

**RECONSTRUCTING TSIMSHIAN CULTURE AND HISTORY
USING ORAL TRADITIONS
A Brief Assessment of Two Expert Opinions**

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BACKGROUND AND QUALIFICATIONS

The following is the product of a request by the British Columbia Regional Office of the Department of Justice Canada that I prepare a report in which I discuss the strengths and limitations of Aboriginal oral traditions in reconstructions of the past and provide a professional assessment of expert opinion that has recourse to such traditions.

I am an anthropologist and ethnohistorian with a Ph.D. from McGill University and have taught at the University of Toronto at Mississauga for over seventeen years. My training, publications and teaching focus on the use of archaeological evidence, written documentation and oral traditions to reconstruct the past cultures of Aboriginal peoples, as well as the history of contact between native peoples and European newcomers throughout Canada and parts of the United States.¹

Anthropology involves the study of human cultures, both past and present. Ethnohistory is not, in and of itself, a field of study leading to a university degree. Rather, it is an interdisciplinary methodology that combines the skills of the anthropologist with those of the historian. Such skills are often acquired during the course of formal training in either anthropology or history, which is why practitioners are found in both disciplines. In North America, anthropologists and historians employing ethnohistorical methodology have focused

¹ A more complete outline of qualifications is found in the attached *curriculum vitae*.

primarily on the study of change and continuity among natives and newcomers who, during the post-contact period, share an intercultural history and form part of a single historical trajectory.

The methodologies developed by anthropologists who reconstruct both pre-contact and post-contact history have a number of practical applications which have given rise to various types of applied anthropology, including forensic anthropology. Recognizing that the latter might conjure up images of crime scenes and skeletal remains, I should point out that, in the most general sense, forensic anthropology connotes no more than the application of anthropological knowledge to legal problems. One such application leads to reconstructions of events and practices in relatively remote pasts for the purpose of assisting courts mandated to adjudicate modern claims to Aboriginal rights, Aboriginal title, and treaty rights. These anthropological reconstructions are necessitated by legal tests requiring evidence, for instance, that a particular practice, custom, or tradition was integral to the distinctive culture of an Aboriginal group during the period prior to contact between Aboriginal and European societies. Other tests require a claimant group to establish that it exclusively occupied a certain tract of land at the time at which the Crown asserted sovereignty over the land subject to the title. Still other tests call for extrinsic evidence illuminating the question of what was in the mutual contemplation of Aboriginal and non-Aboriginal parties to a certain treaty signed centuries ago.²

Anthropology has had a long connection with such legal matters. Indeed, the

² For a fuller discussion of anthropological involvement in such forensic reconstructions see von Gernet 2006. Full referencing for all abbreviated citations in the footnotes may be found in the bibliography at the end (*infra*).

development of modern ethnohistorical methodology over half a century ago was encouraged and shaped in part by the experience that many anthropologists gained from doing land claims research.³ By 1992 I too began developing a professional interest in how written documents, oral traditions and archaeological data are used in the forensic reconstruction of past Aboriginal practices and the history of contact between natives and newcomers. Since my interest is primarily methodological rather than geographical, my research has taken me across the continent. I have had occasion to assess dozens of claims relating to Aboriginal rights, treaty rights and Aboriginal title rights and have served as an expert witness in over twenty legal proceedings in various jurisdictions throughout Canada and the United States.

As noted earlier, my training, publications and teaching focus on archaeological evidence, written documentation and oral traditions. The use of all such evidence for the purpose of reconstructing the past requires specialized knowledge and sophisticated techniques. Hence, I am frequently asked to express professional opinions on the strengths and limitations of all three classes of evidence as they relate to specific reconstructions of events or practices.⁴ In the present instance, my mandate has been to focus on oral traditions, although I have a few brief remarks on the other classes of evidence.

Anthropologists such as myself have been trained to have great respect for all human cultures. Our exposure to Aboriginal issues, as well as an awareness of long-term historical

³ von Gernet 2006:175.

⁴ e.g., von Gernet 2001.

injustice, has often generated deep sympathies. At the same time, my mentors taught that such respect and sympathy should not preclude scientific inquiry conducted at the highest standard of objectivity. Those who apply this advice in forensic contexts must avoid the temptation to side automatically with an Aboriginal party in a dispute. Indeed, court cases in which I have been called to testify have obliged me to lay aside the strong sympathies that I have for the political aspirations of indigenous peoples, so that I may properly rebut expert evidence adduced in support of claims such as the alleged right to discriminate against women, the alleged right to resources that were not of traditional interest, or the alleged right to territories not associated with the Aboriginal claimants until relatively recent times. The fact is that not all Aboriginal claims and causes are supported by the available evidence. Some merely replicate the cultural fiction that comprises “the Indian story” in North America,⁵ while others are wholly justified. Hence, to the extent that it is possible, I always examine the evidence without *a priori* opinions and oblivious to the manner in which my conclusions may be potentially favourable or prejudicial to preferred legal positions taken by any of the parties. My primary motivation for involvement is a belief that history is never unproblematic, that all parties in a dispute deserve access to sound academic scholarship, and that courts benefit from the presentation of more than one perspective. While I have read the Amended Statement of Claim filed in the present action, I stress from the outset that I have formed no opinion whatsoever about whether the plaintiffs enjoy the alleged Aboriginal rights and Aboriginal title.

At various junctures in this report I make reference to case law. This is the consequence

⁵ See Clifton 1990.

of my effort to illustrate important anthropological points using examples that might be familiar to the Court and derives in part from the fact that legal authorities in various jurisdictions have adopted my approach to oral traditions. In short, when it comes to this subject matter, there is overlap between the anthropological and legal professions. As always, my occasional references to case law should not in any way be construed as the offering of legal opinion on my part.

MY APPROACH IN BRIEF

I have long held the view that, while oral traditions are potentially important sources of information, they must be subjected to critical scrutiny, particularly if they are tendered as evidence about an actual past. I first expressed this opinion a decade ago in *Oral Narratives and Aboriginal Pasts: An Interdisciplinary Review of the Literature on Oral Traditions and Oral Histories*.⁶ At the time, my research examined 168 studies and drew a number of conclusions about the utility of oral evidence in historical investigation. I concluded that this class of evidence should not be dismissed *a priori*, but should be seriously considered on a case-by-case basis.

My 1996 report was not prepared in relation to any legal proceeding, but after it was published I was often invited to serve as an expert witness in court cases in which oral histories and/or traditions were led as evidence. In many instances I was asked to provide overviews

⁶ von Gernet 1996.

discussing the issues and methodologies involved in the analysis of this class of evidence and to give opinions on the merits of specific histories or traditions. From time to time my approach was met by challenges which quite properly pointed to the myriad of alternative approaches reflected in the academic literature, a vast corpus with which I have a tolerable familiarity and which I believe is fairly represented in the bibliographies accompanying my publications and reports.

I recognize that those scholars with a stake in the intellectually chic “social constructionism,” “post-colonial theory,” or “cultural studies,” or those who have positioned themselves elsewhere along the continuum between historical objectivism and the postmodernist critique, may respectfully disagree with my approach. These healthy (if arcane) arguments have roots in rival epistemologies current in the academy.⁷ I have briefly reviewed these elsewhere and given reasons for preferring one over another.⁸

Some scholars advance arguments that Aboriginal oral traditions are *not* historical documents, that they should *not* be reduced to writing, that they *cannot* be evaluated using the methodologies scholars routinely employ to assess written historical documents, or that they can only be properly understood from within the context of the orator’s culture. The opinion of First

⁷ For a review of these debates in the discipline of history see Berkhofer 1995, McCullagh 1998, Novick 1988, and Windschuttle 2000. For a similar review of these debates in anthropology see Kuznar 1997 and Mason 2006. For a broader review of the debates in the social and natural sciences see Hacking 1999. For a more restricted view of these debates in law see Fortune 1993.

⁸ von Gernet 2000a; von Gernet 2006.

Nations scholar Angela Wilson is illustrative:

While I would argue that [native] oral accounts certainly are interpretations of the past and should not be treated as raw data, I do not believe they should be tested and evaluated by Western standards, or any other standards from other cultures for that matter. The only standards that matter are those set within the culture, and if stories are still being told within the oral tradition then they have obviously passed these internal checks.⁹

These and similar positions are not without merit and may be defensible in certain settings, but in my opinion they are inappropriate in the forensic reconstructions common to the fact-finding process characteristic of Canadian Aboriginal litigation. Here, oral traditions are either transformed into or specifically generated as *evidence* about an actual past that may be in dispute and can no longer be addressed solely on their own terms or accepted merely because they have passed internal checks. Rather, they must be deemed reliable before being accepted as useful evidence. This is no different from what anthropologists have called for outside of litigation settings.¹⁰

If the ultimate purpose of the fact-finding process is “the determination of the historical truth”¹¹ and anthropologists skilled in reconstructing the past are mandated to assist the Court in that endeavor, such experts must be prepared to suggest a useful approach. An economical way to summarize my own approach is to reiterate what has already been endorsed by the Supreme

⁹ Wilson 1997:110.

¹⁰ e.g., Mason 2006:5-6.

¹¹ *Delgamuukw v. B.C.* [1997] 3 S.C.R. 110, at par. 86.

Court of Newfoundland and Labrador in *Drew*,¹² the Federal Court of Appeal in *Benoit*,¹³ and again more recently by the Federal Court in *Victor Buffalo*.¹⁴ All three decisions quote and agree with this passage taken verbatim from my previously published opinions:

In my opinion, the most useful approach recognizes the legitimacy of self-representation and acknowledges that what people believe about their own past must be respected and receive serious historical consideration. At the same time, it assumes that there was a real past independent of what people presently believe it to be, and that valuable information about that past may be derived from various sources including oral histories and oral traditions. It accepts that both non-Aboriginal and Aboriginal scholars can be biased, that various pasts can be invented or used for political reasons, and that a completely value-free history is an impossible ideal. Nevertheless, it postulates that the past constrains the way in which modern interpreters can manipulate it for various purposes. While the actual past is beyond retrieval, this must remain the aim. The reconstruction that results may not have a privileged claim on universal “truth,” but it will have the advantage of being rigorous. The approach rejects the fashionable notion that, because Aboriginal oral documents are not Western, they cannot be assessed using Western methods and should be allowed to escape the type of scrutiny given to other forms of evidence. Ultimately, the perspective is in accord with the belief of the highly-regarded anthropologist Bruce Trigger: public wrongs cannot be atoned by abandoning scientific standards in the historical study of relations between Aboriginal and non-Aboriginal peoples.

After outlining my approach at some length, the Federal Court of Appeal in *Benoit* adds as follows:

In my view, the approach suggested by Dr. von Gernet to oral history evidence is undeniably a proper approach and is entirely in line with remarks made by McLachlin C.J. at paragraph 38 of *Mitchell, supra*, where she indicated that evidence adduced to support Aboriginal claims should not be weighed in a manner that “fundamentally contravenes the principles of evidence law...” I agree with Dr. von Gernet that oral history evidence cannot be accepted, *per se*, as factual, unless it has undergone the critical scrutiny that courts and experts, whether they be historians, archeologists, social scientists, apply to the various types of evidence which they have to deal with. My specific purpose in referring to Dr. von Gernet’s Report is to emphasize the fact that the Trial Judge ought to have approached the oral history evidence with caution.¹⁵

Similarly, in *Drew*, the Honourable Mr. Justice L.D. Barry remarked:

¹² *Queen v. Drew et al.* 2003 NLSCTD 105, at par. 669-670.

¹³ *R. v. Benoit* [2003] F.C.A. 236 at paragraphs 111-113. An application for leave to appeal this judgement of the Federal Court of Appeal was dismissed by the Supreme Court of Canada on April 29, 2004.

¹⁴ *Chief Victor Buffalo et al. v. The Queen et al.* 2005 FC 1622, at paragraphs 453-455.

¹⁵ *R. v. Benoit* [2003] F.C.A. 236 at paragraphs 112-113.

I find Dr. von Gernet's methodology for interpreting oral history and tradition is consistent with the rationalist approach to the law of evidence which emphasizes a search for truth, justice and reason. In many respects, Dr. von Gernet's approach incorporates the traditional values of evidence law. In conducting his examination of Mi'kmaq oral traditions Dr. Von Gernet places a premium on using a balanced approach which combines a respect for aboriginal traditions along with a rigorous and scientific methodology...¹⁶

I accept this and agree with Dr. von Gernet that, while the value of orally communicated history "does not always lie in its factual accuracy, when it comes to historical inquiry in fact-finding exercises requiring decisions about what happened in ancient times, it is important to at least try to distinguish between what people in the present *believe* might have happened and what on the weight of combined evidence *actually* did happen." Dr. von Gernet's rigorous approach supports the values associated with the principle of good faith in decision-making. If one accepts, as I do, that a good faith attempt to establish the truth about particular past events at issue in a case is a necessary condition for achieving justice in adjudication, then it is necessary to adopt Dr. von Gernet's approach to oral history and tradition.¹⁷

This general approach to oral history and tradition accords with the position of the Supreme Court of Canada in *Mitchell*, where the Court stated: "Placing 'due weight' on the aboriginal perspective, or ensuring its supporting evidence an 'equal footing' with more familiar forms of evidence, means precisely what these phrases suggest: *equal* and *due* treatment". Consistent with this statement, in conducting his assessment, Dr. von Gernet also applied a standard of equal treatment of evidence.¹⁸

The present report is intended to further assist the Court by providing a more detailed discussion of specific evidence tendered through expert witnesses who have filed reports in these proceedings. I end the report with a dramatic cautionary tale that illustrates some of the points I raise.

DEFINITIONS

Theoreticians of positivist history express a formula that serves as the basis for historical science: "no documents, no history."¹⁹ A modern definition of "document" tends to connote a written record, but in the past the term was also used to describe anything that served to show

¹⁶ *Queen v. Drew et al.* 2003 NLSCTD 105, at par. 669.

¹⁷ *Queen v. Drew et al.* 2003 NLSCTD 105, at par. 670 (emphasis in original).

¹⁸ *Queen v. Drew et al.* 2003 NLSCTD 105, at par. 671 (emphasis in original).

¹⁹ C.V. Langlois and C. Seignobos as quoted in Le Goff 1992:179.

evidence or proof. In this broader sense, oral narratives used as evidence about past events are essentially *oral documents* even if they have not been reduced to writing or otherwise transferred to an apparatus for fixing voices.²⁰ When transcribed, they begin to resemble the documents commonly used by historians.

