

1
George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 Vancouver, B.C.
2 December 4, 2006.
3
4 THE REGISTRAR: Order in court. In the Supreme Court of
5 British Columbia at Vancouver, this 4th day of
6 December, 2006. In the matter of Lax Kw'alaams
7 Indian Band and others versus the Attorney General
8 of Canada, my lady.
9 THE COURT: Thank you.
10 MR. RUSSELL: My lady.
11 THE COURT: Mr. Russell.
12 MR. RUSSELL: My lady, we have a binder of some of the
13 documents that may become exhibits this morning.
14 We could pass that up now if your ladyship so
15 desires, or we can deal with them one at a time.
16 They may not, some of them may not; it will depend
17 upon the question.
18 THE COURT: Has Mr. Kirchner seen them?
19 MR. KIRCHNER: I have the binder, and I have no
20 objection to proceeding that way. The binder is
21 not to be marked as an exhibit. It's simply for
22 convenience, as I understand it, so that we don't
23 have to shuffle paper all day as we, as Mr. Russell
24 moves through the material.
25 THE COURT: Yes, and some of it may or may not be marked
26 as an exhibit, depending on the examination; is
27 that correct?
28 MR. RUSSELL: Correct, my lady.
29 THE COURT: All right. We can proceed that way.
30 MR. RUSSELL: All right. My co-counsel, Ms. Vigneau,
31 will give them to you.
32 MS. VIGNEAU: My lady, there are tab numbers there to
33 make it easier to refer to these. Now, it might be
34 that the exhibit numbers will be different from the
35 tab numbers.

36 THE REGISTRAR: Just a reminder, Dr. MacDonald, you're
37 still under oath.

38 THE WITNESS: I beg your pardon?

39 THE REGISTRAR: Just a reminder, you're still under
40 oath.

41 THE WITNESS: Yes, thank you.

42

43 GEORGE MACDONALD, recalled,
44 warned.

45

46 CROSS-EXAMINATION BY MR. RUSSELL, continuing:

47

2

George MacDonald (for Plaintiffs)

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

1 Q Dr. MacDonald, will you return to where we left
2 off, which was, we were talking about Mr. Ferguson.

3 A Right.

4 Q And I have a few more questions about Mr. Ferguson
5 first. Doctor, you have relied on articles by
6 Ferguson before; is that correct?

7 A I am much more aware that he used my material than
8 I used his. I may have referenced him somewhere,
9 but I've never considered him a major source
10 because he's not done primary work in that area.

11 Q And I ask you to turn to, this is the binder that
12 we just forwarded up, it's tab 3 in that binder.
13 This is your 1979 Kitwanga Fort manuscript report?

14 A Correct, yes.

15 Q And this is referred to in your bibliography at
16 page -- of the final report?

17 A That's correct.

18 Q That's the final report that's evidence in this
19 case?

20 A Okay.

21 Q Is that right?

22 A Yes.

23 Q Now, if you could turn to page 10 of this document,

24 you see there in the, just the lower half of the
25 page it says:

26
27 "In a recent study of northwest coast warfare,
28 Ferguson (1979B:4) states:

29 'The river mouths also were centers of
30 trade both before and after contact. Furs
31 and other items from the interior were
32 traded down the valleys and western buyers
33 clustered around the estuaries. Control of
34 this trade was a continual source of
35 conflict.'

36 In particular --

37
38 And this is going, this is outside the quote now:

39
40 " -- reference to the Skeena Estuary, he
41 states (Ferguson 1979B:6):
42 'Boas' (1970:335-378) informants
43 recalled a long series of
44 exterminative raids fought between the
45 Tlingit and Tsimshian over control of
46 the Nass and Skeena estuaries. These
47 occupied most of the eighteenth

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1 century, with the Tlingit finally
2 being defeated and pushed north'."

3
4 So that's a place where you refer to Ferguson in
5 one of your previous articles?

6 A Yes.

7 Q Is that correct?

8 A Right.

9 Q And in particular, you relied on Ferguson for that
10 point?

11 A Well, yes. I relied on him in terms of the mouths

12 of the rivers which I was talking about, but he
13 ignores the conflicts that were going on in the
14 interior, which were the ones that interested me
15 the most, in the area of Kitwanga and up at the big
16 fur trading at Hazelton, which were the conjunction
17 of the major trading routes that I was travelling
18 -- I was documenting in my study.

19 Q All right. But in -- but you do rely on him in
20 that place, for sure?

21 A I refer to him.

22 Q Yes. Now, let's turn to tab 4 in this new binder.
23 I would ask you to turn to page 39 -- page 20, it's
24 Roman numeral XX. So if you don't have, it's about
25 20 pages in, and it's got a double X at the bottom,
26 and it's entitled "Warfare" at the top?

27 A Is it before the maps? Yes, it must be before the
28 maps.

29 Q Just before the maps, yes, before one of them.

30 A The last page before the maps?

31 Q It's the last page --

32 A "During the eighteenthth century"?

33 Q It's headed -- it's, no, it's after those maps.

34 A How many pages, may I ask?

35 Q I would say it's about 25 pages in.

36 A Oh, past that.

37 Q It's headed "Warfare"?

38 A Now, I have one called "Warfare".

39 Q And at the page it's double X?

40 A Yes.

41 Q Okay. Now, and in particular this also is an
42 article, this "Tsimshian Narratives 2" is also an
43 article that you referred to in your bibliography
44 in the final report, this, before this court?

45 A Yes.

46 Q Again, here we see it looks like the same reference
47 in the upper part of the page; in particular,

4

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1 reference to the Skeena estuary, he states
2 "Ferguson 1979B".

3 A Exactly, in reference to the estuary, the Skeena,
4 yes.

5 Q For the same point. I ask you also to turn to
6 what's tab 5 in this new document, and page 4 of
7 that. It's the same reference in the middle of the
8 page?

9 A Yes, because --

10 Q The same point?

11 A I referred to him because I had done my studies
12 upriver, and that was a reference to downriver as
13 well.

14 Q All right. Now, those Ferguson references, they in
15 turn rely on Boas?

16 A They rely on a whole series of people that he
17 extracted in his secondary research to come up with
18 that statement.

19 Q But in particular they rely on Boas, the Ferguson
20 site?

21 A They rely on Boas 1916, prior to any radiocarbon
22 dating that was available to archaeologists; hence,
23 the dating is incorrect totally. It was 1800 BP
24 rather than 1800, 18th century, which he is talking
25 about, because Boas had no way of dating any of the
26 stories, and assumed, as most people did, at the
27 time they had no time scale. In fact, we know now
28 that they had in fact a great deal of time scale.

29 Q Well, let's look at the stories of Boas, see what
30 we can see about those, doctor. So I have the Boas
31 1916 references, so if we could turn to that, and
32 that is tab 6 in this binder.

33 A The publication dated 1909 to 1910, which actually
34 makes it an even earlier statement. It wasn't
35 published until Washington got around to it in
36 1916.

37 Q Yes. In particular, I'd ask you to turn to page
38 376?

39 A Uh-huh.

40 Q In the middle of the page, where it states:
41
42 "The last war with the Tlingit was when the
43 Tsimshian were coming back from Nass River."
44
45 See that paragraph?

46 A Yes.
47 Q

5
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1 "This was in the generation of my grandmother
2 and my grandfather, the second year after the
3 white man arrived on this coast. They knew
4 then how to use guns. The Tlingit were the
5 first to meet white men at Old Tongass."
6

7 A In fact --

8 Q That's clearly a reference to something that is
9 happening in either post-contact or in the
10 proto-contact era?

11 A But it has nothing to do with the battle over the
12 Prince Rupert Harbour. It's a late battle with the
13 Tlingit. There are battles into the 19th century
14 with the Tlingit over specific issues. That was
15 not part of the Tlingit wars.

16 Q Doctor, I am not suggesting that this is the same
17 battle.

18 A No.

19 Q I'm just pointing out that there were battles
20 happening at the time of contact and after?

21 A Correct.

22 Q With the Tlingit in this area?

23 A And until the British brought the Pax Britannia to
24 the north coast, that continued on.

25 Q In particular, this is talking about battles after
26 contact?

27 A Yes, but nothing that I've referred to in there.

28 Q And again, at page 377, towards the top, it's a
29 separate, first of all, paragraph:
30

31 "Our grandfathers and grandmothers have never
32 forgotten this war, when the warriors of the
33 Tlingit were coming up to fight against the

34 Tsimshian, on their way from Nass River. My
35 grandmother's uncle was killed in this war."
36

37 That's again the same reference to the battles?

38 A But again, it refers to the fact that they say
39 "grandmother and grandfather", meaning ancestor,
40 that would be the translation in English. So they
41 say my ancestors had a war with the Tlingit, is
42 their meaning, I would propose there.

43 Q And again, on page 370, in the middle of the
44 paragraph beginning "Three or four generations":
45

46 "Three or four generations before the white man
47 arrived on this coast there were many wars.

6

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1 The Tlingit gained many victories... the
2 Tlingit pursued them everywhere, wherever they
3 went to hide on the mountains. Therefore all
4 the Tsimshian went up Skeena River, so that the
5 Tlingit could not follow them... Then the
6 Tsimshian -- nevertheless they kept watch over
7 them. Then the Tsimshian were safe on Skeena
8 River."
9

10 And I'm going to skip down to the next paragraph:
11

12 "Not one tribe remained at the old town of
13 Metlakatla or anywhere on the seashore. This
14 whole country was taken away by the Tlingit as
15 far as the mouth of Skeena River."
16

17 Again, this is talking about something, now it says
18 here "three or four generation before the white man
19 arrived". Is that possible that it's a reference
20 to the white man arriving and establishing Fort
21 Simpson in the 1830s?

22 A Well, it's probably to do with the fur traders
23 coming on coast, was the whole episode of maritime
24 fur trading, but --

25 Q This would be in the 1700s?

26 A Yeah, but it's -- well, they, the point is that the
27 chronology was pre-archaeology, and that's what us
28 archaeologists have contributed, is the time scale
29 to the oral narrative, and Boas had no knowledge of
30 that.

31 Q But the radiographic dates --

32 A Radiographic --

33 Q -- don't relate to the same battles as these, do
34 they?

35 A They relate to the battles over the Prince Rupert
36 Harbour, which is primarily what my writings have
37 been about, as well as the forts in the interior.

38 Q But doctor, these, these portions of the text we've
39 just been reading from Boas, they don't relate to
40 the same battles that you're talking about in terms
41 of the 1,800 before present?

42 A I am saying that I believe that there were two
43 problems. One is that Boas was taking the literal
44 statement without having any chronology to compare
45 it against, and assuming that the reference to
46 "grandparents" meant one generation. There were
47 conflicts, I'm certainly willing to agree with

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1 that, from the time, as it states here a little bit
2 before that, from the time of the deluge, when the
3 Tsimshian had power over the Skeena River, until
4 the British came in and had gunboats off the coast,
5 which was essentially around the 1850s, and that
6 brought an end to the warfare on the coast. Prior
7 to that, warfare was particularly continuous of the
8 late period, when you had extensive trading, and
9 you had parties of warriors looking for slaves as

10 part of that status system.

11 Q And doctor, the first reference we looked at here?

12 A Which is on page?

13 Q No, no, forgive me. Yes, the first reference on

14 page 376, that was the one, it refers to guns, the

15 use of guns. So that clearly is after, after

16 contact?

17 A Certainly the use of guns is after contact.

18 Q All right.

19 A However, the stories are collapsed, and the

20 archaeologists have had to pull them apart and

21 crosslink them to historical archaeology, or to

22 prehistoric archaeology.

23 THE COURT: Mr. Russell, I'm just concerned that perhaps

24 you jumped into an area without laying the

25 foundation, and I mean, obviously Dr. MacDonald

26 knows the area, but for me and for the record, I

27 don't know who Boas is, I don't know where his

28 stories come from. I don't even know where these

29 articles that you're putting to Dr. MacDonald come

30 from. So if we could do that first, I think it

31 would help me understand better the point that

32 you're trying to make. I shouldn't say I don't

33 know who Boas is, but the point is, for the sake of

34 the case, I don't think it's something I should be

35 taking judicial notice of, I think that should be

36 in the record.

37 MR. RUSSELL:

38 Q Now, doctor, I don't have that portion of the

39 transcript, but I believe you talked about Boas in

40 your evidence already in this trial?

41 A No doubt I've mentioned him.

42 Q And Boas was an ethnographer of the -- who worked

43 with the Tsimshian in Victoria in 1866?

44 A Boas was a marine biologist who did his study on

45 water temperature and plankton off the coast of

46 Ellismere Island, and took an interest in the Inuit

47 people, and eventually worked for the Columbia

1 World Fair on their exhibition, and was introduced
2 to the Indians of the northwest coast, and in fact
3 did studies of all of the native groups under the
4 Jessup North Pacific Expedition that was funded by
5 the American Museum of Natural History. He spent
6 most of his time among the Kwakawakau' people of
7 Vancouver Island, and made two brief trips into
8 Tsimshian territory around 1898, where he stayed
9 for one week or so in Port Essington, and he made a
10 brief trip to the Nass.

11 Q So that's in the 1890s?

12 A Yes.

13 Q He may have also worked, and I don't know if you
14 know this, but at Tsimshian in Victoria in 1866;
15 are you aware of that?

16 A He introduced -- interviewed many people who were
17 coming through Victoria for trade.

18 Q And Boas's full name is Franz Boas, with a Z?

19 A Correct.

20 Q And he also worked with Beynon, William Beynon?

21 A Yes, after Beynon, after the depression Beynon
22 advertised his availability, and he was hired
23 briefly by Boas because it was -- he, Boas died in
24 1940, and so it wasn't a long period of time that
25 Beynon actually sent his books to New York. Prior
26 to that they were all sent to the museum in Ottawa,
27 and after Boas died they were again, after the war
28 ended, sent to the museum in Ottawa.

29 Q And William Beynon was from Port Simpson?

30 A Yes.

31 Q So he is a Coast Tsimshian?

32 A Yes, he's a Coast Tsimshian.

33 Q And he was not an ethnographer himself, William
34 Beynon?

35 A He is being called an ethnoscientist by Marjorie
36 Halpin, who has done a biography on William Beynon
37 in a book on native scientists that have been
38 recognized for their outstanding contribution. So
39 he studied Tsimshian history all of his life, and
40 was coached by Boas and Barbeau.

41 Q So is it fair to call him a field worker for Boas?

42 A The preference now is to call him a native scholar
43 collaborating on research work, not paid informant,

44 which has a derogatory sense to it. He was far
45 more than a paid informant.
46 Q But he has in the past been called a field worker
47 for Boas?

9

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

1 A I don't know. Possibly so.
2 MR. RUSSELL: My lady, is that sufficient introduction
3 with regard to Franz Boas?
4 THE COURT: Yes, thank you.
5 MR. RUSSELL:
6 Q So now, doctor, I return to the 1984 article by
7 Brian Ferguson entitled "Warfare, Culture", a book
8 entitled "Warfare, Culture and Environment", and
9 ask you if this is -- well, my lady, we've
10 established a fair degree of -- I'm wondering now
11 if now is the right time to have a, make a decision
12 on whether or not it can be entered as evidence.
13 THE COURT: Well, do you have any more questions for
14 Dr. MacDonald regarding Mr. Ferguson or this text?
15 MR. RUSSELL: Not for the text as a whole, but I would
16 have for a particular paragraph, yes.
17 THE COURT: All right. Then we may have to deal with
18 that in a different way, depending on my ruling on
19 whether this is authoritative or not. Did you have
20 any more questions for Dr. MacDonald regarding the
21 authority of --
22 MR. RUSSELL: The only -- sorry, my lady. The only part
23 of it I'm interested in is, in fact, the particular
24 paragraph in --
25 THE COURT: Well, then I think really what you probably
26 want to put to Dr. MacDonald is, because he has
27 said that the text is worthy of consideration,
28 although he doesn't consider it authoritative
29 because it makes so much use of secondary sources,
30 so perhaps you could go to that specific area and
31 say, would you consider this portion of the text

32 authoritative. It's a little unusual, but I'll let
33 you ask him that.
34 MR. RUSSELL: Thank you.
35 Q So Dr. MacDonald, I'd ask you to look at, this is
36 Ferguson's 1984 work, and I'd ask you to look at
37 page 274.
38 THE COURT: I have that already. Well, really, I think
39 it goes back to, there's a section or a chapter on
40 the Tlingit, and that's the section that you're
41 going to ask questions about; that is correct?
42 MR. RUSSELL: It's essentially the same text, yes.
43 THE COURT: Then I think you need to lay the foundation
44 as to Dr. MacDonald's opinion of Dr. Ferguson's
45 work in the area of the Tlingit, whether he would
46 accept that as authoritative or not, and depending
47 on his answer, we'll take it from there.

