 Q And what do you look for when you examine a reference
22 to the oral tradition to evaluate it in terms of what
23 you have just indicated?
24 A An anthropologist going through a body of oral
25 tradition like this notes the events that take place,
26 what is considered important, place names, people's
27 names in this instance, chiefs' names, crest names and
28 crests that occur in the context of the oral
29 tradition.
30 Q If you will, again, refer back to the origins of the
31 crests of Goohlaht and Kanoots, which you have already
32 made reference to at page 234 of volume two which is
33 at tab 23. If you will just --
34 THE COURT: I am sorry?
35 MR. RUSH: Volume three, my lord, page 234 of the first
36 tabulation.
37 THE COURT: All right. I am sorry, I am lost, volume three?
38 MR. RUSH: Yes, it's volume three.
39 THE COURT: Tab?
40 MR. RUSH: 25 at page 234.
41 THE COURT: I see.
42 MR. RUSH:
43 Q Now, in terms of what an anthropologist, as you have
44 indicated, would look for in the oral tradition, if
45 you would look at this particular oral recording and
46 can you identify for his lordship the significance of
47 this Kungax or oral tradition?

A This oral tradition tells us a number of things. It tells us that the Wet'suwet'en placed their beginnings at a place on the Bulkley River, a village, where people lived in cedar houses, that was shared and occupied by other people as well. And it is in this context that there are sometimes raids, the village is decimated and grows up again, and the people make peace with surrounding peoples and reconstitute the village. One of the significant features is that there is a chief name identified in this Kungax, there is also --

Q Who is that?

A This is Chief Goohlaht. It's a chief's name which continues to be used today. And this is considered the origin of Chief Goohlaht. It's the original time that Chief Goohlaht emerges as a chief of the Wet'suwet'en.

Q Who holds the name of Goohlaht today?

A Lucy Namox today holds that title.

Q And in this -- on page 235, Goohlaht is spelled G-U-X-L-E-T, and is that the spelling that you would give to the name today?

A It's not, no.

Q How would you spell it?

A I don't know how it's been spelled in the transcripts so far, but it is sometimes rendered, G-O-O-H-L-A-H-T.

Q Now, there is the name of a party of girls called Kanoots in the paragraph, looks to be fourth from the bottom on page 235, do you see that?

A Yes.

Q Is there any significance to you in use of the word Kanoots?

A Yes, Kanoots is the name of a chief in Madiik's house, it's a name that's still held and used among the Wet'suwet'en today, and this is cited as the origin of that title.

Q In looking at this Kungax, is there anything else that you draw from it of significance?

A The raven which is placed on top of the totem pole, is a crest that's used by the Gitdumden or Wolf Clan of the Wet'suwet'en.

Q All right.

THE COURT: Raven is the crest of the Wolf Clan?

A Yes. A crest.

MR. RUSH:

Q Now, is there anything else in this that you draw significance from?

1 A I draw significance from the fact that the warring
2 nature of the Wet'suwet'en, as they perceive
3 themselves, and the neighbouring peoples, is changed
4 by inviting the people who have been there adversaries
5 to a feast, and the feast then succeeds in making
6 peace with these people, who then settle down with
7 them at this village.
8 Q And there is reference in the last line "after the
9 feast they settled down beside his house and built a
10 village"?
11 A Yes, that's right.
12 Q Is that the reference to having a feast?
13 A Yes.
14 THE COURT: Where do I find that?
15 MR. RUSH: On page 236, my lord, very last line.
16 THE COURT: Yes. Thank you.
17 MR. RUSH:
18 Q Now, is there any reference here to territory that you
19 find significant or not?
20 A Jenness identifies that the territory surrounding
21 Dizkle was considered the unique hunting preserve of
22 Chief Goohlaht upon which no other people could
23 encroach without permission. So this then is linking
24 this chief at a particular village with territory and
25 the control or exclusive rights to that territory.
26 It's also -- shall I add?
27 Q Yes, go ahead, please.
28 A Jenness also says that the house founded by Chief
29 Goohlaht is the house, the thin house, and that
30 remains today the name of the house of Chief Goohlaht.
31 It's a different title but he identified it as being
32 the chief of Tsam'dek'.
33 Q In this particular --
34 A No, that's in the '43, in the 1943 monograph. Not what
35 we have before us, not at this tab.
36 Q Maybe I can just back up. He, Jenness, identifies
37 Tsam'dek' as meaning what?
38 A Tsam'dek' is the village, it's one -- the house, a
39 house occupied by Goohlaht at Dizkle.
40 Q Now, Dr. Mills, if you will just refer to your opinion
41 at page 66, from page 66 through to 68, you there set
42 out your description and opinion with regard to the
43 Kungax that you have just referred his lordship to?
44 A I do.
45 THE COURT: That's of Goohlaht?
46 A That's right.
47 MR. RUSH: Yes.