The French sociologist Maurice Halbwachs long ago made an important distinction between autobiographical memory and historical memory. Prior to his death in a German concentration camp, he, himself, remembered Reims because he had lived there a whole year, but he also remembered that Joan of Arc consecrated Charles VII there, because he had heard it said or had read about it.²¹

Similarly, in the present context, it is useful to distinguish two types of oral documents: *oral histories* and *oral traditions*. Definitions of each of these vary depending on the disciplinary affiliation and problem orientation of the researcher. A few scholars use the terms to identify methods or processes, while others apply them to the products. Some reject any and all formal definitions, but others have constructed elaborate taxonomies with dozens of subdivisions.²² Throughout this report, *oral histories* are defined as recollections of individuals who were eyewitnesses or had personal experience with events occurring within their lifetime. *Oral traditions*, on the other hand, are documents about past events transmitted by word of mouth over

²⁰ Pylypchuk 1991:54.

²¹ Halbwachs 1980:50-52.

²² The numerous definitions are reviewed in von Gernet 1996: 7-8, 26-38.

at least a generation. While such inter-generational transmission can occur within a single family, most often oral traditions are to some extent institutionalized and are memories of groups rather than of individuals. Though not entirely satisfactory and often problematic, this nomenclature and set of definitions has the advantage of having been accepted (with inconsequential variations) by authorities who work primarily with oral histories,²³ as well as by scholars who work primarily with oral traditions.²⁴ The anthropologist Ronald J. Mason, for instance, puts it this way:

In advance of more extended treatment later, an initial explication of the dichotomy *oral history* / *oral tradition* will be useful for what follows. The first of these terms is applicable to verbal testimonies having a maximum time depth limited by the recollections of the oldest living member of a society; they are attestations of personally witnessed things and events. Oral traditions, however, are heirlooms of accumulated memories; purporting to maintain the remembrances of ancestors no longer around to speak for themselves, they thereby are intrinsically more inviting of cautious reception by prehistoric archaeologists.²⁵

Oral histories, then, are personal accounts of people, events, conditions, and so on observed or experienced in the lifetime of the individual telling about them. Although they vary in reliability, in the absence of reason to doubt, they are usually intended to be and are usually taken as truthful within the limitations of the narrator's abilities and circumstances. More venerable still are the stories, including what had been in their own time oral histories, inherited from generations before that of the current receiving generation (e.g., "my great grandfather told my grandfather who told my father who told me"). These indirectly received hand-me-down stories are called *oral traditions*.²⁶

In light of this distinction, I should add that many Canadian courts, including the Supreme Court of Canada, tend to use *oral history*, when what they are often referring to is more properly termed

²³ e.g., Thompson 2000:166.

²⁴ e.g., Vansina 1985:12-13, 27-29.

²⁵ Mason 2006:4-5 (emphasis in original).

²⁶ Mason 2006:95 (emphasis in original).

*oral tradition.*²⁷

THE MACDONALD OPINION

Introduction

I have read a 2006 report by Dr. George F. MacDonald on *Coast Tsimshian pre-contact Economics and Trade: An Archaeological and Ethno-historic reconstruction*. Although I have graduate degrees in archaeology, have conducted archaeological fieldwork, have contributed to the archaeological literature, was the editor of an archaeological journal and am often qualified to testify on archaeological methodology, I was not asked specifically to address Dr. MacDonald's opinion in that sub-field of anthropology. Hence, my review of his report is limited to a general statement about methodology and a brief observation about Dr. MacDonald's reliance on oral tradition.

Archaeological evidence

Reconstruction of the pre-contact practices, traditions and beliefs of more recent, historically-known or modern Aboriginal groups requires recourse to various forms of inferential reasoning.²⁸ In archaeology, the most important of these is known as the "direct historical

²⁷ See, for example, the parlance employed in the court decisions commenting on my work (*supra*). For more discussion of this same problem by an anthropologist with a slightly different viewpoint, see Lovisek 2002.

²⁸ e.g., von Gernet 1993. Such inferential reasoning uses the known to interpret the unknown and, hence, is not without pitfalls and occasional circular reasoning. It is, for example, inappropriate to argue that a post-contact practice has an origin pre-contact and at the same time infer the pre-contact practice solely from post-contact evidence.

approach.”²⁹ In its classic formulation, it begins with studying material culture, such as artifact assemblages, dating to the post-contact or “Historic” period and definitely associated with an historically-known or modern Aboriginal group. This material culture is subsequently compared with other assemblages dating to the pre-contact period. Closely related artifact sequences are taken upstream against the flow of time to the point where evidence of historically-known peoples can no longer be discerned. Notwithstanding a number of well-known problems with this procedure,³⁰ it has been successfully applied in various parts of Canada to demonstrate the presence or absence of certain identifiable groups in particular locations in pre-contact times or at the time of first European contact.³¹

Whether, or to what extent, Dr. MacDonald has succeeded in applying this standard approach to the specific Aboriginal group(s) involved in the case at bar, is not a question within the pale of my mandate. I note, however, that his opinion relies not only on his investigation of material culture recovered from archaeological sites, but also on his interpretation of written documents and on a corpus of recorded oral traditions, or what he calls “Oral histories.”

The Oral histories of the Tsimshian, or Adawk (meaning “the true, witnessed histories” of the people) provide much richer details about events that occurred in prehistory than does the archaeological record, but together they constitute an unusually rich record of the past that covers some ten thousand years since the end of the Ice Age that is unmatched elsewhere in North America. Scholars like William Beynon, (Halpin : 1973) who was himself a high ranking chief of the Gitandau, and the anthropologists, Marius Barbeau, Viola Garfield, Wilson Duff and many

²⁹ Steward 1942; Wright 1968; Wright 1984:284.

³⁰ Among other things, the link between material culture and ethnicity is by no means unproblematic.

³¹ For instance, I have demonstrated that the direct historical approach *supports* a pre-contact presence of the Mi’kmaq in Nova Scotia and *supports* a pre-contact presence of the Beothuk in Newfoundland, but *fails* to support a pre-contact presence of the Mi’kmaq in Newfoundland (see my opinions as summarized, analyzed and accepted in *Queen v. Drew et al.* 2003 NLSCD 105, at par. 225-259, 496-497).

more recent ones, have collected literally tens of thousands of pages of Adawx that has carefully recorded Tsimshian oral history over millennia.³²

Dr. MacDonald is a distinguished archaeologist who has made valuable contributions to the field. However, with all due respect, what he has to say on this occasion about “oral histories” is unsupported and contrary to the spirit of scientific rigour that is the hallmark of modern archaeology. This, much like certain statements about oral traditions made by other archaeologists,³³ should not remain unchallenged.

Dr. MacDonald claims that the oral traditions of the Tsimshian “provide much richer details about events...” Oral traditions do indeed have the potential to enrich the record of the past by, among other things, offering details about the perishable components of human cultures which generally do not survive in the archaeological record. By the same token, the archaeological record enriches the record of the past by providing valuable information on actual practices which may have been long forgotten by the descendants of the practitioners.³⁴ Whenever possible, oral traditions and archaeological evidence (together with any written

³² MacDonald 2006:9.

³³ See von Gernet (1994a:10) for discussion of an example in which a Canadian archaeologist has relied on oral traditions in a scientifically inappropriate manner. See Mason (2006) for a broader review of this problem.

³⁴ Iroquoians such as the Seneca and the Huron offer a good illustration. In 1916, Arthur Parker (an archaeologist and museum curator of distinguished Seneca Iroquois ancestry) noted that the Iroquois of his day had totally forgotten what their early villages and architecture looked like. In other words, they had no oral traditions communicating that type of history. In more recent times, that history has been painstakingly reconstructed by archaeologists studying the remains of longhouses and palisades and by ethnohistorians studying eyewitness descriptions by European explorers and missionaries. As the late Bruce Trigger noted, since the purpose of Iroquoian oral traditions was *not* to preserve a literal memory of the past, but to supply a guide to the social, political and moral order of the day, these oral traditions appear to be of little historical value (Trigger 1976:19-20; Trigger 1985:167).

documents by early eyewitnesses) should be used in methodological conjunction. However, I take issue with Dr. MacDonald's assertion that the Tsimshian oral traditions provide rich detail "about events that occurred in prehistory," and that the corpus of *Adawx* collected by modern scholars represents "carefully recorded Tsimshian oral history over millennia."

Anthropologists have known for some time that what ethnographers and other scholars collected in the late nineteenth or early twentieth centuries were not descriptions of Aboriginal cultures as they existed at the time of their first contact with Europeans, let alone during the course of previous millennia. After over a century of research, anthropologists now understand that Aboriginal cultures changed, not only since the time of first contact, but also throughout the pre-contact period. Hence, while links can be established between post-contact cultures studied by ethnologists and pre-contact antecedents, archaeology provides the only substantial source of information on what Aboriginal peoples were like during most of the last 10,000 years.³⁵

Of course, an archaeological record does not speak for itself but must be interpreted by modern scholars who do not always agree on the meaning or conclusions to be drawn from such evidence. Nevertheless, when it comes to an examination of pre-contact cultures, the archaeological record has several important advantages over other forms of evidence. First, it is *a product of the past*. In other words, once the record has been temporally located in a pre-contact period, either through relative dating (e.g., seriation) or absolute dating (e.g., radiocarbon), it becomes direct evidence. Secondly, while modern scientists are required to

³⁵ For a discussion of this understanding in Canadian anthropology see Trigger 1985:110-118.

analyse the evidence, the archaeological record itself was originally *generated by the Aboriginal people* who left the material remains. This overcomes at least some of the difficulties inherent in any study that otherwise relies on the projection into pre-contact times of post-contact written records produced by outsiders.

Much like the material found in the archaeological record, oral traditions are also generated by Aboriginal people. However, *unlike* the archaeological record, oral traditions are first and foremost *products of the present* in which they are told. While it is often purported³⁶ that such traditions contain information about the past, this must be demonstrated rather than assumed. Much like other records produced in post-contact times, oral traditions can only be projected into a pre-contact period through additional assumptions, analytical steps and analogical reasoning. As the late Bruce Trigger, Canada's most distinguished archaeologist and ethnohistorian, once noted:

The scientific study of oral traditions is obviously an exacting task and requires a careful evaluation of the reliability of sources, the identification of stereotyped motifs that may distort historical evidence, the checking of the stories told by one group against comparable information supplied by others, and, finally, the checking of these stories against independent sources of information such as archaeological evidence. Used in this way, oral traditions may supply valuable information about the not too distant past. Used uncritically, however, they can be a source of much confusion and misunderstanding in prehistoric studies.³⁷

Notwithstanding this decades-old caution, some archaeologists who are otherwise competent fieldworkers and theoreticians have continued to treat Aboriginal oral traditions uncritically,

³⁶ (by the orators who relate the traditions, the scholars who make use of them in historical reconstruction, or the lawyers who tender them as evidence)

³⁷ Trigger 1978:127-128. For a detailed discussion of Trigger's views on oral traditions and his influence on the forensic reconstruction of Aboriginal history see von Gernet 2006.

resulting in preposterous claims about their antiquity and historicity. This tendency has been met with scathing scholarly critique, as illustrated by the archaeologist Ronald Mason's recent book titled *Inconstant Companions: Archaeology and North American Indian Oral Traditions*.³⁸

In the case of Dr. MacDonald, there is no evidence in his report or in the references he cites that suggests his conclusion about the antiquity of Tsimshian oral traditions was reached after a careful evaluation of their reliability for the purpose to which they are put, that is, the reconstruction of "prehistory" over the course of "millennia." Since he offers no specifics, I am unable to assess the merits of his allegation about the historicity of Tsimshian oral traditions.

THE ANDERSON REPORT

Introduction

I have had occasion to review a report by Dr. Margaret Seguin Anderson on *The Allied Tribes Tsimshian of North Coastal British Columbia Social Organization, Economy and Trade*.³⁹ I first met Dr. Seguin (as she was known then) at the University of Western Ontario where I was a student during the 1970s. Not being a linguist, I did not keep up with her scholarly activities, although in more recent years I read with interest her short summaries published in various handbooks and textbooks,⁴⁰ as well as her co-authored contribution to *Aboriginal Peoples of*

³⁸ Mason 2006.

³⁹ Anderson 2006.

⁴⁰ Halpin and Seguin 1990; Anderson 2004.

Canada, a reference work in which I, too, contributed a chapter.⁴¹ Dr. Anderson is unquestionably a recognized authority on Tsimshian peoples and has devoted much of her life to the subject. Her report filed in these proceedings appears to be based on years of research, including analysis of a large corpus of both published and archival material, as well as on decades of extensive personal contact with Tsimshian people.

In “A Personal Note” introducing an essay on Tsimshian feasts published a few years ago, Dr. Anderson revealed this about her background:

The reader of an ethnographic essay may not always be aware that it is an intensely personal account, not an impersonal presentation of objective ‘facts.’ It is sometimes equally difficult for an author to convey effectively the extent to which her background, interests, and the history of her particular research effort have shaped the final presentation. The following personal information seems relevant here. I am not Tsimshian. I am a linguist by training. I taught in a department of anthropology for 19 years and then became the first chair of First Nations Studies at the newly established University of Northern British Columbia. There I was able to help create a space in the curriculum for First Nations to develop an indigenous scholarship, including language courses on languages of the region (Haida, Tsimshian, Nisga’a, Gitksan, Haisla, Wetsuwet’en, Carrier, Ts’ilqot’in, and Cree). I began work on Tsimshian culture in the village of Hartley Bay, at the invitation of members of the community, to work with a local language program, and six years later married a man from the community. I am presently a Professor at UNBC, living and working in Prince Rupert (and my husband is still fishing commercially). I am working with language programs among Tsimshian, Nisga’a, and Gitksan, as well as co-ordinating a regional cohort of UNBC’s Master’s program in First Nations Studies.⁴²

Various genres of anthropological writing are deemed to be valid presentations of other cultures, including what are known as *realist ethnography* and *reflexive ethnography*. In the former, the author typically offers a description and explanation of cultural practices in a dispassionate, third-person voice and leaves the impression of an accurate, objective and scientific account. In the

⁴¹ Marsden, Anderson and Nyce 2002; von Gernet 2002.

⁴² Anderson 2004:408-409.

latter, the author sees himself or herself as part of the research and the resulting narrative tends to be far more subjective and personal.⁴³ While the opinion report submitted in these proceedings by Dr. Anderson tends more towards the *realist* end of the continuum, earlier comments about her writing (i.e., “it is an intensely personal account, not an impersonal presentation of objective ‘facts’”) and her previous acknowledgment that her presentation of Tsimshian culture is shaped by her background and interests left me wondering how such subjectivity was avoided in this instance or, at the very least, why the matter was not addressed here as it was elsewhere.