10

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1 MR. RUSSELL:
2 Q So doctor, with reference to, if I may, with
3 reference to -- it's the several sentences in the
4 middle of the first partial paragraph on page 274.
5 THE COURT: Well, no, that -- I obviously haven't made
6 myself clear.
7 MR. RUSSELL: All right.
8 THE COURT: You may or may not be able to ask him about
9 that, but what I want to know from Dr. MacDonald at
10 this point is whether he will agree that
11 Mr. Ferguson's work on the Tlingit that's contained
12 in this portion of this textbook could be
13 considered authoritative.
14 MR. RUSSELL:
15 Q All right, doctor. So -- thank you, my lady. And
16 here we're not talking about what archaeological
17 evidence or radiographic dating that may date back
18 certain matters to 1,800 years before the present.
19 We're talking about the information that Boas was

20 talking about and that Ferguson is relating, has
21 related in the earlier texts, the 1979 text, which
22 you yourself have cited in several articles of the
23 book. In that context, is Mr. Ferguson, can he be
24 considered authoritative with regard to his
25 interpretation of Boas's works with regard to
26 Tlingit presence in the area in or about the 18th
27 century?

28 A Not in terms that archaeologists would accept,
29 because it is old, irrelevant information with no
30 commentary by Ferguson on the fact that he's
31 referring to what happened when the Tlingit got
32 guns, which launched a whole new series of wars, as
33 opposed to the wars in which they were fighting
34 over the Prince Rupert Harbour, 1,800 years or
35 1,600 years prior to the introduction of guns.
36 Guns certainly triggered the expansion, again, of
37 all the people who were on the outer coast and got
38 guns first from the maritime fur trade, and
39 included the Haida, the Tlingit, the
40 Nuu-chah-nulth. They all then had the advantage
41 over the inland people, so that they would use
42 their guns to get furs to trade to the fur traders.
43 So that was a whole other separate -- it's like
44 talking about the First World War versus the Second
45 World War. They actually -- but these were
46 separated by 1,600 years at the minimum.

47 Q Yes, doctor, but my question --

11

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1 A And Boas didn't realize --

2 Q -- would relate to the second World War, not the
3 First World War.

4 A But Boas didn't realize there were two world wars.

5 Q Maybe if I can repeat that question.

6 A Yes.

7 Q My question, doctor, is directed, in terms of your

8 analogy, it's directed at the Second World War.
9 It's not directed at the First World War, it's not
10 directed at what may have happened 1,800 years
11 before the present?
12 A But Boas --
13 Q It's only focussing on the Second World War period
14 in terms of your analogy?
15 A But all of the references Boas makes are to oral
16 histories, which conflate the two episodes of the
17 Tlingit wars in the Prince Rupert Harbour and the
18 wars with the guns of the 18th and 19th centuries.
19 Q Is this a problem with oral histories generally,
20 that they can conflate time periods?
21 A It's exactly the problem of the biblical
22 archaeology, that there is a narrative which has
23 continuity but needs to be tested against the
24 archaeological record, and that's what I've devoted
25 my life to.
26 Q So are you denying that there's any archaeological
27 record of exterminative raids between the Tlingit
28 and Tsimshian in the 18th century?
29 A I did a lot of work on that at the Kitselas Canyon
30 with some very reliable informants, and in fact,
31 there were raids from the coast into the interior,
32 but primarily about Haida raids. And so any of the
33 narratives that I heard were primarily about Haida,
34 not about Tlingit. So exactly the same thing
35 happened, the Haida were raiding at the same time
36 as the Tlingit; the reference is to the Tlingit,
37 but the oral history is more focussed on Haida
38 raids into the Skeena estuary with guns.
39 Q So doctor, you're not talking there about
40 archaeological evidence, you're talking about
41 narratives?
42 A Right.
43 Q What about the archaeological evidence?
44 A Well, that's the point that they, the people that
45 we were working with with the oral narratives were
46 able to point out archaeological features which we
47 validated, which included lookout sites on the

12

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1 highlands in Kitselas Canyon, and other lookout
2 sites in which, when the Haida appeared, or the
3 Tlingit, I assume, that there were signal fires
4 lit, one after another, up the Skeena, and within a
5 matter of hours, warriors from the Kispiox and as
6 far up the river as Kuldo could come down to help
7 defend the mouth of the Skeena.

8 Q But is it fair to say that archaeological evidence
9 to date cannot deny that there were exterminative
10 raids by the Tlingit, fought between the Tlingit
11 and the Tsimshian over control of the Nass and
12 Skeena estuaries in the 18th century?

13 A Well, I would certainly say the exterminative raids
14 is a total misconception. There were slave raids
15 and raids for booty, which mainly meant furs,
16 coming from all the groups of the outer coast to
17 the groups on the inner coast.

18 Q Doctor, I'm not after your conclusions on this,
19 what I am after is the archaeological evidence. Is
20 the archaeology there to deny these exterminative
21 raids?

22 A The archaeology which I did at the Kitwanga fort
23 site, for example, found pieces of flintlock guns
24 on the slopes of the hills, so there's definitely
25 evidence of warfare in that area, but the
26 confirming evidence was that these were all raids
27 from other groups on the coast, primarily Haida,
28 rather than Tlingit. However, I would say that the
29 Tsimshian acknowledged that the iron pots we
30 excavated at that area had originally come from
31 trade with the Russians via the Tlingit.

32 Q So it is fair to say that the archaeological
33 evidence does not deny the exterminative raids?

34 A Well, exterminative is, the archaeological evidence
35 is definitely against exterminative raids; raids of
36 other sorts, maybe.

37 Q What archaeological evidence, doctor?

38 A The Kitwanga Fort material, for example.

39 Q That's in the interior, is it not?

40 A That's in the mid-range of the Skeena River, which
41 of course, within not Coast Tsimshian territory,

42 but Tsimshian territory, Tsimshian language
43 territory.
44 Q I'm talking about the Nass and Skeena estuaries.
45 A Well, the only forts that -- the only fort that has
46 been excavated is the fort at GbTo:33, which is the
47 Lachane site, which was part of that 2,000 year

13

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1 history of raids into the interior, into that area.
2 And then Richard Inglis did the K'nu site, which
3 was occupied throughout the 19th century, beginning
4 a millennium ago, and there were, there were
5 evidence of large houses, and I would have to check
6 back to see what there was in the way of evidence
7 of warfare there, but there was evidence that that
8 village had been fortified recently, or the
9 fortifications had been maintained, because that
10 site was occupied during both the early war, as I
11 will call it now, for the Prince Rupert Harbour,
12 and later raids that would have come during the
13 early fur trade period when guns were suddenly
14 available.

15 Q But right now, doctor, you are not able to point to
16 any archaeological evidence that denies the
17 exterminative raids in the 18th century as between
18 the Tlingit and Tsimshian in the, over control of
19 the Nass and Skeena estuaries; is that correct?

20 A I would simply say that there is no evidence of
21 exterminative raids anywhere on the north coast in
22 that period.

23 Q No other --

24 A There were raids for booty and for slaves.

25 Q In terms of archaeological evidence, you're saying
26 there's no evidence of it?

27 A There's no evidence of any major warfare of any
28 kind in the north coast.

29 Q Is there any evidence that it didn't happen?

30 A Not that I'm aware of, because nobody's looked for
31 it or even thought of looking for it.
32 MR. RUSSELL: Thank you, doctor.
33 THE COURT: All right. Now, are we going to deal with,
34 are we going to deal with this --
35 MR. RUSSELL: No, my lady. I think we have the evidence
36 on this now.
37 THE COURT: You're content to leave it at that then?
38 MR. RUSSELL: Yes.
39 Q Now, doctor, in your final report bibliography you
40 refer to an introduction written by yourself and
41 Jerome Cybulski for the Prince Rupert Harbour
42 Project and Perspectives on Northwest Coast
43 Prehistory?
44 A Yes.
45 Q I'm going to produce to you, going to produce to
46 you a copy of that introduction, and I would ask
47 you to turn to page 13. And it's the partial

14

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1 paragraph at the top, the second whole sentence,
2 and I'll just read it out, the second and third
3 whole sentences. "The Boardwalk site", that's,
4 that's one of the sites in the Prince Rupert
5 Harbour area that's been archaeologically
6 excavated, doctor?
7 A Yes.
8 Q
9 "The Boardwalk site appears to have been one
10 example of a temporary population exodus from
11 the area. It appears that the harbour was
12 gradually reoccupied sometime before the era of
13 native contact with Europeans until nine winter
14 village tribes moved to the Hudson's Bay
15 Company built just north of Port Simpson in
16 1834."
17

18 A Yes. I did not write those words, but I agree it
19 is in the article that I contributed to and jointly
20 used as the introduction to the volume. Those are
21 Archer's words, I believe. Again, since there's no
22 time depth there, it just says "was gradually
23 reoccupied sometime before", contact with
24 Europeans, which I don't deny; but it doesn't mean
25 immediately before contact with Europeans.
26 Q But nor does it mean a long time ago either?
27 A It's floating.
28 Q Yes, thank you. Now, if I may have Exhibit 10
29 placed before Dr. MacDonald; that's the working
30 notes, my lady. We looked at these somewhat
31 already, earlier on in this cross-examination,
32 doctor. Do you recall that?
33 A Yes.
34 Q These working notes include notes of the research
35 work you were doing in preparation for this report;
36 is that correct?
37 A Plus the notations that were made up to the time I
38 handed over the document to you two weeks ago, or
39 whenever that was.
40 Q Yes. Yes, but apart from those three extra pages I
41 think you're referring to, and a few others
42 handwritten --
43 A Well, yes. We haven't quantified them, but it's
44 somewhere in that area.
45 Q But in those working notes, there's the notes of
46 the research work that you did?
47 A Yes.

15

George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 Q In preparation for this report?
2 A Correct.
3 Q Now, those working notes come to an end on March
4 the 26th, 2006, don't they, the ones that are with
5 regard --

6 A They're not all dated, so I'm not sure how you
7 would determine that. The last date may have been
8 there.

9 Q If you go to the last date.

10 A And what page is that on?

11 Q I think it actually has quite a few pages of notes
12 for that date. It's page 18.

13 A And the date you said, I'm sorry, was?

14 Q The date of March the 26th. That's the last date
15 in these working notes, isn't it, doctor?

16 A Uh-huh. Well, I will look through and see. I
17 don't --

18 Q Sure.

19 A Don't always date the notes, so. That's the last
20 one I see going through here; the last date is,
21 I'll say the 23rd of March. It was probably
22 sometime just after that that I started to draft
23 the actual document, and I just began to put the
24 notes directly in as I came across references into
25 the document itself.

26 Q So are you saying that you did some further
27 research, but you may not have made working notes
28 with regard to that?

29 A Right. I incorporated them directly into what I
30 was working on at the time. And by that time the
31 last notes in here are an organization, I think we
32 covered that the last time, of the ideas to begin
33 writing, so those are around the 23rd of March that
34 the organization of the material on trade appears
35 in the, in these notes. And then I began to draft
36 the report after that period.

37 Q So any further research that you did that is not
38 reflected in the working notes, you would have
39 placed, if you place it into your, say, the draft
40 report, you would have put the article, the year
41 and the page number?

42 A In most cases I would give full reference to -- if
43 I had decided that that was something that I wanted
44 to include in the report, I would -- very often
45 what I do is to know where I can put my hands on a
46 copy of the report. It isn't possible always to
47 get copies of them. I rely very heavily on the

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

- 1 library at the museum in Ottawa, and I was there
2 during March and then I came back to Vancouver. So
3 from that point on, I would enter any items that
4 came to my attention that were relevant into the
5 draft of the text, and it was a progressive draft
6 until the final one was completed.
- 7 Q But again, when you actually got a copy of the
8 article you were interested in reading, and if you
9 didn't make working notes, you would have placed --
10 and, but rather, placed it straight into the
11 report, and you would have put a page number of a
12 particular reference; isn't that correct?
- 13 A I would attempt to do that if I was writing it, for
14 example, on the plane, which I often do work on the
15 plane, then I'd put what I -- I'd put Boas 1916,
16 and then I would later on look up the page number
17 to fill in the reference, which is typically done
18 in writing an article.
- 19 Q So the page reference would end up in the report?
- 20 A Right.
- 21 Q Now, doctor, since -- well, at the time when you
22 were last here on the stand, your counsel had
23 produced to us, to counsel for the Attorney General
24 of Canada, some e-mails and drafts that had not
25 been produced to date, so I'm going to ask those be
26 produced now. So we'll start with draft, the
27 first, what I take to be the -- all right. That's
28 in draft one, that's in tab 1 of the binder that
29 you have. And doctor, I'm also producing, it's the
30 e-mail from plaintiffs' counsel to the Attorney
31 General of Canada dated November 22nd, 2006, that
32 enclosed this document plus some other documents,
33 and two other e-mails of April the 18th, 2006,
34 apparently from yourself to plaintiffs' counsel, so
35 if I may produce those as well. Now, if you just
36 want to take a moment and familiarize yourself --
- 37 A I don't have a copy.
- 38 Q Okay. And doctor, there's also at tab 2 a second
39 document which may well be a draft of a report as

40 well. That came with the e-mail of November the
41 22nd, 2006.
42 A It was sent on July 15th, which is essentially when
43 I completed and sent in the report, so it probably
44 is the final.
45 Q All right, doctor. First, the first e-mail of
46 April the 18th, 2006, that's an e-mail that you
47 sent to the plaintiffs' counsel on April the 18th,

17
George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 2006?
2 A Yes.
3 Q And this e-mail attached a draft of the report?
4 A It doesn't say so. Oh, "attached is the draft of
5 the file", okay.
6 Q Do you recall --
7 A It does say so. I usually put, you know,
8 "attachment", but it wasn't -- yes, okay. It was a
9 draft.
10 Q Do you recall if that first document at tab 1 is
11 what was attached to that e-mail? Your plaintiffs'
12 counsel does --
13 A It looks early. Sorry.
14 Q Sorry, doctor, I didn't wish to cause any
15 misunderstanding here. Your plaintiffs' counsel
16 have advised us that it is what was attached to
17 that e-mail.
18 A Yes, it looks like the time frame would be right
19 for this.
20 Q So is this your first draft of your report that
21 you, or the first one that you provided to
22 plaintiffs' counsel?
23 A It is the first one I provided to plaintiffs.
24 Q All right. So this one in particular, for ease of
25 reference, does not have a date on the front?
26 A Right, because it's marked "draft".
27 THE COURT: Did you wish at this point to mark it as an

28 exhibit?
29 MR. RUSSELL: Yes, my lady.
30 THE COURT: And did you wish to mark the bundle of
31 e-mails as --
32 MR. RUSSELL: And the bundle of e-mails, yes, my lady.
33 THE COURT: So let's mark the bundle of e-mails
34 collectively, two pages, as the next exhibit.
35 THE REGISTRAR: Exhibit 16, my lady.
36
37 EXHIBIT 16: Three pages of e-mails
38
39 THE COURT: Thank you. And the draft report at tab 1 of
40 this white binder will be Exhibit 17.
41
42 EXHIBIT 17: Draft report of Dr. MacDonald
43
44 THE COURT: While we're at it, Mr. Russell, this
45 introduction written by Dr. MacDonald,
46 "Perspectives", did you wish that marked as an
47 exhibit or not?

18
George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 MR. RUSSELL: Yes, my lady.
2 THE COURT: All right. We'll make that Exhibit 18 then.
3
4 EXHIBIT 18: Introduction written by Dr. MacDonald
5 entitled "Perspectives"
6
7 THE COURT: Madam Registrar, do you have a copy of this?
8 THE REGISTRAR: I believe the witness does, my lady.
9 MR. RUSSELL:
10 Q Now, if we could also have Exhibit 7, that's the
11 final report, also produced to Dr. MacDonald. And
12 what I want you to note, Dr. MacDonald, is that the
13 version of the report at tab 2 in your binder is
14 not the same as the final report, so if you could
15 just check that.