Q Now, Dr. Mills, in assessing this Kungax that Jenness has recorded and you have made reference to, given the significance that you have indicated, what in -- from your standpoint as an anthropologist, assists you to determine the reliability of the information that you see recorded in this Kungax?

A The fact that there are several versions of this Kungax, as recorded by Jenness, shows that it's an important Kungax and it shows that it's a Kungax which is told by different people. In the Wet'suwet'en tradition, a person is authorized to tell a Kungax if it relates to them and only in those circumstances is a person entitled to recount the story. But since this story relates to more than one people, it is origin of the Kanoots, which is a chief within the Wolf or Gitdumden Clan, as well as to Goohlaht, there are different versions extant of this Kungax, that itself bespeaks of the importance to these people and the importance of maintaining these separate traditions.

Q Is there anything else that you would point to that would assist in your determination of the reliability of the information that's contained there in this Kungax?

A The fact that it's recorded by a number of different sources, this is recorded by Jenness, it's recorded by Morice, it's recorded by Barbeau, it's extant among contemporary Wet'suwet'en, all of this accumulation of different people who have recorded the same Kungax at different times among different, among slightly different peoples, indicates that this is an essential Kungax to the Wet'suwet'en.

Q Is there any significance to you of the mentioning of a chief's name in the Kungax here and the present day existence of a holder of that same name?

A Yes, this Kungax is taken as the origin of that chief. And the fact that that chief exists today bespeaks to the antiquity of the chiefly system among the Wet'suwet'en. This Kungax depicts the Wet'suwet'en living in villages with cedar houses and territory adjacent controlled by chiefs who are the heads of houses at these locations on salmon streams.

Q Now, if we can leave the Village of Dizkle for the moment, in your review of the Kungax and your present day interviews with hereditary chiefs, are there also traditions speaking of the origin of other villages of the Wet'suwet'en?

1 A Yes, there is mention of Moricetown as well. The
2 Kungax that relates to Moricetown tells first of all
3 about the dispersal of people from Dizkle, people had
4 been living at Dizkle, dispersed from there to found
5 other villages such as Moricetown. And at Moricetown
6 certain other events take place such as the marriage
7 of a chief's daughter to a frog, which is said to be
8 the origin of the frog crest of two clans.
9 Q Right. If I may just ask you please to look at page
10 220 at tab 25, again Mr. Jenness is reporting of the
11 oral traditions of the Wet'suwet'en.
12 THE COURT: Page, please?
13 MR. RUSH: It's page 220. And it's entry number 44 entitled
14 "Origin of the crest Kaigyet", K-A-I-G-Y-E-T.
15 Now is mention made here of the Village of
16 Moricetown?
17 A Yes, Moricetown is referred to in this Kungax, in this
18 Kungax, which as you see is placed in the first days
19 we are talking of the sky-god created for each species
20 a boss that was more monstrous than other animals of
21 its kind. Anthropologists seeing a text like this,
22 infer that it is referring to in ancient time, it is
23 not talking about a recent time. And this Kungax goes
24 on to relate how people were hunting in the vicinity
25 of Moricetown in autumn, and then if goes on to talk
26 about how this monstrous creature Utakke arrived and
27 was subdued and became a crest for these people.
28 Q The word Moricetown is used, I presume for the
29 village, could you explain why a word which is
30 apparently of a recent derivation would appear in the
31 text like that?
32 A This is where we would like to know what the original
33 person who recounted the story used in telling the
34 Kungax to Jenness. We don't know if they used the
35 word Moricetown or if they used a word Kaigyet, is the
36 Wet'suwet'en word for Moricetown, or if they simply
37 referred to it as a village. This we can't say
38 because this is all we have. But we can presume that
39 since this is placed in very early times, that -- and
40 Moricetown is referred to, that it's a village in or
41 at the vicinity of Moricetown.
42 Q Of the present day Village of Moricetown, is that what
43 you're saying?
44 A That's correct.
45 THE COURT: Well, as a scientist, when you come across a story
46 such as this, which with your scientific training
47 requires to doubt, and keeping in mind that we have to