For my part, I must stress that I do *not* purport to be an expert on the Tsimshian peoples. My review of Dr. Anderson’s report is written by someone who specializes in the reconstruction of Aboriginal cultures and practices in relatively remote pasts, particularly in forensic contexts. Such reconstructions do not require ethnographic fieldwork and, as far as I am aware, I have never had personal contact with any Tsimshian individual. As noted earlier in my own summary of my background, the evidence I routinely examine in cases throughout Canada include archaeological data, written documents and oral traditions which have been temporarily fixed (by being reduced to writing) and tendered as evidence about actual pasts. While Dr. Anderson relies on all three, I will focus primarily on her general methodology and her use of previously-recorded oral materials.

According to Dr. Anderson, her report

sets out my opinion regarding the social organization, economy, and trade of the Allied Tsimshian

⁴³ Kottak 2004:70-71; Miller et al. 2004:51.

Tribes, and provides representative examples of the evidence on which my conclusions are based. A set of topical Primary Source Compilations is provided with and comprises part of this report; these provide fuller evidence relevant to the topics covered in this report.⁴⁴

Only a small sample of the evidence has been included in my report, but much more extensive documentation has been compiled on CD for reference as required.⁴⁵

Unfortunately, the extensive “Primary Source Compilations” are only sporadically linked to specific statements in her report through the use of a standard scholarly citation apparatus, making it exceedingly difficult to identify the “fuller” evidentiary support for her opinions. Had this link been properly established, it would have permitted an assessment of all her opinions. As it stands, I simply do not have the time to laboriously reconstruct how Dr. Anderson arrived at most of her opinions, and I am obliged to confine my review to a number of her statements which I find particularly problematic.

Temporal framework

My first observation is with respect to the temporal framework of Dr. Anderson’s reconstruction of Tsimshian social organization, economy and trade. The problem begins with the first sentence in her overview when she states that “[t]he Coast Tsimshian tribes *ancestral* to the contemporary Allied Tribes *have* a highly distinctive social organization and culture...” She goes on to say that “[t]hese patterns were established centuries before contact with Europeans, and can still be observed in contemporary forms.”⁴⁶ At one point she states that *adaawx* are no

⁴⁴ Anderson 2006:1

⁴⁵ Anderson 2006:221-222.

⁴⁶ Anderson 2006:1 (emphasis added).

longer widely known in communities and that few people are able to recount them,⁴⁷ but this follows a discussion of *adaawx* that switches seamlessly between past and present tense.⁴⁸ The rest of her discourse, presented primarily in the past tense, suggests a reconstruction of what once *was* (as contrasted with a description of the way things *are*), but precisely *when* this past took place is rarely apparent. Overall, one is left with the impression that, unless specifically modified with reference to dates, her observations about the Tsimshian apply to most of their period of existence.

The a-temporal nature of these descriptions is reminiscent of the old salvage ethnography, in which the intent was to describe an *ethnographic present* existing prior to the arrival of the “whites”—an indefinite period in which flourished a “true” or “pristine” native culture unadulterated by westernization. Some of this may be attributed to Dr. Anderson’s reliance on salvage ethnographies of the early twentieth century⁴⁹ and on sources such as the Beynon manuscript, which refer vaguely to “ancient people.”⁵⁰ Such a reliance is of course justified in many modern anthropological accounts, but it is essential (particularly, but not exclusively, in forensic reconstructions) to specify in more precise terms the temporal context of the observations and not merely appropriate without further explication the vague timeframe of the

⁴⁷ Anderson 2006:38.

⁴⁸ Anderson 2006:36-38.

⁴⁹ e.g., Anderson 2006:33-35, 184-186.

⁵⁰ e.g., Anderson 2006:175-176.

source materials.⁵¹ As an introductory text in cultural anthropology observes in relation to the

ethnographic present:

This notion often gives classic ethnographies an unrealistic timeless quality. Providing the only jarring note in this idealized picture are occasional comments by the author about traders or missionaries, suggesting that in actuality the natives were already part of the world system... Anthropologists now recognize that the ethnographic present is a rather unrealistic construct. Cultures have been in contact—and have been changing—throughout history. Most native cultures had at least one major foreign encounter before any anthropologist ever came their way. Most of them had already been incorporated in some fashion into nation-states or colonial systems. Contemporary ethnographies usually recognize that cultures constantly change and that an ethnographic account applies to a particular moment. A current trend in ethnography is to focus on the ways in which cultural ideas serve political and economic interests. Another trend is to describe how various particular “natives” participate in broader historical, political, and economic processes...⁵²

To be fair, at times Dr. Anderson *does* narrow the temporal framework of her reconstruction, although it remains excessively broad (arguably an entire 10,000-year history prior to 1860) and it is unclear whether this narrowing applies to *all* of her descriptions:

The discussion that follows describes Tsimshian social organization prior to and through the early contact period, prior to the imposition of the Indian Act and reserves, etc. that have distorted the original patterns by imposing patrilineal residence and inheritance.⁵³

The description of social organization provided in this report is primarily focussed on Tsimshian society at the [sic] prior to and at the point of contact and through the 1850s. Where appropriate, information is provided on changes to those patterns in more recent times, since the imposition of the Indian Act and reserves. The description here is based on data from oral histories, first-hand accounts from from [sic] ships' logs and the journals from Fort Simpson, and from the observations of early ethnographers who interviewed the oldest members of the community between the 1880s and 1930s (Niblack, Garfield n.d.), and hence represents the state of Tsimshian social organization and economy in its traditional pre-contact and early contact era.⁵⁴

⁵¹ Authorities, such as Viola Garfield, are said to have based their work in part on interviews of “the oldest members of the community to elicit information on the pre-contact society” (Anderson 2006:34), yet there is no discussion of how information obtained in the twentieth century was justifiably projected to a period prior to the nineteenth century.

⁵² Kottak 2004:71; see also Trigger 1985:114-115.

⁵³ Anderson 2006:56.

⁵⁴ Anderson 2006:13.

While Dr. Anderson does not specify in these passages what she understands to be the “point of contact,” I infer from remarks she has published elsewhere that this occurred sometime during the late eighteenth century.⁵⁵ In any event, her unqualified conclusion that her description *hence* represents the Tsimshian in their pre-contact manifestation does not follow, as her description, according to this statement, evidently relies on post-contact evidence. The only appropriate way in which post-contact evidence can be used to illuminate pre-contact conditions is through the principled and properly justified use of inferential reasoning. It is methodologically unsound to merely assume that information obtained from later times (in this case as late as the 1930s) “represents” a “traditional,” pre-contact culture.

I raise this issue mainly because anthropologists in general, and ethnohistorians in particular, now recognize that scholars have tended to underestimate the amount of culture change brought on by the indirect presence of Europeans. The detailed accounts of Aboriginal life written by Europeans at the point of direct contact or shortly thereafter were once thought to be descriptions of cultures basically unaltered by Europeans. Such an assumption remains sound in specific cases and with respect to certain cultural subsystems. For example, I have shown that the earliest accounts of Huron eschatology are so radically different from the Aristotelian and Catholic views of the seventeenth-century Jesuits, that it is highly unlikely that they were influenced by European proselytization prior to the time of the descriptions.⁵⁶ In many other cases, however, significant cultural changes took place between the first appearance of European

⁵⁵ Halpin and Seguin 1990:281; Marsden, Anderson and Nyce 2002:269.

⁵⁶ von Gernet 1994b.

goods and the earliest contact resulting in substantial historical records. For some Aboriginal peoples this interval, which anthropologists call the protohistoric period, lasted as much as a century.⁵⁷

With respect to Tsimshian peoples, I note the following observations published by Dr. Anderson elsewhere:

The Southern Tsimshian were the earliest contacted by Europeans. The joint fur trading expedition of Capt. Charles Duncan in the vessel *Princess Royal* and James Colnett in the *Prince of Wales* visited what was probably the village of Kitkatla in 1787 (Moeller 1966). Colnett believed that he and his men were the first Europeans seen by the villagers, although they already had trade goods and were eager for more...

Capt. George Vancouver explored Coast Tsimshian waters and sailed up Portland Canal into Nishga territory in 1793, but he left only scanty information about the few Indians he saw. The documentary history of these two groups begins with the establishment of the Hudson's Bay Company at Fort Simpson on the Nass River in 1831.

Fisher (1977) has claimed that the native cultures were little disrupted by the traders, although Grumet (1975) analyzed changes in the potlatching patterns of the Coast Tsimshian who relocated around Fort Simpson.⁵⁸

There is some evidence that goods from the Asian mainland were acquired centuries before direct contact, though these are rare and may be from shipwrecks rather than trading networks. It is certain, however, that European trade goods came to the Tsimshian, Nisga'a, and Gitksan before Spanish and British explorers entered the waters of the area in the 1770s. Some trade goods were obtained from Tlingit people trading with Russian settlements in Alaska after 1741, and early acquisitions may also have included goods that had been traded overland great distances from the east or south. The earliest recorded direct contact with Europeans was when the trading vessel

⁵⁷ Trigger 1985:116, 162-163. In Ontario, we find European goods on sites dating to the 1530s, but the first European did not arrive until 1610 and the first detailed written descriptions date to 1613. In Alberta, the Protohistoric period begins about 1700 which is over 50 years prior to the first European penetration into the region. In the intervening period, Aboriginal peoples on the Plains began to undergo profound changes in their cultures. Trade and raiding spread the horse from its origin among Spanish settlements in the southwestern United States north to Canada, where it arrived sometime in the 1730s. By the time Anthony Henday arrived in 1754, many Aboriginal people in Alberta had already switched from a pedestrian to an equestrian hunting life. Within a generation the "horse culture" of the Plains took shape, with hunters ranging over unprecedented ranges, an increase in warfare, elaboration of political institutions, as well as changes in kinship systems and residence patterns. The first detailed observations on the native peoples of Alberta were recorded *after* the horse had begun to transform "traditional" Aboriginal practices, customs and traditions. The classic horse culture of the nineteenth-century Plains may be said to have origins pre-contact (i.e., pre-1754) or be rooted in pre-contact Plains societies, but this makes it no less a consequence of the European arrival in North America.

⁵⁸ Halpin and Seguin 1990:281.

Princess Royal visited the Kitkatla area in 1787. The Nisga'a also have accounts of trading directly with the Russians around this time.⁵⁹

Dr. Anderson and her co-authors are quick to add that “[t]he later presence of traders, missionaries, and Indian agents did not *radically* alter the ancient way of life,”⁶⁰ although one is left to wonder how this is known and what, if anything, *did* change. The fact that Aboriginal peoples in this region had access to European goods decades prior to their first recorded European contact and the emergence of a “documentary history,” suggests that they too have a protohistoric period. Here, as in other areas of Canada,⁶¹ a proper understanding of this important transitional period requires a sophisticated approach, but unfortunately this is absent in Dr. Anderson’s expert opinion report.

Definitions

Turning more specifically to Dr. Anderson’s treatment of oral materials, I note that she appears to use the terms *oral histories* and *oral traditions* interchangeably⁶² and without any effort to distinguish them in the manner commonly (but by no means consistently) found in the scholarly literature. As noted earlier, my preference, based on the authorities I cite, is to define *oral histories* as recollections of individuals who were eyewitnesses or had personal experience with events occurring within their lifetime. The following example from Dr. Anderson’s report

⁵⁹ Marsden, Anderson and Nyce 2002:269.

⁶⁰ Marsden, Anderson and Nyce 2002:269 (emphasis added).

⁶¹ Trigger 1985:111-163.

⁶² Anderson 2006:7, 12, 13, 28, 33, 57, 61 *cf.* Anderson 2006:59, 89; see also Anderson 2006: Primary Source Compilations, Volume 1, Part 1.1 “Quality of Data”.

falls into this category:

Linguist John Dunn taped a knowledgeable elder, Kathleen Vickers, in Kitkatla in 1968, describing the harvest, processing and trade in foods when she was young... Note that in the Vickers' text the speaker is describing the practices in her youth (the early decades of the twentieth century), and that she refers to fish and berries being preserved by jarring as well as by drying and salting, and that she also refers to trade of Tsimshian foods for those of the Nisga'a and Gitksan.⁶³

Oral traditions, on the other hand, are documents about past events transmitted by word of mouth over at least a generation. It would appear that most of what Dr. Anderson refers to as *adaawx* fall into this category.⁶⁴ Yet, here too we are left with uncertainty. For instance, while she deems the Chief Kelly Manuscript “important because it is one of very few examples of the expanded form of an *adaawx*,”⁶⁵ the manuscript seems to contain a combination of information pertaining to the generation of the raconteur and information handed down from previous generations, with scant means of distinguishing the two.⁶⁶ Furthermore, the manuscript contains passages which are neither oral histories, nor oral traditions. Rather, they are in the nature of speculative generalizations and historical reconstructions based on unknown sources, and, curiously, contain language reminiscent of nineteenth-century evolutionism. Consider this extract:

In those early days, every tribe had an oral law which governed the people of all the tribes all along the Skeena River long time before the white man advent among them. The law is as follows: No one or family from the other tribes shall work within the boundary of the other tribe without the consent of the chief or with the ownership of the said territory. shall be exterminated. So if any one have found from the other tribes working with the permission of the chief that governed within

⁶³ Anderson 2006: 86, 89.

⁶⁴ Anderson 2006:36-39.

⁶⁵ Anderson 2006:23.

⁶⁶ Anderson 2006:24-28, Volume 2, Tab 4.

the boundary shall not be in trouble. So all the people from the other tribes had enjoyment to work with the people of the other tribe as long as they have permission of the Chief or the man who owns the land. There are many a good laws which governed the Tsimshian people in the early history of their races which they accepted very strictly in those early days. So there is no confusion existed among them. All the Tsimshian tribes which situated along the banks of the Skeena River are far in advance than any other Indians of the Coast. They have not the roving disposition, nor the nomadic habits; as, the nomadic tribes of Asia. They are, as a rule, industrious, frugal, and self-supporting and never been ask any highest, with the Haidas a close second. They love not to fight with others even the distant tribes unless something wrong existed between them.⁶⁷

The manuscript itself is of uncertain provenance and I am surprised that much has been made of it.⁶⁸ Far from being a useful source, it is a good example of the type of material that is best avoided in historical reconstruction. In my opinion, it certainly cannot be used to reconstruct Tsimshian culture at the time of first contact in the late eighteenth century.

The uses of oral documents

Irrespective of how they are defined, oral documents can serve many different purposes among the people who originally related them, the descendants who recalled them, the fieldworkers who recorded them, the scholars who subsequently make use of them and the lawyers who marshal them as part of legal argument. Indeed, the various ways in which Northwest Coast oral traditions have been used has itself been the subject of scholarly inquiry.⁶⁹

⁶⁷ Chief Kelly Manuscript as quoted in Anderson 2006:94-95.

