

1
Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 Vancouver, B.C.
2 January 9, 2007
3
4 THE REGISTRAR: Order in court. In the Supreme Court of
5 British Columbia at Vancouver, this 9th day of
6 January, 2007. Recalling the matter of the Lax
7 Kw'alaams Indian Band and others versus the
8 Attorney General of Canada, my lady.
9 THE COURT: Thank you.
10 MR. KIRCHNER: My lady, just before we get started, I've
11 handed up, with my friend's agreement, an aid to
12 the court. This is -- before Christmas your
13 ladyship asked Dr. Anderson about various spellings
14 of the tribal names, and so we've compiled this as,
15 for some assistance. It sets out the nine
16 plaintiff tribes and some alternate spelling that
17 we've been able to locate in the materials. They
18 actually come from our particulars. There was a
19 question in the particulars asking very -- about
20 whether the tribes were known as any, by any other
21 names, and so these come from that, as well as
22 Dr. Anderson's appendix from her report; so I just
23 provide it for some help.
24 THE COURT: Thank you. That should be helpful.
25
26 MARGARET SEGUIN ANDERSON,
27 recalled, warned.
28
29 MR. MACKENZIE: My lady, yesterday I was referring to
30 some of the maps which have been exhibited in these
31 proceedings, and your ladyship was ahead of us on
32 referring to the maps, and that led me to realize
33 that it may be helpful for the transcript just now
34 to clarify again what maps we're going to be
35 speaking about, and what the exhibit numbers are

36 for this part of the cross-examination. As your
37 ladyship knows, the map book, the blue map book has
38 been marked as Exhibit A, and in that map book
39 there are four tabs, and the first tab is a reduced
40 copy of a large topographical map which is very
41 difficult to read in the map book. Tab 2 is the
42 Lax Kw'alaams overview map, which is also difficult
43 to read, and at tab 3 are the, is the current
44 reserves map, which is not bad, fairly legible. In
45 tab 4 is the Allied Tsimshian Tribes traditional
46 territories provisional draft map.
47 Now, the previous three maps are available in

2

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 much larger versions which I will refer to in a
2 minute. This number 4 has not been marked as an
3 exhibit. We do have an enlarged map which I was
4 referring to yesterday; that's what led me to
5 realize that this traditional territories map has
6 not been marked as an exhibit for identification or
7 as an exhibit in the trial. So for the purposes of
8 the transcript, I'll refer to it as the traditional
9 territories map at tab 4 of Exhibit A.
10 THE COURT: We can give it a letter, if it will be of
11 assistance.
12 MR. MACKENZIE: I think it's my friend's exhibit, my
13 friend's document. I don't know how he feels about
14 that, or I don't mean "feels", what he thinks about
15 that.
16 THE COURT: I think we had intended to mark it for
17 identification.
18 MR. KIRCHNER: I think that was the intent, although I
19 don't think we were going to mark that map for
20 identification. I have no concerns about doing so,
21 other than I'll need to bring in another copy.
22 Right now the only copy is the one on the foam
23 board, but I think we have another one at our

24 office that we could bring in for identification.
25 THE COURT: Uh-huh.
26 MR. MACKENZIE: I'm just carrying on from my earlier
27 comments, my lady. The topographical map which is
28 at tab 1 of the map book, Exhibit A, is marked as
29 Exhibit 1; the large topographical map is Exhibit
30 1. And as your ladyship notes, I mean, it's quite
31 a useful map, but in some ways there's so much
32 information on it, it's a little difficult to read
33 immediately without some examination. The overview
34 map at tab 2 of Exhibit A has been marked as
35 Exhibit B for Identification, and we have an
36 enlarged copy of that available as Exhibit B; and
37 the Indian reserves map, which your ladyship was
38 referring to yesterday in Exhibit 2, and that's the
39 map at tab 4 of the map book, Exhibit A. So we'll
40 be referring to some of these maps in our
41 discussions over the next day or so.
42 THE COURT: Exhibit 2 is at tab 3?
43 MR. MACKENZIE: Tab 3, my lady, I understood this was
44 the Indian reserves map, has been marked as Exhibit
45 2.
46 THE COURT: Exhibit 2.
47 MR. MACKENZIE: Yes. I understand that Dr. Anderson

3
Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 wishes to clarify some evidence that she gave
2 yesterday, my lady. I have no objection to that,
3 subject to your ladyship's direction.
4 THE COURT: All right.
5 THE WITNESS: I can just go ahead?
6
7 CROSS-EXAMINATION BY MR. MACKENZIE, continued:
8
9 Q Yes.
10 A Okay.
11 Q Subject to my friend's comment, perhaps you could

12 tell us what the subject is?
13 A Yes. When we were looking at the copy of "Haa
14 Aani, Our Land", the Thornton's edited version of
15 the report on Tlingit lands from the 1945 report by
16 Goldschmidt and Haas, you drew my attention to the
17 Tlingit use of Dundas and Zayas islands and those
18 areas, and I will say that in my work in "Haa
19 Aani", in that book I was primarily focussing on
20 the testimonies interested in issues of resource
21 management following up on work by Tollefson that
22 is cited in my report, indicating that Tlingit did
23 do things like move spawn from one stream to
24 another and so on. And I should have tried to
25 reconcile the Tlingit claims to those, to their use
26 of those areas, with the fact that those are, under
27 Tsimshian law, Gitzaxlaal territories, and I didn't
28 do that. So that's a gap in my research, and I
29 apologize for that.

30 But having looked at the material yesterday, I
31 didn't follow up and read it because I wanted to
32 clarify today that I'm allowed to get my copy of it
33 and read it, but from what we looked at yesterday,
34 I think there are several points about that
35 material that I wanted to draw your attention to.
36 One of them is that the evidence in the report by
37 Goldschmidt and Haas is different than the evidence
38 from the Tsimshian. The Tsimshian evidence is oral
39 histories, that is the adaawx passed down -- I'm
40 talking it too fast, I apologize -- the adaawx that
41 were passed down from generation to generation.
42 And under Tsimshian law, it's very clear that those
43 are Gitzaxlaal territories, and that they have the
44 rights to allocate and use and so on.

45 The evidence in the 1945 report from
46 Goldschmidt and Haas is a different type of
47 evidence. It's what's called life histories; that

4
Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 is, the individual stories of people using
2 particular lands: I went to this territory and
3 gathered seagull eggs, or my father did or my
4 grandfather did. If we take the fact that these
5 are people in 1945 talking about their
6 grandfathers, then I note that some of the
7 witnesses were born in the 1880s. Their
8 grandfathers then would have been using territories
9 in the period between, at the most, the 1830s
10 forward.

11 In the nineteenth century there was a
12 tremendous depopulation of this area. The
13 statistics are provided in my report. The
14 Tsimshian were not impacted as severely as the
15 Haida, for instance. The Haida, apparently,
16 population went from pre-contact about 10,000 Haida
17 people down to 500, so they were literally more
18 than decimated, down to ten per cent and less of
19 their population. The Tsimshian weren't impacted
20 that heavily, but they were, they did lose large
21 numbers of people due to several smallpox epidemics
22 that have been discussed here, due to the impact of
23 influenza, measles epidemics, increased mortality
24 rates from conflicts due to the advent of guns.
25 Their population went down to about a third of what
26 it was pre-contact. Their territories, therefore,
27 were not being used as intensively as they had been
28 prior to that period.

29 My sense is that those testimonies in the
30 Goldschmidt and Haas report are reliable, and that
31 Tlingit people were using parts of the, camps on
32 Dundas Island to fish halibut and gather seagull
33 eggs. There is no evidence that I've seen so far,
34 and I want to recheck the whole document, but there
35 is no evidence that I've seen so far in that, that
36 they claim them as the equivalent of house
37 territories, which the Tlingit did have equivalent
38 institutions. I believe that they were invited or
39 tolerated or simply not contested, and I don't know
40 at this point the grounds of that, to use those
41 territories, and that they chose to expand into
42 that area because it allowed them greater access to
43 Fort Simpson, for example.

44 So I think that it is possible to understand
45 that both sets of information are valid, and that

46 there is a need to try to reconcile the apparent
47 conflicts. I don't believe that the Tlingit --

5
Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 although they may have oral histories, they do have
2 the equivalent of oral histories, and because we
3 know that the Tsimshian did drive them north out of
4 that area, their oral histories may connect to that
5 area, but I don't believe that any of the houses or
6 the equivalent of houses of the Tlingit claimed
7 those territories in the nineteenth century, but
8 they clearly did use them. And that's what I
9 wanted to -- and there is no evidence of
10 compensation being paid. When we talked about the
11 grease camps at the Nass, I was asked whether,
12 there was a question about whether those were
13 rights to those, or whether they were using them by
14 permission. It's very clear in those Nisga'a, in
15 those camps on the Nass, that there was no
16 compensation paid. So they were used as
17 territories or areas where they had camps, where
18 they had the right to use them.

19 There's no, nothing in the documents that I've
20 seen yet, and I will review those again tonight, to
21 indicate whether the Tlingit use of Dundas and
22 Zayas and so on was similar or not. So I just
23 wanted to clarify that.

24 Q Thank you. Do you recall yesterday, as you say, we
25 were looking at the Goldschmidt and Haas document?

26 A Yes.

27 Q Yes. That's at tab 4 of Part IV Territories Volume
28 1. May we look at that again, please?

29 A Tab?

30 Q Tab 4. And I'd just like to refer again to the
31 second page of that tab. We read, we read a
32 passage from Frederica de Laguna which appears on
33 that page. I just refer you to the left-hand

34 column, the second paragraph on that page:

35

36 "In the early 1940s, a boom in white migration
37 to Southeast Alaska brought questions of land
38 and resource rights to courts of law, where
39 neither precedence nor evidence was sufficient
40 to settle claims."

41

42 Are you aware of that, Dr. Anderson?

43 A That, this paragraph, yes.

44 Q Yes:

45

46 "In 1946, the Commissioner of Indian Affairs
47 assigned a team of researchers - anthropologist

6

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 Walter Goldschmidt, lawyer Theodore Haas, and
2 Tlingit schoolteacher and interpreter Joseph
3 Kahklen - to go from village to village to
4 interview old and young alike to discover who
5 owned and used the lands and waters and
6 understand what rules."

7

8 That's correct? Do you agree with that?

9 A Yes.

10 Q Yes. What I'm saying is, the statement is correct,
11 you agree with the statement?

12 A Yes, that is the --

13 Q Yes.

14 A -- grounds, they present that.

15 Q

16 "Their mimeographed report, 'The Possessory
17 Rights of the Natives of Southeastern Alaska',
18 established strong historical evidence to
19 support Native claims."

20

21 A "Native land claims", yes.

22 Q Do you agree on that -- "native land claims", yes.
23 And do you agree with that?

24 A Yes.

25 Q I'll just carry on with that, my lady, if you don't
26 mind, and Dr. Anderson:

27
28 "Haa Aani, Our Land publishes this monumental
29 study in book form for the first time. A
30 reminiscence by Walter Goldschmidt and
31 introduction by Thomas Thornton explained the
32 genesis, context, and significance of the
33 original report."

34
35 My lady, I will just stop and ask Madam Reporter if
36 I'm -- shall I slow down while I am reading:

37
38 "Previously uncirculated testimony from the
39 original 88 witnesses is included, along with a
40 bibliography and an index of names, clans, and
41 resources. Together they tell the story of
42 this unparalleled investigation of Southeast
43 Alaska Natives' deep material, social and
44 spiritual ties to the landscape, and of the
45 fate of the Tlingit and Haida land claims
46 struggle."
47

7
Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 My lady, we have only excerpts at this
2 particular tab. I'll plan now to bring in some
3 more material from this document to assist us in,
4 as a result of Dr. Anderson's clarification. We do
5 have the table of contents, and you can see that
6 it's -- this is a very detailed and extensive
7 survey that was done, including a detailed and
8 careful examination of the possessory rights of the
9 natives of southeast Alaska. And Dr. Anderson, as

10 you candidly commented in your clarification, we
11 did look at some of the statements made by the
12 witnesses --
13 A That's right.
14 Q -- to the commission, yes, to Mr. Goldschmidt. For
15 example, at page 167?
16 A On page 1 --
17 Q Page 167, at the bottom of the right-hand column,
18 number 78 is the statement of Herbert J. Burton,
19 and as you mentioned, Mr. Burton was born in 1884,
20 and he speaks about his grandfather. And you
21 calculate that his grandfather is probably using
22 these places in the 1820s and 30s, is that a fair
23 summary?
24 A I think that would have been when he was an adult
25 at the earliest, and using territories.
26 Q Right. Can we take it back a little further? Can
27 we take the history back a little further, the
28 grandfather, back to the turn of the century?
29 A Well, somebody who was born in 1884, the generation
30 of his father would have been born in the 1860s
31 probably, and the generation of his grandfather,
32 1820s, maybe.
33 Q Okay.
34 A That would be, I would think, the earliest, but.
35 Q Okay.
36 A He doesn't provide any information beyond that.
37 Q No, that's right, he doesn't talk about his
38 great-grandfather, does he?
39 A No.
40 Q And then at page 168, at the bottom of the
41 right-hand column, number 80 is the statement of
42 Joseph Johns?
43 A Number 80, yes.
44 Q And Mr. Johns was born in 1882?
45 A That's right.
46 Q So we're talking about similar types of --
47 A A similar thing. I notice also in statement 78,

8
Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 Mr. Burton says that he was raised in the home of
2 his grandfather. So his grandfather in 1882 was
3 still alive, which gives us additional sense of the
4 timing.

5 Q That's true, yes. And yesterday we looked at chart
6 number 4, which follows page 169. Again, these are
7 excerpts from a much larger document, and chart
8 number 4 is divided into two pages for convenience
9 of reference. Do you recall we looked at that
10 chart?

11 A Yes.

12 Q Yes. And that -- sorry to repeat, but just for
13 clarification, now, that chart is entitled "Chart 4
14 Southeastern Alaska Showing Land Belonging to
15 Tribes of the Tlingit and Haida", correct? That's
16 what it says on the title?

17 A Yes.

18 Q So you'll agree with me that Goldschmidt and Haas
19 say that Dundas and Zayas islands are lands
20 belonging to one of these tribes?

21 A They accepted this as territories belonging to the,
22 to those groups, yes.

23 Q Yes. And if you go over to the second page there,
24 as we looked yesterday at the bottom of the chart,
25 right down at the southern part of Alaska we see
26 the Ketchikan, Tongass territory, which includes
27 Dundas Island, right?

28 A They include Dundas but not Zayas, I think.

29 Q Good point. They include Dundas, but I think
30 you'll probably agree with me that that would
31 include Zayas as well, since Zayas is just to the
32 north or just to the west of Dundas Island,
33 northwest of Dundas Island?

34 A Yes.

35 Q Yes. And then let's go over to the next page,
36 which is chart -- beg your pardon?

37 A They don't --

38 Q Go ahead?

39 A They don't, however, include it on the map.

40 Q Okay, good point. Let's go over to the next page,
41 which is chart 12. Are you at around the same
42 wavelength here, are you on the same page, chart
43 12?

44 A Yes, uh-huh.
45 Q This says "Saxman, Ketchikan, and Kasaan Territory
46 showing Aboriginal Use and Ownership and Present
47 (1946) Uses". Then if you go over to the second

9
Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 page, which is the bottom of the chart, you see
2 that Zayas Island and Dundas Island are included in
3 the Tongass territory?

4 A They are. I do note that there were no cabins and
5 no other villages or anything noted on there, as
6 there are on the rest of the map.

7 Q Good point. However, as we noted, the witnesses --
8 sorry, I don't mean to say "however". What I mean
9 to say is that Mr. Johns said that the Tongass
10 people had a summer village which was used for
11 getting halibut and seaweed at Zayas Island. That
12 would seem to indicate that there was, had some
13 dwellings there. Do you agree?

14 A Can we look at the testimony you're, we talked
15 about?

16 Q Yes, that's right. Let's look at the testimony
17 again, look at testimony of Mr. Burton, page 168,
18 the bottom of the column or the left-hand column on
19 page 168, the last paragraph:

20
21 "Our people used to go to Dundas and Zayas
22 islands for seaweed and halibut and seagull
23 eggs. There were a lot of houses there."
24

25 Do you see that?

26 A Yes. In looking at this, I think it's important to
27 compare what he says about that area to some of the
28 other areas that he talks about. If you look up at
29 the top of the page, for instance, the first full
30 paragraph -- I'm sorry. It begins:
31

32 "Northward from Cape Fox belonged to the Cape
33 Fox or Saxman people. Nakat Inlet was owned by
34 the chief of the Wolf Clan."
35

36 In the next full paragraph:
37

38 "Fillmore Inlet was owned by the Raven Clan."
39

40 In the next paragraph:
41

42 "Willard Inlet is owned by the clan of William
43 Brown's father."
44

45 And so on. So you go through this, and most of
46 them are then owned by statements that they
47 belonged to a particular clan, which is the

10

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 equivalent of the Tsimshian houses.