16 A Well, do you want me to read all pages and check
17 them against all the --
18 Q I think you can find out -- the main first page, in
19 fact, it's in tab 2, the heading refers to
20 Metlakatla and Lax Kw'alaams, whereas the final
21 report does not in the heading. If you open up --
22 A Yes, I reread the submission and realized it was
23 just Lax Kw'alaams that was in, producing the
24 action.
25 Q Yes, doctor.
26 A And so I took Metlakatla off the title.
27 Q But my point here, right now, rather than focussing
28 so much on Metlakatla, is to point out that it's
29 not the same document because of that, at least?
30 A So that word change, yes, that, I made that the
31 same day.
32 Q All right. So there are -- all right. The version
33 that is at tab 2, do you recall when you sent that
34 to plaintiffs' counsel?
35 A It was on July 15th, and then sent to subsequent,
36 the -- it was the same day that I decided that that
37 was the wrong title, and changed the title.
38 Q All right. And were you in Vancouver at that time?
39 A Yes. Let me think. I'd have to -- did I bring my
40 notebook? July 15th, hmm. Yes, I believe I was.
41 I go back and forth every month, so I'd have to
42 check the exact day, but I believe it was -- yes.
43 Q Would that be something you would be able to do by
44 tomorrow?
45 A Yes.
46 Q Perhaps you could do that.
47 A Right.

19

George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 Q Is that in a calendar or a diary?
2 A It's in, it's on a calendar that we keep just on
3 when I go back and forth, primarily for the --

4 Q Does that calendar also have the dates when you did
5 research --
6 A No.
7 Q -- for this, all right.
8 A No, it's a travel calendar.
9 Q And so if you could, if you could bring that in
10 tomorrow.
11 A Verify that date.
12 Q I would be -- would you do that, please?
13 A I'm pretty sure I just returned from Ottawa to
14 Vancouver, because my birthday's July 4th, and I
15 had that there and then came back, but I'll verify
16 exactly what day I came back.
17 Q All right, doctor. Now then, the draft at tab 2,
18 that is a second draft that was done by you?
19 A It's, it's the final work with the change of the
20 title to "Lax Kw'alaams".
21 Q So you recall only giving the first draft we've
22 looked at, which is now Exhibit 17, and then this
23 document here you're looking at, which is in tab 2,
24 and making only the one change?
25 A Do you see other changes?
26 Q Yes.
27 A Okay.
28 Q Do you recall making other changes, doctor?
29 A I recall doing a very last version of it, so that
30 the last items that I thought needed adjustment,
31 and I noted that I hadn't adjusted it from
32 "Metlakatla/Lax Kw'alaams" to just "Lax Kw'alaams",
33 so I made a revision on that. Whether I did, I --
34 I'm sure I would have read through it one more time
35 to fill in references to bibliography, because I
36 ran out of time in terms of bibliographic research
37 that I was able to do while I was in Ottawa in the
38 library, where I knew they had that material. So
39 depending on, if there were minor changes between
40 the first draft and the second draft which -- well,
41 that's not the right terminology; between the one
42 under tab 2 and the Exhibit 7.
43 Q There were not many changes?
44 A Not many. I'm trying to recall whether there were,
45 in my view, substantive. I was trying to bring the
46 document to its most complete stage, so I don't, I
47 don't recall writing any new sections. I was

- 1 trying to fill in references primarily.
2 Q And when did you finalize the report that is
3 Exhibit 7, the final report?
4 A July the 15th.
5 Q The same day?
6 A Yes.
7 Q All right. Do you know where you did those changes
8 on July the 15th?
9 A Where?
10 Q Where?
11 A It was here in Vancouver.
12 Q Did --
13 A Assuming I was here; but I'm sure, now that I think
14 about it, that I was here in Vancouver.
15 Q But did you do them at the plaintiffs' law firm?
16 A At the plaintiffs' --
17 Q At the plaintiffs' counsels' offices?
18 A No. No. I would have done them either in the
19 apartment or in the, in my office at the Reid
20 Foundation.
21 MR. RUSSELL: So if we could have the document at tab 2
22 marked the second exhibit, and I'm going to suggest
23 we call it draft two.
24 THE COURT: All right, that will be Exhibit 19.
25 THE REGISTRAR: Behind tab 2, my lady?
26 THE COURT: Yes.
27
28 EXHIBIT 19: Draft two of report entitled
29 "Metlakatla/Lax Kw'alaams Land Claim file"
30
31 THE COURT: Will this be a convenient time to take the
32 break, Mr. Russell?
33 MR. RUSSELL: Yes, my lady.
34 THE COURT: All right, let's take the morning break
35 then.
36 THE REGISTRAR: Order in court.
37

38 (PROCEEDINGS ADJOURNED AT 11:10 A.M.)

39

40 (PROCEEDINGS RECONVENED AT 11:30 A.M.)

41

42 THE REGISTRAR: Order in court.

43 MR. RUSSELL:

44 Q Now, doctor, just returning to the final report, do
45 you recall how you gave the final report to
46 plaintiffs' counsel? Would that have been in
47 person?

21

George MacDonald (for Plaintiffs)

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

1 A No, I believe I had my secretary just send over the
2 final report on a disk.

3 Q All right. Now, also looking at Exhibit 7, which
4 is the final report, that's the one in the separate
5 cerlox binding?

6 A Right.

7 Q The second sheet, that's your signature, is that
8 correct?

9 A Right.

10 Q And this is an undated signature page?

11 A Yes.

12 Q Do you recall if this signature page came with the
13 draft two, which is now Exhibit 19?

14 A I didn't think so. I thought it came with the last
15 one, but I didn't make particular note of that.

16 Q All right. Do you recall making a separate
17 signature page, or did you just make some changes
18 and use the same signature page?

19 A I don't recall --

20 Q All right.

21 A -- which I did there.

22 Q Now, I'd ask you to turn to draft -- I'm calling
23 Exhibit 17 draft one, and then Exhibit 19 is draft
24 two. So draft one is the undated draft, that's at
25 tab 1.

26 A Oh.
27 Q I'd ask you to turn to page 10, the upper, or the
28 paragraph at the top, and you see that there's a
29 paragraph there starting with the words "there were
30 strong prohibitions", and then at the end of the
31 paragraph it's got a partial reference, by that I
32 mean it refers to "Boas 1916:", and then "note page
33 number"?
34 A Yes.
35 Q And so this is an example of doing a paragraph from
36 memory that you were going to check later?
37 A That was to do with the first salmon ceremonies in
38 the Kitselas Canyon, which I referred to many
39 times, but I didn't know exactly which page number
40 it was.
41 Q All right. So in particular though, it's an
42 example of you doing something from memory at this
43 stage in terms of this draft?
44 A Right.
45 Q And I'll ask you to turn to the second draft, so
46 that's tab 2, Exhibit 19, page 14 in the middle,
47 and if you can keep -- sorry, if you can keep the

22

George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 original one open as well, draft one open as well,
2 you'll see it's the same paragraph in the middle of
3 the page? All right. Sorry, doctor, I want to --
4 it's not the cerlox binder, bound version.
5 A Okay, I've got this.
6 Q It's draft two, it's in tab 2.
7 A Oh, sorry. And page 14?
8 Q Page 14.
9 A Right, uh-huh.
10 Q Again, in the middle of the page, it's the same
11 paragraph, beginning "there were strong
12 prohibitions"?
13 A Yes.

14 Q Now, that partial reference is removed?
15 A That's because I had intended to put in the Boas
16 narrative about the first salmon ceremonies that
17 were conducted at the Kitselas Canyon. I decided
18 that because Kitselas Canyon is somewhat out of the
19 range of the Coast Tsimshian evidence we're looking
20 at, that I didn't insert that. So that was a
21 reference to initially put in the Boas reference,
22 or at least that was --
23 Q But in particular, we don't, you haven't provided a
24 page number for Boas to support the paragraph?
25 A Oh, on the quote that actually is here in the,
26 starting "there were strong prohibitions"? Okay,
27 and then -- I don't know, did I in the final
28 version?
29 Q Well, we can turn to that, doctor. That's at page
30 15 in the cerlox, in the upper part of the page.
31 A Oh, yes.
32 Q Again, the same paragraph, "there were strong
33 prohibitions", again without a reference. So that
34 --
35 A All right.
36 Q -- deletion, you deleted --
37 A The reference.
38 Q -- the reference to Boas 1916, and that's because
39 you didn't actually go back and reread it and find
40 the support for that paragraph, did you?
41 A I decided to eliminate it, so I didn't go back and
42 look for it.
43 Q But you didn't eliminate the paragraph?
44 A No, because I wrote the paragraph, not Boas. But
45 the reference here --
46 Q But the source for the paragraph is Boas, is it
47 not?

23

George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 A No, that was a reminder that there was another

2 element that I thought could be relevant to that,
3 which was his detailed description of the first
4 salmon ceremonies.

5 Q But doctor, your statement in this paragraph where
6 they were looking at draft one, draft two, or the
7 final version, it's a conclusion, isn't it?

8 A The reference is not relevant, in my final
9 decision, to the paragraph that I wrote and put
10 that at the end of the paragraph. That was a
11 notation; as I say, I do it in the drafts as I go
12 through. That's a notation that I would consider
13 putting in the quote from Boas, and then decided
14 that I didn't particularly think it fit, so I
15 eliminated it in the final version.

16 Q But doctor, in this paragraph you are making,
17 making a statement that is a conclusion; you're
18 saying there were strong prohibitions?

19 A Yes.

20 Q But you're not giving any source for that
21 information or for the basis for that. You're not
22 giving any factual evidence and you're not giving
23 any, or you are not giving other authors in
24 support?

25 A That's based on multiple, multiple references to
26 honouring the fish.

27 Q It's based on your memory when you wrote it?

28 A It's based on 40 years of field work and
29 interviewing with native people.

30 Q I would ask you to turn to tab 1, which is the
31 first draft, Exhibit 17, at page 13, in the middle,
32 the first paragraph under the heading "The World of
33 the Intertidal Zone"?

34 A Yes.

35 Q Begins with the words "The intertidal zone"?

36 A Uh-huh.

37 Q And again, at the end of that paragraph there's a
38 reference to Beynon, with a gap?

39 A Correct.

40 Q And then if you turn, keep that page open, but turn
41 to tab 2 for you, and draft two of Exhibit 19, at
42 page 18. Actually, page 17 is, the heading's
43 changed slightly to the "Cosmology of the
44 Intertidal Zone" but the paragraph is again the
45 same, "The intertidal zone had a supernatural
46 dimension", continues over on to the second page,
47 but this time the reference to Beynon is gone.

- 1 That paragraph also was written from memory, wasn't
2 it?
- 3 A That, probably that change was made when I came
4 back to Vancouver, and I do know now I was here in
5 Vancouver. So that was probably because I did not
6 have the Beynon text; it was in the library at the
7 Canadian Museum of Civilization, which I did not
8 have access to, as I completed the draft here,
9 completed the report.
- 10 Q Yes, doctor, but in particular, when it was first
11 written, you wrote it from memory?
- 12 A It's a synthesis in which I was referring to work
13 that I had seen of Beynon's, yes.
- 14 Q But not seen in the context of writing this report,
15 seen maybe much earlier?
- 16 A Well, no. I read through a lot of that material at
17 the Canadian Museum of Civilization in preparation
18 for this, so.
- 19 Q But you don't have a page number for it, do you?
- 20 A Right. I didn't, I didn't make a note of it at the
21 time. It was recalling that there was something
22 relevant, and then the subsequent decision, which
23 is a common one in writing any material, as you do
24 a second evaluation, is this worth the effort of
25 looking it up, and in particular since this was no
26 longer available to me, because it was in Ottawa
27 and I was here; in Gatineau, I guess I should be
28 more precise.
- 29 Q And then we see the same paragraph in the final
30 report in the cerlox binder, Exhibit 7, page 19.
31 Again, that's the paragraph beginning "The
32 intertidal zone", and again it doesn't have a
33 reference?
- 34 A Yes.
- 35 Q All right. Now then, I'd ask you to turn to the

36 first draft, that's tab 1, Exhibit 17, at page 18.
37 In the middle, the first sentence, the paragraph
38 begins with the sentence, "The remarkable
39 preservation"?
40 A Uh-huh.
41 Q Do you see at the end there it goes "as the fort of
42 the warrior Aksk"?
43 A Yes.
44 Q And then again, it's got reference?
45 A Uh-huh.
46 Q In this case, no name and a space, but the space
47 for addition was --

25

George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 A That was Beynon again.
2 Q In this case, again you were writing that sentence
3 from memory?
4 A Yes, from --
5 Q All right. Let's turn to tab 2, draft, that's the
6 second draft, Exhibit 19, and page 21. And the
7 paragraph there is -- well, it's page 21 in the
8 middle.
9 A The third paragraph, middle of the third paragraph,
10 citing the Adoak as the fort of the warrior Aksk.
11 Q Forgive me, I'm just missing this right now. Yes,
12 it's just reworded, the opening clause is an
13 additional clause, but in essence, the first
14 sentence is there after the opening clause?
15 A Yes.
16 Q All right. And again though, we see that the
17 brackets with "ref" in it have been deleted?
18 A Because I do believe that there are other
19 references in the report earlier on that do refer
20 to some of the ethnohistoric material from Warrior
21 Aksk. I know I mentioned it in the report numerous
22 times, and I didn't repeat the reference each time.
23 I'd have to look through it and see where I felt

24 I'd covered that off by providing a reference.
25 Q Perhaps we could come back to that. Now, I'd ask
26 you to turn to the first draft, that's Exhibit 17,
27 at page 21. This is in the lower part of the
28 paragraph, the lower part of the page, it's the
29 paragraph beginning "Shellfish formed". This is
30 tab -- sorry, doctor, it's not the cerlox, it's tab
31 1 in the binder there.
32 A Okay. It would help me if I just know which tab it
33 is.
34 Q Sure.
35 A On page 21?
36 Q On page 21.
37 A Yes, okay. And the paragraph, "Shellfish", yes.
38 Q It's on the lower part of the page, and at the
39 bottom part of the paragraph the only reference in
40 the paragraph is, it says "Cybulski ref"?
41 A Right.
42 Q Again, you wrote this paragraph from memory at the
43 time?
44 A Yes. I had met with Cybulski while I was in Ottawa
45 in that period, over my birthday period, so I had
46 reviewed the information that he had with him at
47 that time. So I was writing it from a week-old

26

George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 conversation.
2 Q But in particular, it wasn't based on the academic
3 authority as written?
4 A I have the references in the bibliography to the
5 Cybulski work involved, and I apologize that I did
6 not complete the reference in the draft that you're
7 referring to. Did I complete it in the final one?
8 Q Doctor, we're just about to turn to that in a
9 moment.
10 A Okay.
11 Q The point here is, you didn't read the reference

12 source to be able to give it? You were still --
13 you wrote, you wrote this paragraph from memory?
14 A Well, I -- yes, from memory that I had read it the
15 week before at the museum reading room.
16 Q But you didn't have a page number?
17 A Right. I didn't make a reference to the page
18 number at that time. I looked it up, I believe,
19 when it was time to complete the reference, the
20 document. But that's a typical way that I write,
21 you know; if I have a reference, then I will ensure
22 that it's looked up in the page, checked as the
23 final report goes in for publication or whatever.
24 Q I'm sorry, doctor, did I just ask you about the
25 version of this paragraph in draft two?
26 A I don't recall.
27 Q Didn't we just look at it? No, I don't think we
28 did. All right, so let's also now look to draft
29 two.
30 A So that's tab 2?
31 Q That's tab 2 for you, it's Exhibit 19?
32 A Yes.
33 Q At page 24. And you see the same paragraph there
34 in the upper part of the page, "Shellfish formed"?
35 A Uh-huh.
36 Q And now at the bottom, the "Cybulski ref" is
37 deleted?
38 A Yes.
39 Q That's because you hadn't read it in the interim,
40 had you?
41 A I had mentioned that about the growth of the arrest
42 lines earlier; I mentioned it twice in the report.
43 So I'd have to check and see whether it was there
44 for the first time, and it could have, of course,
45 been repeated here, but twice I said I know from
46 memory, again, that I referred twice to the fact
47 that there were not dramatic growth arrest lines

27

George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 showing starvation in the population of the Prince
2 Rupert Harbour, so.

3 Q So that's the only part of the paragraph that you
4 expected Cybulski to be supportful?

5 A That's the specific sentence that I was referring
6 to.

7 Q So the rest of that paragraph was written from
8 memory, without you indicating a potential
9 reference in draft one or draft two, so far that we
10 have looked at?

11 A Yes. That's mostly from, for instance, the
12 emergency food and so on were, was from people from
13 the Tsimshian community who had told me that at
14 various times. So that is from my research
15 memories directly. So there were, in my view, no
16 citable references; it's simply my --

17 Q Do you have notes of those communications?

18 A No. Any notes that I have are in the archives of
19 the Canadian Museum of Civilization, so when I
20 did -- my field notebooks are all there, I don't
21 have copies of them. They can be checked there, of
22 course.