⁶⁸ I understand, having read a letter from Ratcliff & Company to the Department of Justice (dated November 30, 2006), that Dr. Anderson conducted further research on this manuscript after she submitted her report and concluded that Chief Kelly was not the author.

⁶⁹ Thom 2003.

Many of today's Aboriginal claims could not have been anticipated by those who long ago selected memories of events for transmission to future generations. It would be absurd to suggest that the current legal requirement that modern Aboriginal practices be rooted in the pre-contact societies was prognosticated by the people engaged in the practices at the time of first contact with Europeans. Inevitably, many oral traditions will not contain evidence about actual past events. Their purpose may have been quite different. Dr. Anderson seems to sense this when she concedes that the Tsimshian *adaawx* did not focus on two of the main topics she covers in her report, economic activities and trade.⁷⁰

Nevertheless, it appears that Dr. Anderson uses "oral histories collected from 1915-1957,"⁷¹ to reconstruct the social organization, economy and trade of Tsimshian peoples presumably for the pre-contact period, at the point of contact, and through the 1850s.⁷² In other words, these materials are being tendered as evidence about what *actually* happened in a relatively remote past, rather than strictly as evidence about what people *believed* at the time the traditions were recorded in the twentieth century. When, for instance, Dr. Anderson states that "[t]he evidence of both *adaawx* and archaeology indicate that the Tsimshian had lived in their present location for thousands of years,"⁷³ she is in essence claiming that the oral traditions recorded in modern times are valuable for their long-term historicity and not merely as

⁷⁰ Anderson 2006:38.

⁷¹ Anderson 2006:12.

⁷² Anderson 2006:13.

⁷³ Anderson 2006:193.

expressions of twentieth or late nineteenth-century belief. Indeed, I will assume (correctly or incorrectly) that the recorded oral histories, oral traditions or *adaawx* referred to in her report are being tendered as documents which are sufficiently reliable to allow historical reconstruction in a Western sense.

The reliability of the adaawx

In 1990, Dr. Anderson observed that

There are two types of Tsimshian myths: those that were known generally and could be told by anyone, such as the Raven cycle (Boas 1916), and those, called *?atáux* that were owned by a particular house and could be told only by a trained and authorized house member... The *?atáux* are historical in character. Many tell of the original home of the lineage ancestors, their migration to and possession of their present territories, and their acquisition of power and crests from supernatural ancestors. The most famous of the Tsimshian homelands was Temlaham (Barbeau 1928; Boas 1902:221-225), said to have been a large town stretched along the west bank of the Skeena just below present Hazelton. Episodes in *?atáux* were widely known, such as the story of a girl who married a bear, and were interpreted by each house to its own ends. Portions of a great many Tsimshian *?atáux* have been published...⁷⁴

In short, *adaawx* were understood by Dr. Anderson and her colleague to be a type of Tsimshian myth.⁷⁵ In the same article she notes, with reference to Franz Boas' work on the Tsimshian, that "insofar as it depends on myths it must be used with caution. *Myths are not a reliable source on actual behavior.*"⁷⁶ Evidently, she has since changed her mind, for the *adaawx* "myths" have now become "oral histories" or "oral traditions" and are claimed to be "more than adequate" and

⁷⁴ Halpin and Seguin 1990:280.

⁷⁵ It should be noted that anthropologists do not always use the term "myth" in the sense it is often used in popular parlance, that is, in reference to a widely held but false notion.

⁷⁶ Halpin and Seguin 1990:283 (emphasis added).

“a reliable source of data on Tsimshian social organization and economy.”⁷⁷

This circumstance invites a closer look. According to Dr. Anderson, the Tsimshian *adaawx* recounted in each matrilineal housegroup are key to understanding Tsimshian culture and law.⁷⁸

The public recounting of an *adaawx* is a statement of rights and these are affirmed by the guests, and in that public use lies their efficacy under Tsimshian law. When told in a feast, the guests acknowledge the right of the hosts to their *adaawx* and their claims at the feast, rather than the literary merit or the literal factuality of all events recounted in an *adaawx*... In telling an *adaawx* it was acceptable to vary the style and, in some contexts, embellish with mythic material to enhance the memorability of the narrative, and there are a large number of the extant versions of the same histories with such minor differences. The story of how the housegroup acquired its rights and territories and passed them down to the present generation remains firm at the core however, and from my own knowledge I can affirm that for fluent speakers of the language who are trained in their culture that history is true. Details about various events in *adaawx* may or may not be confirmable by archaeological or geological research, but under Tsimshian law such external verifiability is not the issue. What matters in Tsimshian law is that the host group’s rights are acknowledged and affirmed by its guests when they acknowledge the *adaawx*. For contemporary researchers studying Tsimshian culture, the decision by many of the knowledge holders of previous generations to have Beynon write down their histories is a great benefit. Though a naive reading of English translations of a few *adaawx* may be virtually useless, patient analysis of the entire corpus, reading the information in each document against the ground of the others, allows a reader with knowledge of the Sm’algyax language and Tsimshian culture to recognize intrusive mythic episodes and provides a high degree of confidence in the data that can be extracted.⁷⁹

If I understand this correctly, Tsimshian *adaawx* were oral traditions related in public feasts hosted by the raconteurs. The traditions recalled how the hosts had acquired certain rights or privileges and the guests were expected to acknowledge and affirm same. While incidental details changed, the core of the stories remained intact. The Tsimshian did not care whether a

⁷⁷ Anderson 2006: Primary Source Compilations, Volume 1, Part 1.1 “Quality of Data”.

⁷⁸ Anderson 2006:36.

⁷⁹ Anderson 2006:36-38.

given tradition was in accord with independent evidence and were only concerned with the acknowledgment of rights. Finally, certain data useful to the task of modern historical reconstruction can be extracted from these traditions, provided one reads the entire corpus and understands the original language.

If the latter conditions hold true, there can be little opportunity for peer review or an independent assessment of Dr. Anderson's opinion, for who else (a) understands the language *and* (b) has the anthropological training and detachment necessary for an objective historical reconstruction. A proper scientific investigation should be amenable to corroboration or falsification, but this cannot be accomplished if comprehension of the evidence calls for highly esoteric talents.

What is not clear in the passage just quoted is whether Dr. Anderson believes the Tsimshian *adaawx* (or at least their unembellished "core" features) are reliable for historical reconstruction because of their oration in public settings, because the guests consider them to be "true," because they are otherwise consistent with independent evidence, or all of the above. This matter requires an extended treatment to which I now turn.

Group validation

Dr. Anderson's colleague, Antonia Mills, conducted fieldwork among the Witsuwit'en of northern British Columbia and had this to say about their oral traditions:

It is important to point out that the Witsuwit'en and other North American Native peoples are carefully trained in the learning of their oral tradition--in this case, their *kungax*. Children are

expected to listen to the kungax with deep attention so that they can retell them accurately; they are carefully trained to remember every detail of the recital. Only someone who is confident that he or she knows a kungax correctly and has the confidence of his or [her] tutors is authorized to tell it.⁸⁰

It is unclear whether the same applies to the nearby Tsimshian. In any event, one should not be tempted to conclude that these, or any other Aboriginal peoples were capable or interested in lengthy verbatim recall (LVR) or the reproduction with strict word-for-word fidelity of a sequence of fifty words or more.⁸¹ In fact, as psychologist David Rubin has noted, “the whole concept of verbatim recall requires a record other than human memory.”⁸² A global literature review suggests that, while oral tradition involves considerable accomplishments of memory, LVR is not one of them. Ian Hunter has concluded that

There is certainly nothing remotely comparable to the feats of LVR which are to be found in literate cultures in connection with sacred or socially valued texts, e.g. the word-perfect recital of the 77,934 words of *The Qur'an*, the memorization of the 10,565 lines of Milton's poem *Paradise Lost*, the rendering by an actor of the 1,422 lines of Hamlet's role. The [literature] search reveals that individuals in non-literate cultures can certainly retain large amounts of information and that detailed events, names and phrases can certainly be transmitted across several generations once their salience to tradition causes them to be mentioned frequently. But what is evident is that LVR is not the means by which such retention and transmission is achieved. Basically, LVR is just not salient for non-literate people, not a pressing real-life concern, not an achievement to aim at. It is the advent of written records which brings the verbatim characteristics of language into prominence and contrasts them from gist and paraphrase. Text brings an interest in LVR by demonstrating the possibility of literal reproduction and providing means to verify that verbatim recall has, in fact, been achieved by oneself and others. Exposure to written texts (and perforce to audio and video recordings) accentuates and tightens the criteria by which people judge reproductive accuracy.⁸³

In theory, an oral tradition intended to preserve historical information and passed from

⁸⁰ Mills 1994:74

⁸¹ Hunter 1984:425.

⁸² Rubin 1995:6.

⁸³ Hunter 1984:427.

one generation to another is supposed to remain unchanged, but in practice actual wording will vary over time and these changes will often remain undetected. This is because there is no standard against which the accuracy of the tradition can be checked. As Jan Vansina points out, the closest one comes to a standard is the process of checking a recitation by others who heard the same tradition.⁸⁴ In other words, memories are checked against other memories.

On the whole, transmission of oral traditions is accomplished not by systematic memorization or rote learning leading to LVR, but by regular attendance at performances during which the traditions are composed more than recalled. In a sense, oral tradition is best described as composition-in-performance:

Each narration is a freshly composed version which the performer improvises on the spot by drawing on a vast repertoire of themes, episodes, turns of phrase, and other narrative ingredients. These ingredients are traditional and their deployment is governed by conservative conventions but they are used to improvise a narrative tailored to suit a unique, here-and-now audience.⁸⁵

This is in accord with Dr. Anderson's characterization of Tsimshian *adaawx* which are said to have a stable "core" around which embellishments were made, resulting in "minor differences" between versions.⁸⁶

In many instances the variations on a theme may indeed be inconsequential, but in some cases they are not. Determining this is particularly important if the traditions are used for

⁸⁴ Vansina 1985:14.

⁸⁵ Hunter 1984:428-429.

⁸⁶ Anderson 2006:37.

historical reconstruction. For example, in the *Victor Buffalo* case, a slight change in wording between Cree oral traditions told on separate occasions was deemed highly relevant, and the Trial Judge was disturbed by testimony that an Elder had the option of deciding whether to tell a story as he heard it or tailor it to suit his audience.⁸⁷ In the present case I point to Dr. Anderson's concession that the Tsimshian *adaawx* do not focus on economic activities or trade and that such information is "incidental" to the accounts.⁸⁸ If such incidental information is not part of the "core" that is transmitted from generation to generation and is not part of the essence of what the hosts ask the guests to affirm, then it stands to reason that the information is not rendered inherently reliable by the group setting.

Oral traditions are to some extent institutionalized and are memories of groups rather than individuals. They are told by many people to many people and become a kind of public memory by which a community explains the present according to how it remembers (or wishes to remember) the past. Such traditions may pass through a ritualized or otherwise formal process of transmission. New oral performances are given in public settings where they may be compared with past performances and critiqued. Mary Druke gives an Iroquois example:

Oral tradition in many cultures, such as Iroquois culture, is often transmitted in public. It is subject, therefore, to criticism by listeners who either were present at the time of a recounted occurrence or who have heard other accounts of the tradition against which to judge a present narrative. The exactitude with which details are transmitted in many cases is not as important, however, as the structure of the narration... [M]any Iroquois oral traditions of treaties are not exact verbatim accounts of council proceedings, but convey an accepted interpretation of relationships

⁸⁷ *Chief Victor Buffalo et al. v. The Queen et al.* 2005 FC 1622, at paragraphs 488, 494.

⁸⁸ Anderson 2006:38.

based on agreements made in council negotiations.⁸⁹

Similarly, Gitksan hereditary chiefs say that their oral accounts are “official” traditions which are tested repeatedly for accuracy, particularly at feasts where they are performed, witnessed, confirmed and authenticated by each generation. They claim that theirs is a “distinctive...system of validating historical facts,” although they go on to say that it is analogous to Western systems: “By surviving in the Feast system, facts acquire a higher status, and come to constitute part of accepted knowledge—much as scientifically verified facts assume the status of knowledge in the Western tradition.”⁹⁰ However, it must be remembered that group validation is not a matter of corroboration or confirmation since there is a free flow of information and the very fact that the Elders talk to one another makes their individual evidence dependent rather than independent.⁹¹

It is instructive to review the similarities and differences between anthropology, history and the law on this issue. Over the years, as the evidentiary difficulties in Aboriginal litigation became increasingly apparent, oral traditions began to be treated as exceptions to the rule against hearsay and were admitted as evidence, provided they met two tests: necessity and circumstantial probability of reliability.⁹² More recently, the test has been characterized as “usefulness and

⁸⁹ Druke 1985:90-91.

⁹⁰ Gisday Wa and Delgamuukw 1988:35-36.

⁹¹ Vansina 1985:158-160.

⁹² Asch and Bell 1994:531-538; Gover and Macaulay 1996:60-65; McLeod 1992:1279-1283; Pylypchuk 1991:57-58, 62, 64; Storrow and Bryant 1992:184-185.

reasonable reliability.”⁹³ One of the circumstances said to be able to satisfy the reliability requirement is one in which a person has disclosed facts which have been discussed publically in a community, thereby exposing the facts to contradiction. In other words, “the concurrence of many voices” among those who might know best, raises a presumption that the facts concurred in are true. Hence, if an oral tradition is re-told at public gatherings where it is subjected to scrutiny, exposed to constant contradiction, becomes a matter of general notoriety and is accepted by the people as their true history, it could bear its own “special stamp of reliability,” be en clothed with “a cloak of trustworthiness” and be admitted as evidence.⁹⁴

There is of course no guarantee that a given tradition was subjected to such scrutiny every time it was told over the generations. In the case of the Tsimshian, Dr. Anderson makes no mention that the facts related in the *adaawx* were exposed to constant contradiction or otherwise subjected to scrutiny, only that “the guests acknowledge the right of the hosts to their *adaawx* and their claims at the feast, rather than the literary merit or literal factuality of all events recounted in an *adaawx*.”⁹⁵ She has no way of knowing whether the acknowledgments of rights and validations have always occurred at public functions, and she intimates that this has in fact not always been the case.⁹⁶ Furthermore, she relies on *adaawx* which were previously recorded, but offers no evidence that even these records had been subjected to the scrutiny of various

⁹³ e.g., *R. v. Marshall; R. v. Bernard*, 2005 SCC 43, at paragraphs 68, 70.