2 In the section on Dundas and Zayas islands,
3 what he says is:
4

5 "Our people used to go to Dundas and Zayas
6 islands for seaweed and halibut and seagull
7 eggs. There were a lot of houses there."
8

9 But he doesn't attribute it to any clan, and he
10 doesn't say who owned it, and I don't think, in
11 fact, reading this, that this is a claim of
12 ownership. I think that they went there for
13 whatever reason in the nineteenth century; I think
14 they were allowed to go there. There are a number
15 of possible reasons that might be pieced out still
16 from the evidence, one of which might simply be
17 that the population depletion, there wasn't
18 pressure on resources, so that the use by these
19 people was not problematic. Had there not been an

20 imposition of the Indian Act and other sorts of
21 changes in the legal and resource regimes, this,
22 there might have been conflict between the
23 Tsimshian and the Tlingit about this area again,
24 but there was no statement here that clarifies
25 that.
26 Q Well, the Indian Act didn't come into force until
27 late in the nineteenth century, right?
28 A Pardon?
29 Q The Indian Act didn't come into force until at
30 least 1871?
31 A That's right.
32 Q Yes. We're talking about the 1820s, the time of
33 the grandfather, right?
34 A We're talking about some period when his
35 grandfather went there during the nineteenth
36 century.
37 Q Yes?
38 A We really can't say if it was the 1820s or the
39 1860s.
40 Q Okay. And over on page 169, Mr. Burton, sorry,
41 Mr. Johns, in the right-hand column, the last
42 paragraph, says:
43
44 "The Tongass people had a summer village which
45 was used for getting halibut and seaweed at
46 Zayas Island on the Canadian side."
47

11

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 A Yes, he does. But again, he doesn't attribute to
2 any clan.
3 Q He speaks about the Tongass people in several
4 paragraphs?
5 A Yes.
6 Q On the right-hand column?
7 A Tongass is a tribe --

8 Q Yes?
9 A -- similar to one of the Allied Tribes, similar to
10 the Gitzaxlaal, for instance, but within each tribe
11 of the Tlingit there were clans which were
12 equivalent to the Tsimshian houses. So he's
13 talking that the Tongass people, he isn't saying
14 that some clan had this territory.
15 Q Well, he uses the same -- I won't take up too much
16 more time on this, but he uses the same terminology
17 in the two paragraphs above that; this is the third
18 paragraph on page 169, right-hand column, says:
19
20 "The Tongass people used the south end of
21 Prince of Wales Island."
22
23 And then he said:
24
25 "The boundary between our people and Hydaburg
26 is at Cape Chacon."
27
28 I think, Chacon.
29 A He does.
30 Q Sorry, go ahead?
31 A Sorry, he does so. In the left column he gives the
32 other type of statement:
33
34 "George Kegan claims Kegan Cove. His people
35 claimed all of Moira Sound."
36
37 In the next paragraph:
38
39 "Carroll Inlet belonged to my father."
40
41 In the next paragraph:
42
43 "George Inlet and Thorne Arm are claimed by the
44 Crow Clan. They belong to Peter Kyan."
45
46 So he uses both types of statements.
47 Q All right. Goldschmidt and Haas have concluded

12
Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 that Dundas and Zayas islands are included within
2 the Tlingit territories, is that right?
3 A They do.
4 Q All right. If you look, if we look at chart 12,
5 and the last page in that, at that tab, looking at
6 the lower, southern part of chart 12, you see that
7 the territorial boundary also includes parts of
8 Wales Island. Do you see that?
9 A Yes.
10 Q And parts of Pearse Island?
11 A On chart 12 at the bottom we're looking --
12 Q Yes.
13 A -- oh, the Tlingit, not the international boundary
14 but the Tlingit.
15 Q Yes, that's right.
16 A Yes.
17 Q And do you see an indication of a fort, a Tlingit
18 fort on Wales Island?
19 A Do I see what?
20 Q The indication, the symbol for a fort on Wales
21 Island?
22 A On that map?
23 Q Yes, do you see Wales Island? Do you see a black
24 square on Wales Island?
25 A On Wales Island I do, I don't see it on Zayas.
26 Q No, I'm saying Wales Island.
27 A Okay, sorry. On Wales Island there is, yes.
28 Q And you understand that -- I'll rephrase the
29 question. I think I'd like to move on, please, to
30 the next item.
31 A Yes, I'll also note that for Zayas and Dundas
32 Island, the resource uses above the islands are
33 seaweed, seagull eggs and halibut.
34 Q Yes?
35 A And note that those are all off-shore resources.
36 Q Yes?
37 A That none of the uses of these territories for
38 hunting or trapping or salmon or berrying that
39 would have been done on the islands themselves are
40 identified here.
41 Q Right. Mr. Burton and Mr. Johns say there were

42 houses on a village --
43 A They do say that, and those may well have been
44 resource camps used for processing those resources.
45 Q Now, please let me refer you to tab 23 in
46 Territories Part IV Volume 1?
47 A Twenty-three?

13

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 Q Yes. And this is an excerpt from "The Handbook of
2 North American Indians", correct?
3 A That's correct.
4 Q Particularly Volume 7, "The Northwest Coast", and
5 that's the volume in which your and Dr. Halpin's
6 authoritative article appeared, correct?
7 A That's correct.
8 Q And this, if you go over to page 203, is the
9 article in that handbook by Frederica De Laguna,
10 correct?
11 A That's correct.
12 Q And it was Frederica De Laguna with whom you
13 corresponded during your preparation of this
14 report, right?
15 A I did.
16 Q And you, as indicated in that correspondence, had
17 met Frederica De Laguna when she attended the
18 conference that you had organized in 1984, about
19 that time, in Hartley Bay; does that sound right?
20 A That's correct.
21 Q Now, please, this is an article on the Tlingit, and
22 I think you would agree with me that this is an
23 authoritative article?
24 A I do.
25 Q Please let me refer you to the first paragraph of
26 that article under the heading "Territory". This
27 reads:
28
29 "They occupy the fjord-indented mainland and

30 islands of the southeastern Alaska panhandle
31 and, before the establishment of the Canada-US
32 boundary in 1906, had some territory in British
33 Columbia (Dundas and Zayas islands; part of the
34 western shore of Portland Canal)."
35

36 So I take it you agree with that?

37 A She -- this is what she said, and it's her
38 conclusion. I note on the map on the next page
39 that she did not include Dundas or Zayas in Tlingit
40 territory. I have no doubt that the Tlingit felt
41 that they had territories there. Evident in those
42 life histories, certainly from ancient times, they
43 had been driven north from that area by the
44 Tsimshian, and as I said, had external forces not
45 put the border and shaped the history, they may
46 well have had another war with the Tsimshian about
47 this. But the Tsimshian also, the Gitzaxlaal

14

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 particularly, claimed this territory, and would
2 have defended it. So there are conflicting claims
3 on that territory.

4 Q I suggest to you that I've now discussed with you
5 two authoritative articles saying that Dundas and
6 Zayas Island were part of the Tongass territories?

7 A They, they accept the statements of the Tlingit
8 that they claim these, yes.

9 Q Yes. And I want to refer you to one other item in
10 this article, please.

11 A To?

12 Q I'm going to refer you to one other item in this
13 article, and that is on page 209; sorry, page 208.
14 And under "Trade", the second paragraph, the first
15 paragraph indicates:

16
17 "The Tlingit were involved in extensive

18 intertribal trade..."

19

20 I guess you would agree with that?

21 A Yes, in loading -- and the Tsimshian are listed

22 there.

23 Q Yes, the Tsimshian, yes. And the second paragraph

24 says:

25

26 "... Tlingits traded largely as gift exchanges

27 between 'partners' or between 'brothers-in-law'

28 or 'fathers- and sons-in-law'."

29

30 Can you agree with that?

31 A That says among themselves, that is trade within

32 the Tlingit, yes.

33 Q Within the Tlingit tribes?

34 A That's what it says.

35 Q Yes. Then it says:

36

37 "These ceremonial but often exploitative

38 arrangements were also imposed on the

39 Athapaskans and Eyak."

40

41 Would you agree with that?

42 A I have no reason to disagree.

43 Q And it's true as well, wouldn't you agree, that

44 Tlingit trading with the Tsimshian was also in a

45 kinship group context, either biological or social

46 kinship group context?

47 A No, I don't believe that it was. They established

15
Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 trade partnerships, which often also included

2 marriages to cement them, but their trade was

3 trade.

4 Q Yes, and often using marriages to cement the

5 relationships; the relationships were very

6 important, weren't they?
7 A Yes.
8 Q And then over on page 209, the first full
9 paragraph, Frederica de Laguna speaks about:
10
11 "Native trade [brought] walrus ivory and hide
12 from the Bering Sea Eskimo,"
13
14 Do you see that paragraph?
15 A Yes.
16 Q And she carries on:
17
18 "As well as fine Haida canoes, Tsimshian
19 carvings, and slaves. Slaves were among the
20 most valuable trade 'goods' or war 'booty'."
21
22 Do you agree with that?
23 A Yes.
24 Q We discussed this briefly yesterday; I mean, this
25 idea of slaves. And you referred to the article by
26 Donald and Mitchell, and the North Pacific slave
27 trade. Do you recall that reference?
28 A That's right.
29 Q Yes. And also I take it you are aware that Leland
30 Donald wrote a book about slavery entitled
31 "Aboriginal Slavery on the Northwest Coast of North
32 America"?
33 A Actually, I think I had misattributed that as a
34 joint article, but that was what I was thinking of,
35 was the book.
36 Q That's the book?
37 A And I had put them together on it, but it was just
38 Donald, you're right.
39 Q You're familiar with both the article and the book?
40 A Yes.
41 Q Let me suggest to you that both Professor Donald
42 and Professor Mitchell are unequivocal that slavery
43 was important and central to the aboriginal
44 economy?
45 A That's their conclusion.
46 Q And those are authoritative works, aren't they?
47 A They are.

Cross-exam by Mr. Mackenzie (cont'd)

- 1 Q Yes.
- 2 A They are, however, still not -- their conclusions
3 are not uncontested. There are many other people
4 who feel that slaves were much less important
5 economically.
- 6 Q Okay. And then I want to, please, refer you to
7 page 213; page 213, two thirteen, and is it Dr. de
8 Laguna?
- 9 A It is.
- 10 Q Yes, Dr. de Laguna. Dr. de Laguna on page 213 is
11 speaking about the social organization of the
12 Tlingit, and just, you can see the introduction or
13 the heading at the, on the previous page; she's
14 talking about the crests, for example. And I'm now
15 referring you to page 213, the right-hand column
16 where, the second last paragraph, Dr. de Laguna
17 says:
18
19 "All clan and lineage properties, including
20 territories, songs, crests, or heirlooms, are
21 alienable: by sale, as potlatch or marriage
22 gifts, as indemnity for injuries or as part of
23 a peace settlement, or as booty taken in war.
24 If a crest were seized in a dispute between
25 clans, the original owners would feel under an
26 absolute obligation to redeem it, just as they
27 would if one of their nobles had been
28 captured."
29
- 30 I take it you would agree with that?
- 31 A Yes.
- 32 Q Yes?
- 33 A For the Tlingit, sale, outright sale was apparently
34 possible, although I note that this wasn't
35 something that I have seen anywhere for the
36 Tsimshian.
- 37 Q Okay, good. And I see that there is a reference
38 there to Olson 1967; are you familiar with that?
- 39 A Yes.

40 Q Is that an authoritative work?
41 A Yes.
42 Q I see that, if you now look to page 228, you'll
43 see -- page 228, which is the last page?
44 A Okay. Okay.
45 Q The second last paragraph, Dr. de Laguna says
46 "social and intellectual life are stressed", and
47 then she lists some sources, and one of those

17

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 sources, that is the third line there, is Olson.
2 There are several articles by Olson listed there?
3 A That's right.
4 Q Including the 1967 article?
5 A Yes.
6 Q Are you familiar with that article in '67?
7 A Yes. I don't believe it's the one I cited, but.
8 Q Yes. Let's look at tab 13, please.
9 A Thirteen?
10 Q Yes. At any rate, this is the "Social Structure
11 and Social Life of the Tlingit in Alaska" by R.L.
12 Olson, and you'll see on the second page there it's
13 copyrighted 1967; that's, it's very small print at
14 the bottom of the page?
15 A Yes.
16 Q This is the 1967 article?
17 A It's the book, yes.
18 Q It's the book, I'm sorry. And as you say, you're
19 familiar with this?
20 A Yes.
21 Q Yes. And it's an authoritative work?
22 A I believe it is.
23 Q Yes. Just before we go into it, let me just refer
24 you to tab 13 A, and you'll see I've put the
25 excerpt there from Dr. de Laguna's work, page 228,
26 showing the reference to Olson 1967, and then I
27 have the bibliography from the handbook. It's a

28 little difficult to see the pages, but if you go
29 through the bibliography, on page 713 you'll see
30 "Ronald L. Olson" at the bottom of the right-hand
31 column?
32 A Yes.
33 Q And if you go over to page 714, you'll see 1967,
34 "Social Structure and Social Life of the Tlingit in
35 Alaska"?
36 A That's right.
37 Q And that's what we're talking about here, right?
38 A Yes.
39 Q So this was, at this point I think we've dealt with
40 that issue. Now, the first thing I want to refer
41 you to is prefaced at small Roman numeral v, page
42 small Roman numeral v in, is this Dr. Olson again,
43 or do you know?
44 A Yes, it is Dr. Olson.
45 Q Yes, Dr. Olson; yes, Dr. Olson's book. And I'm
46 referring you now to the second full paragraph in
47 the middle of the page, and the second last line,

18
Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 second last sentence in that paragraph. The
2 paragraph itself says:
3
4 "European contact with the Tlingit began in
5 1741 when Chirikof, a member of the Bering
6 expedition -- "
7
8 A I'm sorry, I haven't found the right place. Second
9 full paragraph on the left?
10 Q On the right.
11 A On the right, okay, sorry.
12 Q Let me, "European contact"; do you see that?
13 A The second full paragraph?
14 Q Yes.
15 A Okay, yes, "European contact".

16 Q "European contact with the Tlingit began in
17 1741 when Chirikof, a member of the Bering
18 expedition and commander of the ship "St. Paul"
19 lost two boatloads of his crew who had been
20 sent ashore for fresh water."
21
22
23 And you agree with that, correct?
24 A Yes.
25 Q Yes. And then if you go to the second last
26 sentence in that paragraph, it's six lines from the
27 end of the, from the end of that paragraph,
28 Dr. Olson is speaking about the various
29 ethnographers and the works that have been done
30 studying the Tlingit. Do you see that section
31 there?
32 A Yes.
33 Q And for example, he says:
34
35 "Others who have done fairly intensive work are
36 F. de Laguna and V. Garfield."
37
38 And that's referring to Dr. de Laguna and Viola
39 Garfield?
40 A That's right.
41 Q Then he says:
42
43 "W. Goldschmidt and T. Haas have made a study
44 of land ownership by the various tribes and
45 clans."
46
47 A Yes.

19
Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 Q And so he's referring there to the book, the
2 report?
3 A To the "Haa Aani" book that we've just looked at.

4 Q "Haa Aani" is, perhaps, maybe we could get the
5 spelling of that for Madam Reporter.
6 A H-a-a A-a-n-i, I believe.
7 Q Yes, thank you. Now, please, now go into the book
8 at page 1.
9 A Page 1?
10 Q Yes. Page numbers appear in the lower -- sorry, at
11 the bottom, centre bottom page, centre bottom of
12 the page. Do you see that, page 1, entitled
13 "Tribes, Towns and Households"?
14 A Yes.
15 Q And please look at the right-hand column, at the
16 second full paragraph. Do you have that reference,
17 "The Tlingit, then, are not a single tribe..."; do
18 you see that?
19 A Yes.
20 Q Yes:
21
22 "... but a group of tribes (geographical
23 divisions) who occupied the southeast coast of
24 Alaska from Yakutat Bay in the north (actually
25 from the mouth of the Copper River) to Dundas
26 Island a little below the Canadian boundary on
27 the south."
28
29 A That's what it says. I'll note, however, that,
30 remember, these articles are dealing with
31 traditional society, so we can't really date that.
32 We know that the Tlingit occupied Dundas and Zayas
33 islands at some time depth and were driven north by
34 the Tsimshian, so we don't know when they're
35 talking about here.
36 Q Okay. We do know that Dr. de Laguna says that they
37 were occupying and using those lands until 1906,
38 right?
39 A I don't think we know that. She talks about
40 traditional, and in 1946; I'm not sure those are
41 concurrent coordinating statements that they were
42 then and still are. She doesn't say "and still
43 are", so I'm not sure. She also, of course,
44 includes the Tsimshian community and that island,
45 which we know was a reserve established in 1887.
46 Q Okay. Well, let's take a look at tab 23, page 203,
47 and we're referring now, of course, to Territories

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 Part IV Volume 1. Do you have that, page 203 at
2 tab 23?

3 A Yes.

4 Q Yes. If you look at the upper left-hand corner,
5 upper left-hand column under "Territory", and we
6 just actually looked at this, Dr. de Laguna says
7 before the establishment of the Canada-US boundary
8 in 1906 they had some territory in British
9 Columbia, Dundas and Zayas islands, part of the
10 western shore of Portland Canal?

11 A You're right, she does say that; I apologize.

12 Q No problem. Now, please go to page 3 of this book,
13 this document; the page numbers now appear on the
14 upper right-hand corner of the pages. And please
15 look at the second entry on the right-hand side of
16 the page, the right column, entitled "The
17 Tantakwan", T-a-n-t-a-k-w-a-n; do you see that
18 reference?

19 A Yes.

20 Q And this says:

21
22 "Usually called the Tongass-kwan, the members
23 of this tribe call themselves Tantakwan. Tan
24 ("sea-lion") is the name for Prince of Wales
25 Island. Properly they are the Tanyatak-kwan
26 ("People of the head part of Sea Lion Island."
27 The 'head' part of sea lion being counted as
28 the southern tip of the island.) Traditionally
29 their earliest home village was in Stone Rock
30 Bay but possibly in Moira Sound. This is the
31 only Tlingit tribe which was wholly displaced
32 by the Haida. From Prince of Wales Island they
33 moved repeatedly, to Duke, Anette, Dundas, Cat,
34 and other islands. Probably about 1880 they
35 established their town on Tongass Island and so
36 came to be called the Tongass Tribe."
37

38 A Again, we don't know the dates that would be
39 associated with that chronology.
40 Q So what Dr. Olson is saying is that the Tongass
41 people moved to Dundas Island, correct?
42 A At some point; and we know they were on Dundas on
43 some point.
44 Q So what was the date that the Haida were, the Haida
45 moved north to the Alaska islands?
46 A The Kaigani Haida?
47 Q Yes?

21

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 A I don't know.
2 Q Okay. So that was, would you agree with me if I
3 suggested to you it was early in the eighteenth
4 century?
5 A That what?
6 Q Would you agree with me if I suggested to you that
7 the Kaigani Haida pushed north and displaced the
8 Alaska tribes early in the eighteenth century?
9 A I'd want to check sources before I agreed.
10 Q Sure. Sure. Okay, let's go over to page 4.
11 A I would also remember --
12 Q Yes?
13 A -- want to check more current archaeology, because
14 the time-line for the wars with the Tlingit, which
15 earlier was thought to be just prior to contact,
16 has been pushed back by more recent archaeological
17 research to about 1,700 years ago. So I'd really
18 want to look, to have an archaeologist look at
19 that.
20 Q And you say that recent archaeological studies
21 pushed it, the time back, the Tlingit war back
22 1,700 years?
23 A The wars with the Tlingit, I think, to about 1,700
24 years ago.
25 Q Which archaeological work are you referring to?