1 look at these through the eyes of the person telling
2 it, but does it not lead you to inquire whether there
3 is any substance to it at all? And by that I mean, if
4 it's an improbable story by the values that one grows
5 up to accept, does it not lead you to say, well
6 somebody made it up at some time and therefore it
7 doesn't have much validity?
8 A The way that an anthropologist approaches stories like
9 this is by, for one thing, becoming familiar with a
10 large corpus of stories and this is not in North
11 American Indian oral tradition, an unusual story. The
12 stories of North American Indians typically involve
13 the concept that there were -- the creatures that were
14 created to be in charge of each species of animals,
15 and in this case Kaigyet, this entity that's created
16 to be in charge of mankind. When you have a large
17 number of peoples recounting these kinds of Kungax or
18 oral traditions, then you say to yourself, these are
19 categories that are important to the people, that it
20 is significant that they view things in this way and
21 then anthropologists typically ask the people what
22 they mean by having these kinds of betrayals. But
23 when you have a story that's talking about the first
24 days and these early times when their concept of the
25 cosmology is being established and you have in that
26 context the placement of a particular place, this is
27 seen by anthropologists as being significant because
28 it grounds the two together.
29 THE COURT: Well, I can understand why an anthropologist would
30 find significance in a story of some antiquity, that
31 is that it's been told over and over again, if you
32 know that is so, because it at least places people in
33 locations to tell the story. But when you have a
34 story that starts with a woman hiding in the ground
35 and digging down and finding, sitting or upright, a
36 paralyzed person, still alive, that she digs him up
37 and brings him back to life and he becomes a powerful
38 chief, I recognize the significance of the story being
39 told over and over again, but does it really help you
40 to determine anything more than the fact that the
41 people have been there for a long time? Or are you
42 trying to do anything more than that?
43 A At the moment, in talking about the genesis of the
44 Wet'suwet'en that's what I am intent on doing. It
45 does also talk about their concepts of how things can
46 happen and in that world view, this person who is
47 buried under the ground is significant but that's not

1 what I am dealing with just now.
2 THE COURT: But if it's an improbable story, doesn't it mean
3 that either it was made up at one point, then the
4 inquiry is when, or it has been distorted in the
5 telling and you are not hearing the original story?
6 A No, it can mean that it's talking about another kind
7 of event or reality that is important to these people.
8 For example, this man who is buried in the ground and
9 is then exhumed and comes back to life, this becomes a
10 metaphor for somebody who has very great powers,
11 anyone who obviously cannot or can be buried under the
12 ground and can then be alive, be brought back to life,
13 is not an ordinary human being. And that's one of the
14 statements it's making. This may -- this seems very
15 strange to someone who is not used to it, but the oral
16 traditions of most peoples, indeed, link these peoples
17 to a kind of reality that is outside of what we
18 consider ordinary reality and rather than that meaning
19 that it is -- should be discounted, to them it's
20 making an important message, it's saying this man is
21 very special, he is extraordinary, he is not like the
22 ordinary person who could not be buried in the ground
23 and survive.
24 THE COURT: I don't find it strange at all, I don't find it
25 strange because I think you will find the same thing
26 in every culture.
27 A That's true.
28 THE COURT: But what I am trying to just get a handle on is what
29 is -- what are the areas of significance that it has?
30 A Well --
31 THE COURT: What inferences should we draw from it?
32 MR. RUSH: I think your lordship should know that I am going to
33 direct the witness back to the Kungax in respect of a
34 number of different features and the witness has
35 referred to the purpose of the -- of her present
36 review of this Kungax in terms of its antiquity and I
37 intend to refer her to the fact of the mention of
38 crest names and as well clan and house names.
39 THE COURT: Well, I shouldn't be anticipating the direction. I
40 am sure there is going to be much more of it and there
41 is much more to it than I am seeing, but I am trying
42 to get a context in which I should be viewing this
43 evidence, because I am not exactly sure what the
44 witness is telling me is the significance of this.
45 And maybe she is not telling me that yet.
46 Mr. Rush, it's 4 o'clock. We haven't had a very
47 long day, do you want to go on for a while or do you