23 Q So in particular, this paragraph, the whole of this
24 paragraph was written from memory?

25 A Not the whole, because -- well, I mean, in this --
26 I still feel that there is reference to Cybulski,
27 one of his papers, it's in the bibliography, based
28 on the growth arrest lines. That's the only, the
29 only reference in that paragraph to the work of
30 Cybulski, who is a physical anthropologist. The
31 rest all has to do with other topics.

32 Q But you took out the word "Cybulski" with "ref",
33 parentheses around it, because you didn't read it?

34 A Primarily because I thought I had referenced it
35 earlier on.

36 Q Now, I'll ask you to turn to the cerlox binder
37 version, that's Exhibit 7, the final report.

38 A Yes.

39 Q Page 25, at the bottom. Again, you see the same
40 paragraph, beginning "Shellfish formed"?

41 A Right.

42 Q And again, it doesn't have any reference to
43 Cybulski there, or indeed, any other reference in
44 there?

45 A Correct.

46 Q I'd ask you to turn to the first draft, which is
47 tab 1, Exhibit 17, at page 27. It's the, well,

28

George MacDonald (for Plaintiffs)

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

1 it's a partial paragraph, the beginning of the
2 paragraph starts at the bottom of page 26. But in
3 terms of page 27 it begins midsentence with "they
4 traded with the Tsimshian"; do you see that? And
5 at the end of that it's got, at the end of that
6 paragraph it's got, in parentheses, "Martindale",
7 but no year and no page number?

8 A Right.

9 Q Again, at least for the parts of this that are
10 written on this page, on page 27, I know you do
11 refer to Garfield in there, but again you don't
12 give a specific reference to Garfield in that
13 sentence above there, in the second last sentence
14 of that paragraph?

15 A Yes. It's the typical pattern I have in writing
16 when I -- I mean, I reread Garfield, I read all the
17 Martindale papers, and I wrote the report with the
18 intention then of going back to ensure that I had
19 whatever appropriate reference there was. You see,
20 I didn't write it from written notes, if that is
21 the point.

22 Q Yes. And I take it you wrote it from memory, when
23 you wrote it?

24 A Right, recent memory.

25 Q And if we turn to draft two, page 31, in the middle
26 of the page, okay, it's, the paragraph begins "Many
27 Tsimshian", but the paragraph has now been broken
28 up. So the part we're now looking at is now in a
29 separate paragraph that begins "The Haida from the
30 large villages". And so the paragraph in draft one
31 ended with "missing from those islands". That's
32 the end of this paragraph, "missing from those
33 islands", just below the half-way line?

34 A Yes.
35 Q Page 31. This again, the partial reference to
36 Martindale has been deleted. Again, that's because
37 you didn't read Martindale and write it from what's
38 specifically in the --
39 A No, I never write directly from the research
40 materials that I'm writing. I digest the ideas and
41 then I write them; then I cross-check them to see
42 if my memory is exactly what they said in the
43 reference, and then I cite the reference. That's
44 my modus operandi.
45 Q But you didn't do that in this case, not by the --
46 not by the time of draft two, you don't cite the
47 reference?

29

George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 A I eliminate it by the time draft two came, for
2 possible, several reasons, one being I was no
3 longer there with the research material at the CMC,
4 the Canadian Museum of Civilization.
5 Q So you couldn't, you weren't able to complete your
6 normal process of checking again later --
7 A And that's why -- so I dropped them.
8 Q Pardon?
9 A So I dropped them out of the final text.
10 Q But you didn't drop out the text, you just dropped
11 out the reference?
12 A Because the text was more than just that one
13 reference point. It was, these are some general
14 comments, as you said, of which I was looking to
15 one person to add confirming references, but it
16 wasn't entirely on the basis of, for example, in
17 the part about goat wool and horns used in
18 ceremonial objects, that was not dependent on
19 Martindale, so that eliminated Martindale, because
20 I didn't have the references. They were in the
21 journals in the Canadian Museum of Civilization.

22 Q And again, you wrote it from memory and don't refer
23 to those either?
24 A The way in which I have said is, the whole of my
25 writings throughout my career are based on reading
26 the text, synthesizing the information, writing a
27 draft, and cross-checking it with the references.
28 Q And in this case you weren't able to do that?
29 A So I dropped it from the text because it wasn't
30 critical.
31 Q But kept the text?
32 A Because the text was based on many other
33 experiences that I did not --
34 Q But you don't cite them in the paragraph, is that
35 correct?
36 A That's just, you know, true of every paragraph in
37 the book.
38 Q So doctor, isn't it fair to say that what you're
39 doing in many parts of this report is making
40 concluding statements based on memory?
41 A Based on research.
42 Q But also based on your memory of the research?
43 THE COURT: Gentlemen, please don't talk over each
44 other, please don't interrupt each other. Just
45 take your time. I'm not going to --
46 THE WITNESS: All right.
47 MR. RUSSELL:

30

George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 Q So doctor, isn't it true that you're, in many parts
2 of this report, where you don't make references,
3 where there's no specific references, and there are
4 statements made that conclude similar, there are
5 conclusive, conclusive in nature, that what you're
6 doing is you're making those statements based on
7 your memory, as to a lifetime of reading, what have
8 you, but you don't give an opportunity to the
9 reader of the report to go in there and read the

10 basis upon which you make the conclusive statement?
11 Isn't that fair to say that's what you're doing in
12 this report?

13 A No, because I believe all of the research that I'm
14 basing this on is cited in the bibliography.

15 Q But sir, you don't refer to it in the paragraphs.
16 And so what you're -- and you're also, you're
17 indicating that much of this is written, well, the
18 paragraphs we've looked at so far are written from
19 memory, and you didn't go back and cross-reference
20 the ones we've been looking at, cross-check?

21 A I'm assuming that counsel has read the references
22 that I put in there. So there is an opportunity
23 for counsel to review the material on which I have
24 based the conclusions in the reports.

25 Q But doctor, your report is for the court as a
26 whole, and are you not, when you don't provide the
27 references, are you not acting yourself as the
28 person who's saying this is the way it is, this is
29 the conclusive opinion, rather than saying I have
30 expertise, this is what my opinion is and these are
31 my reasons, and referring to references, et cetera,
32 et cetera? You're not doing that in this report,
33 are you, by and large?

34 A What I'm doing is making the, all the references,
35 Martindale, or about half a dozen Martindale
36 references in here which are available to anyone
37 who has the document and has the bibliography. So
38 they are accessible from my point of view, and I
39 think that of other scholars.

40 Q Yes, but your report in particular doesn't refer to
41 them, certainly in the paragraphs we've looked at
42 today, doesn't refer to them specifically and say
43 this is where my basis for this opinion is; you
44 don't do that, do you, not in those paragraphs?

45 A Well, I'm waiting till you're finished. But what
46 I'm saying is that all of the material that is
47 normally judged by scholars to be required for the

1 basis of research conclusions and to support the
2 process of synthesis in science is included in the
3 text and in the bibliography, and I apologize if I
4 haven't done the spoon-feeding to the extent that
5 perhaps I could have.

6 Q But it's more than that, isn't it, doctor? It's
7 that you haven't actually cross-checked the
8 references; you haven't gone back and done the
9 third step in the methodology that you spoke of
10 earlier?

11 A For those that I have included in the final draft,
12 yes, I have.

13 Q The ones with specific page numbers, references,
14 for instance?

15 A The ones I chose to retain in the final report,
16 that's the whole purpose of draft, is that you
17 change your perspective as you finalize the draft,
18 and I have eliminated versions that I did consider
19 unnecessary but kept the necessary one.

20 Q So for those paragraphs that don't have references
21 but have conclusive opinions of yours in them, in
22 the final report, are those the ones where you
23 didn't reread or read and cross-check the
24 references to support it?

25 A No, I reread all of the documents that are in the
26 bibliography.

27 Q Before you finalized the report?

28 A Yes. In the period of the work that I did, I
29 reread all of those reports.

30 Q But you didn't make notes, working notes about all
31 of those reports, did you?

32 A But I had, I reread them, so I had already read
33 them previously; and in rereading, it was
34 reinforcing either what I knew or what I had to
35 learn, and the process is that synthesis of all of
36 the documents. I read many items that I didn't
37 refer to because I didn't feel were relevant at
38 all, but for the ones that you have been citing
39 this morning, I had read those, I had put them in
40 the bibliography, and they are available to anyone
41 who wishes to cross-check the basis of that
42 evidence.

43 Q So I'd ask you to also, for this last one, I'll ask

44 you to turn to the cerlox binder which is the final
45 report, page 32, the lower portion of the page.
46 And again, it's this paragraph now beginning with
47 the words "The Haida from the large villages", and

32

George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 again, at the bottom it doesn't have the reference
2 to Martindale?
3 A Yes.
4 Q So again, that paragraph was written from memory,
5 correct?
6 A It is part of the synthesis that I was stating here
7 without detailed references, primarily because
8 syntheses require many different sources, and you'd
9 have nothing but references in the text if you did
10 it that way. Some choose to do it that way; that's
11 not the way I have traditionally written.
12 Q I'd ask you to turn to the second draft, page 31,
13 so that's tab 2; the second paragraph.
14 A Thirty-one; I'm sorry, page 31.
15 Q Yes, so it's tab 2, draft two, Exhibit 19, page 31.
16 It's the second paragraph, the top part of the
17 paragraph, I believe it is. So the paragraph
18 begins "Many Tsimshian also spoke", and at the end
19 of the second sentence there's a reference to
20 Martindale again?
21 A Yes.
22 Q Again, without the year or page number?
23 A Correct.
24 Q So that, those two sentences were written from
25 memory?
26 A In fact, I had read them. I do not make detailed
27 notes on every point that I read in every paper.
28 Q Now, if we turn to the final, that's in the cerlox
29 binder, page 32. In the second paragraph you see
30 the same, or essentially the same paragraph,
31 beginning "Many Tsimshian", and then after the

32 second sentence, ending "Prince of Wales Island,
33 Alaska", the reference, a partial reference to
34 Martindale has now been deleted. Do you see that?
35 A Yes; again, because I was back in Vancouver and I
36 didn't have reference to fill that in, so I
37 eliminated it.
38 Q All right. Now then, this is -- I'd ask you to
39 turn to tab 1, draft one, Exhibit 17, page 15, in
40 the middle the paragraph beginning "Quite
41 distinctive from the above"?
42 A Uh-huh.
43 Q The third sentence reads:
44
45 "A shamanic 'First Salmon Ceremony' of this
46 type was described in detail by Boas,"
47

33

George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 And there it says "1916:" with a space?
2 A Yes, that's where this was relevant --
3 Q That's where you meant to add a page number when
4 you read it, right?
5 A Right.
6 Q And then we turn to the final, which is in the
7 cerlox binder, page 20; no, that's draft one, so
8 forgive me. Then we turn to draft two, page 19, in
9 the upper part of the page. The opening part of
10 the paragraph is worded differently. It now reads,
11 "Another category of petroglyphs occur",
12 But then we see, "on large boulders and bedrock
13 faces at the entrance to the harbour around
14 Metlakatla Pass"; that's the same, remainder of the
15 first sentence. And the second sentence is the
16 same, and then the third sentence is the same, with
17 one difference: now it says "Boas 1916", but the
18 colon's been removed. A simple point, perhaps, but
19 it has been removed?

20 A It certainly has.
21 Q Yes. And that again was because you didn't go back
22 and read that and cross-check it for the purposes
23 of this?
24 A Right. I certainly do not reread all the
25 literature between, or even notes, between drafts,
26 unless it's relevant.
27 Q And then in the final report, it's the same as the
28 draft two, so there's the cerlox, page 20, in the
29 middle of the page. You see it there, the
30 paragraph begins "Another category"?
31 A Right.
32 Q And again, it's the same at the end of the third
33 sentence?
34 A Yes. That should have been filled in, I regret
35 that.
36 Q Although it looks like it's been combined into
37 another sentence, that still is the same, in any
38 event, at that point?
39 A Yes.
40 Q Now, I would ask you to turn to, and I've also come
41 to the end of -- just a few more of these. I ask
42 you to turn to draft one, page 20, at the bottom.
43 This is the paragraph that begins "Large tidal fish
44 traps", and the second sentence begins "Wooden fish
45 weirs that have been maintained". I'll read it
46 out:
47

34
George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 " -- that have been maintained over thousands
2 of years in the same spot have been reported in
3 Gitanyao territory on the Kitwankul River and
4 lake that date to 2,000 years ago."
5
6 Do you see that? And then there's a reference to
7 Martindale 200, which I take it you were going to

8 add a year, like 2001 --
9 A Yeah, right. I did have the year.
10 Q And perhaps also a page number as well?
11 A And I was questioning at that time whether
12 Martindale was the proper reference, or whether it
13 was Prince.
14 Q All right. Well, then let's turn to draft two, and
15 I think there you'll see there is a reference to
16 Prince there. So that's tab 2, Exhibit 19, page
17 23. The lower part of the page, it's the paragraph
18 that begins "Large tidal fish traps"?
19 A Yes.
20 Q And the second sentence, and now we see at the end
21 of the second sentence -- well, I'm going to read
22 it all out, the second sentence:
23
24 "Wooden fish weirs that have been maintained
25 over thousands of years in the same spot -- "
26
27 That part of the sentence is the same as before, as in
28 draft one:
29
30 " -- have been reported in Gitanyao territory
31 on the Kitwankul river and lake -- "
32
33 That part is also the same:
34
35 "That document intensive harvesting of salmon
36 from 770 BP to the present."
37
38 "BP" means before the present?
39 A Yes.
40 Q So the last part of the sentence has changed from
41 the draft one. It no longer refers to that date,
42 to 2,000 years ago in draft one, in the last part
43 of the sentence; it's now talking about the time
44 period 770 before present to the present. And also
45 what's changed is the reference, now you have a
46 complete reference to Prince, doctor. And if we
47 can turn also to the final report --

35

George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 A Sorry, may I not answer that, or you're going on to
2 something else? I'm not --

3 Q No, I'm staying with this, if I may. I was just
4 going to point out, the final is the same.

5 A So I will come back to my rebuttal --

6 Q Yes.

7 A I will make a note of that, if I might.

8 Q I'm just going to show you the final.

9 A Okay.

10 Q The final, page 25, in the upper part of the page,
11 it now begins, it's been broken down into two
12 sentences:
13

14 "Wooden fish weirs have been dated on
15 freshwater lakes and rivers in the interior."
16

17 The first of the breakdown is:
18

19 "Some have been maintained over thousands of
20 years in the same spot, for example on the
21 Kitwankul River and Lake."
22

23 And then the last sentence:
24

25 "Intensive harvesting of salmon from 770 BP to
26 the present has been documented by recent
27 archaeology."
28

29 In referring to Prince. So doctor, that second
30 last, that second sentence in that paragraph, that
31 was initially written from memory in the first
32 draft, correct?

33 A Yes, it was, but not just on Prince. There were,
34 you know, other radiocarbon dates that have been
35 set on the weirs, but I did then, when I referred
36 it originally to Martindale, realized that it was
37 actually Prince, as I mentioned earlier, and I went
38 back to Prince to verify the carbon dates, and
39 your -- from a technical point of view I should
40 have also referenced other carbon dates that
41 related earlier to fish weir stakes that had been

42 dated, but my specific reference was to page 83 of
43 the article by Prince in 2005, citing the
44 radiocarbon date of 770 BP.
45 Q So there's no, you don't cite any support here for
46 that second sentence of the paragraph in the final
47 report?