26 A Well, some of the work that has been done, for
27 instance, by David Archer, in the Tlingit area,
28 including Dundas Island, in which he has identified
29 a large number of settlements and has done dating
30 of core samples and so on.
31 Q Okay.
32 A The dating of archaeology earlier then, you know,
33 was less certain.
34 Q Okay. And over on page 4, we're now talking about
35 another, would you call these houses or tribes?
36 A Clans, I -- well, they call them houses here, I
37 think, city houses.
38 Q We're now talking about the Sanyakwan, do you see
39 that, the lower, the bottom of page 3?
40 A The Sanyakwan, yes. Kwan is a tribe then,
41 essentially.
42 Q And that carries over on to page 4, and as you say,
43 Dr. Olson lists the houses of that particular
44 tribe. And the first paragraph after the houses on
45 page 4, in the left-hand column he says:
46
47 "The Sanyakwan 'owned' Behm Canal and Boca de

22

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 Quadra."
2
3 Do you have that reference?
4 A Yes.
5 Q Do you see where I am?
6 A Yes.
7 Q
8 "They held the coast to the mouth of Portland
9 Inlet, including Duke and Pearse islands; but
10 when the Tantakwan moved to Port Tongass they
11 took over the claim. Portland Canal was freely
12 used by Tsimshian, Sanyakwan, and Tantakwan."
13

14 A Yes.
15 Q So do you agree with that?
16 A It's certainly what he says, and I don't know
17 enough of the Tlingit literature to dispute it.
18 Q Okay. We can -- Madam Registrar, will you please
19 give Dr. Anderson the map book, which is Exhibit A,
20 and let's look at tab 3, which is the reduced
21 version of the Indian reserves map.
22 A Three?
23 Q Tab 3, yes. This is the reduced version of the
24 Indian reserves map which is, the larger version of
25 which has been marked as Exhibit 2. Now, I'll just
26 refer you up to the north part of this area, so
27 that we can see what we're talking about here. You
28 would see right up at, you see the international
29 border at the top of the map?
30 A Yes.
31 Q And yesterday we looked at Wales Island, and you
32 can see it there?
33 A Yes.
34 Q And also you can see Pearse Island at the top, just
35 to the northeast?
36 A Yes.
37 MR. MACKENZIE: My lady, do you see where Pearse Island
38 is?
39 THE COURT: Yes.
40 MR. MACKENZIE: Just to give an indication of the area
41 we're talking about.
42 Q And the Portland Canal, I guess, would you agree
43 with me that the Portland Canal is the water course
44 through which the international boundary goes?
45 A The Portland Canal is?
46 Q The water course through which the international
47 boundary runs? It's not marked on there, you have

23
Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 to look at another map.

2 A Well, below it is Portland Canal too. I suppose
3 that it's on both sides of that, of those islands,
4 the Portland Canal.

5 Q Well, actually it's Portland Inlet, the one --

6 A Oh, you're right. Portland Canal then, yes.

7 Q Well, Portland Canal is not marked on this map.
8 I'm just wondering if you understand --

9 A It's the international boundary though, yes.

10 Q Yes, all right, thank you. And then, still looking
11 at page 4, if you just keep the map book handy
12 underneath the binder because you may refer to it
13 again, still looking at page 4 in Dr. Olson's book,
14 at the bottom of the left-hand column, Dr. Olson
15 actually refers to the Kiksadi House. Do you see
16 that, the second --

17 A "The Kiksadi owned", is that --

18 Q Yes, that's right.

19 A Okay.

20 Q So he's talking about a house here, right?

21 A Yes.

22 Q A Tlingit house, is that your understanding?

23 A Yes.

24 Q Yes. He says:

25

26 "The Kiksadi owned:
27 (1) Boca de Quadra and its arms.
28 (2) Neets Bay.
29 (3) The area from around Cape Fox to Portland
30 Canal, including Nakat, Willard and
31 Fillmore inlets, also Wales and Pearse
32 islands."
33

34 A Yes.

35 Q Do you see that reference?

36 A Yes.

37 Q Dr. Olson is saying that house, the Kiksadi House
38 owned Wales and Pearse islands, right?

39 A That's what he's saying. I think, didn't he, up
40 above, say that they were freely used by the
41 Tsimshian, Sanyakwan and Tantakwan?

42 Q He's saying the Portland Canal, Portland Canal was
43 freely used.

44 A Yes, he is, okay.

45 MR. MACKENZIE: Yes. So my lady, were you able to see
46 the references?

47 THE COURT: Yes.

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 MR. MACKENZIE:
2 Q Yes, thank you.
3 A These are the Lax Kw'alaams reserves. There's one
4 on Pearse Island, three look like they're on Wales
5 Island.
6 Q Yes.
7 A And then, yes.
8 Q That's right. And these islands are, much of them
9 or most of them are included in the claim in this
10 case. Actually, I'll rephrase that comment; some
11 of these islands are included in the claim in this
12 case as shown on tab 4 of the map book which is
13 Exhibit A. Can you look at tab 4 and confirm that
14 some of the Lax Kw'alaams houses claim parts of
15 those islands?
16 A Yes, they do.
17 Q Yes, thank you. Does your ladyship have that
18 reference? Thank you. Now, please let us go to
19 page 10 of Dr. Olson's book, and let us look at the
20 top of the left-hand -- correction, the right-hand
21 column on page 10. You see here that Dr. Olson is
22 speaking about the house groups?
23 A That's right.
24 Q The Tantakwan, correct?
25 A Yes.
26 Q And as we saw earlier, that is the Tongass, Tongass
27 tribe, correct, or the Tongass people?
28 A Yes.
29 Q Yes. And let's look down at the second paragraph
30 where he talks about the, about Ganaxadi Clan. Do
31 you see that reference?
32 A
33 "The Ganaxadi clan of the Tantakwan had the
34 houses listed below."
35

36 Q Yes, very well said. And if we go down to page,
37 item number 4 on that list, you'll see that the --
38 how do you pronounce that?
39 A Yes.
40 Q How do you pronounce that one?
41 A The Yetla Saxkihit
42 Q Let me get the spelling.
43 A "Yet" is raven, so it's the Raven House.
44 Q Let me get the spelling for Madam Reporter,
45 Y-e-t-l-a -- sorry?
46 A Y-e-t, barred L, that's an L with a line through
47 it, S-a-x-k-i-h-i-t.

25

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 Q Very good. And that's, the translation given is
2 just as you've said, Raven's Bones House, right?
3 A Yes.
4 Q And this was also called, how do you say that?
5 A Waktldedih.
6 Q And give the spelling of that, please?
7 A W-a-k-t-l-d-e-d-i-h, again a barred L, an L with a
8 line through it, d-e-d-i-h.
9 Q And that is people of the Waktldedih Dundas Island,
10 right?
11 A Yes.
12 Q So that --
13 A That's the Tlingit name then for that island.
14 Q Yes?
15 A But again, you can't tell when that name was
16 created.
17 Q Okay. Well then, let's go over to page 55 of
18 Dr. Olson's book. And this, you see a title, the
19 "Ownership of Territory"?
20 A Yes.
21 Q Yes. Now, Dr. Olson clearly agrees with what
22 you've just testified. I'm going to read with you
23 the first paragraph on the left-hand column:

24
25 "It seems clear that the Tlingit did not think
26 of 'tribal' territory as a geographical area.
27 Rather they thought of the ownership of areas
28 by the respective clans of each tribe."
29
30 A Yes.
31 Q And that's what you were saying, right?
32 A Yes.
33 Q
34 "The tribal territory is therefore white man's
35 construct. In other words, the tribal
36 territory is merely the aggregate of the areas
37 owned by the clans; it follows that Tlingit
38 territory can only be properly discussed in
39 terms of ownership by clans, households, and
40 individuals."
41
42 I take it you would agree with that?
43 A Yes.
44 Q And that applies generally to the --
45 A Pardon?
46 Q That applies also to Coast Tsimshian, would it?
47 A That they were house group territories, yes.

26
Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 Q Yes. Let's look at page 56, please. And at the
2 bottom of the lower, lower, the left-hand column,
3 the last title on that column, it says "Ownership
4 in the Tantakwan Tribe", that's T-a-n-t-a-k-w-a-n.
5 Do you see that reference?
6 A Yes, I do.
7 Q And may I read this with you, please:
8
9 "The Tantakwan regard Prince of Wales Island as
10 their early home. Their name is derived from
11 tan (sea lion), the name of that island. After

12 the Haida movement northward, probably about
13 1750, the Tantakwan occupied the eastern coast
14 from Chasina Point, to Cape Chacon."

15
16 Chacon, I think it should be, C-h-a-c-o-n:

17
18 "However, they may have moved from the mainland
19 as they state that they lived on George Inlet,
20 Carrol Inlet, and Thorne Arm 'before the
21 deluge'. They claimed Gravina, Anette, Duke,
22 and Dundas islands."

23
24 A Yes, that's what it says. I believe that's
25 accurate, though I would want to look at more
26 recent archaeology regarding the movement north of
27 the Haida.

28 Q Okay. So you'll agree with me that in this 1967
29 book, Dr. Olson notes that the movement north of
30 the Haida was about 1750?

31 A Actually, this book was published in 1967, but it
32 was his 1939 work that was published then, so it
33 was much earlier than that. And in that, he does
34 say that, yes.

35 THE COURT: Would this be a convenient time?

36 MR. MACKENZIE: Yes, my lady, thank you.

37 THE REGISTRAR: Order in court. Court is adjourned for
38 the morning recess.

39
40 (PROCEEDINGS ADJOURNED AT 11:13 A.M.)

41
42 (PROCEEDINGS RECONVENED AT 11:32 A.M.)

43
44 THE REGISTRAR: Order in court.
45 MR. MACKENZIE: My lady, I have a clarification, a
46 geographical clarification. I misspoke and
47 misstated something earlier this morning, and that,

27
Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 you recall we were talking about Portland Canal and
2 the three nations being able to use the Portland
3 Canal freely, and I suggested to Dr. Anderson that
4 the international boundary goes through the
5 Portland Canal. Well, actually the international
6 boundary goes through Pearse Canal, and Portland
7 Canal is at the north end of Pearse Island. So I
8 would like to refer your ladyship to that, the map,
9 Exhibit 1, where that shows clearly. Let me just
10 see whether -- I don't think it shows on the map we
11 were looking at.

12 THE WITNESS: It shows on tab 1.

13 MR. MACKENZIE: Yes, tab 1, that's correct. This is now
14 referring to Exhibit 1; Dr. Anderson is referring
15 to tab 1, which is the reduced version of Exhibit
16 1. If your ladyship will look up at the northern,
17 the northwestern part of that map, you'll see --

18 THE COURT: Yes.

19 MR. MACKENZIE: You'll see the Portland Canal quite
20 clearly marked, and you'll see Pearse Canal which
21 is where the international boundary goes. So I
22 apologize to you, Dr. Pearse, for misstating that.

23 MR. KIRCHNER: Anderson.

24 MR. MACKENZIE: Dr. Anderson, sorry.

25 Q So Dr. Anderson, that's where the Portland Canal is
26 --

27 A Yes.

28 Q The northwest, the northeast end of Pearse Island,
29 yes.

30 Now, Dr. Anderson, before the morning break we
31 were speaking about the Tlingit ownership of
32 certain territories. Do you recall that
33 discussion?

34 A Yes.

35 Q We were talking about, we were referring to
36 Dr. Olson's book?

37 A Yes.

38 Q And we were actually looking at page 56 of
39 Dr. Olson's book, which is at tab 13 of the Part IV
40 Territories Volume 1, and specifically we were
41 looking at ownership in the Tantakwan Tribe. At
42 page 56 on the right-hand column, Dr. Olson appears
43 to list the various territories that were owned by
44 the Tantakwan Tribe. Do you see that?

45 A That's right.

46 Q And for example, he starts with Ketchikan, and a
47 certain creek at that location. Do you see that,

28

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 number 1?
2 A Yes.
3 Q Yes. And if you go down to page number 16 at the
4 lower right-hand corner of page 56, you'll see:
5
6 "Dundas Island (waktl) was the preserve of the
7 people of Raven's Hat House and Fort House who
8 were sometimes called the Watldedih."
9
10 I think you pronounced it, not that I pronounce it,
11 but something like that, right, Dr. Anderson?
12 A Watldedih.
13 Q Yes, Watldedih. It's, and we've given the spelling
14 of that, but it's W-a-t-l-d-e-d-i-h, People of
15 Waktl. So Dr. Olson is saying specifically that
16 that, Dundas Island was the preserve of that
17 particular house, those particular houses, right?
18 A That's what he says.
19 Q Yes. And as we've discussed so far, you can't
20 really agree with that?
21 A I don't have -- I believe that they claim it, okay.
22 It's important to realize, under Tlingit law, I
23 believe they probably do have the rights to that,
24 that it is their territory. Under Tsimshian law,
25 the Gitzaxlaal have the rights to it. So it's an
26 international boundary dispute, not unlike some
27 that are going on in the world today; China thinks
28 they own Taiwan, Taiwan doesn't. Under those laws,
29 had Canadian sovereignty not brought in other
30 factors, had the economy not changed to shift from
31 only use of traditional territories to the cannery
32 period, for instance, they might well have had to
33 resolve that dispute, either through feasting or

34 through violence, as it had been once before. But
35 there's no question that they both have claims
36 under their own laws to those territories.

37 Q And over the page, on page 57 of Dr. Olson's book,
38 number 17, do you see that, "Zayas Island"?

39 A Yes.

40 Q "Had the same claimants as the proceeding", and
41 there's a footnote there; just for fairness, the
42 footnote says:

43
44 "This area in the south had no claimants among
45 the people of Drifted Ashore House, Raven's Hat
46 House, and Raven House because they came from
47 Taku."

29

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1
2 A That's right, that's what it says.

3 Q So you have spoken in response to, during our
4 discussions you've mentioned several times the
5 introduction of legislation, federal sovereignty,
6 and other factors as influencing the claims and the
7 ownership to these territories. Is that a fair
8 summary?

9 A They were influencing the aboriginal ability to
10 pursue those under their own law.

11 Q But can you agree with me that what you're, the
12 time that you're talking about, starting about
13 1871?

14 A I think when the Hudson's Bay Company entered and
15 that period began, the Hudson's Bay Company, had
16 there been outright warfare between the two groups,
17 would have tried to intervene, although there
18 wasn't, but that was the beginning of the time
19 during which there were an imposition of alien
20 legal structures.

21 Q I see. Well, you will agree with me we looked at

22 some of the Hudson's Bay journals where the
23 Hudson's Bay Company officials are commenting on
24 the fact that there are wars going on at that time,
25 right?
26 A The ones that we looked at, I would have
27 characterized as feuds though. They had to do with
28 somebody being kidnapped or killed, and somebody
29 taking retribution. They weren't about territory.
30 Q Uh-huh. Well, I suggest we don't know whether they
31 were about territory, because we didn't look at all
32 the entries, did we?
33 A There may have been other issues, you're right.
34 Q And certainly the Hudson's Bay Company officials
35 used the word "war", didn't they, when they
36 described the --
37 A They used the word "war".
38 Q Yes. Can you agree with me that the period between
39 about 1750 and getting up to 1787 was a period of
40 instability and turmoil on the northwest coast?
41 A It would be unclear why the date of 1750 was
42 chosen, because first contact in the B.C. coast
43 wasn't until 1787.
44 Q I used 1750 because that's the date that Dr. Olson
45 refers to as the date that the Haida pushed north,
46 pushing the, pushing the Tongass Tantakwan out of
47 their apparently original homelands?

30

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 A That's right, but I would want to check more recent
2 archaeology because I accepted that 1750 was when
3 that happened.
4 Q Okay. Certainly you'll agree with me, I take it,
5 that Dr. Olson, in his book, tells us that after,
6 sometime after 1750, the Tongass were claiming that
7 they owned Dundas and Zayas islands?
8 A Yes.
9 Q Now, please refer to tab 24. This is a document, a

10 book entitled "The Tlingit Indians" by George
11 Thornton Emmons, E-m-m-o-n-s. Now, that book
12 appears as item 14 of your bibliography, is that
13 right?
14 A That's right.
15 Q So you would agree that this is an authoritative
16 work?
17 A I do.
18 Q Yes. And by the way, as you probably noted,
19 because you are very familiar with this document,
20 it was edited with additions by Dr. de Laguna?
21 A That's correct.
22 Q Yes. Now, let's take a look at -- again, these are
23 excerpts. Here's a map, second page in this
24 excerpt, showing the various territories of the
25 Tlingit, and please look at the southern part of
26 that map where the Tongass territory is delineated,
27 and you'll agree with me that that includes Dundas
28 and Zayas islands, correct?
29 A Yes, it does.
30 Q It also appears to include Pearse Island and Wales
31 Island, right?
32 A Yes.
33 Q And looking at the table of contents which is on
34 Roman numeral vii at the bottom of the page,
35 Dr. de Laguna has apparently written a preface
36 entitled "Editing the Tlingit Indians"?
37 A That's right.
38 Q Is that Dr. de Laguna's preface?
39 A I think it is.
40 Q I don't think we have it in here, in this
41 particular excerpt.
42 A No, you don't.
43 Q No. Now, please go to page 6. This is in a
44 chapter entitled "The Land and the People". And if
45 you look on the left-hand column, you'll see a
46 title, "Tlingit". Do you see that?
47 A Yes.

31
Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 Q And there's an asterisk aside the title "Tlingit",
2 and then at the bottom of the page there's a
3 footnote which is, which says "editor's note". So
4 that's a note that was prepared and written by
5 Dr. de Laguna, right?

6 A Yes.

7 Q So this, it would appear from this note that
8 Dr. de Laguna read this section quite carefully --

9 A I'm sure she did.

10 Q -- and edited it. She says:

11
12 "This section was originally the first in
13 Chapter 4, but had been transferred by Bella
14 Weitzner, with Emmon's approval, to the
15 beginning of Chapter 2, and from there to this
16 chapter. I checked and amplified the reference
17 to Dawson."

18
19 So it looks as though Dr. de Laguna has looked at
20 this very carefully?

21 A I'm sure she did.

22 Q Yes. And please look at the second paragraph under
23 that title on page 6; and by the way, my lady, for
24 the transcript, we're now referring to tab 24 in
25 Part IV Territories Volume 1, and looking at page 6
26 of that document. And let me read this with you:

27
28 "While early traditions of the Tlingit connect
29 them with the coast about the mouth of the
30 Skeena River,"

31
32 And do you agree with that?

33 A Yes.

34 Q
35 " ... their territory as settled and claimed
36 through many generations included the coast and
37 contiguous islands of the Alexander
38 Archipelago, from Dixon Entrance [including
39 Zayas, Dundas, and probably parts of Wales and
40 Pearse islands in British Columbia], up to and
41 including Controller Bay. [The latter was,
42 rather, the northernmost limit of direct
43 Tlingit influence]. About the early part of

44 the eighteenth century the Tlingit were driven
45 out of the southern portion of Prince of Wales
46 Island by Haida from Masset on the Queen
47 Charlotte Islands."