⁹⁴ Asch and Bell 1994:538; Gover and Macaulay 1996:61; McLeod 1992:1288.

⁹⁵ Anderson 2006:36.

⁹⁶ Anderson 2006: Primary Source Compilations, Volume 1, Part 1.1 “Quality of Data”.

housegroups. In this connection, I recall Brian Thom's interesting observation that the recent publishing of Gitskan *adaawk* in a peer-reviewed academic press is in keeping with potlatch tradition, but unlike an oral recollection at a feast, no one is able to stand up during the reading of a text and contradict what is being written.⁹⁷

More importantly, what oral historiographers worry about are not blatant lies or inaccuracies which can easily be exposed by an Elder's peers, but rather honestly held beliefs containing unconscious and subtle alterations engendered by new socio-political or other conditions. These often have a cumulative effect with each generation. The slightest variation in the language of one raconteur can easily be adopted by like-minded others. Hence, even if an Elder had precisely replicated his father's verbatim account, his truthful testimony under oath in a court of law may still be inaccurate. As the Federal Court of Appeal put it in *Benoit*, "The fact that a witness was telling the truth, i.e. that he or she truly believed what he or she was relating to the Court did not, *per se*, prove that the information was accurate."⁹⁸ Commenting on the core of the *adaawx* as passed down to the present generation, Dr. Anderson asserts she "can affirm that for fluent speakers of the language who are trained in their culture that history is true."⁹⁹ Yet, whether members of a culture regard their history to be true is not relevant to anthropological reconstructions of what actually happened in the past.

⁹⁷ Thom 2003:9.

⁹⁸ *R. v. Benoit* [2003] F.C.A. 236 at paragraph 107.

⁹⁹ Anderson 2006:37.

The fact remains that human groups can consciously or unconsciously maintain falsehoods just as easily as individuals. As Bruce Trigger observes, even in cultures where there is a strong desire to preserve the integrity of oral traditions through accurate transmission, such traditions are reworked from generation to generation so that the latest versions are often no longer in accord with independent evidence.¹⁰⁰ Group accounts can be streamlined and reshaped within a relatively short period of time, and the fact that a certain group of people have decided that their account is accurate is of course not evidence that this is so. People all over the world believe many things that are demonstrably false. In many cultures, including Western ones, “truth” is what is being faithfully repeated as content and does not necessarily coincide with what actually happened.¹⁰¹ Vincent Crapanzano asks,

Does the “confirmation” of an event by another or even several other members of the informant’s culture in fact confirm the event, *wie es gewesen war*, to use Ranke’s by now hackneyed phrase? Or do they confirm a verbal pattern—a gloss? It would seem that consistency of accounts over time and among informants is rather more revealing of a cultural orientation or psychological disposition than of the actual occurrence of an event.¹⁰²

Any assessment of oral traditions should look for evidence of group validation. At the same time, since there is little in group validation that increases the probability of a reliable transmission of historical knowledge, the presence of such a procedure should in and of itself never be taken as evidence for a reliable corpus of oral tradition.

The most frequently cited examples of group validation in Aboriginal litigation are of

¹⁰⁰ Trigger 1978:127.

¹⁰¹ Vansina 1985:129.

¹⁰² Crapanzano 1984:955.

course the *adaawk* tendered in the *Delgamuukw* trial. Recall that the Gitksan argued that their *adaawk* were essentially “official” traditions which had been tested repeatedly through a public feasting system where they were performed, witnessed, confirmed and authenticated by each generation, thereby ensuring the purity of the transmission of history.¹⁰³ In other words, the plaintiffs alleged that the oral traditions “are particularly trustworthy because of their antiquity and because they are authenticated by public statement and restatement in accordance with the practice that what is stated at a feast must be challenged then and there, at once, or not at all.”¹⁰⁴ As counsel for the plaintiffs said in his opening address, “this accumulated validation lies behind the present day chiefs [sic] insistence that a particular story is true and is not anything like mere hearsay.”¹⁰⁵

Ultimately, the Trial Judge sensed a discrepancy between what the plaintiffs had promised and what the evidence showed. While early witnesses suggested that an *adaawk* is “well formulated and the contents constantly sifted and verified,” further testimony made it apparent that an *adaawk* was seldom told at feasts, that some chiefs never told their *adaawk*; that some chiefs never told them outside their Houses, that there was little likelihood of dissent, and that the verifying group was small.¹⁰⁶

¹⁰³ Gisday Wa and Delgamuukw 1988:26-27, 35-36; Monet and Skanu’u 1992:30, 32; Ray 1990:14; *Delgamuukw v. B.C.* [1991] 79 D.L.R. (4th) 185, at p. 243.

¹⁰⁴ *Delgamuukw v. B.C.* [1991] 79 D.L.R. (4th) 185, at pp. 258-259.

¹⁰⁵ Gisday Wa and Delgamuukw 1988:35; see also Asch and Bell 1994:542; McLeod 1992:1288.

¹⁰⁶ *Delgamuukw v. B.C.* [1991] 79 D.L.R. (4th) 185, at p. 259.

Significantly, the Gitksan understood that in a court of law the *adaawk* could not be regarded as *prima facie* proof of the truth of the beliefs unless further admissible evidence could corroborate them.¹⁰⁷ Hence they attempted to check some of the traditions with independent data. Witness Mary Johnson related an *adaawk* involving a giant supernatural grizzly bear impervious to spears or arrows who roared down a mountain valley scattering trees into the air, crushing warriors and killing many villagers. This was apparently an act of revenge against members of the village who broke a taboo against playing with trout bones. The lawyer for the plaintiffs argued that this *adaawk* was led not for the purpose of the beliefs that were held, but “for the purpose of the truth of the contents of those histories.” In fact, the plaintiffs went to great lengths to demonstrate the historicity and scientific veracity of this oral tradition by attempting to associate it with a landslide that—according to a geomorphologist and paleobotanist contracted to do fieldwork and to serve as expert witnesses—occurred over 3,000 years ago. The purpose was to establish that Gitksan people had already been at this location at such an early time, and *inter alia* that their oral traditions contained evidence of historical events millennia ago.¹⁰⁸ In short, the Aboriginal plaintiffs tendered oral traditions as truthful statements about what really happened, and then attempted to demonstrate the reliability of these traditions not only by pointing to their own, internal validation procedures, but by calling on external evidence to corroborate them. This type of independent testing was certainly not part of the Gitksan

¹⁰⁷ Asch and Bell 1994:538.

¹⁰⁸ Fortune 1993:95; Gisday Wa and Delgamuukw 1988:34; Mills 1994:17-18; Monet and Skanu’u 1992:38, 110; *Delgamuukw v. B.C.* [1991] 79 D.L.R. (4th) 185, at pp. 263-270. Efforts were made to provide a temporal framework for the *adaawk*. It was claimed that they “begin in the early postglacial period [12,000 BP] and continue to the late 1800s” (Sterritt et al. 1998:15-16, 273).

system of group validation of traditions at feasts, but was part of an effort to render the oral documents compatible with the intelligibility requirements of Western historiography.

In the present case, Dr. Anderson asserts that “[d]etails about various events in *adaawx* may or may not be confirmable by archaeological or geological research...”¹⁰⁹ At the same time, both she,¹¹⁰ and Dr. MacDonald,¹¹¹ seem to suggest that the *adaawx* are at the very least consistent with archaeological data for a period of millennia. Unfortunately, whether, or to what extent, this is actually the case cannot be ascertained from the evidence. Nor, for that matter, is it possible (from the material they provide and due to the structure of its presentation) to test the oral documents against independent written records in any but the most superficial manner.

A CAUTIONARY TALE

My cautious approach to the use of oral traditions in historical and anthropological reconstructions is supported by the scholarly literature¹¹² and is also informed by my own experience with such material elsewhere in the country. The following example is instructive.

In 1905 anthropologist David Bushnell visited the *Collegio di Propaganda Fide* in Rome

¹⁰⁹ Anderson 2006:37.

¹¹⁰ Anderson 2006:193.

¹¹¹ MacDonald 2006:9.

¹¹² e.g., Mason 2006.

where he stumbled upon a spectacular wampum belt. Knowing little about it, he published a photograph and speculated that the specimen might have originated in the St. Lawrence Valley or the Iroquois country.¹¹³ By the 1980s, the existence of this wampum belt was known to the Mi'kmaq community in Nova Scotia, although no one had seen the original. The Grand Chief and other leaders on the Executive of the Grand Council of the Mi'kmaw Nation began asserting that this belt recorded a “concordat” or agreement made between the Mi'kmaq and the Catholic Church in 1610.¹¹⁴ By 1994, reference to the belt appeared in Russel Barsh's “List of Significant U.S. Treaties and Case Law,” where it was described as “the earliest surviving ‘wampum’ treaty,” based on Mi'kmaq oral traditions.¹¹⁵

In 1997, the well-known legal scholar James (Sakej) Youngblood Henderson published a curious tome titled *The Mikmaw Concordat*. Using trendy post-colonial theory, he advanced a peculiar argument for the existence of an agreement between the Mi'kmaq Nation and the Holy See by which Mi'kmaq territory became an independent Catholic Republic during the seventeenth century. Henderson alleged that he obtained most of his information from the *Putús* teachings of the *Santé Mawíomi*, which he accepted as “a valid source of Mi'kmaq law and history.” Treating the wampum as if it were a written treaty, he cited both Canon law and Supreme Court of Canada decisions in support of what he considered to be the proper legal principle of interpretation: “any ambiguities or doubtful expressions in the symbols of the

¹¹³ Bushnell 1906:250-251.

¹¹⁴ Marshall et al. 1989:77.

¹¹⁵ Barsh 1994:472.

Concordat must be resolved in favour of the *Putús* teachings, since most of the symbols are derived by Mi'kmaq worldview.” He grounded his study in the oral traditions in order to “avoid those colonial biases and fallacies found in secondary materials.”¹¹⁶

In the *R. v. Marshall* logging prosecution, the accused Mi'kmaq were charged with cutting and removing timber from Crown lands in Nova Scotia. The defendants called Stephen Augustine, a hereditary Mi'kmaq Chief, member of the Mi'kmaq Grand Council, and a *Putús* (keeper of the Mi'kmaq oral traditions). Chief Augustine had spent eight months fashioning a replica of the wampum belt pictured by Bushnell which he brought to court to serve as a mnemonic device to assist in the recall of an oral tradition. In response to a question about Bushnell's understanding of the origins of the belt, Chief Augustine replied:

A. He assumes that it was something that came from the Iroquoian-Huron.

Q. But you don't think it is.

A. No, I know it's not.

Q. Okay. Why do you know it's not?

A. From our elders' knowledge, oral tradition.

Q. And where did that come to you from?

A. From my grandmother, from my great grandfather or great great, whatever.

Q. Okay. And you were going to read the belt to us. Where did you get the information that would allow you to read the belt?

A. My grandmother shared a story about the significance and meaning of the belt. As well as members of the Mi'kmaq Grand Council have information about the meaning of the belt. And this information has been systematically told in our Grand Council meetings.

Q. Okay.

A. Systematically – successively, I meant to say.¹¹⁷

Chief Augustine went on to “read” a complex oral tradition from the wampum into the court

¹¹⁶ Henderson 1997:23-27.

¹¹⁷ *R. v. Marshall (S.F.) et al.* Trial transcripts vol. 26, pp. 4113-4114, as reproduced in von Gernet 2000b:40.

record. It purportedly related to the events of 1610.

In March of 2000, I traveled to Rome where I uncovered the original wampum belt in a basement facility under the Vatican. I was permitted to remove the specimen from the facility and transport it to a special art restoration laboratory elsewhere in Vatican City where I undertook a scientific investigation and determined that the belt could not possibly date to 1610 and was probably of early nineteenth-century vintage. I also undertook a detailed stylistic comparison with other belts and concluded that it was more likely Iroquois than Mi'kmaq. Finally, I discovered that two letters had accompanied the wampum when it arrived at the Vatican from Canada. The letters were dated 1831 and were sent from the Iroquois and Algonquins of Kanasatake in Quebec. The letters indicated that the belt was a gift to the Pope and described the meaning of the symbols it contained. I concluded that the wampum had nothing whatsoever to do with the events of the seventeenth century, with Nova Scotia or with the Mi'kmaq people, and that Chief Augustine's account was a neotradition.¹¹⁸

After my report was disclosed to the defendants in the *Marshall* proceedings, counsel for the Mi'kmaq attempted to convince the Trial Judge to withdraw Chief Augustine's testimony from the record and then said the defence would no longer rely on it as part of their case. The Trial Judge said "that amounted to an acknowledgement that Chief Augustine was wrong about the belt," and said he "would consider that error in weighing Chief Augustine's other

¹¹⁸ The foregoing is greatly condensed from the full story I give elsewhere (von Gernet 2000b).

evidence.”¹¹⁹ The Supreme Court of Nova Scotia later had this to say:

The Learned Trial Judge acknowledged that Chief Augustine knows a great deal about Mi'kmaq culture and history. The Trial Judge did not appear to doubt the truthfulness of Chief Augustine. The evidence would appear to support a determination by the Trial Judge to the effect that while Chief Augustine was telling the truth as he knew it, much of Chief Augustine's evidence was not historically accurate...

Both *Van der Peet* and *Delgamuukw* make it clear that oral evidence is important in terms of conveying Aboriginal perspective. That does not mean it must be accepted as being historically accurate if there is convincing evidence to the contrary. Oral tradition is not any better than documentary evidence and it is not to be blindly accepted over a mountain of documentary evidence. The risks associated with oral history or oral tradition become very apparent when as in the present case it became obvious that the wampum belt was not part of Mi'kmaq history. In spite of this lack of connection the self proclaimed interpreter of wampum belts in this case testified as to his reading of the belt and what it meant to the Mi'kmaq people.¹²⁰

In sum, a Chief and official custodian of Mi'kmaq traditions had an oral account that had undergone a form of group validation by being publically affirmed and accepted by the Mi'kmaq Grand Council. The Chief did not volunteer more than what he himself had heard, and he recounted the tradition with truthfulness and unwavering confidence. He was careful to credit his grandmother and other sources, and his account was rich in detail. Furthermore, recollection of his tradition was aided by one of the most elaborate mnemonic devices ever contrived, and the witness had, besides, university training in ethnohistory and was simultaneously qualified as an expert. After all that, he remembered things that never actually happened. His tradition turned out to be demonstrably false, or at least contrary to an overwhelming corpus of independent evidence, prompting the lawyer who had called him to testify to urge the Court to ignore his testimony.