36

George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 A Or for the first sentence.
2 Q The first -- the second sentence, "Some" --
3 A Having some --
4 Q -- "have been maintained over thousands of years in
5 the same spot"?
6 A Yes.
7 Q We'll just turn to Exhibit 10, that's the working
8 notes, at page 22. At the bottom of the page it
9 says "note due" -- is that the word "outlined"?
10 A Yes.
11 Q "From above and sent to Matt". That's a reference
12 to plaintiffs' counsel?
13 A Yes.
14 Q And then below that it says "what kind of outline
15 does he want"; is that right?
16 A Right.
17 Q "Some areas sketched in. He can indicate if he
18 wants more on that topic"; is that what it says?
19 A That's what it says.
20 Q All right. And I don't, I think the next page is
21 not related, is that correct?
22 A These are not necessarily notes that are following
23 the same logic, they're simply notes that I put
24 down, so. Yes, some of the other elements don't
25 necessarily follow along from the items you've
26 read, but that is, in a sense, a series of notes in
27 that bottom of the page.
28 Q So the first draft, which is tab 1 or Exhibit 17,
29 that's not an outline, is it? It's a --

30 A It's a progressive draft.
31 Q Right. Did you provide an outline at all?
32 A No.
33 Q So this was the first document that you provided to
34 plaintiffs' counsel?
35 A Right. Right.
36 Q That's draft one, which is Exhibit 17?
37 A (WITNESS NODS HEAD AFFIRMATIVELY)
38 Q Is that right?
39 A Yes.
40 Q Now, if we look at the end of draft one, turn to
41 page 28 and over on to page 29. You have a title,
42 "Summary", but it essentially is a quote from Jay
43 Miller; is that correct?
44 A That was to be inserted, yes, which I did.
45 Q And that, but the next paragraph below is part of
46 the quote?
47 A The Coupland? No, it has nothing to do with the

37

George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 reference to Jay Miller. That was just to remind
2 me that I had read a statement by Jay Miller that I
3 thought summarized the situation very nicely, and
4 would be a good introduction to that summary
5 section. So that was a note to myself, that's what
6 it means, note that I would note to insert that.
7 Q All right.
8 A In a progressive draft.
9 Q Well, if we look at the second draft, Exhibit 19,
10 page 33 at the bottom, and the top of page 34?
11 A Sorry, that's tab 2, is it not?
12 Q Yes, it would be tab 2.
13 A Correct. I've not filled in the Jay Miller either,
14 in this one either. It then skips to Coupland.
15 With the indentation it probably looks --
16 Q Well, this indentation, you've set it up as being a
17 quote from Jay Miller?

18 A Oh, I'm sorry, I'm sorry, you're right there. That
19 is set up as a quote. Jay Miller was quoting
20 Coupland in his, in -- Miller's '97 was quoting
21 Coupland from the 1988 article. I thought it was a
22 good quote, so I redeployed it in here.
23 Q All right. And again on the next page, page 34 of
24 the second draft, this is a continuation of the
25 quote from Jay Miller, is that right?
26 A No, of Coupland, Tsimshian Council. Let me just
27 read this now. That's all the same quote from
28 Coupland, 1988.
29 Q From Miller?
30 A It's quoted in Miller, but it's the words of
31 Coupland.
32 Q I see. So in fact, the second paragraph, the
33 second paragraph is --
34 A Part of the quote.
35 Q The paragraph at the top of page 34 is in fact a
36 quotation from Coupland 1988 that was cited by
37 Miller?
38 A Yes. It's indented, and it's the same quotation
39 that starts on the previous page of Coupland, cited
40 by Miller.
41 Q All right. In any event, it's all part of cites
42 either by Miller or Coupland, those last two
43 paragraphs?
44 A Correct.
45 Q And what we see also though is that comparing draft
46 one and draft two, there's three new paragraphs in
47 there, in the summary. If we go back again to

38

George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 draft one, tab 1, there's nothing above the Jay
2 Miller quote under "Summary"?
3 A Yes, that's when I was finalizing the report, I
4 decided to include it.
5 Q Whereas in draft two there are three new

6 paragraphs?
7 A In the summary?
8 Q Yes, above the Jay Miller --
9 A Yes.
10 Q -- quotes?
11 A Right, right.
12 Q Okay.
13 A I felt the summary was rather abrupt, and I added
14 in.
15 Q So when you sent draft one in, in April, April
16 28th, 2006, you didn't have -- the only summary you
17 had was this quote from Jay Miller; you didn't have
18 any other summary pulling together the direction --
19 A I always think through the summary as the last
20 statement I would make, but I've been formulating
21 it in my head to include all of the conclusions and
22 syntheses that I've done, so I very often write
23 that at the very last minute, and that's what
24 concludes the report. Again, it's part of my modus
25 operandi of doing research.
26 Q But you also provided the draft without the summary
27 to plaintiffs' counsel?
28 A Yes.
29 Q Did you, did you receive any comments on how to
30 summarize your report?
31 A No.
32 Q Drafts one and two do not have an introduction; if
33 you just turn quickly to draft one, it's at tab 1.
34 So tab 1, and the first heading under the table of
35 contents is "Archaeological Research"?
36 A Yes.
37 Q And draft two, Exhibit 19, tab 2 for you, doctor,
38 the first heading again under the table of contents
39 is "Archaeological Research"?
40 A Uh-huh.
41 Q The final report, page 2, is where the body of the
42 text begins after the table of contents and
43 reference to the illustrations. It has a four
44 paragraph introduction?
45 A Yes. That's again, the habit I normally have is to
46 write the intro to set the scene for the study and
47 to write the conclusions as the last thing I do

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

- 1 before finding, handing in a final report, and to
2 write four paragraphs takes half an hour at that
3 stage.
- 4 Q So you wrote these four paragraphs in half an hour
5 on July 15, 2006?
- 6 A Yes. I often would write 15 pages in, you know,
7 one sitting, so four paragraphs is really nothing.
- 8 Q And did you receive any comments on what to say in
9 the introduction to your report --
- 10 A No.
- 11 Q -- before you wrote it. I would ask you to turn to
12 draft one, tab 1, Exhibit 17, at page 6. All
13 right, it's in the paragraph beginning "For a short
14 period in late May"?
- 15 A Yes.
- 16 Q And it's the sentence that begins about half-way
17 through the paragraph, "herring roe was considered
18 a prime delicacy"?
- 19 A Uh-huh.
- 20 Q So I will read it out:
21
22 "Herring roe was considered a prime delicacy at
23 feasts and were a significant item of trade to
24 the interior."
25
- 26 And there's a reference to MacDonald, Coupland,
27 Archer, and then it says "108-plate"?
- 28 A That's the Historical Atlas of Canada, which has
29 lists of the trade goods that went on the various
30 trails. So that's Volume 1, Historical Atlas of
31 Canada, which I do believe is in the bibliography.
- 32 Q So if we turn to draft two, I think you specify the
33 page numbers, in fact, in draft two. So it's draft
34 two, tab 2, Exhibit 19, page 10, in the middle.
35 And you've added a clause, so I will read it out
36 this time. It's, again, it's the sentence, the
37 paragraph in the upper part of the page beginning
38 "For a short period in late May", the sentence most
39 of the way through the paragraph beginning "herring

40 roe":
41
42 "Herring roe was considered a prime delicacy at
43 feasts and were a significant item of trade to
44 the interior."
45
46 And then you've added in parentheses:
47

40
George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 "For a full list of trade goods see MacDonald,
2 Coupland, Archer, 1987:Pp32-33."
3
4 A That's because I was trying to fill in the
5 reference to the fact that it was a plate, and not
6 a series of linear texts, but in the plate is
7 incorporated the lists of trade goods.
8 Q And those aren't -- so pages 32 and 33 are just the
9 page numbers where the plate is?
10 A Yes.
11 Q We're talking about the same thing?
12 A Yes, okay.
13 Q And that's where, so that's where you're saying
14 there is a full list of trade goods?
15 A It was full when we did it at that time. I had
16 looked it over later and realized that we had left
17 out some of the more common species.
18 Q One in particular, doctor, you hadn't, herring roe
19 was not on that list, was it?
20 A Right. That's what I say, I did realize that when
21 I had done the atlas, I was focussed on the
22 interior trade trails, and I was asked by Cole
23 Harris, who was the editor, to specify some of the
24 details of what was carried on in trade. I made up
25 part of the list, it was then transferred to Cole,
26 and he had both Archer and Coupland go through it.
27 That's why it's a tri-author plate, because by that

28 time I had moved from Vancouver, when I had made
29 the original agreement to work on the plate, back
30 to Ottawa to build the new Canadian Museum of
31 Civilization. So I suddenly was, I no longer had
32 time available to complete the research, and it was
33 turned over to two of my students, Archer and
34 Coupland, working with Cole Harris, to complete the
35 list. I realized, in looking over these again,
36 that they missed some of the species like salmon,
37 like herring, and so on, that should have been in
38 the list, and so feel that the list is not
39 complete, in answer to your question.
40 Q But when you wrote draft two, you still considered
41 it a full list of trade goods, didn't you?
42 A Yes. I should have said an extensive list, not a
43 definitive list.
44 Q And so I'm producing to you, sir, a photocopy of
45 what I believe is pages 32 and 33 of the atlas, the
46 pages that you're referring to?
47 A Uh-huh.

41
George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 Q Now, your sentence is talking about herring roe as
2 a significant item of trade to the interior, so
3 we're talking trade to the interior?
4 A Uh-huh.
5 Q And on the second page of this, pages 32 and 33, it
6 refers to trade goods and trade routes, the Skeena
7 River, and in particular, upriver trade; that will
8 be trade to the interior?
9 A Yes.
10 Q Food, and then there's no mention there of herring
11 roe, correct?
12 A That's exactly what I was referring to, that it is
13 an incomplete list, and I recognized that when I
14 looked over it again for this study.
15 Q If we turn to the final report at page 10, at the

16 bottom it still states the same sentence:
17
18 "Herring roe was considered a prime delicacy at
19 feasts and was a significant item of trade to
20 the interior."
21
22 And then in parentheses:
23
24 "For a list of additional trade goods see
25 MacDonald, Coupland and Archer."
26
27 A What, of course, I'm saying is that, for a list of
28 traditional trade goods.
29 Q Right, it does change --
30 A Over and above what the herring -- because I
31 realize the herring wasn't there, so that's why I
32 put it in this version, final version.
33 Q So that was --
34 A Or penultimate.
35 Q That was a change that happened on July the 15th?
36 A I checked that kind of detail as I go through to
37 make a final submission, and that is undoubtedly
38 the time that I would make the change.
39 Q Did someone prompt you to make that change?
40 A No. No, I just realized that the list had not
41 really had my participation in the finalizing of
42 that list, and that that was something that needed
43 to go on record. I feel the same way, there's not
44 much made in the list about the trade in salmon,
45 because it was so widespread that it got overlooked
46 and was just so ubiquitous that it wasn't
47 referenced.

42
George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 Q So doctor, you don't give a reference then for the
2 trade in herring roe, or what you say was trade in
3 herring roe to the interior?

4 A That was based on many, many reports from Gitksan
5 people who -- I worked considerably with the
6 Gitksan, and their comment directly to me, that
7 herring roe was one of the key features of the
8 feast, and I've sat through numerous feasts in
9 which I witnessed the ecstasy that was manifested
10 by eating herring roe, and got to savour that
11 wonderful pop when you're chewing them that they
12 have. So I always head for them first at the
13 feasts. I had some last weekend.

14 Q So if we go back to draft one, tab 1, Exhibit 17,
15 page 25.

16 THE COURT: I see the time. Perhaps we'll take the
17 lunch adjournment.

18 THE REGISTRAR: Order in court. Court is adjourned
19 until two p.m.
20

21 (PROCEEDINGS ADJOURNED AT 12:30 P.M.)
22

23 (PROCEEDINGS RECONVENED AT 2:05 P.M.)
24

25 THE REGISTRAR: Order in court.

26 MR. RUSSELL:

27 Q So, doctor, turning to draft one, which is tab 1,
28 Exhibit 17, at page 25?

29 A Uh-huh.

30 Q And I want you to compare that with the two page --
31 I'm not sure, was this made an exhibit, the two
32 pages?

33 THE COURT: Not yet. Did you wish it to be?

34 MR. RUSSELL: Yes, please.

35 THE COURT: All right.

36 MR. RUSSELL: The next exhibit, please.

37 THE COURT: That's Exhibit 20?

38 THE REGISTRAR: Yes, my lady.
39

40 EXHIBIT 20: Excerpts from the Historical Atlas of
41 Canada
42

43 MR. RUSSELL:

44 Q So Exhibit 20, doctor, is the excerpt, photocopy of
45 an excerpt from the atlas?

46 A Yes.

47 Q That's pages 32 and 33 that you referred to in

- 1 draft two in the final report?
- 2 A Right.
- 3 Q So on the second page of Exhibit 20 is the trade
4 goods, the table of trade goods and trade routes,
5 and for the Skeena River, upriver trade, food
6 items?
- 7 A Yes.
- 8 Q That's essentially the same list as on page 25 of
9 draft one for the food items?
- 10 A Yes. That was done in around '83, is that
11 approximately -- location B in that -- just to
12 establish when that draft was done, when that
13 publication --
- 14 Q I think it's more, it's either '85 or '87. I think
15 it's '87 in your bibliography?
- 16 A Yes.
- 17 Q Yes. On page 39 of the final report you refer to
18 MacDonald, Coupland and Archer, 1987, the Coast
19 Tsimshian circa 1750 in the Historical Atlas of
20 Canada, pages 32 and 33?
- 21 A Correct.
- 22 Q That's '87.
- 23 A I might just point out that was the publication
24 date. I believe the last time I saw the manuscript
25 was '85, and then it went to press, and it was
26 quite some time before they had all the plates
27 ready and it was published.
- 28 Q And so just to complete this in terms of the
29 herring roe, the herring roe and the herring spawn
30 is not on this list either, on page 25, that is?
- 31 A Yes. I'm sorry to say I can't read even with my
32 glasses on, but I take your word for it that it's
33 not there.
- 34 Q Well, let's turn to page 25 of the, of draft one,
35 tab 1.
- 36 A Yes.
- 37 Q And again, here is the same point essentially as

38 before, that the herring spawn, herring roe is not
39 on this list on page 25?
40 A Yes. That was an oversight, and I realized that
41 when I was preparing this report, the final draft
42 of it.
43 Q Now, also on this same draft one, page 25, there's
44 no reference to -- and you may have mentioned this
45 this morning, but there's no reference to salmon
46 being traded by the Coast Tsimshian up the Skeena
47 in this table on page 25, is there?

44

George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 A That's right. Because of the extensive nature of
2 the trade, salmon was, was not singled out as a
3 particular trade item, and what of course should
4 have been done is to say that it was particular
5 varieties prepared in these particular ways that
6 were the trade items.
7 Q So again, in draft two, page 29, you've added as
8 the second line item now in the same table dried
9 salmon, select varieties; page 29, draft two?
10 A Correct. Yes, select varieties.
11 Q And you don't give any specific reference for that
12 here?
13 A Yes. You're right, it was essentially from the
14 Barbeau files at the museum, but I don't give a
15 specific reference to actually any of those items
16 in those lists.
17 Q Now, if we go back to draft one, at the bottom of
18 page 25 and then the top of page 26, you list items
19 that you say the Tsimshian acted as intermediaries
20 for trade goods from the Tlingit and Haida and
21 other groups further south on the coast?
22 A Correct.
23 Q And you don't mention salmon in that list, correct?
24 A Yes. Again, I focussed on exotics like octopus and
25 sea urchin. I --

26 Q Then on draft two, page 30, you separate and add an
27 item for Tsimshian items traded to Haida Gwai, just
28 below the middle line?
29 A Yes.
30 Q Now then, salmon isn't on that list either, this is
31 draft two?
32 A There are quite a few items that aren't on the
33 trade to the Haida Gwai, because as I mentioned,
34 when I was doing the maps I was focussing on the
35 interior trade, and I never did do as much work on
36 the trade over to Haida Gwai. But there are other
37 items that are missing in there, like sheep, goat
38 fat and so on, which were important, or that may be
39 under food. But it's not complete, as it should
40 have been. I regret that, but it, it's not a
41 definitive list of what was traded over to Haida
42 Gwai.
43 Q Now, if we return to Exhibit 20 -- and what I will
44 do, doctor, is I will read out parts of this for
45 you, to assist -- Exhibit 20 being the two page
46 excerpt from the historical atlas?
47 A Uh-huh.