1 want to adjourn?
2 MR. RUSH: I am happy to go on, my lord.
3 THE COURT: Mr. Reporter, can you go on for a while?
4 THE REPORTER: Yes, my lord.
5 THE COURT: If we are going to go to five I think we should have
6 a break. If we are going to go to 4:30, we should
7 carry on.
8 MR. RUSH: I was going to suggest we go to 4:30.
9 THE COURT: Let's carry on the way we are then if that's all
10 right.
11 MR. RUSH: I think one of our numbers will be excused.
12 THE COURT: She is excused.
13 MR. RUSH:
14 Q In terms of the references that you have directed his
15 lordship to in the Kungax regarding the early origins
16 of the Village of Dizkle and Moricetown, can you
17 explain to his lordship about the linkage between the
18 Kungax and the age or the antiquity of the references
19 that are contained therein, how you determine that?
20 A Yes. One thing that may assist my lordship is to
21 understand that the very -- perhaps one could say
22 improbable events that are recounted, the more
23 mythical events, are often noted by anthropologists to
24 refer to the times longest ago, to the times of
25 greatest antiquity. So perhaps this is one way of
26 tying in the qualities of these stories with the
27 antiquity of the places that are being mentioned.
28 Q Just on that count, is there a way that -- apart from
29 that evaluation, is there a way of determining just
30 what the antiquity of the Kungax is, given the two
31 things you have drawn here?
32 A They are relating to time in the very far distant
33 past, way before contact, is that what you're
34 referring to?
35 Q Well, just how -- what are the signposts, if I can put
36 it that way, that assist you in determining its
37 antiquity?
38 A They are things like saying, in the first days and
39 then words like in the beginning of time, when those
40 kinds of phrases are used, they bespeak antiquity.
41 Q Now, are there oral traditions or Kungax which mention
42 Wet'suwet'en chiefs or crests and neighbouring
43 peoples?
44 A Yes, there are.
45 Q And are the neighbouring peoples the Gitksan?
46 A In some cases. Even in this Dizkle story they
47 depicted as being both Sekani, by Jenness, and people

1 down river, who are not specified. Once again we
2 would like to know if the person who recounted the
3 story had identified them or if they were not
4 identified. There are other Kungax in which other
5 chiefs are mentioned, and relating to other peoples
6 down river, Chief Woos, for example.
7 Q Is that Woos, W-O-O-S?
8 A Yes. Woos is the protagonist in another Kungax
9 recorded by Jenness, relating to events that take
10 place down river involving whales, which bespeaks of
11 coastal area.
12 Q All right. Does Barbeau make mention of Wet'suwet'en
13 chiefs in the recording of the adaawk?
14 A Yes, he does.
15 Q I wonder if you look at tab 34 of your volume, ask you
16 if you can identify this extract. It's an extract
17 entitled Totem Poles of the Gitksan, Upper Skeena,
18 British Columbia. And I believe certain portions of
19 this have been tendered in evidence already. But I am
20 directing the witness to a new passage. Can you
21 identify this as a publication to which you made
22 reference?
23 A Yes, I can.
24 MR. RUSH: Can that be an exhibit, my lord?
25 THE COURT: Yes. 911.
26
27 (EXHIBIT 911: BULLETIN NO. 61 - TOTEM POLES OF THE
28 GITKSAN, UPPER SKEENA RIVER, BRITISH COLUMBIA)
29
30 Q If you will look at page 129 under the Poles of
31 Arhteeh --
32 THE COURT: I am sorry, the page number?
33 MR. RUSH: 129 is the first page, my lord. I in fact reversed
34 the order of the pages, probably to confuse everyone,
35 including myself.
36 Q I ask you, if you will, please, to turn to the bottom
37 of page 129. And if there you have reviewed the
38 Barbeau publication a reference to a Wet'suwet'en
39 chief.
40 A Yes. Woos appears in this account by Barbeau, he is
41 talking about the relationship of Wolf families at --
42 under Arhteeh at Kitwanga, and talks about connections
43 with Woos as a chief of the Wet'suwet'en. I think he
44 uses the word Carrier.
45 Q Is there, to your knowledge, a present day holder of
46 the name of Woos?
47 A Yes, there is.