¹¹⁹ *R. v. Marshall (S.F.) et al.* (2001), 191 N.S.R. (2nd) 323; 596 A.P.R. 323 at paragraph 61.

¹²⁰ *Keith Lawrence Julien et al. v. Her Majesty The Queen* (2002) N.S.S.C. 057, at paragraphs 115-116.

As Mark Twain quipped, few things are harder to put up with than the annoyance of a good example. Yet, despite this cautionary tale, I continue to believe that oral traditions have a role to play in the reconstruction of Aboriginal pasts and I find myself agreeing with Jan Vansina:

In applying the rules of evidence to oral traditions we have constantly questioned the reliability of the information they yield. Superficially, this leads to gloomy conclusions because cases of unreliability are piled one onto the other. One should remember, however, that not all traditions are automatically unreliable, even though all have limitations. And one should temper this critical approach with a realization of what oral traditions can contribute.¹²¹

CONCLUSION

The foregoing should *not* leave the impression of a conclusion that Tsimshian oral traditions recorded in recent times are in my view useless in the forensic reconstruction of Tsimshian culture and practices at the time of first European contact in the late eighteenth century. Perhaps they are in some way useful for that or another purpose. However, what I do suggest with all due respect is that Dr. MacDonald and Dr. Anderson's claims about the historicity of such traditions are not properly supported by the evidence they cite and are advanced in the absence of sophisticated and critical approaches demanded by modern anthropology. While their apparent unfamiliarity with some of the scholarship on the subject may be excused on account of its recency,¹²² the lack of any reference whatsoever to at least one

¹²¹ Vansina 1985:197.

¹²² e.g., Mason 2006; Cruikshank 2005.

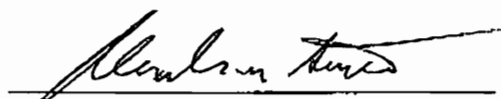
of the classic works,¹²³ or to the methodological concerns such literature has raised, is puzzling and suggests that issues relating to memory, chronology, selectivity, presentisms, and the feedback effect were not regarded as germane to their investigations.¹²⁴

This case has been rather unusual, in that the oral “histories,” “traditions,” or “*adaawx*” tendered as evidence did not come primarily from living Elders giving *viva voce* testimony in court, but from old manuscripts retrieved and interpreted by anthropologists. One advantage, perhaps, is that these oral documents were recorded *ante litem motam* (before any controversy had arisen). Nevertheless, as written records they should be accorded treatment equal to that given any written source purportedly containing evidence about an actual past and used in historical or anthropological reconstruction. This means they must be subjected to critical scrutiny and properly contextualized in the era in which they were recorded. Their applicability beyond that era must be demonstrated rather than assumed. Given that the use of anachronistic evidence to illuminate a target date involves inferential reasoning, ample justification must be given for their employment in the first place. Each document must be assessed on a case-by-case basis and any generalizations about the reliability of the entire corpus should be avoided. At the end of the day, a link must be established between a reconstruction of a practice or event at a particular target date and evidence contained in specific documents which have been tested for reliability.

¹²³ e.g., Vansina 1985; Henige 1982.

¹²⁴ To be fair to Dr. Anderson, she did allude to “gaps and biases” in the oral histories, but this is buried in a separate volume and is exceedingly brief (Anderson 2006: Primary Source Compilations, Volume 1, Section 1.1).

Respectfully submitted this 8th day of February, 2007.

A handwritten signature in black ink, written in a cursive style, positioned above a horizontal line. The signature appears to read "Alexander von Gernet".

Alexander von Gernet, Ph.D.

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6. (1991) Lecturer, University of Toronto, Toronto, Ontario.
7. (1992 - 2001) Assistant Professor Status-Only, University of Toronto, Toronto, Ontario.
8. (2002 - present) Adjunct Professor and Lecturer, University of Toronto, Toronto, Ontario.
9. (1993 - present) Associate Member, Graduate Faculty, School of Graduate Studies, University of Toronto, Toronto, Ontario.
10. (1994-1999) Editor, *Ontario Archaeology*, The scientific journal of the Ontario Archaeological Society [responsible for assessing the scholarly merits of over 100 submissions, making decisions on their suitability for publication, supervising the peer review process, as well as personally editing all contributions accepted by the journal.]

E) UNIVERSITY TEACHING

Department of Classics, Concordia University, Montréal, Québec

1. (1986) *Classical Archaeology*. Archaeological theory and method, Bronze-Age Aegean, Greece, Italy.

Department of Anthropology, McGill University, Montréal, Québec

2. (1987) *Symbolic and Structural Anthropology*. Human symbolic systems, religion and mythology; French structuralism and semiotics. [T.A.]
3. (1987, 1988) *World Prehistory*. Prehistoric archaeology, theory and method; Americas, Asia, Middle East, Europe, Africa.
4. (1988) *Psychological Anthropology*. Cross-cultural perspectives on human psychology, dreams, visions, trance, possession, ritual and religion. [T.A.]

Department of Anthropology, University of Toronto at Mississauga, Ontario

5. (Fall 1989) *ANT 200Y Prehistoric Archaeology*. Archaeological theory and method; hunter-gatherers; Palaeolithic; Africa, Europe, Asia, North America, Australia.
6. (Spring 1991, 1995, 1996, 1997, 1998) *ANT 200Y Prehistoric Archaeology*. Archaeological theory and method; origins of agriculture and complex state societies;

- Neolithic, Bronze and Iron Ages; Middle East, Americas, Europe, Asia.
7. (1991,1992,1994,1995,1996,1997,1999) *ANT 312H Archaeological Analysis*. Lab methods, analytical approaches; pottery, lithics, faunal, archaeobotanical; Aboriginal peoples of North America.
 8. (1992) *ANT 411H Archaeological Theory*. Advanced course in Processual and Post-processual approaches.
 9. (1992-1993, 1995-1996, 1997-1998, 1998-1999, 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2006-2007) *ANT 241Y Aboriginal Peoples of North America*. The image of the “savage” in Eurocolonial thought; culture contact since A.D. 1000; current issues and their historical context; Archaeological, ethnohistorical and ethnological approaches to reconstructing cultures; examples drawn from throughout North America.
 10. (1994, 1997, 1998, 1999-2000, 2000-2001, 2002-2003) *ANT 304Y Change and Continuity in Canadian Aboriginal Societies*. Case studies of culture contact between Europeans and various First Nations with an emphasis on ethnohistorical and ethnographic source materials, as well as oral histories and traditions; sixteenth to twentieth centuries.
 11. (1995) *ANT 432H Special Seminar in Anthropology*. Survey of literature on the Haudenosaunee (Iroquois Confederacy) with emphasis on the Mohawk.
 12. (1995-1996) *Graduate Studies Research Supervisor: Archaeological Information Processing and Native Peoples of Ontario*. Research towards the creation of a master database on the Iroquoian and Algonquian peoples of Ontario.
 13. (1995-1996, 1996-1997, 1997-1998, 1998-1999, 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007) *ANT 397H Independent Study; ANT 398Y Independent Reading; ANT 399Y Independent Research; ANT 499Y Advanced Independent Research; GGR 417Y Research Project* Faculty Supervisor for independent courses on various topics relating to North American Aboriginal peoples, anthropology, history and law.
 14. (1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006) *CHL 5417F Tobacco and Health: From Cells to Society*. History and Anthropology portion of this team-taught Graduate Studies Course traces origins and history of tobacco use among natives and newcomers.
 15. (2003-2004, 2005) *ANT 304Y; ANT 304H Forensic Anthropology and Aboriginal Peoples*. The application of anthropological knowledge to legal problems. Focus on the methods used by anthropologists to reconstruct past cultures for the purpose of assisting courts mandated to adjudicate land claims, Aboriginal rights and treaty rights. Case studies review archaeological data, written documents and oral traditions used in legal proceedings.
 16. (2007) *ANT 304H5S Anthropology and Aboriginal Peoples*. The application of anthropological knowledge to legal problems. Focus on the methods used by anthropologists to reconstruct past cultures for the purpose of assisting courts mandated to adjudicate land claims, Aboriginal rights and treaty rights. Case studies review archaeological data, written documents and oral traditions used in legal

proceedings.

F) ARCHAEOLOGICAL FIELDWORK

1. (1978-1980) Archaeologist: seven Pre-contact and Protohistoric Iroquoian sites (Webb I, Webb II, Best, Pugh, Draper, Windemere, Lawson). University of Western Ontario, Museum of Indian Archaeology, London, Ontario.
2. (1978) Archaeological Surveyor: New Toronto International Airport Archaeological Survey. Archaeological Survey of Canada, Canadian Museum of Civilization and University of Western Ontario, Museum of Indian Archaeology, London, Ontario.
3. (1979) Archaeological Surveyor: Burlington Highway 403 Archaeological Survey. Ministry of Transportation, Ontario and University of Western Ontario, Museum of Indian Archaeology, London, Ontario.
4. (1979) Archaeologist: Van Egmond Historic Site. University of Western Ontario, Museum of Indian Archaeology, London, Ontario.
5. (1980) Principal Investigator: excavation and partial reconstruction of the Lawson Pre-contact Neutral Iroquoian Village Site. University of Western Ontario, Museum of Indian Archaeology, London, Ontario.
6. (1980) Archaeologist: multi-component (Archaic to Historic) Squaw Island Site, St. Lawrence River, Ontario. Directed by J.V. Wright, Archaeological Survey of Canada, Canadian Museum of Civilization, Ottawa.
7. (1980-1981) Archaeologist: Paleolithic, Neolithic, Pharonic, Greek, Roman, Coptic and Islamic sites in Eastern Sahara. Dakhleh Oasis Project (Egypt), Royal Ontario Museum and Society for the Study of Egyptian Antiquities, Toronto, Ontario.
8. (1990) Archaeological Surveyor: Ontario Hydro Archaeological Assessment of Proposed Power Corridor. Brampton, Ontario.
9. (1990-1996) Director and Principal Investigator: Highland Lake Sixteenth-century Aboriginal Hunting Camp in Renfrew County, Ontario.

G) LABORATORY AND MUSEUM EXPERIENCE

1. (1979) Curator of 20,000-specimen Jury Archaeological Collection at the University of Western Ontario, Museum of Indian Archaeology, London, Ontario.
2. (1979) Laboratory Technician: development of systems for artifact organization and use of computerized cataloguing techniques for Draper Site Collection. Ministry of Culture and Recreation, Heritage Administration Branch, and University of Western Ontario, Museum of Indian Archaeology, London, Ontario.
3. (1980) Analyst: development of descriptive and analytic code for the study of Egyptian lithics. Dakhleh Oasis Project, Royal Ontario Museum and the Society for the Study of Egyptian Antiquities, Toronto, Ontario.
4. (1979-1981) Analyst: development of descriptive and analytic code for the study of Iroquoian pipes. University of Western Ontario, Museum of Indian Archaeology, London, Ontario and McGill University, Montréal, Québec.

H) CONSULTING EXPERIENCE (1985-2005)

- Federal Clients: Department of Justice Canada
Department of Indian and Northern Affairs Canada - Research and Analysis Directorate
Department of Indian and Northern Affairs Canada - Litigation Support Directorate
Department of National Revenue Canada
Department of Fisheries and Oceans Canada
Royal Canadian Mounted Police
- Provincial Clients: Department of Justice Province of Newfoundland and Labrador
Alberta Department of Justice
Alberta Environmental Protection
Ontario Ministry of Natural Resources
Ontario Ministry of the Attorney General
Nova Scotia Public Prosecution Service
New Brunswick Attorney General Public Prosecutions
- Foreign Clients: State of New York, Office of the Attorney General
State of Ohio, Office of the Attorney General
- Other Clients: Ontario Tobacco Museum, Delhi, Ontario
Town of Lachine, Quebec
Peel-Dufferin School Board, Mississauga, Ontario
First Nations Festival, Mississauga
Royal Commission on Aboriginal Peoples (policy advisor and contributing author of Volume One of final report of RCAP)
A.D. Regehr Landscape Architect, Toronto (Historical Advisor Canadian Heritage Garden, Rideau Hall, Ottawa)
Life Magazine, New York (consultant for Special Double Issue ranking the top 100 events of the last 1,000 years).
Macleod Dixon Barristers & Solicitors, Calgary, Alberta
Parlee McLaws, Barristers and Solicitors, Calgary, Alberta
Miller Thomson LLP, Barristers & Solicitors, Vancouver, B.C.
McKenzie Lake Lawyers LLP, London, Ontario
Consultant in several confidential files involving Aboriginal clients
- Consulting Subjects: Analysis of written documents relating to Aboriginal peoples
Analysis of archaeological evidence relating to Aboriginal peoples
Analysis of Aboriginal oral histories and oral traditions
Reconstructing past Aboriginal practices
Forensic reconstruction of past Aboriginal practices and the history

of contact between natives and newcomers
Location and movement of Aboriginal groups
Treaties, Reserves & Indian Policy

Groups Researched: Abenaki, Algonquin, Athabaskan, Blackfoot, Blood, Cayuga, Chipewyan, Dene, Eastern Shawnee, Huron, Inuit, Métis, Mi'kmaq, Mississauga, Mohawk, Ojibwa, Oneida, Ottawa, Plains Cree, Saulteaux, Seneca, Shinnecock, Shuswap, Stoney, Tsilhqot'in, Tsuu T'ina (Sarcee), Ute, Xenigwet'in, Woods Cree

I) EXPERT WITNESS

General qualifications statement: “*anthropologist and ethnohistorian specializing in the use of archaeological evidence, written documentation and oral traditions to reconstruct the past cultures of Aboriginal peoples, as well as the history of contact between Aboriginal peoples and European newcomers throughout Canada and parts of the United States.*”