45

George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 Q In the map portion of this, there are three places
2 where there is depicted, I believe it's indicated
3 as a trade route with numbers, and those numbers
4 are 18 going to northern Queen Charlotte Islands,
5 19 going to central Queen Charlotte Islands, and 20
6 going to central Queen Charlotte Islands from a
7 lower route?
8 A Yes, on this --
9 Q All right. So those are the three trade routes
10 that, on this map, that involve the Haida on the
11 Queen Charlotte Islands; is that correct?
12 A Yes.
13 Q So then if we turn to the table on the second page,

14 and this is the part that I will read out, 18, 19
15 and 20, the table. So for 18 it says "Nass
16 Fisheries/Masset and Skidegate Inlet, Mainland to
17 Queen Charlotte Islands trade", and it lists
18 oolichan grease, goat horn and wool, sheep horn,
19 grizzly bear fur and claws, copper, woven blankets
20 of goat wool; that's going in the direction to
21 Queen Charlotte Islands. And then from 19, which
22 is for Prince Rupert Harbour/Skidegate Inlet,
23 Mainland to Queen Charlotte Islands trade, it lists
24 goat horn and wool, sheep horn, Grizzly bear fur
25 and claws, copper, woven blankets of goat wool.
26 And then for 20, it says "Kitkatla Skidans" it just
27 says same as number 19. So none of those refer to
28 salmon?
29 A You're right, those are incomplete lists, and
30 they're at least four or five other items that
31 should have been in there. The last one was
32 manufactured items, yes.
33 Q So these changes adding salmon to the, to the lists
34 in the two places -- well, let's go and look at
35 that in the final, let's look at the final report
36 now.
37 A And herring.
38 Q So final report, page 30 -- page 30. Yes, I think
39 we've just looked at that, it shows dried salmon on
40 the, on the list of food items traded inland?
41 A Correct.
42 Q So this is the first time, in terms of the drafts,
43 it comes in in the final report only, in the list?
44 A For both the herring spawn and the salmon.
45 Q Yes. Well, the herring spawn, I'm not sure if that
46 was earlier, but certainly the salmon, that's where
47 it comes in. All right, that's the first time the

46

George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 salmon comes in, is in the final report, correct?

2 A I imagine so; I'm sure you've checked it carefully.

3 Q Well, if we just go -- I'm sorry, my notes are
4 incorrect in this point, you have to forgive me.
5 Yes, it was added to draft two in this first part
6 of the list, forgive me for that.

7 A Yes.

8 Q That's the first time it got in, in that part of
9 the list. And in terms of the second part of the
10 list, where you've added reference to salmon being
11 traded to Haida Gwai, the first time that comes in
12 is in the final report?

13 A Yes, because in the first report I was just listing
14 them directly off here. And subsequent analysis
15 showed that there were other species being traded,
16 and some of the adaawks referred to those, so that
17 is when I added a number of things, and since then
18 have realized there were other items, particularly
19 on the trade from the mainland to the Queen
20 Charlotte Islands, that are even not in the final
21 report here, but that there is evidence, and I
22 realize it's too late for that now, but it's a
23 progressive list, and there could be considerably
24 more, both manufactured items and food materials,
25 that are traded back and forth.

26 Q All right. Now then, I'd ask you, doctor, to turn
27 to -- it was made an exhibit this morning. It's
28 the "Introduction to the Perspectives"; Exhibit 18,
29 I believe. All right, do you have it, doctor?

30 A I have the exhibit.

31 Q Will you turn to page 10. Looking at the -- we
32 begin with the sentence that begins with the word
33 "as" at the very bottom of page 9. "As part of the
34 project, a much" -- do you see that, doctor:

35
36 "As part of the project, a much more extensive
37 picture of prehistoric trade in the area was
38 compiled from ethnohistoric sources,
39 particularly from the work of William Beynon, a
40 Tsimshian scholar of Port Simpson (see Marsden,
41 this volume, for references). His grandfather,
42 Arthur Wellington Clah, born in 1835, not long
43 after initial European-native contact on the
44 coast, was the first literate Tsimshian
45 historian."

46
47 A Yes.

- 1 Q And then it goes on:
2
3 "Based on their data, known trading trails and
4 lists of trade goods were published as Plate 13
5 in Volume 1 of the Historical Atlas of Canada
6 (MacDonald, Coupland and Archer 1987)."
7
- 8 A Yes.
9 Q That's the reference to Exhibit 20, the two page
10 excerpt, is it not?
11 A Yes, it is.
12 Q So that the list of trade goods here is based on
13 the ethnohistoric sources you refer to here on page
14 10?
15 A And archaeological evidence from the Prince Rupert
16 Harbour excavations.
17 Q You don't say that in this article, do you?
18 A I'd have to read it again.
19 Q Well, it reads --
20 A The article --
21 Q Okay. Well, I'll let you deal with that, doctor.
22 A The whole volume is about the prehistory in the
23 archaeology of the Prince Rupert Harbour area, so
24 the artifact material is treated in a number of
25 other articles within that compendium. So I don't,
26 for instance, note that in site A or site B, horn
27 cores of mountain goats were in great abundance,
28 indicating the trade in the transfer of mountain
29 sheep and mountain goats. So that's the kind of
30 evidence, the final analysis, particularly that
31 done by Stewart and Stewart in, I believe in that
32 volume, that details that. So I didn't feel it was
33 necessary to put in all the archaeological
34 evidence. I was referring primarily to the
35 ethnographic, ethnohistoric material, because I

36 felt that's what archaeologists would feel was
37 particular information that was added to the
38 detailed archaeological reports in the volume.
39 Q And in particular, in terms of goods traded to the
40 interior of the Skeena, you don't refer to any
41 archaeological evidence here, do you?
42 A In that particular article, no. There are other
43 publications where I have done that.
44 Q Now, if we turn to draft two, that's tab 2, Exhibit
45 19, at page 28. It's page 29, forgive me, I've
46 just got the wrong page number. Again, it's a
47 table. And actually, forgive me, in fact, we need

48

George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 to turn to draft one, page 25. Now, draft one, in
2 the list of food items traded by the Coast
3 Tsimshian up the Skeena, it doesn't list sea
4 urchins there, correct?
5 A No, nor abalone, I notice.
6 Q And then draft two, which we started to look at a
7 moment ago, at page 29, that does list sea urchins,
8 sea urchin, in the food items traded in there?
9 A Yes.
10 Q Again, there is no reference for that there?
11 A Well, there are no references to any of the food
12 items here in that list.
13 Q But on what do you base adding sea urchin to that
14 list as being traded inland?
15 A It was, again, my rereading of the Barbeau notes at
16 the CMC that I noted that there was sea urchin.
17 Q Can you point to that one?
18 A I could find it for you, if you would like.
19 Q You don't have a reference or page number or
20 anything at this moment in time?
21 A No, I don't have reference to any of them. It
22 would be a matter of researching any one of those.
23 The original work was, you know, done 20 years ago.

24 Q Now then, I would like to ask you to turn to draft
25 two; I'm going to change tack and ask a few
26 questions more generally with regard to trade in
27 the drafts. So I'll ask you to turn to draft two,
28 page 3, paragraph beginning at, partial paragraph
29 beginning at the bottom with the words "Population
30 growth"?
31 A Right.
32 Q That's a new paragraph as compared to draft one?
33 A (WITNESS NODS HEAD AFFIRMATIVELY)
34 Q If you would, I can show you that it's not there.
35 If we turn to draft one on page 3, the paragraph
36 several paragraphs above, beginning "Many of the
37 students who worked on the NCCP" in draft two on
38 page 3?
39 A Yes.
40 Q That is on the bottom, bottom of page 2 of draft
41 one? And then you see at the top of page 3, draft
42 one, is the paragraph beginning "At this point
43 almost two dozen sites have been excavated"?
44 A Yes.
45 Q And that is in the lower part of page 3 of draft
46 two, that paragraph?
47 A Uh-huh.

49

George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 Q And then there's a change of heading. So these
2 next paragraphs are new?
3 A Where is the change of heading, I'm sorry?
4 Q Well, in draft one there's a new heading,
5 "Historical" -- sorry, "Historical Overview"?
6 A Yes, that was dropped.
7 Q Right, whereas that doesn't happen until the bottom
8 of page 4, and it's been changed to "Ethnographic
9 Overview"?
10 A Right.
11 Q So the point I'm putting to you, doctor, is that

12 this paragraph beginning "Population growth" is a
13 new paragraph?
14 A Yes, it looks like it.
15 Q And in this paragraph, the first sentence, you
16 state, "With clear evidence of expanded trade,
17 amongst other things", in that first sentence? You
18 use the words "With clear evidence of expanded
19 trade"?
20 A I'm sorry, I'm not -- it's page 3 of draft one?
21 Q Page 3 of draft two, forgive me, it's at the bottom
22 of draft two, it's a new paragraph beginning
23 "Population growth"?
24 A Yes.
25 Q You use the words "With clear evidence of expanded
26 trade" in the second line?
27 A Yes.
28 Q Now, you do cite somebody at the end of the
29 paragraph, but if you read the citation which you
30 put into the report at the top of page 4 --
31 A Uh-huh.
32 Q -- that doesn't support this matter of expanded
33 trade, does it?
34 A The part that I quoted there?
35 Q Yes. It doesn't support the point about expanded
36 trade? It supports other things, but it doesn't
37 support that point?
38 A It looks like in this draft there's an error that I
39 would guess the machine has made, because it
40 doesn't start with the whole sentence. The
41 quotation starts "Not by the emergence of cultural
42 trades", which is not a quotation that I would
43 consider complete. So it's got truncated, I would
44 suggest, by some misstroke on the computer, so I
45 don't know if the next form --
46 Q Well, I can't tell you whether or not -- what it
47 does appear, doctor, if I may, is it does appear,

50

George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 what you've -- it looks to me like the language of
2 the text proper here is ending with the word
3 "defined", "is defined", the words "is defined",
4 and then the part of the quote is to continue on
5 with the sentence?
6 A Well, then yes, it should have, if that is the
7 case, then have "... " to show that it jumps into a
8 quotation. So it should --
9 Q Yes. That was the way I read it, in any event.
10 A All right.
11 Q Perhaps you could check that this evening, doctor.
12 But in any event, the quote that is here does not
13 support the point in the first sentence of that
14 paragraph --
15 A May I have a --
16 Q -- to do with expanded trade?
17 A -- read this in context?
18 Q Yes. Actually, in draft two those are separate
19 paragraphs; "population growth" is one paragraph.
20 It looks like they're separate paragraphs, it's
21 hard to tell.
22 A So they're not, one is not supporting the other?
23 Are you --
24 Q But in any event, is it true that this cite here,
25 what you've cited here does not support the trade
26 point?
27 A But may I look at what is in the final?
28 Q Yes, we're about to do that. And so if we turn to
29 the final, doctor, it's at page 4 at the bottom,
30 and here at least it's clear that it's all in one
31 paragraph?
32 A Okay. "Population growth" -- "expansion of the" --
33 "middle period" -- "clearly indicate an" -- "but
34 not on the major scale these activities" --
35 "achieve in the late period" -- okay. So I'm
36 saying that the population growth in the middle
37 period is indicated in the cites with evidence of
38 expanded trade, and then in the quotation, about a
39 series of -- I'm reading in the quotation, starting
40 in the middle of the thing:

41
42 "But by a complex series of historical events
43 related to westward and southward migrations by
44 interior coastal peoples, this movement of
45 people for which there is evidence in both the

46 archaeological and oral history records
47 amplified local population growth and resulted

51
George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 in sociopolitical changes that culminated in a
2 period of warfare between the Tsimshian and
3 invaders from the north and east. The
4 formation of alliances between various
5 Tsimshian tribes as a result of this invasion
6 created much of what is recognizable as
7 ethnohistoric Tsimshian culture."
8

9 So the connection I'm trying to make is the first
10 part about population growth and expansion in the
11 middle period is clearly indicating the sites with
12 evidence of expanded trade. So I think the point
13 you're making is that there's no reference to
14 expanded trade in the citation --

15 Q That's correct.

16 A -- that I've just read through.

17 Q That's correct, isn't it, doctor?

18 A Yes.

19 Q So you've added that statement about extensive
20 trade here to draft two, and also to the final, as
21 we've just seen, the final report, without a
22 specific reference, correct?

23 A Yes, it would appear so.

24 Q I would ask you to turn to draft two, page 7. It's
25 the paragraph beginning "The high ranking chiefs",
26 and the sentence in the middle of that, which says,
27 begins "Sometime", it's the second sentence:

28
29 "Sometime during the millennium, before contact
30 with Europeans, the ceremonial regalia of the
31 Tsimshian chiefs was adopted by the Haida and
32 Tlingit as the quintessential attire for
33 trading partners in the extensive system of

34 intertribal trade that embraced all of the
35 communities and their resources throughout the
36 north coast zone."
37

38 A Yes.

39 Q It's that sentence beginning "Sometime" and ending
40 "north coast zone". Now, if we look at draft one,
41 this whole paragraph -- in fact, it's the whole
42 paragraph, I submit to you, doctor, is not, is a
43 whole new paragraph; it's not in draft form. So if
44 we turn to draft one, this is under -- well, while
45 we're still at draft two, it's under the heading
46 "Rank and Class" on page 6?

47 A Uh-huh.

52

George MacDonald (for Plaintiffs)

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

1 Q And above a heading "Slaves" --

2 A Uh-huh.

3 Q -- on page 7. And what we see when we turn to
4 draft one is that there are no such headings in
5 draft one. So they've been added, and in fact, the
6 paragraphs have been added to?

7 A Uh-huh.

8 Q Is that your understanding?

9 A Yes. That was, as I read through it on the
10 computer, I revised it as I went to give it more
11 consistency.

12 Q So in particular, if we look at page 7, again at
13 draft two, it's that sentence that I read out that
14 talks about extensive system of intertribal trade,
15 you don't give any reference for that there, do
16 you?

17 A No, I don't give any reference there. I'm just
18 wondering -- basically I guess the point is that
19 I'm making a conclusion that I came to as I was
20 finishing the report, that in fact, all of the
21 evidence that there is showing that every element

22 of the Tsimshian chief's regalia originated amongst
23 the Tsimshian, that is pretty recent realization on
24 my part, that they -- like the frontlets, the
25 blankets, the leggings, the woven aprons, the
26 rattles and so on, were all part of, they all
27 relate to stories of origins of the Nass and Skeena
28 rivers, and then they spread north to the Tlingit
29 and over to the Queen Charlotte Islands. So there
30 really isn't an authority other than myself to talk
31 about the development of the regalia. I'm not
32 aware that anyone else has come to that conclusion,
33 that the three north coast groups that shared the
34 common set of regalia rather religiously, it had to
35 originate somewhere, and I believe that it came
36 together from disparate parts of Tsimshian
37 territory into a badge of office in the sense, into
38 almost like the robes of the masons, as a rank and
39 implication that these were the trading chiefs, and
40 it gave them a commonality which set the basis for
41 trade.

42 Q Again, I'd ask you to turn to draft two, page 25,
43 in the middle, the middle paragraph there,
44 paragraph beginning "This partial list of exotic
45 trade items", and --

46 A Yes.

47 Q I'm going to read out the last sentence:

53

George MacDonald (for Plaintiffs)

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

1

2 "Using advanced preservation techniques, the
3 fish runs over two large rivers in the coast
4 and between were processed into exchange
5 commodities that attracted trade exchange for
6 hundreds of miles around the Prince Rupert
7 Harbour."

8

9 "Attracted trade exchange for hundreds of miles";

10 there's no reference there for that?

11 A That was primarily, of course, the Nass River, and
12 I have, I know, in the report, talked about how the
13 Nass River formed a natural hub or area where
14 people from all over, surrounding tribes, came
15 together, because the fish runs were so rich that
16 no-one could exploit them. So in a sense, they
17 each had fishing territories. So I probably should
18 have limited that statement to the Nass River as
19 being where that occurred, and of course, the Coast
20 Tsimshian had the major sites on the lower Nass
21 River.

22 Q And just to complete the point on that in terms of
23 the change from draft one, doctor, if we turn to
24 draft one on page 22, it's in the upper part of the
25 page, the paragraph beginning "This partial list of
26 exotic trade items", that sentence is not there in
27 draft one, so that sentence was added to draft two?

28 A There were many, many sentences as I went through,
29 felt that it hadn't quite captured the meaning, so
30 I would add a sentence.

31 Q And that paragraph with the added sentence is in
32 the final report, page 26, at the bottom, and over
33 on to the top of page 27?

34 A Yes.

35 Q Now, I would ask you to turn to draft one, tab 1 in
36 your book, Exhibit 17, page 15. I'm sorry, it's --

37 A You already covered that.

38 Q Is it page 15 or page 16 in your -- one of my
39 copies, unfortunately, my lady, I've given, has the
40 wrong page numbers on it, and so I think I've ended
41 up with one with the wrong page numbers in front of
42 me, so. But in the version that you have, doctor,
43 does it have at the bottom of page 16 the first,
44 the last whole paragraph beginning "The Haida who
45 frequently raided"?