32

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1
2 This book was published in 1991, correct?
3 A That's right.
4 Q And this book, as edited by Dr. de Laguna, states
5 that the Tlingit were driven out of the southern
6 portion of Prince of Wales Island by Haida about
7 the early part of the eighteenth century, correct?
8 A That's right. Can we clarify, is Prince of Wales
9 Island the same as Wales Island?
10 Q No; I'll bring in a map, my lady. Prince of Wales
11 Island, let me clarify this with you, Dr. Anderson,
12 Prince of Wales Island is north of the Queen
13 Charlotte Islands.
14 A That's what I thought, yes.
15 Q And my lady, all of our maps are Canadian-biased
16 maps, apparently, and they don't appear to show
17 Prince of Wales Island. However, in an earlier
18 chambers application, not a chambers application
19 but a case management conference, we provided to
20 your ladyship a map of Dixon Entrance, showing
21 Prince of Wales Island, and I will bring that map
22 in. But I think possibly, if you look at tab 3 of
23 the map book which is Exhibit A, you'll see up in
24 the very upper or left-hand corner of one of the
25 islands, and I think that's probably one of the
26 islands which is next, just east of Prince of Wales
27 Island; and so I'll be able to get that for your
28 ladyship and for Dr. Anderson.
29 And I take it, doctor, if you look at the
30 map -- sorry, just to go on a little bit, my lady,
31 if you look at the map, but tab 2 of the map book,

32 which is Exhibit A, this is the map, the overview
33 map which is Exhibit B, you'll see a bit more of
34 those islands which are off the Alaska coast, but
35 we can't see all of Prince of Wales Island, and
36 it's not labelled on this map, so I'll have to
37 bring that map in for Dr. Anderson to take a look
38 at.
39 Perhaps I could ask you this, Dr. Anderson.
40 You're, I take it, generally aware of the location
41 of Hydaburg?
42 A Yes.
43 Q And that's up in, on those offshore islands?
44 A That's right.
45 Q And that's, those are the Kaigani Haida that are up
46 at Hydaberg?
47 A That's right.

33

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 Q And they originated in northern Queen Charlotte
2 Islands?
3 A That's right.
4 Q Or Haida Gwai, as you say?
5 A Yes.
6 Q And as a matter of fact, that's the subject, the
7 subject of the next paragraph on page 6 of
8 Mr. Emmons, or Dr. de Laguna's book, and I'll just
9 read that with you. This is the section, I think,
10 that Dr. de Laguna paid particular attention to,
11 according to her editor's note. Now, I'm referring
12 to the right-hand column, the first full paragraph:
13
14 "Emmons here evidently refers to the report of
15 G.M. Dawson for 1878-79 in which Dawson
16 mentioned a Haida tradition '... of internecine
17 wars as a result of which a portion of the
18 Haidas of the northern part of the Queen
19 Charlotte Islands were driven to seek new homes

20 on the Prince of Wales group. Their story is
21 borne out by other circumstances, and the date
22 of the migration cannot be more than 150 years
23 ago, [i.e. about 1730, or shortly before
24 Bering's voyage of discovery]. These Haidas
25 living beyond the Queen Charlotte group are
26 generally known collectively as Kai-ga-ni,
27 which name is also among the Indians applied to
28 the country they inhabit."

29
30 So it appears that, Dr. Anderson, it appears that
31 Dr. de Laguna looked very carefully at this
32 reference from Dawson, and she has inserted it in
33 this book, stating that the Haida migration must be
34 about 1730?

35 A That's what she says.

36 Q Yes. So do you need any more evidence of that
37 date?

38 A I still would, I'm sorry.

39 Q Okay, don't be sorry.

40 A Yes.

41 Q That's why we want you to be careful, no problem.

42 A Archaeological research in the last couple of
43 decades has really changed the view of the
44 prehistory of this area. It's not clear to me what
45 other evidence she feels establishes that it
46 couldn't have been more than 150 years.

47 Q She said that, or she put this, apparently edited

34

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 this book about 1991; is that correct?

2 A She edited this in 1991, that's right.

3 Q Yes. So you think that there is some
4 archaeological evidence since 1991 that would
5 change that date; is that a fair summary?

6 A Well, I know that the analysis that archaeologists
7 now give their view of the Tlingit-Tsimshian wars

8 puts it much earlier, so I would want to check if
9 there's been any research done on the Kaigani
10 Haida, you know, pushing the Tlingit north, before
11 I did anything else, before I --
12 Q Okay.
13 A -- got into anything.
14 Q I understand. But I take it you'll agree with me
15 that Dr. de Laguna appears to believe that was the
16 date?
17 A She absolutely does.
18 Q Yes, thank you. Dr. Anderson, please refer to tab
19 8 in Part IV Territories Volume 1. Now, do you
20 know Stephen Neary?
21 A I do. Well, I know his work.
22 Q Yes?
23 A Stephen McNeary.
24 Q Stephen McNeary, I beg your pardon, yes. Have you
25 done any work with him?
26 A McNeary did his Ph.D. in this report, and then left
27 the academy. I think he became a computer
28 programmer.
29 Q No doubt more lucrative than this line of work.
30 A Pardon?
31 Q I say, no doubt more lucrative than this line of
32 work, possibly.
33 A Well, the 1990s, the '80s and '90s were a hard time
34 in academia.
35 Q Yes.
36 A A lot of bright young scholars were not able to
37 find permanent positions.
38 Q Well, you have done, you have done research on the
39 Nisga'a, correct?
40 A I've done some.
41 Q Some research. Your handbook article discussed the
42 Nisga'a as well as other Tsimshian?
43 A That's right.
44 Q Your encyclopaedia of Canadian peoples, in
45 cooperation with Susan Marsden and Deana Nyce, also
46 dealt with the Nisga'a?
47 A Yes, Deana Nyce produced the content for the

35

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 Nisga'a for that, Susan Marsden did the Gitksan,
2 and I did the Tsimshian.

3 Q All right. So if we do say that Stephen -- this is
4 an authoratative work, this report for the Museum
5 of Man by Stephen McNeary?

6 A Yes, I would.

7 Q We were talking about this report by Stephen
8 McNeary. This is a final report for the National
9 Museum of Man in Ottawa, 1974?

10 A That's right.

11 Q You say that's an authoritative work?

12 A I think it is.

13 Q Yes. And are you familiar with this?

14 A More with his Ph.D. dissertation, but I've seen
15 this.

16 Q Yes. We have already talked about the Nisga'a
17 territories in our earlier discussion, and do you
18 recall we had quite an intensive discussion about
19 the map that appears in your handbook article?

20 A That's right.

21 Q And you agreed with me that that map shows the
22 Nisga'a territories as including the whole Nass
23 River?

24 A That's right.

25 Q Right. And you've also, you've included that map
26 in your report, correct?

27 A That's right.

28 Q And it's also in the primary source compilations
29 that we looked at yesterday, correct?

30 A That's right.

31 Q Yes. Now, you know, do you speak Nisga'a as well
32 as Sm'algyax, or are they pretty well the same?

33 A They're similar, and I have to admit that I have
34 taught the structure of the Nisga'a to the Nisga'a,
35 but I wouldn't claim to speak it.

36 Q Okay, good. This is, I'm looking at the
37 introduction; Dr. McNeary, I take it he received
38 his doctorate, did he?

39 A He did.

40 Q It says:

41

42 "This paper is a report on fieldwork undertaken
43 under contract to the National Museums of
44 Canada. Among the Niska of the Nass River..."
45
46 A That's right.
47 Q And he said he lived for a year on the Nass River

36

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 over those periods of time. Are you aware of that?
2 A Yes.
3 Q It says most of the time he lived in Canyon City?
4 A That's right.
5 Q And you, of course, have been to Canyon City; I
6 guess that's got a Nisga'a name now?
7 A It's Gitwinksihlkw.
8 Q We'll get the spelling of that.
9 A G-i-t-w-i-n-k-s-i-h-l-k-w.
10 Q And he says in the second paragraph, he says that
11 he visited the fisheries at Fishery Bay, and we've
12 spoken about that, haven't we?
13 A Yes.
14 Q He also says over on page 5 that he learned enough
15 Nisga'a vocabulary to be of some use in
16 interviewing; he does say, do you see that
17 reference there?
18 A Yes.
19 Q And he says most Nisga'a are fluent in English; is
20 that correct?
21 A That is correct.
22 Q And he says, he speaks about his sources of
23 information, Eli Gosnell, 1974. Have you met
24 Mr. Gosnell?
25 A No. Eli Gosnell is deceased now.
26 Q Passed away. Do you know his wife, Mary Gosnell?
27 A No, I don't.
28 Q Is that, is he in the famous Gosnell family at
29 Nisga'a, in the Nisga'a people?

30 A Well, Eli Gosnell, I think, may have been a brother
31 or uncle to Joseph Gosnell, who was the president,
32 first president of the Nisga'a Nation.
33 Q And number 2, Hubert McMillan, do you know him,
34 Reverend McMillan?
35 A I have met him.
36 Q Yes. Over on page number 3, number 6, Titus
37 Nisyok, N-i-s-y-o-k, did you know him?
38 A No. I knew the man who took his name after he
39 died, but I didn't know him. I expect he was gone.
40 Q Yes. Number 4, Peter Nyce, 83 years old, did you
41 know him?
42 A I did. He's a relative of my husband.
43 Q Oh, that's very interesting. And do you see any --
44 I was going to ask you whether Deana --
45 A But he's gone now, too.
46 Q Is there any relation to Deana Nyce?
47 A Peter Nyce would be Deana Nyce's husband's father,

37

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 I think.
2 Q Okay. Anyway, these are all reliable sources,
3 aren't they?
4 A Yes.
5 Q Yes?
6 A Yes.
7 Q I won't go through the rest of them, but do you
8 know Abraham Williams?
9 A Pardon?
10 Q Did you know Abraham Williams?
11 A No.
12 Q Did you know Lucy Williams?
13 A No.
14 Q Okay. And please go to the page following page 8;
15 I don't know which page this is in the original
16 document.
17 A Page what, I'm sorry?

18 Q The page following page 8; page 7, page 7,
19 following page 7?
20 A Okay. Looks like 19, because the page following it
21 is 20.
22 Q Yes, it could be. This is entitled "The Land,
23 Boundaries and Neighbours". And the first
24 paragraph says:
25
26 "As mentioned above, the heartland of Niska
27 territory is the Nass valley from Nass Bay
28 approximately to the mouth of the Cranberry
29 River. This was the area of the winter village
30 sites."
31
32 Do you agree with that?
33 A Yes.
34 Q
35 "Although some clan legends describe migrations
36 into the Nass valley from other areas (e.g.
37 Wrangell, Alaska), I know of no legends that
38 speak of this heartland area as being inhabited
39 by any group of people other than the Niska."
40
41 And you agree with that too?
42 A Yes.
43 Q Then he talks about Portland Canal, which we have
44 already looked at on the map, and Observatory
45 Inlet. At the bottom of the page he says:
46
47 "Portland Canal and Observatory Inlet are now

38

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 considered Niska territory, as indeed they may
2 have been even before the Ts'ets'awut entered
3 this area."
4

5 And I guess you would agree with that, right? I

6 take it you would agree with that?
7 A Yes.
8 Q Yes. And going now to tab 15 in Territories Part
9 IV Volume 1, now, this is entitled "Tribal
10 Boundaries in the Nass Watershed". Certainly you
11 know and worked with, have worked with Susan
12 Marsden; is that correct?
13 A That's right.
14 Q You know Robert Galois, correct?
15 A I do.
16 Q Have you met, do you know Neil Sterritt?
17 A I know him.
18 Q And do you know Richard Overstall?
19 A I do.
20 Q And do you know Peter Grant?
21 A Peter, I've missed --
22 Q Actually, he's the lawyer for --
23 A Peter Grant, I do know him, yes.
24 Q He is now in Vancouver. And this is a publication
25 that they prepared generally based on the, on much
26 of the evidence that was given, the oral history
27 that was given at the Delgamuuk trial. Are you
28 aware of that?
29 A And other sources.
30 Q And other sources right. So are you familiar with
31 this document, this book?
32 A I am.
33 Q And did you agree this is an authoritative work on
34 the boundaries in that area?
35 A It is a work that's considered contentious.
36 Q Contentious, okay. What's that mean?
37 A That some people feel that some parts of it are
38 skewed.
39 Q You mean skewed in favour of the Gitksan, the
40 Gitksan?
41 A I would say.
42 Q Yes, okay.
43 A Or the Gitanyow, specifically.
44 Q Oh, Gitanyow, yes. Well, let me ask you about,
45 well, we haven't, you haven't -- can you agree that
46 it's authoritative at least relating to the
47 comments about the Nisga'a territory and the lower

Cross-exam by Mr. Mackenzie (cont'd)

1 Nass River?
2 A I would want to read them before we --
3 Q Well, look at them. My lady, Dr. Anderson has
4 candidly said that she knows the authors, and is
5 familiar with this book. She has not agreed that
6 it's authoritative; she says, Dr. Anderson says
7 it's contentious and that it may be, or at least
8 some people think it may be biased towards the, I
9 guess the territorial interests of the
10 Gitanyow Nation; is that a fair summary?
11 A Yes. I believe that there are reasons why the
12 claims are made on both sides of this.
13 Q Yes?
14 A I don't know that this explicates all of the
15 issues.
16 Q Yes. May I ask you, my lady, if I just explore
17 this a little bit --
18 THE COURT: Fine.
19 MR. MACKENZIE:
20 Q -- with Dr. Anderson. May I ask you if what you're
21 saying about the contentiousness relates primarily
22 to the boundary between the Nisga'a and the
23 Gitanyow and the Gitksan?
24 A What I'm aware of, yes.
25 Q Can you say, can you agree with me then that other
26 than that, the book could be considered
27 authoritative?
28 A I would want to read the sections in the evidence
29 before I confirmed that.
30 Q So my lady, I think what Dr. Anderson is saying is
31 if she reads some of the material, she may be able
32 to comment on whether she considers it
33 authoritative or not.
34 A That's correct.
35 Q So it's sort of an unusual situation. The book is
36 not considered authoritative, but I was planning to
37 refer Dr. Anderson to specific passages.
38 THE COURT: Are you, let me ask you, are you intending
39 on putting this publication in through any witness

40 in your own case?
41 MR. MACKENZIE: I don't have instructions on that, my
42 lady, so I can't say.
43 THE COURT: You can't say one way or another. Well
44 then, in that case I would say that the publication
45 doesn't get marked as an exhibit. If there's
46 specific statements that you want to put to
47 Dr. Anderson just in general, about --

40
Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 MR. MACKENZIE: All right.
2 THE COURT: -- borders, she can agree or disagree; it
3 doesn't have to be based on what they say in the
4 publication.
5 MR. MACKENZIE: That's fine, my lady. I won't pursue
6 that any further, because my friend is quite an
7 authority on this area. I think he's going to cite
8 the Marquhard [phonetic] case to your ladyship
9 right away.
10 Q Let me move on then to another issue, another
11 subject, please, and this is -- may I refer you to
12 tab 22, please, in the binder, Part IV Territories
13 Volume 1. Now, we have referred to this in
14 passing. This is taken from your book, the
15 "Tsimshian Images of the Past, Views For the
16 Present". Do you have that reference?
17 A That's right.
18 Q Yes. And if you go through the pages, you'll come
19 to this particular article I want to ask you about.
20 It's by George F. MacDonald, and it's entitled the
21 "Epic of Nekt", N-e-k-t?
22 A That's right.
23 Q And you've already agreed with me that this is an
24 authoritative work, right?
25 A Yes.
26 Q So generally speaking, and I think her ladyship may
27 be familiar with this from Dr. MacDonald's

28 testimony, I'd like to discuss some of these
29 passages with you, Dr. Anderson. And generally
30 speaking, what Dr. MacDonald is referring to here
31 is archaeological investigations at the Kitwanga
32 fort, correct?
33 A That's right.
34 Q And then he talks about the grease trails, and he
35 talks about other issues related to, and events
36 relating to proto-contact periods in the west coast
37 history. Is that a fair summary?
38 A That's right.
39 Q Thank you. So let me then, please, refer you to
40 page 74.
41 A Seven four, right?
42 Q Yes, 74; and this is where we're talking about the
43 first use of metal. I mentioned this, you and I
44 discussed this briefly yesterday. Let me refer you
45 then to the second paragraph, first full paragraph
46 on page 74, and I'll just read it with you:
47

41
Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 "The Barbeau and Beynon accounts include some
2 that are literal translations of informant
3 texts called Adaox, or 'The True Traditions'.
4 Some have titles such as 'The First Traders Met
5 By the Tsimshian', and 'The First Use of Metal
6 Among the Tsimshian'. All of the accounts
7 agree that the first Europeans with whom they
8 traded were Russians."
9
10 All right, and I guess you agree with that,
11 correct?
12 A Yes.
13 Q And just going down a couple of lines on that
14 paragraph:
15

16 "The face-to-face trade with the Russians
17 occurred about the same time as that with the
18 Spanish and English in the 1770's and 1780's,
19 but indirect trade occurred earlier. The
20 Russians first arrived in the New World in
21 1741, when they explored the Aleutians.
22 However, even Wrangel's account indicates that
23 substantial use of metal was already
24 established. Cook, Malaspina, and others note
25 that by 1778 the Nootka, Haida, Tlingit, and
26 other Indians were familiar with metals of all
27 kinds."

28
29 So I take it you agree with that?

30 A Yes.

31 Q Yes. And the next paragraph:

32
33 "Therefore, the significant question is this:
34 when did metals and other trade goods first
35 reach the Northwest Coast, and what impact did
36 they make on native cultures? It now appears
37 that metal and trade goods were converging on
38 the Northwest Coast from three or four
39 directions from the very beginning of the
40 eighteenth century, three-quarters of a century
41 before the first Europeans established direct
42 contact. The length of the proto-historic
43 period on this part of the coast may eventually
44 be stretched to a full century."

45
46 Do you agree with that?

47 A Yes.

42
Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 Q Now, we have discussed this as well,
2 "proto-historic" period means the period of
3 indirect contact with European culture, I guess, or

4 goods, prior to first contact. Is that a fair
5 summary?

6 A Prior to direct contact.

7 Q Yes, prior to direct contact. And then
8 Dr. MacDonald, in the next paragraph on page 74,
9 speaks about the transcontinental source of trade,
10 right?