1. (1993) *Walter Patrick Twinn et al. (Sawridge) v. Her Majesty the Queen*. In the Federal Court of Canada Trial Division. [**Plains Cree, Woods Cree, Sarcee, and Blackfoot**]
2. (1996) *Grand Chief Michael Mitchell v. Minister of National Revenue*. In the Federal Court of Canada Trial Division. [**Mohawk**]
3. (1997) *Chippewas of Sarnia v. Attorney General of Canada et al.* In the Ontario Court of Justice, General Division (affidavit and deposition only). [**Ojibwa**]
4. (1998-99) *Her Majesty the Queen v. Harley Gregory Frank*. In the Criminal Division of the Provincial Court of Alberta. [**Blood**]
5. (1999) *Seneca Nation of Indians et al. v. The State of New York et al.* In the United States District Court Western District of New York (affidavit only). [**Seneca**]
6. (1999, 2001) *John N. Jeddore v. Her Majesty the Queen*. In the Tax Court of Canada. [**Mi'kmaq**]
7. (2000) *Her Majesty the Queen v. Stephen Frederick Marshall et al.* Province of Nova Scotia, In the Provincial Court. [**Mi'kmaq**]
8. (2000) *Cayuga Indian Nation of New York et al. v. George E. Pataki et al.* In the United States District Court, Northern District of New York. [**Cayuga**]
9. (2001) *Her Majesty the Queen in Right of Newfoundland v. Ken Drew*. In the Supreme Court of Newfoundland Trial Division. [**Mi'kmaq**]
10. (2001) *Charles John Gordon Benoit et al. v. Her Majesty the Queen*. In the Federal Court of Canada Trial Division. [**Cree, Chipewyan and Dene**]
11. (2002) *The Attorney General of Canada v. Anishnabe of Wauzhushk Onigum Band et al.* In the Ontario Superior Court of Justice (affidavit, report and deposition only). [**Ojibwa**]
12. (2002) *Victor Buffalo et al. v. Her Majesty the Queen et al.* In the Federal Court of Canada Trial Division. [**Plains Cree**]

13. (2003) *Her Majesty the Queen v. Gregory Barberstock et al.* In the Ontario Court of Justice. [**Mohawk**]
 14. (2003) *Her Majesty the Queen v. Alex MacDonald et al.* Province of Nova Scotia, In the Provincial Court. [**Mi'kmaq**]
 15. (2003) *CAW-Canada [Applicant] v. Great Blue Heron Gaming Company [Responding Party] v. Mississaugas of Scogog Island First Nation, The Attorney General of Ontario and the Attorney General of Canada [Intervenors]*. Ontario Labour Relations Board (affidavit and deposition only) [**Ojibwa**]
 16. (2004) *Her Majesty the Queen v. Dennis Winston Walker.* Province of Nova Scotia, In the Provincial Court. [**Mi'kmaq**]
 17. (2004) *The Oneida Nation of New York State et al. vs. The State of New York et al.* In the United States District Court Northern District of New York (report and deposition only) [**Oneida**]
 18. (2006) *Jake Davis et al. v. Attorney General of Canada et al.* In The Supreme Court of Newfoundland and Labrador Trial Division [**Mi'kmaq**]
 19. (2006) In the Matter of an Arbitration under the Ontario *Cemeteries Act (Revised)* [**Oneida**]
 20. (2006) *Roger William v. British Columbia et al.* In the Supreme Court of British Columbia [**Tsilhqot'in and Xeni Gwet'in**]
 21. (2007) *State of New York et al. v. The Shinnecock Indian Nation et al.* In the United States District Court Eastern District of New York [**Shinnecock**]
- [expert opinion reports were prepared for several other cases subsequently settled out of court or adjourned].

J) COMMUNITY-BASED EXPERIENCE

1. Board of Directors, Mississauga Heritage Foundation (1990-2000)
2. Vice-President, Mississauga Heritage Foundation (1992-1994)
3. President, Mississauga Heritage Foundation (1994-2000)
4. Chair, Long-Range Planning Committee, Mississauga Heritage Foundation (1992-1994)
5. Chair, Archaeology Committee, Mississauga Heritage Foundation (1992-1994)
6. Chair, Publications Committee, Mississauga Heritage Foundation (1994-2000)
7. Organizing Committee of the Mississauga First Nations Celebration (1992-1994)

K) PUBLICATIONS and REPORTS

1. 1982 Interpreting Intrasite Spatial Distributions of Artifacts: The Draper Site Pipe Fragments. *Man in the Northeast* 23: 49-60.
2. 1985 *Analysis of Intrasite Artifact Spatial Distributions: The Draper Site Smoking Pipes.* University of Western Ontario, Museum of Indian Archaeology, Research Report 16. [271 pp. monograph]
3. 1986 Commentary: Drugs, Mystics and Personality. *Bulletin of the R.M. Bucke Memorial Society for the Study of Religious Experience* 2(1): 3-5. Montréal, Québec.

4. 1987 Pipes and Parakeets: Constructing Meaning in an Early Iroquoian Context. In *Archaeology as Long-Term History*, edited by Ian Hodder, pp. 31-42. New Directions in Archaeology. Cambridge University Press, Cambridge, England. [with Peter Timmins]
5. 1988 *The Transculturation of the Amerindian Pipe/Tobacco/Smoking Complex and its Impact on the Intellectual Boundaries Between "Savagery" and "Civilization," 1535-1935*. 2 vols. Ph.D. Dissertation, Department of Anthropology, McGill University, Montréal.
6. 1989 [Review of] Tobacco and Shamanism in South America. *Man* [Journal of the Royal Anthropological Institute] 24(4): 713.
7. 1990 Archeology in the 1990s. *Anthropology Newsletter* [American Anthropological Association] 31(2): 3.
8. 1990 [Review of] Offering Smoke: The Sacred Pipe and Native American Religion. *American Anthropologist* 92(4): 1040-1041.
9. 1991 Culture Contact in the Canadian Wilderness. *Compass* 9(3): 19-22.
10. 1991 [Review of] Black Robe. *Arch Notes* [Publication of the Ontario Archaeological Society] 91(6): 9-10.
11. 1992 A Critical Look at the Film "Black Robe." *Ontario Museum News Currently* 15(1): 6.
12. 1992 A Possible Matouweskarini Hunting Camp: Excavations at the Highland Lake Site, Renfrew County. *Second Annual Archaeological Report, Ontario* (new series) 1991: 120-124.
13. 1992 False Balance Masks History of Cultural Genocide. *Compass* 10(2): 50.
14. 1992 New Directions in the Construction of Prehistoric Amerindian Belief Systems. In *Ancient Images, Ancient Thought: The Archaeology of Ideology*, edited by S. Goldsmith, S. Garvie, D. Selin, & J. Smith, pp. 133-140. Archaeological Association, University of Calgary, Calgary, Alberta.
15. 1992 *Brief Synopsis of Historical and Cultural Information Relating to the Native Peoples of Mississauga*. Indian Art-I-Crafts, Brampton, Ontario.
16. 1992 Hallucinogens and the Origins of the Iroquoian Pipe/Tobacco/Smoking Complex. In *Proceedings of the 1989 Smoking Pipe Conference*, edited by Charles F. Hayes III, pp. 171-185. Rochester Museum and Science Center Research Records No. 22. Rochester, New York.
17. 1992 *1990-1991 Excavations at The Highland Lake Site*. Report for the Ontario Heritage Foundation, Toronto. 220 pp.
18. 1993 Archaeological Investigations at Highland Lake: 1991 Field Season. *Third Annual Archaeological Report, Ontario* (1992): 74-79.

19. 1993 The Construction of Prehistoric Ideation: Exploring the Universality-Idiosyncrasy Continuum. *Cambridge Archaeological Journal* 3(1): 67-81. Cambridge University Press, England.
20. 1993 *The Plains Cree, Woods Cree, Sarcee, and Blackfoot Before and After Their Treaties With the Crown*. 183 pp. + 82 supporting documents. Federal Court of Canada Trial Division (Action T-66-86). Federal Department of Justice, Ottawa.
21. 1993 *The Plains Cree, Woods Cree, Sarcee, and Blackfoot Before and After Their Treaties With the Crown. Supplement: Analysis of Transcripts of Oral History Interviews Submitted by Plaintiffs*. 33 pp. + 7 supporting documents. Federal Court of Canada Trial Division (Action T-66-86). Federal Department of Justice, Ottawa.
22. 1994 How Long Have Native Peoples Been Here? *Nativebeat* March: 6.
23. 1994 Archaeology as Discourse. *Ontario Archaeology* 57: 3-22.
24. 1994 Guide for Standardized Manuscript Production. *Ontario Archaeology* 57: 88-100.
25. 1994 Saving the Souls: Reincarnation Beliefs of the Seventeenth-Century Huron. In *Amerindian Rebirth: Reincarnation Belief among North American Indians and Inuit*, edited by Antonia Mills and Richard Slobodin, pp. 38-54. University of Toronto Press, Toronto, Ontario.
26. 1994 Four Studies in Ontario Iroquoian Prehistory. *Ontario Archaeology* 58: 3-5.
27. 1995 Nicotian Dreams: The Prehistory and Early History of Tobacco in Eastern North America. In *Consuming Habits: Drugs in History and Anthropology*, edited by Jordan Goodman, Paul E. Lovejoy, and Andrew Sherratt, pp. 67-87. Routledge, London and New York.
28. 1995 The Date of Time Immemorial: Politics and Iroquoian Origins. In *Origins of the People of the Longhouse*, edited by André Bekerman and Gary Warrick, pp. 119-128. Ontario Archaeological Society, Toronto.
29. 1995 Compilations and Explanations. *Ontario Archaeology* 59: 1-3.
30. 1995 Revisiting Sites and Meals. *Ontario Archaeology* 60: 1-4.
31. 1995 *The Mohawks and Akwesasne: Territory, Political Relations and Trade*. 252 pp. + 244 supporting documents (Grand Chief Michael Mitchell v. Minister of National Revenue) Federal Court of Canada Trial Division (Action T-434-90). Federal Department of Justice, Ottawa.
32. 1996 *Oral Narratives and Aboriginal Pasts: An Interdisciplinary Review of the Literature on Oral Traditions and Oral Histories*. 2 vols. Research and Analysis Directorate, Indian and Northern Affairs Canada, Ottawa.
33. 1996 *Les communications orales et le passé des autochtones: un examen interdisciplinaire de documentation sur les traditions orales et les*

- histoires orales*. Direction de la recherche et de l'analyse, Affaires indiennes et du Nord Canada, Ottawa [French edition of no. 32].
34. 1996 Reactions to the Familiar and the Novel in Seventeenth-Century French-Amerindian Contact. In *Transferts culturels et métissages Amérique / Europe XVI^e - XX^e siècle. Cultural Transfer, America and Europe: 500 Years of Interculturation*, edited by Laurier Turgeon, Denys Delâge, and Réal Ouellet, pp. 169-188. Les Presses de l'Université Laval, Québec, P.Q.
35. 1996 The Innu, the Wendat and the Fur Trade. In *Looking Forward, Looking Back*, pp. 105-111. Volume 1 of *Report of the Royal Commission on Aboriginal Peoples*. Canada Communication Group, Ottawa.
36. 1996 Research on Intrasite and Regional Spatial Distributions. *Ontario Archaeology* 61:1-4.
37. 1996 Access to the Past. *Ontario Archaeology* 62:1-3.
38. 1997 Four New Reports on Four Old Sites. *Ontario Archaeology* 63:1-3.
39. 1997 *The Chippewas of Sarnia Band and the Cameron Transaction of 1839*. 41 pp. + 38 supporting documents (Chippewas of Sarnia Band v. Attorney General of Canada). Ontario Court of Justice General Division (Action 95-CU-92484). Federal Department of Justice, Toronto.
40. 1997 *Comments on the R. v. Adams Decision of the Supreme Court of Canada*. 25 pp. Provincial Department of Justice, Government of Newfoundland and Labrador.
41. 1997 *Plains Cree and Blackfoot Postmarital Locality and Band Membership Issues* 31 pp. (Kathleen Steinhauer-Anderson v. Her Majesty the Queen and Saddle Lake First Nation). Federal Court of Canada Trial Division (Action T-1874-92). Federal Department of Justice, Edmonton.
42. 1998 [Review of] *Deadly Medicine: Indians and Alcohol in Early America*. *Pacific Historical Review* 67(1):102-103.
43. 1998 *Handbook for Creating a Record of Aboriginal Oral Histories and Traditions*. Research & Analysis Directorate, Indian and Northern Affairs Canada, Ottawa.
44. 1998 *Blackfoot Agriculture and Trade: A Study of Aboriginal Practices Before and After First European Contact*. 97 pp. + 248 supporting documents. (Her Majesty the Queen v. Harley Gregory Frank). Criminal Division of the Provincial Court of Alberta (Action 61438503P10101). Federal Department of Justice, Edmonton.
45. 1998 *Blackfoot Agriculture and Trade: Supplementary Report on Issues Arising from the Cross-Examination of Anthony Hall and Phillip Lane Jr.* 8 pp. + 5 supporting documents. (Her Majesty the Queen v. Harley Gregory Frank). Criminal Division of the Provincial Court of

- Alberta (Action 61438503P10101). Federal Department of Justice, Edmonton.
46. 1998 *Mohawk Trade in Tobacco and Alcohol Specifically in Relation to What is Now the Border Between Canada and the United States* (Volume 1) 66 pp. + 84 supporting documents. *Tobacco in Aboriginal North America, 1521-1656: A Comprehensive Inventory and Analysis of the Documentary Record* (Volume 2) 330 pp. (Her Majesty the Queen v. Loran Thompson et al.). Superior Court of Quebec (Action 760-73-000045-977). Federal Department of Justice, Ottawa.
47. 1998 *Assessment of Charles R. Brasfield's Reports on Research Among Certain Shuswap People in British Columbia*. 12 pp. (Francis Johnson et al. v. Her Majesty the Queen et al.). Supreme Court of British Columbia (Action A964198). Federal Department of Justice, Vancouver.
48. 1998 *A History of Canadian Indian Reserves and the Mi'kmaq at Conne River, Newfoundland*. 25 pp. + 50 supporting documents (John N. Jeddore v. Her Majesty The Queen) Tax Court of Canada (No. 96-2182 [IT])G). Federal Department of Justice, Halifax.
49. 1999 [Review of] Rethinking American Indian History. *Indiana Magazine of History* March, pp. 75-76.
50. 1999 Iroquoians. In *Encyclopedia of Canada's Peoples*, edited by Paul Robert Magosci, pp. 56-64. University of Toronto Press, Toronto.
51. 1999 *The Historical Context of the Cayuga Treaties with the State of New York*. 88 pp. + 93 supporting documents (Cayuga Indian Nation of New York et al. v. George E. Pataki et al.) United States District Court, Northern District of New York (No. 80-CV-930 & 80-CV-960). Attorney General of the State of New York, Albany, N.Y.
52. 1999 *Aboriginal Use and Occupancy of the Niagara River Environs*. 50 pp. + 79 supporting documents + 18 supplementary documents (Seneca Nation of Indians v. State of New York et al.) United States District Court Western District of New York (No. 93-CV-0688A). Attorney General of the State of New York, Buffalo, N.Y.
53. 2000 What My Elders Taught Me: Oral Traditions as Evidence in Aboriginal Litigation. In *Beyond the Nass Valley: National Implications of the Supreme Court's Delgamuukw Decision*, edited by Owen Lippert, pp. 103-129. The Fraser Institute, Vancouver, British Columbia.
54. 2000 Origins of Nicotine Use and the Global Diffusion of Tobacco. In *Nicotine and Public Health*, edited by Roberta Ferrence, John Slade, Robin Room and Marilyn Pope, pp. 3-15. American Public Health Association, Washington, DC.