46 A Yes.

47 Q That's page 16, all right.

1 A So that's in the first draft?
2 Q This is in draft one, yes.
3 A Correct.
4 Q So I will just read it out:
5
6 "The Haida, who frequently raided the Tsimshian
7 villages of the lower Skeena, were very
8 conscious of these supernatural beings who
9 controlled water traffic in their areas."
10
11 And it goes on from there. Now then, if we turn to
12 draft two, that paragraph has been deleted; is that
13 right?
14 A Yes, sorry, which page in draft two?
15 Q It would be about five pages on from there, I
16 believe.
17 A On from --
18 Q If you look at page 19 of draft two.
19 A Uh-huh.
20 Q The last paragraph there, partial paragraph there
21 begins "Tsimshian traders who lead annual trade
22 delegations"?
23 A Yes.
24 Q Now, relate that back to page 16 of draft one.
25 That's the paragraph above the paragraph we're
26 talking about?
27 A Yes.
28 Q And then going back to draft two, the next
29 paragraph after the Tsimshian traders paragraph is
30 the one that begins after the Haida paragraph?
31 A Yes, so the Haida paragraph was dropped. Is that
32 the point?
33 Q Yes.
34 A I considered that it wasn't that relevant. It was
35 really about how the Haida got oppressed, and
36 didn't particularly seem -- it was more a Haida
37 story than it was a Tsimshian.
38 Q And you talked briefly this morning about taking
39 out the word "Metlakatla" in the title. And so,
40 doctor, is it your understanding that the people of
41 the Metlakatla Indian Band are descendents of the
42 same tribes as the people of the Lax Kw'alaams?
43 A Yes. That's why I use the "Metlakatla/Lax

44 Kw'alaams" in my own thinking, because of course,
45 they did move with Reverend, or with Mr. Duncan, in
46 the 1860s, from Fort Simpson to Metlakatla. The
47 villages there they had abandoned for a period of

55

George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 20 some years, 30 years perhaps. But the term
2 "abandon" is not appropriate, because of course,
3 they were still using them seasonally. What they
4 did, they moved their major dwellings closer to the
5 fort, partly for defence against the Haida, who
6 were still harassing them quite a lot.

7 Q But the ten tribes, which later become nine tribes
8 that we referred to in the report, they are also
9 descendents of those tribes too?

10 A Yes. Not all in Metlakatla; some of them lived
11 outside of Metlakatla, but the majority that are
12 represented at Fort Simpson were living at
13 Metlakatla, or all of them were living in the Coast
14 Tsimshian territory, but some of them had major
15 sites outside of the Metlakatla area. Metlakatla
16 includes the Venn Passage. It does not include the
17 whole Prince Rupert Harbour, for instance,
18 Metlakatla Pass.

19 Q Right. But we're not just talking about the
20 physical pass here, we're talking about the people
21 from the Metlakatla Indian Band?

22 A Yes, that the people were all, virtually all, let's
23 say, in the Prince Rupert Harbour, they were
24 attracted to their old camping spot at Fort Simpson
25 when the Hudson's Bay Company moved its site from
26 the mouth of the Nass to Fort Simpson. Then when
27 there was the missionary advocating that if they
28 were going to make substantial progress, they had
29 to remove themselves from the influence of the fort
30 and the traders and they moved to Metlakatla;
31 subsequently, of course, was the move with Reverend

32 Duncan again to new Metlakatla up in Alaska. So
33 they have moved very considerably, but it is
34 primarily the population that historically is being
35 traced in the archaeological record.

36 Q But some of the people remained in old Metlakatla
37 as well, who have been there?

38 A Certainly, seasonally there could have been people;
39 I'm trying to think. I know that when we excavated
40 the archaeological sites there was evidence of
41 gardening going on in the intermediate period; in
42 other words, very little soil around Fort Simpson.
43 And so people would come down and both collect
44 shellfish, and they would cultivate some of the new
45 crops that were being introduced on the old village
46 sites in the Prince Rupert Harbour. But they were
47 primarily domiciled at Fort Simpson from 1834/35,

56

George MacDonald (for Plaintiffs)

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

1 to 1862, I believe, when Duncan managed to get
2 several hundred of those people to move with him
3 out of the range of the harmful influences, as he
4 saw them, of the traders in the Hudson's Bay
5 Company.

6 Q But is it fair to say, doctor, that people who are
7 now in the Metlakatla Indian Band are descendents
8 of the same people, the same nine tribes?

9 A Their ancestors lived at Fort Simpson, that
10 certainly I can say, that they were primary
11 residents for a period of a few decades at Fort
12 Simpson.

13 Q And they were part of the nine tribes at that time?

14 A Yes.

15 Q Doctor, I want to ask you some questions about the
16 bentwood boxes. Now, you refer in your report to
17 boxes found at Lachane?

18 A Lachane.

19 Q Lachane, forgive me. And I would ask us to turn to

20 -- this is, I think it's the second of, the second
21 of the reports by Richard Inglis into Lachane, the
22 one entitled "'Wet' Site Distribution - the
23 Northern Case GbTo:33 - The Lachane Site". And you
24 cite this report in your, this article in your
25 report?

26 A Yes.

27 Q I'll ask you to turn to page 172.

28 A Uh-huh.

29 Q Under the heading "Containers"; and 36, that means
30 number, does it?

31 A Yes.

32 Q And the second paragraph:

33

34 "Eleven bentwood box or box fragments were
35 found. All are small containers, perhaps water
36 buckets. Two specimens were complete, having
37 all four sides represented."

38

39 And then on page 173, these would appear to be the
40 two specimens that were complete. And the top
41 paragraph gives all three dimensions, I mean the
42 top illustration, and just below the illustration
43 gives all three -- this is on page 173.

44 A Yes.

45 Q That gives --

46 A And may I just say that Inglis did not analyze the
47 collection. He did the analysis based on the

57

George MacDonald (for Plaintiffs)

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

1 period between when they were recovered and when
2 they went to the conservation lab. Because they
3 were waterlogged, they were drying out very
4 rapidly, so we made arrangements for them to be
5 transferred to the Canadian Conservation Institute
6 for bulk processing of all of the wooden remains
7 and the basketry remains. They were in the

8 processes of treatment using polyethylene glycol
9 for a period of two years. By the time they came
10 back from the lab at the CCI, Canadian Conservation
11 Institute in Ottawa, Inglis had moved to a
12 different position at the Royal British Columbia
13 Museum, so he never had any further access or
14 interest in pursuing that collection.

15 So I actually then analyzed them and found
16 there were sides of boxes which then, once they
17 were preserved, went together. They had come
18 apart, they had broken at their curved seams. And
19 so that there actually were more than this, than in
20 this report, and in fact, they are on public
21 display now in the Tsimshian Prehistory Exhibition
22 at the Canadian Museum of Civilization. So it's,
23 this paper is a preliminary one and does not have
24 access to that collection in full, nor are these
25 numbers complete.

26 Q All right, doctor. Well, perhaps we can deal first
27 with what Dr. Inglis has to say.

28 A Sure.

29 Q And then we'll come and deal with the point you
30 just made.

31 A All right.

32 Q All right. In terms of what Inglis has to say
33 here, there's two containers. The top one on page
34 173 has all three dimensions?

35 A And it's a water bucket. It specifically was found
36 in an area where water was drawn. It essentially
37 is a water bucket, it's not a trade container.

38 Q And the lower one doesn't have a third dimension
39 anyway?

40 A Yeah, because it's just the bottom of a box.

41 Q All right. So now you say you later analyzed the
42 box and box fragments from Lachane?

43 A Yes, I studied them further. I have never
44 published them.

45 Q That was going to be my next question.

46 A Okay.

47 Q And you don't refer to any article in here where

1 that --
2 A No, because I had them all laid out, I began to
3 work on that when another project swept me away,
4 and I never completed the analysis of that
5 collection.
6 Q Do you have your, any notes of that analysis?
7 A They would be in the Canadian Museum of
8 Civilization. I left all of my working notes.
9 Q Forgive me; did you finish?
10 A Yes.
11 Q Sorry. You don't refer to those notes in this
12 final report, do you?
13 A No, I don't. I'm not sure they exist, but they
14 may. I'll just say I left 20 filing, four-door
15 filing cabinets full of notes when I left the
16 Canadian Museum of Civilization, and whether
17 they've even gone through them and catalogued them
18 is an open question in my mind.
19 Q Now, doctor, on, I believe it was November 22nd,
20 during cross-examination of yourself, you referred
21 to bentwood boxes being available online through
22 the --
23 A Yes.
24 Q And --
25 A Ethnographic.
26 Q Through the museum's web site?
27 A Correct.
28 MR. RUSSELL: And -- excuse me, my lady, we just
29 obtained these today, and I'm not sure I've got all
30 the copies of this. Perhaps it might be an
31 appropriate time to take a break?
32 THE COURT: That's fine.
33 THE WITNESS: There should be about 30 of them online.
34 THE REGISTRAR: Order in court.
35
36 (PROCEEDINGS ADJOURNED AT 3:00 P.M.)
37
38 (PROCEEDINGS RECONVENED AT 3:20 P.M.)
39
40 THE REGISTRAR: Order in court.
41 MR. RUSSELL:

42 Q Now, Dr. MacDonald, we were able to print off from
43 the museum's web site today 18 items, and I'll
44 produce it to you and I'll go through the search
45 terms that we used, but it's through the, using the
46 catalogue search engine at the web site; so if I
47 may pass that forward. We've added on to it some,

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George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 a number of these pages we've added on some
2 handwritten calculations, which I'm going to
3 propose that we check overnight if need be. So
4 I'll forward those. So that in particular, on the
5 first one you can see the handwriting in the bottom
6 right-hand corner there; that's not obviously from
7 the web site. And the same, I believe, for the
8 first five sheets, it's got that handwriting.

9 So the search that we did was using the search
10 terms "box", "Tsimshian" and "Barbeau"; you can see
11 that, for instance, on the top of first page; it
12 also should be on each page?

13 A Yes.

14 Q And so we found 18 items. Do you know if that's
15 correct, in terms of the number of items?

16 A I believe there are more than 18 in there. It
17 would depend on -- because I looked in it on
18 several occasions, and would find new ones each
19 time that I had not seen previously. I'm not
20 exactly sure why new search terms brought up more
21 examples, but there were more than 18; not a lot
22 more than 18. I maybe guess at 24 were the total
23 numbers, if you used all the search terms that
24 somehow or other applied to that.

25 The one thing, I'm not sure if you have the
26 cedar bark box in here, but you know, that was one
27 of the boxes that may not have come up in your
28 term, in your search. It was a container of the
29 same rough dimensions as these, I don't see it

30 here, but made of bent sheets of cedar bark, what I
31 would call sort of a -- oh, you actually have it,
32 you have it here. That's it. So that doesn't
33 count as one of the missing ones.
34 Q How many in is that one, doctor? How many in is
35 it, closer to the beginning or --
36 A That is three, four -- page one of three, that's on
37 the search one.
38 Q Yes, forgive me, these aren't numbered.
39 A Three, four, yes.
40 Q Does it have handwritten calculations on it?
41 A Yes, it does.
42 Q All right.
43 A Yes. It's catalogue number VII-C-1338.
44 Q And that one's cedar?
45 A Yes, that's made of cedar bark. It's lying on its
46 side in the illustration. It would have been
47 vertical, but the more height than width or

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George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 breadth.
2 Q All right. Now then, so do you have access, say
3 tonight, to this web site, to be able to go through
4 and see if there are any more that you can find and
5 print off?
6 A Yes, I could do that.
7 Q Okay, I would ask you to do that if you can. So
8 what we're looking for is if there are other
9 print-outs. This is the complete print-out that we
10 got when we did the search.
11 A Uh-huh.
12 Q But we have also experienced that. In fact, we've
13 experienced inability to access the web site,
14 mostly; and then when we did get it, we didn't
15 print off, and then today we got in and we printed
16 off, and that's how come we got it today. We
17 didn't realize we weren't going to have access in

18 the interim.
19 A Okay.
20 Q So we got these 18, so we have experienced some
21 variation in what, what is available. So if you
22 can also do that tonight, that would be excellent.
23 Also, what you will see is that it's only the
24 first five that have all three dimensions for the
25 measurements for the box?
26 A Yes. I believe there are more, I will check that
27 as well. I believe I said once before that what I
28 found frustrating was whoever was cataloguing the
29 pieces were not consistent in measuring length,
30 width and height, in terms of the box as it would
31 have been used, as opposed to the one I've just
32 cited, which is now lying on its side in the
33 illustration, and probably was measured on its
34 side, which throws off all the length, width
35 measurements. So it's obvious to anyone who has
36 studied them that there is a face to every box if
37 it has any decoration at all, because there's a
38 front and a back image, because the box is
39 surrounded by a supernatural protector, the goods
40 in the box.
41 Q Now, turning to the fifth one, the last one with
42 the handwritten calculations on it?
43 A Yes.
44 Q I think it's the only one without an image?
45 A Uh-huh.
46 Q Can you tell from the information here what kind of
47 a box this is, or if indeed it is a box? Oh, it

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George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 says "box", yes?
2 A Uh-huh.
3 Q Can you tell what kind of a box it is from the
4 information here?
5 A No. My assumption would be that it's a bent cedar

6 box, but without a picture I can't -- or without a
7 descriptive. They've left the categories out that
8 have to do with the material. Those are recorded
9 in their records, but they're not on the web site,
10 which is only what is referred to as tombstone
11 data; that is, just the very essential elements,
12 and not the many other fields of information that
13 is reported about each one of those pieces.

14 Q So if we return to the one on the page immediately
15 before that, the fourth one, the CD; and below the
16 picture there's a third line which says "CD96-110".
17 Does that refer to the cedar, the CD there?

18 A We're on this page?

19 Q Yes, the fourth one, it's V -- it's Roman numeral
20 VII-C-1338?

21 A Well, if it's CD, that's the catalogue number,
22 VII-C-1338, that's correct.

23 Q And then if you look at the illustration, I will
24 read it out to you, doctor, if you cannot read it,
25 but below the illustration there's a lengthy
26 number?

27 A Oh, yes.

28 Q And it says ".base.jpg", then below that it says
29 "S94" with some further numbers. Below that, for
30 this picture, it says "CD96-110". Do you know if
31 that means cedar or --

32 A Yes. No, it does not. I was director at the time
33 that this was recorded. It means that it is on CD,
34 compact disk number 696, which meant it was created
35 in 1996, and it is item 110 on that compact disk --

36 Q All right.

37 A -- in storage.

38 Q Thank you, doctor. So then are you familiar with
39 converting cubic centimeters to gallons?

40 A No, I'm hopeless. That's why I didn't do it.

41 Q All right. I don't propose that we do any
42 calculations in court, but what I am going to do is
43 produce a conversion factor sheet from Transport
44 Canada, I trust it's got the appropriate
45 conversions so that people can check the
46 handwritten calculations, and we'll just get the
47 extra copies. If I may, my lady, pass those

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

1 forward to you.

2 So, doctor, this, just very quickly, it's --
3 okay. What it does is it converts the litres to
4 imperial gallons about just over half, just under
5 half-way down the table. The first column says
6 "litres" and the second column says "imperial
7 gallons", and below that there's a conversion to US
8 gallons --

9 A Correct.

10 Q -- which are different. And when you're talking
11 about five gallons in your report, are you talking,
12 are you using imperial gallons or US gallons?

13 A I was referring to tea chests that are now in use
14 even today, I imagine, they were 20 years ago, for
15 the exchange of goods between the Nass River and
16 the Skeena River areas, and chopped seaweed goes
17 one way and oolichan grease goes down from the
18 Nass. So I was wondering the other day, the tea
19 chests are somewhat like this, and as I recalled in
20 talking to the chap on the ship that was, on the
21 boat that was taking them up for trade in the Nass,
22 that they were tea chests that were sold in the
23 stores in Prince Rupert and Port Essington and
24 wherever, that came from China. So I would assume
25 they would, they would be in imperial, not in US,
26 because the original container was for tea.

27 And I realized that they are much smaller than
28 the boxes that were used in, that I saw in the
29 collections in the museum, which they were
30 essentially, as I recall, two sizes. One would
31 have been, and I checked them at the time with the
32 hand-span calculations that Garfield had recorded
33 for width and breadth of the boxes, and they, they
34 were approximately the same for Garfield's
35 calculation of the size of boxes and those in the
36 storage of the Museum of Civilization, with the
37 exception that there were additionally tall boxes
38 like the one in the, in 1338, VII-C-1338, because
39 that box could obviously not have held oolichan

40 grease, probably wouldn't have held it anyway, it
41 would have run out, but that size of box, which are
42 the taller of the two boxes, would have been for
43 some form of dried material.

44 Seaweed would be a natural item to be traded.
45 So the people who are on the trails and that
46 Horetzky talks about who have the boxes of grease
47 on their back, as opposed to the boxes of other

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George MacDonald (for Plaintiffs)

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

1 foodstuffs being traded, there essentially were
2 large and small size trade boxes, depending on
3 whether it was dry goods or wet goods, grease.
4 Grease is dense, heavy. A box of grease has a very
5 considerable weight to it, would be probably as
6 much as a person could carry on the trail for a
7 long period of time, although they carried
8 incredible weights. Whereas the volume, if it was
9 a lighter material, dried fish, dried seafoods,
10 dried seaweed, dried herring spawn, would have been
11 in the lighter baskets, because they're dried
12 foods.