11 A Pardon?

12 Q He speaks about the transcontinental source of
13 trade?

14 A That's right.

15 Q So generally speaking, this is, these are goods
16 and, coming across the continent, across the Rocky
17 Mountains?

18 A That's right.

19 Q Or south, from the southern part of North America?

20 A From Mexico or --

21 Q Yes, Mexico, yes?

22 A Yes.

23 Q Sorry to interrupt, I mean north, from the southern
24 part of North America, okay?

25 A Or from the east, yes.

26 Q Yes. And Dr. Anderson refers to the Ozette,
27 O-z-e-t-t-e site?

28 A Dr. MacDonald does.

29 Q Sorry, Dr. MacDonald, I beg your pardon, at the
30 bottom of page 74. And you're generally familiar
31 with the location of that in Washington State,
32 right?

33 A Yes.

34 Q And he seems to think that the transcontinental or
35 Spanish-American source is more likely than was the
36 previous suggestion that metal all came from
37 Chinese junks. So Dr. Anderson, Dr. MacDonald, on
38 page 76, indicates that Ozette is a proto-historic
39 site that predates Captain Cook; it probably
40 belongs to the early or mid eighteenth century,
41 right?

42 A Yes.

43 Q There appears to have been an extensive amount of
44 iron found at that site?

45 A Say it again?

46 Q There appears to have been an extensive amount of
47 iron found at that site?

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

- 1 A That's right.
- 2 Q Yes. Now, then Dr. MacDonald on page 76, about
3 eight lines down -- my lady, I'm sorry, we've gone
4 past our --
- 5 THE COURT: No, we haven't.
- 6 MR. MACKENZIE: Oh, sorry, it's twelve thirty we stop,
7 beg your pardon.
- 8 THE COURT: A few more minutes.
- 9 MR. MACKENZIE: Yes, I misread the clock, my lady.
- 10 Q Okay, on page 76, Dr. MacDonald is talking about:
11
12 "An even greater source seems to have been
13 through intertribal trade networks..."
14
- 15 Do you see that?
- 16 A Yes.
- 17 Q Yes:
18
19 "... for metals and other items from Siberia;
20 this last source has received the least
21 attention. The earliest Russian posts in
22 Siberia date from the mid-1600s at which time
23 Irkutsk was established. By 1700 Russian goods
24 were flowing into Kamchatka and Chukotka.
25 Their first tentative expedition in search of
26 the New World was prompted by accounts of
27 trading partnerships of the Chukchis with
28 people to their west. Unfortunately, the 1725
29 Russian expedition followed the Asian coastline
30 into the Arctic Ocean without even sighting
31 Alaska. It was not until 1741 that an actual
32 landfall was made in the New World. By that
33 time, trade networks were already flourishing
34 throughout the Northwest in terms of the system
35 of trade partnerships, as well as watercraft
36 and inland trail networks."
37

38 Do you agree with that, all that --
39 A Yes.
40 Q -- Dr. Anderson. Then if you look down at the
41 lower, the last paragraph on page 76, you'll see
42 Dr. MacDonald says:
43
44 "Father Morice states that the first iron came
45 all the way into the Carrier area by 1730."
46
47 Now, do you know who Father Morice was?

44
Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 A Yes.
2 Q Yes. Can you just summarize that?
3 A He was a missionary who worked with what were
4 called the Carrier, now the Wet'suwet'en,
5 W-e-t-'-s-u-w-e-t-'-e-n, who are the group to the
6 east of the Gitksan.
7 Q All right. So going over to page 77, Dr. MacDonald
8 is again speaking about some of the, some of his,
9 some of the results of his archaeological work at
10 Kitwanga fort; and if you look at the third
11 paragraph, getting down towards the middle of the
12 page, he's talking about the various artifacts, and
13 half-way down the page he says, "Nevertheless, it
14 appears that the trade goods"; you see that
15 reference?
16 A Yes.
17 Q
18 "... at Kitwanga Fort are mostly of Russian
19 origin - with a secondary possibility of a
20 Maritime fur trade source which involves
21 traders from many nations in the late 1700s and
22 early 1800s."
23
24 A Yes.
25 Q And again, we talked about this; sorry, the end of

26 the next sentence:
27
28 "They are certainly not of Hudson's Bay Company
29 origin. The Bay did not get established on the
30 North Coast until it built its first post on
31 the Nass River in 1832,"
32
33 And again, that should be 1831, shouldn't it?
34 A Yes.
35 Q Yes:
36
37 "... to block the further expansion of the
38 Russian American Company down the coast."
39
40 So do you agree generally with those sentences?
41 A Yes.
42 THE COURT: I see the time now is --
43 MR. MACKENZIE: Oh, yes, my lady. Thank you. I just
44 have a couple of more references there, but maybe
45 this afternoon will be convenient for your
46 ladyship.
47 THE COURT: All right.

45
Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 THE REGISTRAR: Order in court. Court is adjourned
2 until two p.m.
3
4 (PROCEEDINGS ADJOURNED AT 12:30 P.M.)
5
6 (PROCEEDINGS RECONVENED AT 2:05 P.M.)
7
8 THE REGISTRAR: Order in court.
9 MR. MACKENZIE:
10 Q My lady, Dr. Anderson, I've handed up to your
11 ladyship a copy of the map of Dixon Entrance that
12 we provided to the court at actually two case
13 management conferences, including one in October of

14 this year -- correction, of last year, October of
15 2006. This is a map of the Dixon Entrance area
16 which shows the location of Prince of Wales Island,
17 and we've been talking about that in our discussion
18 this morning. Do you see that, Dr. Anderson?
19 A Yes.
20 Q So that pretty well answers your question about the
21 relationship of Prince of Wales Island and Wales
22 Island, right?
23 A Yes, thank you.
24 MR. MACKENZIE: Yes. My lady, we could mark this as an
25 exhibit, or we could just give it to your ladyship
26 for your convenience and you might slip it into the
27 map book Exhibit A. I'm in my friend's hands, I
28 don't think --
29 MR. KIRCHNER: I have no objection either way, my lady.
30 THE COURT: Do you think you might refer to it again,
31 and we should have it marked?
32 MR. MACKENZIE: Yes. I think that because this area
33 figures so prominently in the evidence, it might be
34 helpful to mark it as an exhibit. And the other,
35 on the other hand, we could just put it into the
36 binder, the Part IV binder volume, Volume 2, and
37 then we wouldn't have to worry about that.
38 THE COURT: Sorry, which binder now are we talking
39 about, the Territories?
40 MR. MACKENZIE: The Territories Part IV Volume 2; and it
41 would be tab, it would be tab 28. We would hole
42 punch the, we could hole punch the map and bring in
43 the tabs tomorrow.
44 MR. KIRCHNER: If I may suggest, my lady, I think it's
45 conceivable that one of the other, one or the other
46 of us might come back to this map with or without
47 this witness, so it may be better to just mark it

46
Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 as an exhibit, rather than have it put in as one of

2 these binders that are really confined to a single
3 witness.
4 THE COURT: It might be harder to find it at a later
5 time.
6 MR. MACKENZIE: Yes, my lady.
7 THE COURT: Let's give it its own exhibit number. What
8 number are we at?
9 THE REGISTRAR: Exhibit 46, my lady.
10
11 EXHIBIT 46: Map entitled Dixon Entrance
12
13 MR. MACKENZIE:
14 Q Dr. Anderson, before we had our afternoon or our
15 luncheon break, we were looking at Dr. MacDonald's
16 paper, or his article on "The Epic of Nekt", which
17 you included in your book on "The Tsimshian, Images
18 of the Past, Views For the Present". Do you recall
19 that?
20 A Yes. Can you remind me the tab number for that,
21 please?
22 Q Yes, tab 22. I refer to page 79, at the bottom of
23 the page, the last paragraph:
24
25 "Summarizing the argument to date, we can see
26 that the Kitwanga Fort National Historic Site
27 is set in a complex framework of intertribal
28 trade and warfare, which dates perhaps as early
29 as the first millennium B.C., when trade and
30 militarism appear in clear evidence in the
31 Prince Rupert Harbour village sites. From
32 those times, a situation of relative stability
33 appears to have prevailed until the early
34 1700's. By that time there is evidence for a
35 widespread destabilization of population
36 through much of the Northwest Coast. From the
37 central coast there was a northern shift,
38 presumably to get closer to the source of the
39 new trade goods filtering through from Siberia.
40 The Haida from the Queen Charlotte Islands
41 pushed the Tlingits further north from the
42 Prince of Wales archipelago about 1720."
43
44 Do you agree with that?
45 A Again, I'd want to check more recent archaeology
46 regarding that date, but in general I agree.
47 Q The only thing you disagree with is the date that

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

- 1 the Haida pushed north from the Queen Charlotte
2 Islands?
3 A Yes.
4 Q Actually, you don't disagree; you like to check
5 the --
6 A Don't disagree what?
7 Q You don't disagree, you like to check --
8 A I'd like to check, yeah.
9 Q -- more information, yes. Dr. MacDonald is quite
10 an authoritative person in these fields, isn't he?
11 A He is.
12 Q And for fairness, I have to, I think, refer you to
13 page 80. My friend may be asking me to read this,
14 or he may read it himself, so I'll do that. The
15 top of page 80:
16
17 "At the same time, the Tsimshian pushed out of
18 the Skeena estuary and dislodged the Tlingit,
19 possibly from the Prince Rupert Harbour as well
20 as from such islands as Dundas at the mouth of
21 the Nass River."
22
23 Do you agree with that?
24 A That's the part for which I believe there is
25 evidence that it was earlier than this.
26 Q Okay.
27 A From more recent archaeology.
28 Q And you're saying it's David Archer you're thinking
29 about?
30 A Pardon?
31 Q You say it's David Archer's work you're thinking
32 about?
33 A I think primarily for me, yes.
34 Q Okay. The second paragraph on page 80:
35

36 "The pattern of warfare became endemic as the
37 destabilization of traditional boundaries
38 continued throughout the eighteenth century.
39 Small forts proliferated at the pressure points
40 along the network of trails. The causes for
41 warfare also changed radically. Oral accounts
42 are consistent that the traditional objectives
43 of warfare were mainly to capture food (Skeena
44 smokehouses were full of fish) and secondarily
45 to capture slaves (who were food producers)."
46

47 Do you agree with those comments?

48

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 A Yes.

2 Q And then the third paragraph on page 80:

3

4 "Warfare on the northwest coast in the
5 eighteenth century, I suggest, was motivated by
6 the desire to control a new and scarce valuable
7 resource. These trade items include metal, and
8 especially such weapons as guns and knives."
9

9

10 Can you agree with that?

11 A I think there were other reasons for warfare as
12 well, but these were certainly reasons.

13 Q Okay. Now, in this article, Dr. MacDonald is
14 saying that from the early 1700s, there was a
15 period of instability and warfare on the northwest
16 coast?

17 A Yes.

18 Q That's what he says in this article, right?

19 A Yes.

20 Q And this is an article that you included in your
21 book, "The Tsimshian, Images of the Present --
22 Images of the Past, Views for the Present";
23 correct?

24 A That's right.
25 Q So as I understand it, your only disagreement is
26 that you think that perhaps David Archer's work may
27 have changed this --
28 A I think a number of recent archaeological studies,
29 perhaps including MacDonald's; I'm not familiar
30 with his recent work.
31 Q Okay. Now, you refer to David Archer; any other
32 archaeological studies you have in mind as having
33 changed this view?
34 A Coupland's work; Archer's co-author in recent
35 studies is, it starts with an M, and I'm going to
36 make him a Mc, but he's not.
37 Q Martindale or Madson?
38 A Martindale, yes.
39 Q Andrew Martindale?
40 A Andrew Martindale, yes.
41 Q We have looked at a couple of his articles?
42 A Yes.
43 Q You think that perhaps some archaeological work
44 done by one of those four people may have changed
45 this theory that Dr. MacDonald sets out in his
46 article, "The Epic of Nekt"?
47 A The, not the specifics of the fort at Kitwanga, but

49

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 the timing of the push against the Tlingit in the
2 Prince Rupert Harbour area and north.
3 Q Okay. Please now refer to tab 5 of this binder,
4 Part IV Territories Volume 1. This is an article
5 or paper by James V. Haggarty entitled "Zayas
6 Island Archaeological Survey Project". Do you know
7 about Dr. Haggarty?
8 A No, I don't.
9 Q Are you familiar with this article?
10 A No.
11 MR. MACKENZIE: Okay. My lady, this is an article which

12 the Crown expert will state is authoritative, and
13 therefore I'd like to, I submit that it should be
14 marked as an exhibit for identification.

15 THE COURT: Yes, we can do that.

16 THE REGISTRAR: Exhibit F, my lady.

17

18 EXHIBIT F FOR IDENTIFICATION: Article entitled
19 "The Midden" dated June 1988

20

21 MR. MACKENZIE:

22 Q If you look at the bottom of page 9 on Exhibit F,
23 Dr. Anderson, you'll see that at the time that this
24 article was written in 1988, Dr. Haggarty was head
25 of archaeology, of the archaeology unit, and acting
26 chief of the human history section of the Royal
27 British Columbia Museum?

28 A That's right.

29 Q Are you familiar with any work -- I'm sorry, I'm
30 just following up on some of your answers. Are you
31 familiar with any of the work that Dr. Haggarty has
32 done with Mr. Richard Inglis, by any chance?

33 A No, I'm not.

34 Q Are you familiar with any of the work that
35 Mr. Haggarty has done with Dr. MacDonald and
36 Mr. Inglis?

37 A No, I'm not.

38 Q I'll refer you to page 9. What this -- by the way,
39 if you look at page 7, you'll see that what this
40 article's about is some archaeological excavations
41 on Dundas Island?

42 A That's right.

43 Q And you see the Dundas Island group, Dundas Island
44 group. And it appears that, if you look at page 8,
45 there was a discovery in 1987, looking at the
46 second full paragraph, there was the discovery in
47 the summer of 1987 of a major village site with 35

50

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 rectangular house depressions near the centre of
2 the study area, and Dr. Haggarty and the
3 researchers asked if this is the type of site one
4 would expect to be associated with the seasonal
5 round in AD 1750. And what they mean, what he
6 means by that is, he's trying to determine whether
7 this is a Coast Tsimshian or some other village;
8 and he concludes that at the top of page 8, under
9 "Settlement Patterns":

10
11 "This site, along with some or all of the nine
12 stone wall fish traps and some or all of the
13 other six general-activity shell midden sites,
14 forms part of an early, Dundas-based settlement
15 pattern that is distinctly different from the
16 pattern described for the Coast Tsimshian in
17 1750."

18
19 What he is saying there is what he has found on
20 this Dundas group island is a village that appears
21 to be different from the Coast Tsimshian village
22 sites. Are you familiar with this research that he
23 did?

24 A No, and I'm, I think he's saying it's similar to
25 those at port -- at the Metlakatla area, right?

26 Q He says it's distinctly different from the pattern
27 described for the Coast Tsimshian in AD 1750?

28 A Where are you in this, I'm sorry, then?

29 Q Page 8, top right-hand corner of the page?

30 A Oh, the right. I'm sorry, I was trying to find it
31 on the left.

32 Q I'm sorry, I beg your pardon.

33 A Okay, Dundas -- okay, yes.

34 Q So he says it's distinctly different; do you see
35 that?

36 A Yes.

37 Q And then in the second paragraph he talks about the
38 modern settlement pattern of seasonal occupation
39 and use of the Dundas group by native people from
40 Port Simpson and Metlakatla, and he says that is
41 represented archaeologically by:

42
43 "... some, or all, of the 12 historic native
44 habitation sites containing both presently used
45 and collapsed house structures. No evidence of

46 a prehistoric occupation was observed at 11 of
47 these 12 sites. This fact alone indicates that

51
Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 there is essentially no overlap between the two
2 apparent historic-period settlement patterns."

3
4 And each paragraph goes on to emphasize the
5 difference between this particular village and the
6 Coast Tsimshian habitations and sites; do you see
7 that?

8 A Yes.

9 Q And he speaks about, bottom of page 8, about the
10 native tradition, and in the second paragraph under
11 that heading "Native Tradition" on page 8, he
12 refers to Franz Boas's war tales?

13 A That's right.

14 Q Talking about prolonged conflict between Coast
15 Tsimshian and Tlingit, with the Tlingit eventually
16 being defeated by the Tsimshian; do you agree with
17 that?

18 A Yes.

19 Q Then he also refers to Marius Barbeau and William
20 Beynon involving the war narratives between the
21 Tsimshian and Tlingit groups, right?

22 A That's right.

23 Q And do you agree with that?

24 A Yes.

25 Q And he says:

26
27 "From these war narratives it is clear that at
28 some point in the past the Tlingit occupied
29 Dundas Island and from it stage raids on the
30 Tsimshian located in the Prince Rupert Harbour
31 and Skeena River areas."

32
33 Can you agree with that?

34 A Yes.

35 Q

36 "Despite the detail contained in these
37 narratives,"

38

39 We're continuing over on page 9:

40

41 "... it is not known whether the Tsimshian
42 regained control over an area they had once
43 occupied, or succeeded in capturing this area
44 for the first time in the 1700s."

45

46 Do you agree with that?

47 A Yes.

52

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 Q He says, this is page 9, the first full paragraph:

2

3 "What is clear from the wealth of ethnographic
4 data collected during the first half of the
5 twentieth century is that both Tsimshian and
6 Tlingit groups claim the Dundas group as part
7 of their respective traditional territory."

8

9 I take it as a result of our discussions today, and
10 probably before our discussions, you agree with
11 that statement?

12 A Yes.

13 Q And then it says:

14

15 "In 1915, Beynon recorded that the Dundas
16 region was part of the territory of Gitzaklalth
17 Tsimshian."

18

19 And you agree with that?

20 A Yes.

21 Q

22 "This group, unlike other Tsimshian groups, had
23 two clans [raven and wolf] rather than the
24 usual four - a trait characteristic of the
25 Tlingit rather than the Tsimshian."
26

27 Do you agree with that?

28 A It is not quite accurate.

29 Q Okay.

30 A Tsimshian villages didn't necessarily have all four
31 of the clans represented.

32 Q Okay.

33 A Some of them did have only two clans. You had to
34 have necessarily at least two.

35 Q Yes?

36 A But depending on their settlement's history, there
37 might only be two, three or four.

38 Q All right.

39 A The Tlingit did, however, have two.

40 Q Yes. And then it continues:

41

42 "In addition, many of their village names were
43 Tlingit names and their chiefly house was
44 associated with a subgroup of the Tongass
45 Tlingit."
46

46

47 Can you agree with that?

53

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 A That is true.

2 Q And then he speaks about Dr. Olson's work, which we
3 looked at earlier today, saying that the Tantakwan
4 or Sanyakwan Tlingit once occupied territory in the
5 Dundas group; and do you agree that Dr. Olson says
6 that?