1 Q And is that name of the present day holder, is that in
2 your evaluation, connected to the reference that's
3 made here by Barbeau to a Woos that is spelled
4 W-A-W-S?
5 A Yes, it is the same. It's the same chief's name.
6 Q And in terms of the significance of this reference,
7 Dr. Mills, can you explain what do you draw from the
8 mention of the name Woos here?
9 A Well, this indicates also that the chiefs among the
10 Wet'suwet'en were recognized equally by the Gitksan as
11 their chiefs and, indeed, they see some linkage to
12 them.
13 Q And in other Kungax are there references to peoples
14 other than the Wet'suwet'en? You have mentioned in
15 the Goohlaht reference that there was, I believe, a
16 comment about the Sekani people?
17 A That's right.
18 Q And is there a -- are there other references to other
19 peoples in the Kungax that you can refer to? You
20 mentioned the down river people?
21 A That's right. In some accounts the people who are
22 living at Dizkle are described as the Gitksan, the
23 Tahltan, the Carrier and the Sekani. It varies in
24 different accounts but those peoples occur in one
25 account or another, all of those people.
26 Q And I just want to refer you for the moment to page
27 141 at tab 25, this is entry number eight, entitled
28 "The Flood", do you see that?
29 A Is that the other volume?
30 Q This is volume number --
31 A 25?
32 Q Yes.
33 A I see. I am sorry, what page number?
34 MR. RUSH: This is 141.
35 THE COURT: Are you in volume three?
36 MR. RUSH: Yes, I am. Tab 25 at 141.
37 A Hm-hmm.
38 Q In reviewing this Kungax, are there references here
39 that you would glean from this text with respect to
40 other peoples, other than the Wet'suwet'en?
41 A Well --
42 Q And by figures that you recognize?
43 A This Kungax of the flood, there are several versions
44 but the -- talks about people going down to the coast
45 and meeting a person named Satsan and Satsan is one of
46 the chief's names in Samooh's house. It's a name that
47 is -- that continues in existence today among the

1 Wet'suwet'en. And once again accounts that involve
2 flood are taken to be accounts of events that are very
3 ancient.
4 Q Why is that?
5 A Because the flooding of the -- because we think that a
6 major flood that inundated took place a very long time
7 ago. That's one of the reasons. Similar accounts are
8 found in the oral traditions of most people, including
9 in the Judeo-Christian tradition, the flood there is
10 taken as a very early event. The same analogy.
11 Q Now, in terms of clans as portrayed in the Kungax at
12 page 74 of the opinion, you state, and I am quoting:
13 "The Wet'suwet'en Kungax do not recount migrations of
14 these different people to Dizkle. The clan appear as
15 a given in the Wet'suwet'en Kungax depicting the
16 earliest times."
17 Can you explain to his lordship what you mean by
18 that?
19 A Some peoples have oral traditions that recount the
20 beginning of a clan in a particular event, natural or
21 supernatural. The Wet'suwet'en Kungax are noteworthy
22 for always assuming that clans exist.
23 Q What's noteworthy about that?
24 A That means that the clans were the very elemental,
25 earliest features in the social organization of these
26 people. Shall I give an example?
27 Q Just a moment, please. Yes, go ahead.
28 A For example, in some Kungax, after a major event is
29 described, it's said that this person the protagonist
30 in the Kungax, was of the Laksamshu Clan, for example,
31 took this particular object as a crest or it became a
32 crest of the Laksamshu Clan because this person, the
33 protagonist in the Kungax was Laksamshu.
34 Q I wonder if you would please turn to page 240 of tab
35 25 again. This is the recording by Jenness of the
36 oral traditions. And I am here directing your
37 attention to the portrayal of clans. Now, I'd ask if
38 you had reviewed the entries at 59 and 60 with respect
39 to the origins of the crest porcupine and the origin
40 of tribes in your evaluation of the recitation of
41 clans or references to clans in the Kungax?
42 A Yes.
43 Q And, in particular, what would you direct his
44 lordship's attention to in entry number 59?
45 A This is a case where a chief is mentioned, Kweese, who
46 is a -- described here as a chief of the Tsayu or
47 Beaver phratry, Jenness uses phratry as we use the