13 Q Are you saying, doctor, now, are you now saying
14 that there are two different standard sizes of
15 boxes that were used for trading?

16 A I would say the dry good and wet good, there are --
17 I was always aware of the fact there were quite
18 tall boxes, as well as much shorter boxes, and
19 that's what I tried to do by taking the notations,
20 at least the measurements that I could read off the
21 screen, and realizing that there was no consistency
22 in length, width and height that I could work with.
23 Probably it could be done, but it would be a
24 particular study that would undertake to do that
25 from all the collections that have large numbers of
26 those boxes. And it was my impression from looking
27 at that, there was a dry goods box which had a

28 greater volume than a wet goods box. And it seemed
29 to me that when I looked at the ones that I would
30 think are the ones for denser wet goods, that they
31 often had oolichan grease staining on them, or
32 certainly grease, indicating that they were holding
33 flesh or, you know, oolichan grease, as opposed to
34 seaweed; and berry, berry cakes are also very light
35 when they're dried, they're berry leather
36 essentially. Dried clams are very light, because
37 they mean smoked and dried.

38 Q So doctor, is the answer yes, that you are now
39 talking about two different sizes of standard boxes
40 that they used for --

41 A Yes. I recognized as the work went on, and I
42 regret that I didn't make that clearer in the
43 report, it was something that has, you know, come
44 out of the look at those boxes. I was primarily
45 interested in their manufacture rather than their
46 use in earlier times. So I've looked at them many
47 times with different objectives in mind, but I'm

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George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 clearly of the impression which would, of course,
2 only be verified by doing an analysis of the
3 variations of boxes, but that there are -- they
4 cluster. This is very much the kind of parlance
5 archaeologists use, if you have a population of
6 objects, that they will tend to polarize into two
7 distinct categories, if there were two sizes in
8 use. So I'm of the impression that there's a dry
9 goods box and a wet goods box, which related to
10 having to carry them by hand or on your back, over
11 the trails.

12 Q So doctor, are you now saying that your opinion
13 with regard to standard size boxes for trade
14 purposes is not verified?

15 A I'm saying that I think there are two, and that I

16 overlooked one, and I think Garfield overlooked
17 one. I think Garfield's measurements of the
18 hand-spans that she recorded in her 1930s some
19 volume were the grease boxes, and I think that was
20 her special interest. But I think there are
21 examples in the museum collections of taller boxes,
22 and ones such as those temporary ones made out of
23 cedar bark that were used for lighter goods. It's
24 a definement of the original --

25 Q So is your opinion, is your opinion on this, is it
26 verified, in your mind?

27 A By observation, yes. By statistical analysis, no,
28 it's never been done.

29 Q All right. So in your report you talk about
30 containers of a volume of five gallons?

31 A Those were the historic ones that I saw which were
32 tin, essentially tin cans. They were the tin boxes
33 that I personally witnessed the exchange going on,
34 and I realized that those are not as big as the,
35 any of the boxes, big or small, but they were
36 larger than that, that Garfield described, and that
37 Barbeau collected.

38 Q So what is, what is the other size, standard size
39 of box that you're now talking about?

40 A I'm talking about the one that Garfield describes
41 as being the width, three times the width of
42 distance between the second finger and the third
43 finger. She has all of those measurements in her
44 field study done at Lax Kw'alaams in the '30s.

45 Q Do you know what that volume is?

46 A No. I think I suggest in here that it, that the
47 hand-spans convert to certain number of inches, so

65

George MacDonald (for Plaintiffs)

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

1 it would be a relatively simple calculation to see
2 what that comes with in terms of your table.

3 Q Have you done that calculation?

4 A No.

5 Q And have you had somebody else do it for you?

6 A No.

7 Q So you're not presently aware of what the volume is

8 for that?

9 A Yes.

10 Q When Garfield talks about the finger-spans, which

11 we'll come to?

12 A Right.

13 Q You're not presently aware of what the volume is

14 for that?

15 A No.

16 Q Is it more than or less than the five gallons?

17 A It's more than.

18 Q All right. Do you have a sense of how much more it

19 is?

20 A It could be four times more, looking at how, when

21 you increase something, you're increasing it in

22 three dimensions, the boxes are bigger in three

23 dimensions, not just one dimension. So the volume

24 then becomes a multiple of probably three or four

25 times. But it was grease that was in the boxes I

26 was looking at at Kinkolith. That was grease, and

27 they were heavy. So I imagine the boxes that

28 Garfield sets the standard for would be three to

29 four times what a five gallon pail of oolichan

30 grease would actually weigh. These, these, of

31 course, are very much like any of the trade item,

32 trade containers that were used in China before

33 Chin Shih Huang destandardized weights and measures

34 or that, in Europe, when certain standards were

35 laid down in Britain for container sizes which, you

36 know, wasn't until the 13th century or so, and in,

37 on the continent when Napoleon laid down the

38 Napoleonic code for the measurements, his people,

39 for litres and so on.

40 So the standardization into the exact science

41 as we now it as is a relatively recent thing, and

42 before that it was done in hands and feet, and you

43 know, that's the basis in English measurement, is

44 so many feet. And the Tsimshian had so many spans

45 of the hand to determine what a box would be,

46 knowing, I assume, that a box bigger than that

47 would be hard to carry full of grease on the trail,

- 1 and that I don't think there's any question that
2 the main product being taken over those trails was
3 grease, the main heavy goods. Most other things
4 were dried and light goods.
- 5 Q And then when you gave your evidence earlier you
6 talked of -- this will be two weeks ago now,
7 approximately -- you talked of looking at the
8 measurements online and doing some calculations
9 with regard to those measurements online?
- 10 A Well --
- 11 Q Did you make any notes of those calculations?
- 12 A No, I just did them on a telephone pad that we, you
13 know, throw the notes way. I just tried to
14 calculate what the volume would be and that's, I
15 think, when I made the comment that, you know, I'm
16 not a mathematician and I got nowhere with those.
17 So those, those were nothing more than
18 multiplications to see if I could come -- and I
19 actually looked online to try and find something
20 like this, and I wasn't able to. I just kept
21 getting either weight conversions or volume
22 conversions from metric to regular; what's the
23 other one called, non-metric, the English system.
- 24 Q Imperial gallons?
- 25 A Not being able to go from volume to liquid weights,
26 I didn't, I didn't come across anything as useful
27 as you have.
- 28 Q Now, then for ease of reference here, I will just
29 point out that the fault line in this table,
30 conversion factors table, goes from imperial
31 gallons to litres; do you see that? That's the
32 other way, the other direction?
- 33 A Right.
- 34 MR. RUSSELL: So my lady, can we have these marked the
35 next exhibit? That's the table, I mean, the
36 collection of 18 items, and then also the
37 conversion factor table.

38 THE COURT: So the computer print-out can be Exhibit 21
39 and the conversion table Exhibit 22.
40
41 EXHIBIT 21: Computer print-out of collection items
42
43 EXHIBIT 22: Conversion table
44
45 MR. KIRCHNER: If I might ask my friend if he has
46 another copy for Dr. McDonald. He has asked
47 Dr. MacDonald to look at this overnight, and it

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George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 might be useful, because the doctor cannot take the
2 exhibit copy.
3 THE COURT: Do you have another one, Mr. Russell?
4 MR. RUSSELL: I believe we don't, unfortunately. We can
5 have another one made -- pardon?
6 MS. KEENAN: Is yours marked, the conversion table?
7 MR. RUSSELL: Yes, I previously marked it. Perhaps, my
8 lady, we could take a copy, take a photocopy and
9 have it made quickly.
10 THE COURT: Yes, or I mean, my copy just has the areas
11 highlighted that you mentioned, so you can use mine
12 if you want.
13 MR. RUSSELL: Thank you, my lady. And so tomorrow when
14 we come back to this, I'll want to deal
15 substantively with the volumes in here, so that if
16 you have an ability to check the calculations, or
17 perhaps we can go through plaintiffs' counsel and
18 see if they confirm the calculations, that might be
19 the best way to go in terms of that.
20 THE COURT: Then they can just go in by admission.
21 MR. RUSSELL:
22 Q Yes. And also, of course, it's my earlier request
23 that, for you to see if you can obtain other
24 examples?
25 A Yes, I will.

26 Q All right. And have we done it the right way
27 through the catalogue search?
28 A Yes. As you note, the queries bring up different
29 items from the collection. There are some 10,000
30 objects in the northwest coast collections at the
31 Canadian Museum of Civilization, so as you can
32 imagine, there are, you know, quite a few that
33 don't have hits, depending on what query word you
34 use. They should come up in boxes, but there are
35 many different kinds of boxes, and that's probably
36 why you didn't get as many as I think I got. I
37 just kept going back after it, looking in different
38 ways at the collection.
39 Q Would you suggest --
40 A I'm pretty certain it's more than 18.
41 Q Doctor, sorry, would you suggest a different search
42 word to use?
43 A I believe there's one that has to do with trade and
44 transportation, it's a whole category, and so it
45 would be worth, I think, looking under that
46 category of trade and transportation, under
47 Tsimshian, as well as then looking, as you have,

68

George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 for "box Tsimshian", or --
2 Q With Barbeau here?
3 A Barbeau, right. Are you interested or not in ones
4 that are collected by other than Barbeau, or did
5 you --
6 Q Well, it's the ones, doctor, that you looked at,
7 first of all, we were interested in, and then
8 secondly, other examples of boxes to see.
9 A Okay. I believe that, you know, there may not be
10 many more than 18 that Barbeau himself collected,
11 but there are many other well-documented boxes, or
12 there are, I shouldn't say many, there are other
13 documented boxes that came from Emmons or from

14 Harlan I. Smith, or some of the other collectors
15 who were in the area early on in about the same
16 time as Barbeau. But you wouldn't have got them if
17 you searched just for "box Tsimshian Barbeau".
18 That would have -- that's probably the proper, 18
19 is probably the number he collected personally, and
20 then there were others that were collected by other
21 researchers at an early date --
22 Q Now, doctor --
23 A -- that were part of the collection.
24 Q The two standard sizes that you're now talking
25 about in your oral evidence, for trade purposes,
26 would you expect to see those demonstrated in the
27 boxes at the CMC?
28 A Yes. I would think that that would -- you know,
29 just looking at the pictures, I can see some are
30 the tall boxes and some are the shorter ones. I
31 see one of them has a height of 56 centimetres,
32 that's quite large; the other ones are more like 40
33 centimetres, and there are a number there that are
34 53 and a half centimetres. There are a number that
35 are in the 50 to 60 centimetre range, and then
36 there's, the second one is 49 centimetres.
37 Q All right, doctor. I want to move on now to the
38 finger-span measurements of Garfield's. Would you
39 just explain to the court who Garfield is?
40 A Yes. Garfield was professor of anthropology at the
41 University of Washington in Seattle who began her
42 studies first at New Metlakatla in Alaska, when she
43 went on a trip up there, and I think as I reported
44 earlier, was told that if she wished to have some
45 of the earlier information, then she should work at
46 Lax Kw'alaams. So around '32 or so she began to
47 work at Lax Kw'alaams, and then eventually

69

George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 published the substantive monograph on Coast

2 Tsimshian in '37, I think it was that her monograph
3 appeared. And then she published a series of
4 papers and other publications; "The Tsimshian and
5 Their Neighbours" was another one published in the
6 '40s. So she is one of the people who did direct
7 ethnography at Lax Kw'alaams. In fact, she and
8 Barbeau were the two primary researchers to work at
9 Lax Kw'alaams.

10 Q So just, we turn, if we could turn to the final
11 report at page 27, the lower part of the page.
12 It's the paragraph that begins "Viola Garfield"?

13 A Yes.

14 Q And I will read it out:

15
16 " -- who worked with William Beynon and
17 knowledgeable elders at Lax Kw'alaams from 1932
18 on, commented on the standard size of storage
19 boxes."

20
21 And you've got 1939 and then page reference 320?

22 A All right.

23 Q
24 "Boxes for oolichan grease and seaweed storage
25 were three middle finger-spans high and two
26 first finger-spans wide on each side. A
27 finger-span is measured from the tip of the
28 outspread thumb to the tip of the finger."

29
30 That's got quotations around that. And then you go
31 on to say:

32
33 "This is equivalent to 14 inches on each side
34 and 24 inches in height."

35
36 A That's the small box.

37 Q All right. I believe, doctor, that the reference,
38 and I don't think this is of any consequence, but
39 the reference there should be to page 329, and
40 we're going to turn to that.

41 A Okay.

42 Q I think we have both pages, so we can see. I will
43 forward that up. And this is a work that you
44 yourself cite in the report?

45 A Yes.

46 Q Actually, it seems that we don't have page 320, but
47 329 looks like it is the page. It's the appendix

1 with exchange values of goods?

2 A Yes.

3 Q Would you agree with me that this is the right page
4 you're referring to?

5 A Yes.

6 Q So at the bottom of the page, doctor, page 329,
7 paragraph, and I will read it out:

8

9 "The following list of exchange values was
10 given by three informants. The list is not
11 complete and includes articles of both native
12 and white manufacture."
13

14 And then that's the list?

15 A Yes, I've gone over that, and I seem to recall that
16 she may have made a misstatement somewhere, because
17 I worked them out as to the 40 groundhog skins were
18 equal to a caribou skin, a caribou skin for a large
19 box of grease, so therefore, the equivalent is 40
20 groundhog skins for a large box of grease. And
21 then I think somewhere she has, yes, 40 groundhog
22 skins for one large box of grease, so that's
23 verified as that one, and one groundhog skin for
24 one dried fish, herring or salmon.

25 Q And this is the -- oops.

26 A It's unfortunate she didn't make a table rather
27 than putting them in that kind of list.

28 Q But if we look at the footnote, that's where the
29 finger-spans comes in?

30 A Yes.

31 Q So I'll read it out. Footnote number 1:

32

33 "Boxes for oolichan grease and seaweed storage
34 were three middle finger spans high and two
35 first finger spans wide on each side."

36
37 And then she states:
38
39 "A finger-span is measured from the tip of the
40 outspread thumb to the tip of the finger."
41
42 So from the middle finger would be like that, and
43 for the first finger it would be the distance
44 between those two, is that right?
45 A Yes. That's what I interpret her as saying, yes.
46 Q And that was based on three informants?
47 A That's what she says.

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George MacDonald (for Plaintiffs)
Cross-exam by Mr. Russell (cont'd)

1 Q Then if we turn to --
2 A May I add that, just that, you know, I measured it
3 at seven inches as I recall, when I measured that,
4 the maximum span, and I say, and that was two of
5 these spans. So 14 inches was the, was that
6 measurement.
7 MR. RUSSELL: Right, thank you, doctor. Excuse me, my
8 lady, if I may, just a moment?
9 THE COURT: Well, we're almost there anyway. Do you
10 want to stop for the day?
11 MR. RUSSELL: Yes, my lady, that would be appropriate.
12 THE COURT: Mr. Kirchner? Now, you didn't need a copy
13 of this, Exhibit 22?
14 MS. KEENAN: We have found one, my lady.
15 THE COURT: Just before we do break, did you want to
16 mark this document that we've been looking at as an
17 exhibit?
18 MR. RUSSELL: Yes, my lady.
19 THE COURT: Make that Exhibit 23, the Tsimshian Clan and
20 Society.
21
22 EXHIBIT 23: Excerpts from document entitled
23 "Tsimshian Clan and Society"

24
25 THE COURT: We also haven't done anything with
26 Mr. Inglis's article; I don't know.
27 MR. RUSSELL: I would --
28 THE COURT: I'm not sure --
29 MR. RUSSELL: I think we should enter that as well.
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Certification

1 THE COURT: I'm not sure if Dr. MacDonald really agreed
2 with that one. I don't know if you laid the
3 foundation for that one.
4 MR. RUSSELL: Well, I'm in your hands on that one, my
5 lady.
6 THE COURT: All right. You want it marked as an
7 exhibit?
8 MR. RUSSELL: I'm not pressing the point.
9 THE COURT: All right, let's leave it then. All right,
10 adjourned until tomorrow then.
11 THE REGISTRAR: Order in court. Adjourned until ten

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a.m.

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

REPORTER'S CERTIFICATE

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

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.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 12th day of December, 2006.

R. PEREIRA
Certified Realtime/Official Reporter
United Reporting

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