7 A Yes.

8 Q He also describes the, three of the Tantakwan
9 houses, this is Dr. Olson, the houses were always

10 built with two terraces inside, a hereditary right
11 crest; can you agree with that?

12 A I don't know the data here, but such terraced
13 houses were a crest; a number of Tsimshian chiefs
14 also had similar crests. Terraced houses were
15 found in Tsimshian as well as Tlingit areas.

16 Q Okay. Dr. Haggarty says:

17
18 "There are at least six houses near the eastern
19 end of the major village site in the Dundas
20 group that exhibit two clearly defined terraces
21 inside the house outlines. If this is the type
22 of terrace Olson refers to, then this may well
23 be one of the rare examples of a direct
24 correlation of archaeological evidence with a
25 particular social group unit at the household
26 level."
27

28 Can you agree with that?

29 A I don't think this establishes that correlation.
30 It may be, as he says.

31 Q Okay. And then "Culture Change", he says in the
32 first paragraph, first full paragraph under
33 "Culture Change":

34
35 "I think the archaeological record, at least as
36 far as we know it at present, serves as a
37 relative time-frame for some of the
38 ethnographic data collected in the first half
39 of the twentieth century."
40

41 There he's talking about the Barbeau, Beynon and
42 the Boas collections, correct?

43 A That's right.

44 Q And do you agree with that sentence?

45 A Yes.

46 Q
47 "The earliest settlement pattern observed in

54

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 the study area, represented by the major
2 village site and likely associated with the
3 stonewall fish traps establishes the existence
4 of a large Dundas-based social unit."
5
6 Can you agree with that?
7 A Yes.
8 Q Yes. And he continues on:
9
10 "Another reasonable explanation of the
11 archaeological data gathered to date would be
12 one that argues in favour of the major village
13 site being a Tlingit village that was abandoned
14 after repeated attacks by Tsimshian groups."
15
16 Do you agree with that?
17 A It's a reasonable explanation, yes.
18 Q Yes. And the next paragraph:
19
20 "There is no information that documents or even
21 suggests that the Tsimshian, once having gained
22 control over the Dundas group of islands, ever
23 occupied these islands other than on a seasonal
24 basis."
25
26 Can you agree with that?
27 A There was at least one Tsimshian group that I
28 believe did have large structures there, in the
29 traditions of conflict that's described.
30 Q And what, what are you referring to?
31 A Pardon?
32 Q Are you referring to an oral narrative?
33 A That's right.
34 Q And which one are you referring to?
35 A Well, that's going to be hard to produce off the
36 top of my head. It's in the series of wars between
37 the Tlingit and the warrior group that displaced
38 them from Dundas Island, and the narrative ends
39 with a feast; I think it's Quock, Q-u-o-c-k, is the
40 name of the leader.
41 Q Okay. And he continues:
42
43 "The collapse of this social unit, for whatever

44 reason, may well have triggered, or
45 intensified, the inter-group warfare documented
46 ethnographically between Tlingit and Tsimshian
47 in the late prehistoric and possibly early

55
Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 historic periods."

2
3 Can you agree with that?

4 A Yes.

5 Q
6 "These conflicts were likely the result of
7 repeated attempts to gain control of the
8 recently abandoned territory and its attendant
9 resource base - a series of battles that were
10 eventually won by the Tsimshian."

11
12 Do you agree with that?

13 A Yes.

14 Q And carrying on below the picture on page 9:

15
16 "Because of its unique geographic location this
17 social unit may well have had long-established
18 kinship ties to both the Tanyakwan and
19 Sanyakwan Tlingit groups to the north and to
20 the Gitzaklalth Tsimshian group to the south."

21
22 Do you agree with that?

23 A That seems to be likely.

24 Q Yes:

25
26 "With its apparently sudden demise sometime in
27 the late 1600s or early 1700s, individual
28 households likely dispersed to neighbouring
29 groups, probably based on the relative strength
30 of individual kinship ties."

31

32 Can you agree with that?
33 A It's possible; it can't be established at this
34 point.
35 Q Yes. And one thing I skipped, if you look at page
36 8, just the dating for this, for this settlement,
37 at page 8 on the left-hand column, the third full
38 paragraph, Dr. Haggarty writes:
39
40 "What is clear, is that this major village
41 deposit represents part of a settlement pattern
42 that is earlier than that indicated for the
43 late prehistoric and early to mid-historic
44 periods."
45
46 And so what he's talking about, late prehistoric, I
47 guess, would be the late eighteenth century,

56

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 correct; 1770, 1780?
2 A It would be the end of the eighteenth century,
3 somewhere.
4 Q Well, "prehistoric" means before first contact,
5 right?
6 A Yes.
7 Q Before, so --
8 A Yes.
9 Q So he's talking about late prehistoric, sometime
10 shortly before 1787, right?
11 A Yes. He is not using the proto-historic
12 distinction in here.
13 Q No, he doesn't. So he's talking about the second
14 half of the eighteenth century, right?
15 A Somewhere in there, the late seventeenth,
16 eighteenth.
17 Q Late 1700s?
18 A No; he actually talks about in, later in this
19 paragraph --

20 Q Yes, that's right. Well, sorry to interrupt you.
21 I'm just going to go to that, and then I'll ask you
22 for your comment if you'd like:
23
24 "Botanists along on our project estimated that,
25 given the current vegetation cover, the site
26 was likely abandoned between 250 and 300 years
27 ago [about A.D. 1680-1730]."
28
29 Is that what you're referring to?
30 A Yes.
31 Q And he gives the explanation of why they made that
32 estimate?
33 A I didn't hear the last, sorry.
34 Q He then gives an explanation of why the botanist --
35 A Yes, okay.
36 Q -- made the estimate of that date?
37 A Yes.
38 Q In the end of that paragraph?
39 A Yes.
40 Q Sorry to speak lowly. Now, I'm going to suggest to
41 you this article suggests that there's a reasonable
42 probability that there was a large Tlingit
43 settlement in the Dundas group as late as 1730?
44 A It does.
45 Q Yes.
46 A It also suggests, however, that the people may have
47 been related both to the Tsimshian and to the

57

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 Tlingit.
2 Q Right. My lady, I'm handing to Madam Registrar a
3 replacement for tab 21 in this Volume 1 Part IV
4 Territories, with hole punches, and the reason I'm
5 giving you this replacement is the copy that's in
6 the binder now is nonpaginated, is not paginated;
7 makes it a little difficult to refer to the pages.

8 Now, Dr. Anderson, at tab 21 we've now inserted
9 excerpts from a book entitled "Tsimshian Narratives
10 2" collected by Marius Barbeau and William Beynon,
11 edited by George F. MacDonald and John J. Cove, and
12 you're familiar with that, correct?
13 A Yes, I am.
14 Q It's item number 32 in your bibliography, right?
15 A Yes.
16 Q Now, this is an authoritative work, correct?
17 A It presents the narratives as they were collected,
18 without much other scholarship around them, but
19 yes.
20 Q It also has some, has a preface and an
21 introduction; that's what I'm going to refer you
22 to.
23 A That's right.
24 Q Yes. Now, please turn to Roman numeral viii; the
25 numbers are on the centre bottom of the page. This
26 is the historical period. And it appears that some
27 of this material is, in this introduction, similar
28 to the information that Dr. MacDonald had in his
29 article, his paper, "The Epic of Nekt"?
30 A Yes, it would be.
31 Q Which you included in your --
32 A Yes.
33 Q -- in your book. And so let's just take a look at
34 some of these items here, and page xviii, this is
35 the "Early Historical Contacts". If you look at
36 the second full paragraph?
37 A Page xviii?
38 Q Yes, Roman numeral xviii?
39 A Roman numeral xviii, okay.
40 Q It's at the bottom of the page, the centre of the
41 page. If you look at the second full paragraph,
42 you'll see that the authors summarize the history
43 of this area which we've looked, we discussed a
44 little bit:
45
46 "Maritime exploration begins with the Spanish
47 under Juan Perez who probably reached the Queen

58

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 Charlotte Islands in 1775."
2
3 That should probably be 1774; do you agree with
4 that?
5 A Yes.
6 Q
7 "Cook made landfalls on the outer coast in 1778
8 followed by Captain Dixon in 1787,"
9
10 And then he continues, refers to some of the other
11 explorers and traders. The next sentence says:
12
13 "Invariably the early maritime explorers
14 expressed considerable surprise in finding
15 quantities of trade goods, particularly iron
16 axes and knives, in the hands of the native
17 people they contacted."
18
19 A Yes.
20 Q And we've already looked at that, I think you would
21 agree with that. And "Dixon", this is Captain
22 Dixon:
23
24 "... remarks '... a fondness for carving and
25 sculpture was found among the people by Captain
26 Cook; iron implements were in common use,' and
27 he adds: 'it must doubtless [sic] be a
28 considerable time ago that iron was introduced
29 from that coast'."
30
31 A Yes.
32 Q Are you familiar with that --
33 A Yes.
34 Q -- passage. And then the next paragraph deals with
35 some of the explorers, including Alexander
36 MacKenzie in the first line, the first sentence,
37 and then the second sentence again:
38
39 "Father Morice describes what he believes to be
40 the first iron axe owned by the Denes as coming
41 from a village called 'Tsechack', near the

42 Hazelton on the Skeena River, about 1730."
43
44 We've already mentioned that generally; you agree
45 with that?
46 A Yes.
47 Q Yes. And then there's some, Father Morice

59
Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 continues:
2
3 "Morice further notes that Simon Fraser found
4 iron wares near the 49th parallel, '... some of
5 them which seemed of Russian manufactures'.
6 Morice justifies this by pointing out, 'When in
7 1741, Bering first reached the mainland of
8 America, he found among the inhabitants of the
9 Fox or Eastern Aleutian Islands 'long iron
10 knives, apparently their own manufacture'."
11
12 Are you familiar with that evidence?
13 A Yes.
14 Q Next paragraph:
15
16 "Such items were undoubtedly traded across
17 Bering Strait from the Gulf of Anadyr
18 opposite the mouth of the Yukon River."
19
20 And do you agree with that?
21 A Yes. Well, do I agree that that's undoubted?
22 Q Yes.
23 A I don't know.
24 Q Okay. He continues on:
25
26 "Bering notes that as early as 1648 trading
27 expeditions had brought quantities of trade
28 objects to this area some of which would have
29 been traded into the New World."

30
31 Would you agree with that?
32 A Yes.
33 Q And then there are further comments about the
34 Russian activities on the north, on the Alaskan and
35 Aleutian coasts, at the bottom of that page, which
36 is page xviii. I'm going over to page xix. Again,
37 there's quite a bit of, there's continued
38 discussion of the Russian activity along the Alaska
39 coast, and the import of goods related to that
40 activity. Do you see that?
41 A Yes.
42 Q And do you agree, generally speaking, with the
43 passages? I haven't read them out into the record,
44 but do you agree, generally speaking, with the
45 summary of the Russian expansion down the coast and
46 the availability of those European and Russian
47 goods?

60

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 A Yes.
2 Q Yes. And the final paragraph on page xix, Roman
3 numeral xix:
4
5 "Archaeology, trade goods have been found in
6 the central interior of British Columbia which
7 corroborates these dates. Borden found a
8 chinese coin at the Carrier village of Chilac
9 which Morice claims was destroyed during the
10 Chilcotin raid of 1745. Excavating in the
11 Chilcotin area south of the Carrier territory
12 Wilmeth, has trade copper objects appearing at
13 A.D. 1705 + - 75. It is now apparent that
14 trade objects of European origin began to
15 appear in the Skeena River district in the
16 early decades of the eighteenth century
17 although the first Europeans did not travel

18 this river before another century had passed."

19

20 Do you agree with that last paragraph?

21 A Yes.

22 Q And please carry over to page Roman numeral xx.

23 You and I have discussed in passing some of the
24 evidence about warfare, and we've referred to some
25 of the material in the Hudson's Bay Company
26 journals. Do you recall our discussion on that
27 subject? Do you recall our discussion about that?

28 A Yes, uh-huh.

29 Q Yes. So in this section the authors are discussing
30 this subject, and it started -- I'll read this with
31 you, if you don't mind, starting at the first
32 paragraph:

33

34 "Among the Tsimshian speaking people of British
35 Columbia, warfare is recorded in epic oral
36 histories that even by conservative estimates,
37 span three or four centuries prior to European
38 contact."

39

40 Do you agree with that?

41 A Yes.

42 Q

43 "The wars of the coast Tsimshian were on a much
44 larger scale than those of their relatives on
45 the Upper Skeena River."

46

47 Can you agree with that?

61

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 A Yes, they were.

2 Q

3 "The coast Tsimshian conducted raids hundreds
4 of miles north and south of their home
5 territory, using large sea going canoes that

6 could carry fifty men."
7
8 Do you agree with that?
9 A Yes.
10 Q And then there's a reference to Ferguson, I think
11 this Ferguson article may have been discussed
12 during Dr. MacDonald's testimony:
13
14 "Ferguson states:
15 'The river mouths were centers of trade both
16 before and after contact. Furs and other items
17 from the interior were traded down the valleys
18 and western buyers clustered around the
19 estuaries. Control of this trade was a
20 continual source of conflict."
21
22 Can you agree with that?
23 A Yes.
24 Q And then the next paragraph:
25
26 "In particular reference to the Skeena estuary,
27 [Ferguson] states:
28 'Boas' informants recalled a long series of
29 exterminative raids fought between the Tlingit
30 and Tsimshian over control of the Nass and
31 Skeena estuaries. These occupied most of the
32 eighteenth century, with the Tlingit finally
33 being defeated and pushed north'."
34
35 Can you agree with that?
36 A I wouldn't be sure of the dating without further
37 checking, but that there were such wars and they
38 pushed the Tlingit north is true.
39 Q So here Dr. MacDonald, and is it Dr. Cove or
40 Mr. Cove?
41 A Pardon?
42 Q Cove --
43 A It's Dr. Cove.
44 Q Dr. Cove. Dr. MacDonald and Dr. Cove are stating
45 that, sorry, they're referring to Ferguson's
46 comment that these wars occupied most of the
47 eighteenth century. And again, you want to

Cross-exam by Mr. Mackenzie (cont'd)

1 consider further archaeological evidence which
2 might change that --

3 A Yes. I believe that archaeologists have revised
4 their views of the dates there.

5 Q Thank you. And then the next paragraph:

6
7 "At the same time, the Haida were pushing out
8 from their Queen Charlotte Island home in
9 several directions. To the north they
10 displaced Tlingit people from much of the
11 Prince of Whales [sic] Archipelago, and made
12 frequent attacks on the Coast Tsimshian
13 villages. According to legend, they were
14 leading war parties up the Skeena River even
15 before the maritime fur trade had been
16 established."

17
18 Can you agree with that?

19 A Yes, I do.

20 Q Now, I'd like to refer you to page Roman numeral
21 xxiii. This is a discussion of the types of armour
22 that Tsimshian tribes, speaking tribes were
23 wearing; and this is relevant, I'll get to the
24 relevance of this to the topic under discussion.
25 Let me refer you to this passage:

26
27 "Several types of armour were used by the
28 Tsimshian speaking tribes."

29
30 Do you see that --

31 A Yes.

32 Q -- passage. And then he describes the various
33 types of armour:

34
35 "The most elaborate were wooden slats or rods
36 woven into an articulated cuirass."

37
38 So can you just generally agree with --

39 A Yes, that armour was --

40 Q Yes.
41 A -- did exist.
42 Q Yes. And there's some more talk in the rest of
43 that paragraph about other aspects, other features
44 of that armour. Now, it's the second paragraph I
45 wanted to ask you about:
46
47 "The second type of armour was made from heavy

63
Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 leather. This was often the skin of a large
2 animal such as a sea lion, elk or moose, which
3 was folded double then wrapped around the body
4 and fastened at the left side by toggles and
5 thongs."
6
7 And is that correct?
8 A Yes.
9 Q Yes. So can you agree with me that the Coast
10 Tsimshian were engaged before contact in importing
11 elk skins down the Skeena River; that was part of
12 some of the items that were coming down from the
13 interior, is that a fair statement?
14 A That they were employed in --
15 Q They were importing elk skins?
16 A Elk skins, yes.
17 Q Down the Skeena River?
18 A Yes.
19 Q Those were parts, that was part of the trade that
20 was coming from the interior?
21 A That's right.
22 Q And those elk skins were used to make these types
23 of armour, correct?
24 A That was one of their uses, yes.
25 Q Yes.
26 A Walrus and sea lion skins were apparently also used
27 for armour.

28 Q Please now refer to tab 7 in this volume, Part IV
29 Territories Volume 1. This is a paper, paper
30 number 87 in the National Museum of Man Mercury
31 Series dated 1979?
32 A That's right.
33 Q You also wrote a monograph that was published in
34 this series, didn't you?
35 A Yes.
36 Q Tsimshian context, the 1980 --
37 A I think it might have been 5.
38 Q Nineteen eighty-five?
39 A Yes.
40 Q And are you familiar with this monograph entitled
41 "Skeena River Prehistory" by Richard Inglis and
42 George MacDonald?
43 A Yes.
44 Q Is this an authoritative work?
45 A I believe it is.
46 Q It appears that it deals primarily with the upper
47 Skeena River, the Hagwilget Canyon. Looking at the

64

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 table of contents on page Roman numeral v, and the
2 abstract on page Roman numeral iii refers to the
3 excavation reports for Gitaus, G-i-t-a-u-s,
4 Gitlaxdzawk, G-i-t-l-a-x-d-z-a-w-k. This is page
5 Roman numeral iii, the abstract?
6 A Yes.
7 Q Kitselas Canyon and Hagwilget Canyon. So it's not
8 dealing with the Coast Tsimshian archaeology?
9 A No, it's not.
10 Q However, if you look at -- not "however", but if
11 you look at the maps on page 3, they do appear to
12 provide some information about the Coast Tsimshian?
13 A That's right.
14 Q Do you see map number 2, "Coast Tsimshian Historic
15 Territories on the Lower Skeena"?