1 clan.
2 Q So we are to equate the word phratry with clan?
3 A Yes. There is an account where the head chief of the
4 Tsayu or Beaver phratry, one Kweese, bestows a crest
5 on another person with a particular anecdote that
6 marks the beginning of this crest as a crest which is
7 held henceforth -- I am expanding from this -- by in
8 individual who is in Kweese's house.
9 Q In terms of the entry at 60, I ask you to look at the
10 top of page 241, and is there anything that you would
11 point his lordship to there that would assist in
12 determining the clan references?
13 A This is just -- in this passage Jenness is noting that
14 the Wet'suwet'en people equate neighbouring peoples
15 with a particular crest or totemic animal. For
16 example, they are saying in this passage that the
17 Sekani came from a wolf, the Fraser Lake Indians from
18 a mink, et cetera. And this tendency to label other
19 peoples by a totemic kind of name is typical of many
20 North American Indian peoples, including the
21 Wet'suwet'en.
22 Q When you use the expression totemic name, what does
23 that mean?
24 A Often people will be identified by an animal name, but
25 it's not -- there is -- it's used not only as a way of
26 describing the qualities of the people as being like
27 the animal wolf, but it often then becomes assumed to
28 be used as a title for these people. So then you have
29 the different clans associated with different animals
30 in some context.
31 Q You made reference earlier to the Gitdumden as being
32 associated with the wolf?
33 A That's right.
34 Q Is that an example?
35 A Yes, it is.
36 Q All right. Would you please direct your attention to
37 page 214 of tab 25. And it's under entry 41, Origin
38 of the clan-name, Ginerhlaiya, G-I-N-E-R-H-L-A-I-Y-A
39 and the crest Kaigyet, K-A-I-G-Y-E-T.
40 A Hm-hmm. In --
41 Q Now, is there reference here to the depiction of the
42 clan as you referred to in your opinion?
43 A Ginerhlaiya becomes a clan name, here again we need to
44 make this little bridge between Jenness's use of these
45 names. When Jenness says clan, he is meaning what we
46 call house. So this is then the origin of a house
47 name, Ginerhlaiya. And Ginerhlaiya, this tells about

the origin of this title for a Wet'suwet'en house. It also mentions the equivalent name among the Gitksan language, but Ginerhlaiya is a Wet'suwet'en word, and so this is then the sort of origin story that's associated with this particular house, which is still in existence among the Wet'suwet'en. It's recognized as one of the Wet'suwet'en houses.

Q And at the bottom of page 214, in that entry it says, and I am quoting: "One of the clans in the Laksilyu phratry now bears the name Ginerhlaiya. In front of its chief's house at Hagwilget there was formerly an image of Ginerhlai with human faces over its body and limbs."

Now, this particular oral reference makes a connection between the house as it's been identified and referred by you to the Laksilyu phratry or clan?

A That's right.

Q What's your understanding about that connection today?

A Well, these -- this is a -- the same relationship exists today. The house of Ginerhlaiya is still a house within the Laksilyu Clan.

THE COURT: What do you understand an image to be in that context?

A I think in that context it means a carving.

THE COURT: Not a pole?

A Pardon?

THE COURT: Not a pole?

A There are poles that have Ginerhlaiya on them but since if says image, I am not sure that that's what -- I would have to assume that it's just meaning a portrayal of some sort. I wouldn't leap from image to totem pole.

MR. RUSH:

Q On that count, Dr. Mills, are there references to totem poles in the Kungax?

A Yes, there are. And I think that you already have submitted as evidence in this court the photographs of the poles of Ginerhlaiya, in the commission evidence of Johnny David.

Q Your answer was with reference to the poles of Ginerhlaiya. My question was whether in reference to whether in the Kungax there are recordings of totem poles contained within the substance of those?

A Yes, there are two references to totem poles in the body of the Kungax. The one is the totem pole that's erected by Chief Goohlaht at Dizkle, and the second is a totem pole that's erected in the village of the