16 A I don't think it says "historic territories", does
17 it? It says "Coast Tsimshian Territories on the
18 Lower Skeena".
19 Q Yes. Well, if you look at the label actually on
20 the map?
21 A Okay, sorry.
22 Q Yes, no problem. But you're right, the label
23 underneath the map says "Approximate Area of Coast
24 Tsimshian Territories", it says "from Wallace and
25 Beynon"?
26 A That's right.
27 Q And that's William Beynon, right?
28 A Yes.
29 Q And who is the "Wallace"?
30 A I believe it would be James Wallace, but I'd want
31 to check this.
32 Q Is this our friend James Wallace from Metlakatla,
33 or some other --
34 A I think he is Lax Kw'alaams.
35 Q Yes, okay. This is another Wallace, Herbert
36 Wallace?
37 A There was a Herbert Wallace there too.
38 Q Yes. Okay, well, if we don't know -- I don't know
39 offhand who that Wallace is. And if you go over to
40 the next page --
41 A And I'll note, those are only on the lower river
42 course, not the coast itself.
43 Q Good point. They say "on the lower Skeena"; do you
44 see that?
45 A Yes.
46 Q Yes. So they don't include the islands?
47 A That's right.

65

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 Q In fact, Dundas and Zayas aren't even on the map
2 here?
3 A That's right.

4 Q Porcher Island, which is in the lower right-hand
5 corner, it is on the map, correct?
6 A Yes.
7 Q And that's part of the Lax Kw'alaams map?
8 A Did you say right-hand corner or --
9 Q Left-hand corner, yes.
10 A Yes.
11 Q Yes, Porcher Island is that large island right down
12 in the lower left-hand corner?
13 A Yes.
14 Q Okay. Well, this, you're right, it doesn't include
15 the islands, but it does include, it does include
16 the Git'tsiis territory, which is number 1, up
17 around Lax Kw'alaams and the Work Channel, right?
18 A Yes.
19 Q And it doesn't have, it doesn't include any house
20 territories northwest of that Git'tsiis territory
21 number 1, does it?
22 A No.
23 Q I'm sorry, northeast, northeast up towards the
24 Nass?
25 A It doesn't include what, I'm sorry?
26 Q It doesn't include any house territories?
27 A To the northeast.
28 Q To the northeast, to the Nass River?
29 A No, it doesn't show anything there.
30 Q No. It doesn't include any house territories in
31 the Nass watershed, does it?
32 A It says that it only includes the lower Skeena, so
33 no.
34 Q Okay. Well, so you think there are house
35 territories up there?
36 A Well, aside from that, this map wouldn't show them.
37 Q Okay, fine. So that Git'tsiis area does go down to
38 the -- you're right, it does extend down to the --
39 A To the Skeena.
40 Q To the Skeena?
41 A I think because this was dealing with Kitselas,
42 they were really only interested in the Skeena
43 itself.
44 MR. MACKENZIE: Sure. My lady, did you wish to take the
45 afternoon break now?
46 THE COURT: Yes, that's fine.
47 THE REGISTRAR: Order in court. Court is adjourned for

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

- 1 the afternoon recess.
2
3 (PROCEEDINGS ADJOURNED AT 3:00 P.M.)
4
5 (PROCEEDINGS RECONVENED AT 3:20 P.M.)
6
7 THE REGISTRAR: Order in court.
8 MR. MACKENZIE: Thank you, my lady. My lady, I'm just
9 handing to Madam Registrar copies of a map at tab 6
10 of the Territories Part IV Volume 1, and the map is
11 in black and white in the binder, and this is the
12 colour copy that I'm handing up for insertion at
13 tab 6.
14 THE COURT: Thank you.
15 MR. MACKENZIE:
16 Q Now, please turn to tab 6 of the binder which is
17 Part IV Territories Volume 1, and you'll see that
18 is excerpts from the "Historical Atlas of Canada".
19 You're familiar with the "Historical Atlas of
20 Canada"?
21 A Yes, I am.
22 Q And attached are excerpts from plate 13 of the
23 Historical Atlas of Canada. And that plate, the
24 black and white that you see on the second page at
25 tab 6 is entitled "Coast Tsimshian about 1750".
26 So, and I'm also now referring you to the colour
27 copy of that map of that, which we handed up.
28 You're familiar with this map?
29 A Yes.
30 Q Yes. And it is, the authors are set out in the
31 upper left-hand corner: George F. MacDonald,
32 right?
33 A Yes.
34 Q Gary Coupland, correct?
35 A Yes.
36 Q And David Archer?
37 A That's right.

38 Q Those are eminent archaeologists, aren't they?
39 A They're all archaeologists, yes.
40 Q And this is an authoritative document, an
41 authoritative map, isn't it?
42 A Yes.
43 Q In fact, if you look at the authors' names, you
44 refer to two of those authors, or three of them,
45 you refer to all three of those authors,
46 Dr. MacDonald, Dr. Coupland and Dr. Archer, as
47 being authorities you wish to consult to determine

67

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 whether the dates for the Tlingit-Tsimshian wars
2 have changed since the articles which we've
3 discussed today, correct?
4 A That's right.
5 Q Yes. Now, this map sets out the Coast Tsimshian
6 territories coloured in yellow. Do you see that?
7 A Yes.
8 Q Okay. If you look at the map, you'll see the
9 various house territories there. And now if you
10 look at around the Terrace area, can you see the
11 Terrace area? It's not on here. It would be up in
12 the, up the river, towards the northeast boundary
13 of the Coast Tsimshian territory shown in this map,
14 and that's generally the Terrace area, correct?
15 A It's the what, I'm sorry?
16 Q The Terrace area?
17 A Oh, okay, sorry. Yes.
18 Q Right? That's the location of the present city of
19 Terrace?
20 A Yes.
21 Q Yes. And you see Kitsumkalum written, or at least
22 labelled there on the Kitsumkalum River?
23 A Yes.
24 Q Yes. So that, you see the Kitsumkalum territory is
25 marked there; do you see that?

26 A Yes.
27 Q Yes. And upriver from that you see the Kitselas
28 territory is marked?
29 A Yes.
30 Q And then you see just across the river from
31 Kitsumkalum, there is a territory which is labelled
32 "disputed territory"?
33 A Yes, I see that.
34 Q And that's on the lower Zymoetz River, isn't it?
35 A Yes.
36 Q That's spelled Z-y-m-o-e-t-z. That is, that lower
37 river is an area that's claimed by the Gitlan House
38 in this case, isn't it?
39 A Yes.
40 Q Yes. And I'm just referring, my lady, to --
41 A By whom, I'm sorry?
42 Q Gitlan House?
43 A Yes.
44 Q Referring to tab 4 in the map book, which is
45 Exhibit A; tab 4 in the map book, which is the
46 Exhibit A. You see the orange territory there at
47 the upper, the north, up the Skeena River --

68

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 A Yes.
2 Q Two of them. And that Gitlan territory on the
3 south bank of the Skeena River extends along the
4 Zymoetz River, doesn't it?
5 A Sorry?
6 Q You see the --
7 A Yes, I see it.
8 Q And as well, while we're looking at that
9 traditional territories map which is at tab 4 of
10 the map book, you see that there's a Gitlan
11 territory right across the Skeena River, along the
12 west bank of the Kitsumkalum River, also coloured
13 orange; do you see that?

14 A Yes.
15 Q Now, that includes the valley of the Zymacord,
16 doesn't it?
17 A It includes, I'm sorry, what?
18 Q It includes the Zymacord valley, doesn't it?
19 A Yes. I wish it was marked on here, but.
20 Q Yes, we'll take a look at that, okay. We have
21 looked at the Zymacord valley, and you can see it,
22 of course, on the map at tab 3 of the map book,
23 Exhibit A; that's the Indian reserves map. And do
24 you recall we were talking about the Zymacord
25 reserve being at the mouth of that river?
26 A Yes.
27 Q And you can see that those, that reserve is
28 coloured green on this map which is at tab 3; do
29 you see that, light green? Do you see the
30 Zymacord?
31 A Back to --
32 Q I'm sorry, doctor --
33 A This map, sorry. Yes.
34 Q I'm sorry, I'm referring to the Indian reserves
35 map, which is tab 3 in the map book that you have
36 in your hand.
37 A Okay, sorry.
38 Q No problem. Sorry, I don't mean to rush you.
39 A Okay.
40 Q And what we were referring to was the Zymacord
41 reserve at the mouth of the Zymacord River?
42 A Yes.
43 Q Do you see that?
44 A Yes.
45 Q And then I asked you, can you agree with me that
46 that's coloured in light green?
47 A That it's marked in light green?

69

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 Q That it's marked in light green on this map?

2 A Yes.
3 Q And that is indicating it's a Kitsumkalum reserve,
4 correct?
5 A On this map?
6 Q Yes, the map that you have in your hand, the Indian
7 reserves map?
8 A Yes, it is.
9 Q You see that?
10 A Yes, it is.
11 Q So I'm going to ask you some questions about that,
12 but I just want to get the locations clear in our
13 minds and on the transcript.
14 A Yes.
15 Q Okay, so now let's go back to the Coast Tsimshian
16 map from the "Historical Atlas of Canada". We were
17 just referring to the disputed territory along the
18 lower Zymoetz River, correct?
19 A Yes.
20 Q You see that, that's where we were?
21 A Yes.
22 Q And then I asked you, I started to ask you about
23 the territory across the river which is marked as
24 Gitlan territory. Do you see that?
25 A On this map, across the Skeena or --
26 Q Across the Skeena River, yes. Do you see that just
27 west of the, just west of --
28 A The territory that's marked as disputed on this?
29 Q No, no. I'm now asking you to cross the Skeena
30 River to just west of Kitsumkalum, and look at the
31 Gitlan territory that's marked on this map.
32 A On the north side of the river?
33 Q Yes, that's right?
34 A Okay. Sorry, I thought you were trying to get me
35 across the Skeena to the south.
36 Q No problem. We've been across, we've been on the
37 south shore, now we're going to the north shore.
38 A Okay, we're on the north shore, and you're right,
39 it's Gitlan.
40 Q And that's the Zymacord River, right?
41 A Yes.
42 Q Okay, good, because I'm going to ask you some more,
43 I'm going to discuss this a little more. And as
44 I've mentioned to you, that's right on the boundary
45 of the Kitsumkalum territory, right?
46 A It is.
47 Q Okay, good. Now, let's go across to the south

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

- 1 shore again, from Gitlan, and you have Gitlutzah;
2 right?
- 3 A That's right.
- 4 Q And that's the Lakelse Lake and the Lakelse River,
5 correct?
- 6 A Yes.
- 7 MR. MACKENZIE: Now, for her ladyship, I'm just going to
8 refer to the map at tab 3 of the map book, so we
9 can see where the Lakelse River and Lakelse Lake
10 are. And this is, my lady, if your ladyship looks
11 just south of Terrace, you will see Lakelse Lake.
- 12 THE COURT: Yes.
- 13 MR. MACKENZIE: And flowing out of that is the Lakelse
14 River, and we're going to be speaking a little more
15 about that.
- 16 Q We're still looking at the map from the historical
17 atlas which is found at tab 6 in the Part IV
18 Territories Volume 1 binder. And now I want to ask
19 you again if you could go to the north boundary of
20 the Coast Tsimshian territories; do you see that?
- 21 A Yes.
- 22 Q And do you see that it does not include any part of
23 the Nass River watershed?
- 24 A I'm trying to see where the Nass comes out on this.
- 25 Q You see it comes out at Kincolith; do you see
26 Kincolith there? Does your ladyship see Kincolith
27 at the mouth of the Nass River?
- 28 A Right. Yes, okay. So no, it doesn't include the
29 Nass.
- 30 MR. MACKENZIE: My lady, if you just look up above the
31 boundary there, you see the Nass River coming down
32 through the Nisga'a territories to Kincolith at the
33 mouth of the river? We're looking at the
34 historical atlas map.
- 35 THE COURT: Uh-huh.

36 MR. MACKENZIE: And you see the Niska territories there,
37 my lady, to the north of the Coast Tsimshian
38 territories, N-i-s-k-a?
39 THE COURT: I just can't find Kincolith.
40 MR. MACKENZIE: Okay, my lady. Do you see the arrows
41 heading up to the Nass River for the oolichan
42 fisheries, the black arrows?
43 THE COURT: Oh, I have it now. Thank you.
44 MR. MACKENZIE: Do you see that at the Nass River, my
45 lady?
46 THE COURT: Yes.
47 MR. MACKENZIE:

71

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 Q And Dr. Anderson, Kincolith, generally speaking, is
2 at the mouth of the Nass River, correct?
3 A Yes, that's right.
4 Q Yes.
5 A I will note that it does mark parts of the lower
6 Nass as areas where people went for oolichan
7 fisheries and trade in the late winter, spring.
8 Q Right.
9 A Not as house territories, but as places that they
10 went.
11 Q Sure.
12 A In that greenish column.
13 Q That's right, yes. So my question is, just to get
14 back to it, you can see there are no house
15 territories, there are no Coast Tsimshian house
16 territories shown in the Nass River watershed,
17 right?
18 A That's right.
19 Q And can you agree with me also that there are no
20 Coast Tsimshian house territories shown in the
21 Kwinamass River watershed?
22 A On the Kwinamass?
23 Q Now, can I help you locate the Kwinamass River. Do

24 you see the name Guninwang just above the Coast
25 Tsimshian border?
26 A Yes.
27 Q Now, that's on the Kwinamass River, isn't it?
28 A Guninwang, yes.
29 Q Does your ladyship see that name?
30 THE COURT: Yes.
31 MR. MACKENZIE:
32 Q Yes. Do you remember, we looked at the Kwinamass
33 River before, we can verify that again. We can
34 verify that again by looking at the map book, tab
35 3, the map book which is Exhibit A, and we can look
36 up to the north part of the area and we can see the
37 Kwinamass River, and there is a, there's, it looks
38 like there is a reserve called Canamis 46
39 [phonetic] at the mouth of the river.
40 Dr. Anderson, I'm just referring to this map again
41 at tab 3.
42 A Tab 3.
43 Q This is --
44 A At the Kwinamass.
45 Q Yes.
46 A And --
47 Q I just wanted to help us identify where the

72

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 Kwinamass River is.
2 A Yes.
3 Q Do you see that?
4 A Yes.
5 Q Does your ladyship see that?
6 THE COURT: Yes.
7 MR. MACKENZIE:
8 Q I'm suggesting that this historical atlas map does
9 not show any house territories on that river,
10 watershed?
11 A No, it doesn't.

12 MR. MACKENZIE: Thank you. Did your ladyship follow
13 that?
14 THE COURT: Yes.
15 MR. MACKENZIE:
16 Q Okay. Okay now, Dr. Anderson, please help us
17 again. This map from the historical atlas does not
18 show any house territories on Wales Island, does
19 it?
20 A On?
21 Q Wales Island?
22 A No, it doesn't.
23 Q This map from the "Historical Atlas of Canada" does
24 not show any house territories on Pearse Island,
25 does it?
26 A No.
27 Q Okay. The next thing I wanted to ask you about is,
28 you see that in the lower left, lower right-hand
29 corner of this map, this chart from, I call it
30 plate 13 from the "Historical Atlas of Canada",
31 there is a list of trade goods and trade routes.
32 Do you see that?
33 A That's right.
34 Q And item number 2 is the Skeena River, do you see
35 that?
36 A Yes.
37 Q And then it has:
38
39 "Downriver trade:
40 Food - dried soapberries
41 - dried Saskatoon berries
42 - dried blueberries
43 - mountain-goat fat
44 - dried caribou meat
45 - dried goat meat"
46
47 Right?

73

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 A Yes.
2 Q And then it has:
3
4 "Upriver trade:
5 Food - dried seaweed
6 - dried and smoked shellfish
7 - dried seal and sea-lion meat
8 - dried salmonberries
9 - dried halibut
10 - dried cod
11 - native tobacco."
12
13 Right?
14 A That's right.
15 Q There is no mention of salmon there, is there?
16 A No, there isn't.
17 Q And when they talk about meat, they're talking
18 about seal and sea-lion meat, aren't they?
19 A In this case, yes.
20 Q That's right. You wouldn't include any sort of
21 fish in that description of a product that's known
22 as meat, would you?
23 A As in this list, no.
24 Q Or in any list, right?
25 A Well, if it is a list that includes only dried
26 meats, but not specifying any of them, then it
27 might well include fish.
28 Q Certainly not if there are other fish in the list,
29 right?
30 A Probably not, no.
31 Q That's right. Let me ask you these questions. I'm
32 going to be referring you to some of the pages from
33 Duff's files that you have in your primary source
34 compilations, and let me just suggest this to you
35 now before we go and look at the, go and look at
36 the actual pages. And the first thing I'd like to
37 ask you about is the lower Zymoetz River, remember
38 we looked at it; it says "disputed territory" in
39 this map, which is plate 13?
40 A Yes.
41 Q Yes. Well, I'm going to suggest to you that Wilson
42 Duff says that's Kitselas territory?
43 A I would want to look and check, but.
44 Q Okay, fine. And now, we also talked about
45 Lakelse Lake and Lakelse River. Do you recall us

46 mentioning that?
47 A Yes.

74
Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 Q Now, you've done quite a bit of work in that area
2 for the West Fraser case, but let me suggest to you
3 that Wilson Duff says that's Kitselas territory;
4 can you agree with that?
5 A He says the north shore, I think there were some
6 houses that had territories there.
7 Q The north shore of Lakelse Lake?
8 A In that area.
9 Q Yes?
10 A I'm not sure that he defined the boundary very
11 clearly.
12 Q So some Kitselas houses, you mean structures or
13 house territories?
14 A No, house groups.
15 Q House groups on the north shore of Kitselas Lake?
16 A That's on the northern part of that, yes.
17 Q I'm sorry, I said Kitselas Lake, I meant Lakelse
18 Lake. Lakelse Lake, is that what you mean --
19 A Yes, Lakelse Lake.
20 Q I will just repeat that. I misspoke, Dr. Anderson;
21 I meant to say, confirm what you were saying, that
22 Wilson Duff indicates that there are some Kitselas
23 house group territories on the north shore of
24 Lakelse Lake. Is that a fair summary of your
25 evidence?
26 A I would want to look at the maps, but I believe he
27 did.
28 Q Sure, we'll take a look at them. Now, let me talk
29 again, let me talk about the Zymacord River. Do
30 you recall that's on the north shore?
31 A Yes.
32 Q Right, just west of Kitsumkalum?
33 A Yes.