1 dead, which is again --
2 Q This is in entry number nine entitled the City of the
3 Dead? It's found at page 14.
4 A Of this one?
5 Q Yes, of Mr. Jenness, tab 25. Maybe it's 114.
6 A I suspect so.
7 THE COURT: He seems to start at page 99.
8 MR. RUSH: I am sorry, I cut off the three.
9 Q Dr. Mills, it's page 143. It was my error.
10 A Yes.
11 Q And if you turn to page 144 -- 145, -- I am sorry. I
12 am actually referring you to 147 which is the
13 following Kungax called Kaits, and I don't know if the
14 two are related, although it does begin at page 145 as
15 "A young man one winter travelled along the road that
16 leads to the land of the dead." But the reference I
17 would direct you to is on page 147 on the last full
18 paragraph.
19 A Yes.
20 Q And is that the reference that you were directing to
21 his lordship?
22 A Yes.
23 Q What do you take from that, what's the significance of
24 the reference there?
25 A The significance is that the Wet'suwet'en saw totem
26 poles as being -- well, they recognized the existence
27 of totem poles. One wouldn't refer to a totem pole
28 without being familiar with totem poles. It's a
29 category that's significant to them.
30 Q Now, are there references throughout the Kungax to
31 clan crests?
32 A Yes, there are.
33 Q And I have directed you to some, but in others, in
34 your reading of the material, are there references
35 other than those to which I have directed you?
36 A Yes, there are a number Kungax that describe the
37 origin of a particular crest that's taken by a
38 particular chief in a particular clan.
39 Q All right. And at the bottom of page 79 of your
40 opinion you will see that it says at the bottom of the
41 second full paragraph, "In short clan crests serve as
42 markers of the identity of the clan whether the clan
43 is indigenous or adopted from deep association with
44 peoples from ancient times."
45 Does that articulate your opinion on clan crests?
46 A Yes, it does.
47 Q Now, can you just say on what does that refer, to

which does that refer? Which clan crest, for example, do you mean?
A Clan crests such as the sun crest, bear crest, wolf crest, beaver, frog crest.
Q The beaver and the eagle are associated, I think the evidence has been, with Kweese and the Tsayu clan?
A That's correct.
Q And there has been evidence with regard to a raid upon the people of Kitimat by Kweese and her house and clan members?
A That's correct.
Q Is that recorded in the Kungax?
A Yes, it is.
Q And just ask you, my lord, to turn to page 232, ask you Dr. Mills if you will --
THE COURT: Of the report?
MR. RUSH: No, of tab 25, which is Jenness's recordings of the oral traditions of the Wet'suwet'en.
THE COURT: Yes.
MR. RUSH:
Q And is this the accounting of the war with the Kitimat?
A It is.
Q Have you heard this tradition, this Kungax told by others?
A I have.
Q By whom?
A By Chief Kweese herself.
Q That is Florence Hall?
A That's correct.
Q In the previous Kungax on page 232, reference is made to a -- to Madiik, do you see that in the last sentence on page 232?
A I do.
Q And it refers to a personal crest, that is to say, the antler club, as claimed by Madiik?
A Yes.
Q Do you understand that to be a chief's name held by a Wet'suwet'en person today, currently?
A Yes, I do.
THE COURT: I haven't found Madiik yet.
MR. RUSH: My lord, it's page 232, just above the entry 49, "War with the Kitimat."
THE COURT: Yes. I am sorry.
MR. RUSH:
Q And the sun crest, Dr. Mills, again, if I may just direct your attention to 218 of the Jenness monograph,

I would ask you if this is the reference at the bottom of page 218 that you were directing us to as to the crest that is depicted with reference to one of the clans of the Wet'suwet'en?

A Yes, and this is also the example, one of the examples that I referred to in saying that a particular person, after having a Kungax recounted about them is then said to belong to a particular clan, in this case, Laksamshu, and in this case she is taking a particular crest, sun, sun or moon.

Q Is that a clan that already exists?

A Hm-hmm.

THE COURT: All right. Is it convenient to adjourn now?

MR. RUSH: Yes, my lord.

THE COURT: All right. I find I have got myself somewhat engaged after court hours this week. I won't be able to sit in the evening anyway but I can sit until 5 o'clock every night for the next three days at least.

MR. RUSH: I think it might be advisable to do so tomorrow, my lord. And it may be advisable, given your commitments, on Wednesday. Those aren't firm yet but we may not be able to sit for more than -- well, if the funeral is at 11 o'clock on Wednesday, I would be prepared to start at nine and go to about 10:30, but I don't know if counsel want to or can find some better use for their time than to come here just for that short time. Although we will sit in the afternoon anyway. But I will be glad to discuss that with counsel tomorrow. But unless there is a change, I think we should plan to sit until 5 o'clock and I think counsel should give some thought to Saturday. We won't make a decision on that now. I am sure everyone would like to be free of this for a short time next week.

MR. RUSH: I think some of us have commitments next week pertaining to the case.

THE COURT: I think I understand that, that's why I say we should start looking at Saturday pretty soon.

(PROCEEDINGS ADJOURNED TO 10 O'CLOCK A. M., TUESDAY, MARCH 7, 1988)

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

Wilf Roy
Official Reporter