34 Q I want to suggest to you that that is now a
35 Kitsumkalum territory. Are you aware of that
36 dispute?
37 A The Kitsumkalum certainly claim it.
38 Q Yes. Are you aware that James McDonald wrote a
39 paper on that?
40 A Yes, I am.
41 Q Yes. You're familiar with that paper, aren't you?
42 A Yes.
43 Q And that's an authoritative paper?
44 A I believe it is.
45 Q Yes. Well, you've made our job much easier,
46 because you obviously are familiar with these. So
47 when we look at the pages from Wilson Duff, but

75

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 some of them are difficult to read, but you have
2 obviously thought about this, so that will help us
3 in our research; in our questions, I mean. I'm
4 finished with that document, please; and my lady, I
5 think your ladyship picked up the reference to
6 McDonald, M-c-D-o-n-a-l-d, as opposed to the other,
7 George.
8 So, please, let's look at tab 10. We're now
9 referring to tab 10 of Part IV Territories Volume 1
10 binder. Now, this is, these are excerpts from
11 James McDonald's thesis of February 1985. Do you
12 recognize that cover page?
13 A Yes, I do.
14 Q And that is number 57 on your bibliography?
15 A Yes.
16 Q Correct. And this is, as you've said before, I
17 think, an authoritative work?
18 A I believe it is.
19 Q All right.
20 A Noting that it's about the Kitsumkalum largely.
21 Q Yes, right. Absolutely, that's what we're going to

22 talk about. And perhaps we could start at page 30;
23 the page numbers are in the upper right-hand corner
24 of the page. And looking at the second paragraph,
25 this is just sort of stating where Kitsumkalum is:

26
27 "On the Skeena there were at least 11 such
28 groups ..."

29
30 These were the Tsimshian groups, and:

31
32 "... known to have occupied the mountainous
33 valleys of the major tributary streams. The
34 lower nine of these formed a loose
35 confederation during the merchant period of
36 Tsimshian history, and became known as the Port
37 Simpson tribes, after the name of the Hudson
38 Bay Company post where they settled."

39
40 Do you agree with that?

41 A Yes.

42 Q Yes. Let me ask you about that. When James
43 McDonald, Dr. McDonald, your colleague at, I take
44 it it was UNBC, refers to the "merchant period of
45 Tsimshian history", he's speaking about following
46 first contact and during the fur trade, isn't he?

47 A I believe that's what he's referring to.

76

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 Q Because that's when the Tsimshian first become
2 involved in commercial activities, correct?

3 A No.

4 Q Okay. That's when the Tsimshian were first exposed
5 to the Euro-American market demand, correct?

6 A Yes. McDonald's thesis is largely about the
7 transition to capitalist economic structures, and
8 so that's his interest.

9 Q So as I say, this is the period when the Tsimshian,

10 the Coast Tsimshian were first exposed to
11 Euro-American market demands, right?
12 A That's right.
13 Q And then the next sentence is:
14
15 "Kitsumkalum was the tenth group upriver."
16
17 I take it you would agree with that?
18 A If we leave out the group, the Gitwilkseba, that he
19 doesn't allude to, yes.
20 Q Okay, Gitwilkseba?
21 A Is the group that is extinct, and their territories
22 were absorbed by the place where the remnants went.
23 Q Sure. Well, let's look at page 32 and the -- well,
24 let's start, sorry, let's start -- carry on at the
25 bottom of page 30, if you don't mind, please, carry
26 on from where we just left off:
27
28 "At the start of the industrial stage, in the
29 1870s, Kitsumkalum formed a residential
30 alliance with Kitselas, the final Tsimshian
31 village group on the Skeena."
32
33 And your -- and that's correct, isn't it, the
34 Kitselas are the final group up the Skeena?
35 A For the coast's speaking groups, yes.
36 Q Right. And when we say "the start of the
37 industrial stage", we're talking about the --
38 A I believe he's talking about the cannery period.
39 Q Absolutely, yes, the canneries?
40 A Yes.
41 Q The introduction of the canneries?
42 A Yes.
43 Q On the Skeena River?
44 A Yes.
45 Q Uh-huh. That's when the Coast Tsimshian started --
46 sorry, let me see if I can phrase this as
47 diplomatically as possible to get your agreement.

77

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 That's when the Coast Tsimshian became, began
2 working with the commercial fishing industry as
3 represented by the canneries; is that a fair
4 summary?
5 A In that fishing industry, that aspect of it, yes.
6 Q Okay, good. So let me, let's bite the bullet here.
7 I'm going to suggest to you that's when the, that's
8 when the Tsimshian first started commercial
9 fishing?
10 A No, I don't agree.
11 Q Okay, I thought you'd say that. Okay, so let's
12 carry on with page 32:
13
14 "Together they lived in the cannery centre of
15 Port Essington."
16
17 And looking, let's see where Port Essington is; I'm
18 sure you know. Let's look at the map which is at
19 tab 3 of Exhibit A, and Port Essington is at the
20 mouth of the river, right at the mouth of the
21 Ecstall River. Do you see that?
22 A That's right.
23 Q Does your ladyship see that, Port Essington; the
24 mouth of the, towards the mouth of the Skeena
25 River, just where the Ecstall River flows into the
26 Skeena, and we're referring to --
27 THE COURT: Where are we looking at?
28 MR. MACKENZIE: We're referring to the map at tab 3 of
29 the map book, Exhibit A. Does your ladyship see
30 that, that's at the mouth of the Skeena River?
31 THE COURT: Yes.
32 MR. MACKENZIE:
33 Q Yes. Now, Dr. Anderson, that was, Port Essington
34 was a very, very important centre after the 1870s
35 up until, I guess the CPR lines?
36 A That's right. It was, there wasn't a Prince Rupert
37 at that time. It was the major sort of urbanish
38 centre in that area.
39 Q And if you look in this map, which is tab 3 of the
40 map book Exhibit A, you see a reserve there at Port
41 Essington. Do you see that?
42 A That's right.
43 Q And that is called Port Essington. And if you look

44 in the table at the lower right-hand corner of the
45 page, this is referring to this map, you'll see
46 Port Essington is a reserve that is held in trust
47 for the Kitselas and Kitsumkalum; do you see that?

78

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 A That's right.

2 Q Yes. Now, I asked you, I asked you about this
3 before. Again, I'm going to have to bite the
4 bullet and get whatever answer you give me; but
5 this, can you agree with me that this area was a
6 fall camping area for the Kitsumkalum and Kitselas
7 people?

8 A No, I don't believe that it was traditionally their
9 fall camping area. It was a fall camping area; in
10 fact, the Tsimshian name is spaksuut, which means
11 fall place. But I believe it was a Coast Tsimshian
12 camping area before the creation of the cannery in
13 Port Essington.

14 Q I asked you this before as well, but we didn't have
15 the context that we have now. Can you agree with
16 me that the Kitsumkalum, traditionally and
17 aboriginally, fished along the Skeena River and
18 into the mouth of the Skeena River?

19 A I think they did most of their fishing, in fact, in
20 the Kitsumkalum River.

21 Q Okay. Okay. Well, James McDonald goes into this
22 in some detail, doesn't he?

23 A He does.

24 Q And we'll see this, okay. Let's look at page 32,
25 the second, first full paragraph:

26
27 "In general, the territories of Kitsumkalum
28 were the adjacent valleys of the Zimacord and
29 Kitsumkalum Rivers. They also utilized the
30 Skeena River valley and the ocean at its
31 mouth."

32
33 Do you agree with that?
34 A I'm not sure they used the mouth of the river and
35 the ocean as much as he believes they did. He's
36 largely talking about life histories data from the
37 nineteenth century, and I think at that time they
38 were, since they didn't have territories down at
39 the mouth of the river, I think they traded for
40 ocean resources before that.
41 Q Okay. So as I understand, what you're saying is
42 that you don't think that McDonald is saying that
43 these were the aboriginal areas utilized by the
44 Kitsumkalum people?
45 A I believe he's saying that, yes.
46 Q Oh, I see. You don't agree with that?
47 A No, I don't.

79

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 Q And if you --
2 A They have no oral histories that identify house
3 group territories in that area.
4 Q Okay.
5 A So if they went there, they went as guests or in
6 other ways, on other people's territories.
7 Q Well, can we leave it, can we agree to say that
8 James McDonald, whose thesis you regard as an
9 authoritative work, believes that the Kitsumkalum
10 had territories on the Zymacord and the Kitsumkalum
11 rivers?
12 A Yes.
13 Q Can we also say that Dr. McDonald states that they
14 utilized the Skeena River valley and the ocean at
15 its mouth?
16 A Yes, but he doesn't say when he, when that's dated.
17 Q Okay, good. Okay, let's look down at page 47.
18 A Three seven?
19 Q Forty-seven.

20 A Four seven, okay.
21 Q "The Written Record"; "Kitsumkalum, The People, The
22 Written Record":
23
24 "The Kitsumkalum were the tenth village group
25 on the Skeena. Downriver, to the west, were
26 the Gitlan and Gilutsau, and to the east were
27 the upriver Kitselas."
28
29 Do you agree with that?
30 A Yes.
31 Q
32 "The main land areas exploited by the
33 Kitsumkalum were the Kitsumkalum River Valley,
34 areas along the Skeena to its mouth, certain
35 islands off the mouth, and a fishery on the
36 Nass River."
37
38 Do you agree with that?
39 A Depending on when he is talking about.
40 Q Okay.
41 A They didn't have house group territories below the
42 Zymacord, certainly.
43 Q Okay.
44 A But they did go to the, to the Nass for grease,
45 so --
46 Q All right.
47 A -- they must have had camping areas.

80

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 Q All right.
2 A I note in this same paragraph he says that:
3
4 "Occasionally, individuals would activate
5 social connections and join the production at
6 other villages, both along the coast and on the
7 Nass..."

8
9 Q Right. And you discussed that, that's one way that
10 you can go --
11 A That's my sense of how they utilized the coast and
12 the Nass.
13 Q As you say, that's one way that you can go and use
14 someone else's territories?
15 A That's right.
16 Q As we've discussed, you either have to stick to
17 your own territories or have permission or a
18 relationship to use someone else's territories?
19 A That's right.
20 Q We're talking about house territories, right?
21 A Yes.
22 Q We're talking about tribal territories, right?
23 A Which were an amalgam of house territories.
24 Q Yes, and we're talking about the nation's
25 territories?
26 A Yes.
27 Q I mean, referring to the aboriginal group as a
28 nation?
29 A Yes.
30 Q Okay. And looking at page 48, you'll see that
31 there's a footnote there referring to Boas, a
32 comment on the bottom of page 47, Boas records
33 Kitsumkalum as one of the Tsimshian villages, et
34 cetera?
35 A Yes.
36 Q And then at the bottom he says:
37
38 "Despite such close contact with the group,
39 Boas makes little specific reference to the
40 village."
41
42 A I'm sorry, is that in the footnote? I'm --
43 Q I'm getting to the footnote now.
44 A Okay.
45 Q I've got, on page 47 is the sentence that leads to
46 the footnote.
47 A Okay, sorry.

81

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 Q Then we have the footnote, "G.its!Emaga'lon"; I'm
2 sure you have a different pronunciation, but that
3 looks like the, or Tsimshian for Kitsumkalum?
4 A It is.
5 Q Yes:
6
7 " -- is listed as one of the six tribes of the
8 Tsimshian proper, found below the canyon of the
9 Skeena River (Port Simpson is listed as the
10 composite group of Tsimshian with nine towns.)
11 Their town is described,"
12
13 Et cetera, et cetera. Then he goes on at length
14 about Kitsumkalum; this is Boas. He speaks, he
15 says:
16
17 "A war between the phratries is mentioned, as
18 is the Tlingit origin of the Gun-hut laksgiik
19 clan in the village."
20
21 Do you know about that?
22 A Okay.
23 Q You see about eight lines down?
24 A
25 "A war between the phratries is mentioned, as
26 is the Tlingit origin of the Gun-hut laksgiik
27 clan in the village."
28
29 Q Yes?
30 A Yes, okay.
31 Q Is that true?
32 A Yes. Yeah.
33 Q
34 "Boas was told in 1888 that this migration had
35 occurred six generations earlier, about 1740 in
36 his reckoning."
37
38 Is that correct?
39 A That's what he was told, and published. I suspect
40 it was much earlier.
41 Q Okay.

42 A There's a tendency in the adaawk that time feels
43 conflated.
44 Q Okay. When you say "conflated", you mean
45 compressed?
46 A Yes.
47 Q Yes. If you look at page 49, here we have a

82

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 reference to George Dawson again in the last
2 paragraph on page 49. You remember in, I think it
3 was Emmons' book edited by Dr. de Laguna, they
4 refer to George Dawson:
5
6 "When the Dominion's geological explorer,
7 George -- "
8
9 A Are you on page 49, sorry?
10 Q Page 49?
11 A Here it is, sorry.
12 Q At any rate:
13
14 "When the Dominion's geological explorer,
15 George Dawson, passed through the area he was
16 mainly concerned with the geography. About the
17 Kitsumkalum he only said: 'A small Indian
18 village is situated at the mouth of the river'.
19 This was the site of the new village. By the
20 time of his visit commercial fishing had
21 captured the interest of Kitsumkalum, and many
22 people were living either at the cannery
23 village of Port Essington or the mission
24 village of Metlakatla."
25
26 Do you agree with that?
27 A Yes.
28 Q And I'll suggest to you that James McDonald regards
29 the advent of the canneries as the beginning of

30 commercial fishing for the Kitsumkalum people; is
31 that correct?
32 A Of the commercial fishing industry as we know it
33 now?
34 Q Yes?
35 A Yes.
36 Q However, you disagree with my more general
37 statement?
38 A That's right.
39 Q That that's the beginning of commercial fishing --
40 A If we're talking about sale of fish, yes.
41 Q Well, we're going to get into the sale of fish.
42 A Pardon?
43 Q We'll get into the sale of fish later this week, I
44 hope.
45 A Yes, okay.
46 Q You're probably waiting for that. Okay, then let's
47 go over to page 51, and this is where, or

83

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 Dr. McDonald starts talking about land holdings.
2 A Fifty-one?
3 Q Page 50, he starts talking about land holdings, and
4 he continues on page 51; do you see that?
5 A Yes.
6 Q Okay, then he gets, if you look at the second last
7 paragraph on page 51, he says:
8
9 "The map in Figure 2 -- "
10
11 Do you see that? This is the third, third sentence
12 in the second-last paragraph on page 51?
13 A Okay, yes.
14 Q
15 "The map in figure 2 shows the basic land
16 holdings in the nineteenth century."
17

18 He says:
19
20 "This is a tentative reconstruction based on
21 archival and interview sources. It is being
22 investigated further by band members."
23
24 And look over the page on page 52. Do you see that
25 map, figure 2?
26 A Yes.
27 Q And you see that it says, it's entitled, it's
28 labelled "The Aboriginal Property Holdings of the
29 Kitsumkalum Phratries in the Kitsumkalum and
30 Zimacord Valleys (reconstructed from archival
31 materials)"; do you see that?
32 A I'm sorry, you're on page --
33 Q I'm on page 52.
34 A Fifty-two now, okay.
35 Q Figure 2.
36 A Okay, sorry. I was going between 51 and 53, yes.
37 Q No problem, okay. You see I'm referring to the
38 map --
39 A Yes, now I've got it.
40 Q -- which is figure 2, and that's labelled "The
41 Aboriginal Property Holdings of the Kitsumkalum
42 Phratries in the Kitsumkalum and Zimacord Valleys
43 (reconstructed from archival materials)"; do you
44 see that?
45 A Yes.
46 Q And do you see that it shows the entire Zymacord
47 valley as being a property holding of the

84

Margaret Anderson (for Plaintiffs)

Cross-exam by Mr. Mackenzie (cont'd)

1 Kitsumkalum phratry?
2 A He does.
3 Q And it's specifically the Gispawadawada phratry?
4 A The Gispawadawada.
5 Q Yes?

6 A G-i-s-p-a-w-a-d-a-w-a-d-a is how he spells it here.
7 Q And just, by the way, you can see Lakelse Lake to
8 the south of it, to the south of the Skeena River
9 on that map?
10 A Yes.
11 Q So do you agree with James McDonald's depiction of
12 the Zymacord valley as being a property holding of
13 the Kitsumkalum phratry?
14 A I note that on the next page he talks about it as
15 recent due to a dispute.
16 Q Okay, we'll get to that then. Okay, then let's go
17 back to page 51, and the last -- well, my lady,
18 it's time for the afternoon break, or I'm sorry,
19 the afternoon adjournment.
20 THE COURT: If you just want to finish that question,
21 just go ahead.
22 MR. MACKENZIE:
23 Q Yes. At the bottom of page 51:
24
25 "Raw tenure patterns over large areas are
26 generally considered to have been fairly
27 stable. Evidence emerging from the
28 reconstruction of Kitsumkalum's property
29 holdings indicates that this was the rule, but
30 not necessarily an inviolate condition. In the
31 recent past, the adjacent Zimacord Valley was
32 annexed by Kitsumkalum and claimed by certain
33 smoogyt as the result of a dispute between
34 Kitsumkalum and the Gitlan. The resolution of
35 this issue, which was interrupted by the
36 colonial developments of the last century,
37 still awaits the public decision of the feast.
38 The story of the conflict is studied in
39 McDonald 1983."
40
41 So he says "recent", he's talking, he's talking
42 quite a long time ago; he's saying "interrupted by
43 the colonial developments of the last century"?
44 A That's right.
45 Q So he's talking back into the early 1800s or the
46 late 1700s, isn't he?
47 A I thought it was nineteenth century.

1 Q Okay. And the story of the conflict, and he refers
2 to his article, which is his 1983 article, right?
3 A And it's really, under Tsimshian law, it's not yet
4 resolved.
5 MR. MACKENZIE: All right. Well, I think we'll discuss
6 that a little further when we meet again tomorrow.
7 Thank you.
8 THE REGISTRAR: Order in court. Court is adjourned
9 until ten a.m.

10
11

(PROCEEDINGS ADJOURNED AT 4:00 P.M.)

12
13
14

REPORTER'S CERTIFICATE

15
16

I, REESA PEREIRA, Official Reporter in the
Province of British Columbia, BCSRA No. 282, do
hereby certify:

17
18
19
20

That the proceedings were taken down by me in
shorthand at the time and place therein set forth
and thereafter transcribed, and the same is a true
and correct and complete transcript of said
proceedings to the best of my skill and ability.

21
22
23
24
25
26

IN WITNESS WHEREOF, I have hereunto subscribed
my name this 17th day of January, 2007.

27
28
29

30
31

32
33

R. PEREIRA
Certified Realtime/Official Reporter
United Reporting

34
35
36
37
38
39

40
41
42
43
44
45
46
47

i

INDEX

WITNESSES	PAGE
Margaret Seguin Anderson (for the Plaintiffs)	
Cross-exam by Mr. Mackenzie (continued)	1

EXHIBITS

NUMBER	DESCRIPTION	PAGE
46	Map entitled Dixon Entrance	46
F FOR IDENTIFICATION	Article entitled "The Midden" dated June 1988	49