55. 2000 North American Indigenous Nicotiana Use and Tobacco Shamanism: The Early Documentary Record, 1520-1660. In *Tobacco Use by Native North Americans: Sacred Smoke and Silent Killer*, edited by Joseph C. Winter, pp. 59-80. The Civilization of the American Indians Series, Volume 236. University of Oklahoma Press, Norman.
56. 2000 *The Aftermath of the Cayuga Treaties with the State of New York*. 31 pp. + 47 supporting documents. (Cayuga Indian Nation of New York et al. v. George E. Pataki et al.) United States District Court, Northern District of New York (No. 80-CV-930 & 80-CV-960). Attorney General of the State of New York, Albany, N.Y.
57. 2000 *Oral Traditions, Wampum Belts, Land and Logs: An Assessment of Testimony in a Nova Scotia Mi'kmaq Case*. 108 pp. + 172 supporting documents (Her Majesty the Queen v. Stephen Frederick Marshall et al.) Province of Nova Scotia In the Provincial Court (Nos. 853504, 853508 etc.). Special Prosecutions, Nova Scotia Public Prosecution Service, Halifax, Nova Scotia.
58. 2000 *Aboriginal Oral Documents and Treaty Six*. 8 pp. + 13 supporting documents (Chief Victor Buffalo et al. v. The Queen) In the Federal Court of Canada Trial Division (T-2022-89, T-1254-92) Macleod Dixon, Calgary, Alberta.
59. 2000 *An Assessment of Certain Evidence Relating to Plains Cree Practices*. 19 pp. + 63 supporting documents (Chief Victor Buffalo et al. v. The Queen) In the Federal Court of Canada Trial Division (T-2022-89, T-1254-92) Macleod Dixon, Calgary, Alberta.
60. 2000 *Treaty Six: An Assessment of the Written and Oral Documents*. 71pp. + 91 supporting documents (Chief Victor Buffalo et al. v. The Queen). In the Federal Court of Canada Trial Division (T-2022-89, T-1254-92) Macleod Dixon, Calgary, Alberta.
61. 2000 *Oral Traditions, Treaty Eight and Taxation*. 52 pp. + 89 supporting documents (Charles John Gordon Benoit et al. v. The Queen). In the Federal Court of Canada Trial Division (T-2288-92). Originally Parlee McLaws, Calgary, Alberta & later Macleod Dixon, Calgary, Alberta.
62. 2000 *A History of Canadian Indian Reserves and the Mi'kmaq at Conne River, Newfoundland*. Supplementary Report, 5 pp. (John N. Jeddore v. Her Majesty The Queen) Tax Court of Canada (No. 96-2182 [IT])G). Federal Department of Justice, Halifax, Nova Scotia.
63. 2001 *Response to Robert H. Cuff's Supplementary Report on "The Colonial Reservation at Conne River."* 7 pp. (John N. Jeddore v. Her Majesty The Queen) Tax Court of Canada (No. 96-2182 [IT])G). Federal Department of Justice, Halifax, Nova Scotia.

64. 2001 *Preliminary Statement of Opinion on "Cultural Loss."* 7 pp. + 3 supporting documents. (Sonia Thompson v. Attorney General of Canada et al.) In the Court of Queen's Bench, Judicial Centre of Regina (No. 2276 of 1998). Federal Department of Justice, Saskatoon, Saskatchewan.
65. 2001 *The Origins and Early History of the Mi'kmaq in Newfoundland: An Analysis of the Oral Traditions, Archaeological Evidence and Written Records.* 286 pp. + 484 supporting documents. (Her Majesty the Queen in Right of Newfoundland v. Ken Drew) In the Supreme Court of Newfoundland Trial Division (1996 St. J. No. 1022). Department of Justice, Province of Newfoundland and Labrador, St. John's, Newfoundland.
66. 2001 *Cree Territory at the Time of First European Contact.* 26 pp. + 46 supporting documents (Chief Victor Buffalo et al. v. The Queen). In the Federal Court of Canada Trial Division (T-2022-89, T-1254-92) Macleod Dixon, Calgary, Alberta.
67. 2001 *Comments on Winona Wheeler's "Indigenous Oral Tradition Histories, An Academic Predicament."* 4 pp. + 13 supporting documents. (Chief Victor Buffalo et al. v. The Queen). In the Federal Court of Canada Trial Division (T-2022-89, T-1254-92) Macleod Dixon, Calgary, Alberta.
68. 2002 Iroquoians. In *Aboriginal Peoples of Canada: A Short Introduction*, edited by Paul Robert Magocsi, pp. 153-173. University of Toronto Press, Toronto.
69. 2002 The Future of the Present Past. In *Mississauga: The First Ten Thousand Years*, edited by Frank Dieterman, pp. 279-286. Mississauga Heritage Foundation, Eastendbooks, Toronto [awarded Ontario Heritage Foundation Certificate of Achievement, 2005].
70. 2002 *The 'Saulteaux Tribe' and Treaty 3 Reserve Entitlement.* 72 pp. + 150 supporting documents. (The Attorney General of Canada v. Anishnabe of Wauzhushk Onigum Band et al.) In the Ontario Superior Court of Justice, Toronto, Ontario. Federal Department of Justice, Ottawa.
71. 2002 *Jakej: The Early History of Lobster Harvesting Among Natives and Newcomers in Atlantic Canada.* 67 pp. + 129 supporting documents. (Her Majesty the Queen v. Alex MacDonald et al.) In the Nova Scotia Provincial Court. Federal Department of Justice, Halifax and Department of Fisheries and Oceans, Ottawa.
72. 2002 *Brief Observations on Mi'kmaq Socio-Political Organization, Territorial Distribution and Resource Extraction.* 29 pp. + 36 supporting documents. (Her Majesty the Queen v. Alex MacDonald et al.) In the Nova Scotia Provincial Court. Federal Department of Justice, Halifax and Department of Fisheries and Oceans, Ottawa.

73. 2002 *“Within the Prick’d Line”*: *The Historical Context of the 1701 Deed from the Iroquois to the King of England of a Vast Tract of Land*. 89 pp. + 82 supporting documents; with a 9-page Addendum prepared in January 2003 (Her Majesty the Queen v. Gregory Barberstock et al.) In the Ontario Court of Justice. Ontario Ministry of Natural Resources, Toronto, Ontario.
74. 2003 *An Analysis of Oral Tradition Evidence Relating to the 1701 Albany “Deed” and other Matters*. 21 pp. + 24 supporting documents. (Her Majesty the Queen v. Gregory Barberstock et al.) In the Ontario Court of Justice. Ontario Ministry of Natural Resources, Toronto, Ontario.
75. 2003 [Untitled affidavit response to affidavits on Mississauga cultural practices]. 9pp. (CAW-Canada [Applicant] v. Great Blue Heron Gaming Company [Respondent] and Mississauga of Scugog Island First Nation [Intervenor]). In Ontario Labour Relations Board. Ontario Ministry of the Attorney General, Toronto, Ontario.
76. 2004 *The Historical Context of the Oneida Treaties with the State of New York*. 277pp. +171 supporting documents. (The Oneida Indian Nation of New York et al. v. The State of New York et al.) In United States District Court Northern District of New York. State of New York Office of the Attorney General, Albany, New York.
77. 2004 *Mi’kmaq and the Cervidae*. 65pp. +111 supporting documents. (Her Majesty the Queen v. Dennis Winston Walker) Province of Nova Scotia, In the Provincial Court. Special Prosecutions, Nova Scotia Public Prosecution Service, Halifax, Nova Scotia.
78. 2004 *A History of Treaties, Statutes and Government Policy Relating to Band Membership With a Particular Focus on the Sawridge Cree and the Tsuu T’ina of Alberta*. 140pp. + 192 supporting documents (Sawridge Band v. Her Majesty the Queen & Tsuu T’ina First Nation v. Her Majesty the Queen) in the Federal Court of Canada. Department of Justice, Edmonton, Alberta.
79. 2005 *Rebuttal Report to the Report of Dr. James Miller on Sawridge, Tsuu T’ina, and Self-Government: First Nations’ Self-Government and the Canadian State*. 26pp. + 27 supporting documents (Sawridge Band v. Her Majesty the Queen & Tsuu T’ina First Nation v. Her Majesty the Queen) in the Federal Court of Canada. Department of Justice, Edmonton, Alberta.
80. 2006 The Influence of Bruce Trigger on the Forensic Reconstruction of Aboriginal History. In *The Archaeology of Bruce Trigger: Theoretical Empiricism*, edited by Ronald F. Williamson and Michael S. Bisson, pp. 174-193. McGill-Queens University Press, Montreal and Kingston.
81. 2006 *Assessing the Strengths and Limitations of Oral Histories and Traditions in the Forensic Reconstruction of Aboriginal History*.

- 139pp. (Sawridge Band v. Her Majesty the Queen & Tsuu T'ina First Nation v. Her Majesty the Queen) in the Federal Court of Canada. Department of Justice, Edmonton, Alberta.
82. 2006 *The Oneida, the Iroquois, and the Dorchester Burials*. 45pp. + 60 supporting documents (In the Matter of an Arbitration under the Ontario *Cemeteries Act (Revised)*). Ontario Ministry of the Attorney General, Crown Law Office (Civil), Toronto, Ontario.
83. 2006 *On the Authority of New York Colonial Governors to Decide on Matters Relating to Shinnecock Lands and the Town of Southampton*. 35pp. (State of New York et al. v. The Shinnecock Indian Nation et al.) United States District Court, Eastern District of New York. Office of the Attorney General of New York, Albany, New York.
84. 2006 *Oral History and Oral Tradition Evidence in the Forensic Reconstruction of Aboriginal History and Practices*. 142pp. Roger William v. B.C. Department of Justice Canada, Vancouver, B.C.
85. 2006 *Analysing Tsilhqot'in Oral Traditions*. 98pp. Roger William v. B.C. Department of Justice Canada, Vancouver, B.C.

[In Preparation]

- [paper] The Forensic Reconstruction of Centuries-old Events and Practices Using Archaeological, Written and Oral Tradition Evidence.
- [book] Oral Histories and Oral Traditions as Evidence in Aboriginal Claims.
- [book] Oral Traditions and Wampum Belts.
- [monograph] The Highland Lake Site: A Protohistoric Forager Camp on the Southern Canadian Shield.
- [monograph] Amerindian Tobacco-Use in North America: A Critical Assessment of the Ethnohistorical Literature.
- [book] Sacred Oyekwa: Tobacco and Pipes in Traditional Iroquoian Belief.

L) PAPERS PRESENTED AT CONFERENCES

1. *Tobacco Use in Prehistoric North America: Evidence From Cross-Cultural Continuities Surviving in Historic and Ethnographic Records*. Invited conference paper delivered at Symposium on The Native American Tobacco Complex: Origins, Development, and Analysis. Society for American Archaeology, 56th Annual Meeting, New Orleans, Louisiana, April 1991.
2. *Appropriation, Ambivalence and Eschewal: Three Reactions to Novelty in Seventeenth-Century French-Amerindian Contact*. Invited conference paper delivered at "Transferts Culturels en Amérique et Ailleurs (XVI^e -XX^e Siècle)." Québec City, Québec, May 1992.
3. *The Role of Nicotiana in the Contact Between French, Iroquoian and Algonquian Peoples During the Early Historic Period*. Invited conference paper delivered at Symposium on Impact and Influence: Early Native and European Contacts in the

- Americas. Ontario Archaeological Society 19th Annual Meeting, Toronto, Ontario, October, 1992.
4. *Early Contacts and Ethnicity in the Northeast* (Chair and Discussant). Association canadienne d'Archéologie 26^{ième} réunion annuelle. Montréal, Québec, May, 1993.
 5. *Highland Lake: Archaeology, Ethnohistory and the Linguistic Affiliation of a Protohistoric Site on the Canadian Shield*. Invited conference paper delivered at Canadian Archaeological Association 27th Annual Meeting. Edmonton, May, 1994.
 6. *The Ethnicity of Refuse and the Date of Time Immemorial: Some Observations on Iroquoian Origins*. Invited conference paper delivered at Symposium on Origins of the Peoples of the Longhouse. Ontario Archaeological Society, 21st Annual Meeting, Toronto, Ontario, October, 1994.
 7. *Contested Pasts: Oral and Written Evidence in Dispute Resolution*. Invited guest lecturer, Department of Indian Affairs and Northern Development, Ottawa, June, 1996.
 8. *Contested Pasts: A Few Observations on Anthropological and Aboriginal Reconstructions of Canadian Prehistory and History*. Invited guest lecture, Medusa Series, Anthropology Graduate Students Association, University of Toronto, March, 1997.
 9. *A Brief History of Nicotine Delivery Systems*. Invited commentary at conference on Alternative Nicotine Delivery Systems, Toronto, March, 1997.
 10. *Prefixing the Historic: New Definitions for Old Periods Before and After Contact in the Northeast*. Invited conference paper delivered at Taming the Taxonomy: Toward a New Understanding of Great Lakes Archaeology. The 1997 Joint Symposium of the Ontario Archaeological Society and the Midwest Archaeological Conference, Toronto, October, 1997.
 11. *What My Elders Taught Me: Oral Traditions as Evidence in Aboriginal Litigation*. Invited conference paper delivered at The Delgamuukw Case: Aboriginal Land Claims and Canada's Regions. A Fraser Institute Conference, Ottawa, May, 1999.
 12. *Oral Traditions and Oral History*. Invited Paper conference paper delivered at the Aboriginal Law Conference, Department of Justice, Edmonton Regional Office, Edmonton, Alberta, November, 1999.
 13. *Pipes and Tobacco Use Among Native Peoples and European Newcomers in Eastern North America: An Illustrated History*. Invited conference paper delivered at Eastern American Indian Historical Conference, Cleveland, Ohio, April, 2002.
 14. *The Influence of Bruce Trigger on How we Reconstruct Aboriginal History*. Invited conference paper delivered at Symposium on "The Works of Bruce G. Trigger: Considering the Contexts of his Influence," 69th Annual Meeting of the Society for American Archaeology, Montreal, Quebec, April 2004.
 15. *Oral Traditions, Written Documents and Archaeological Evidence in Aboriginal Litigation*. Keynote Address at 6th Federal / Provincial / Territorial (FPT) Conference on Aboriginal Issues. Toronto, Ontario, November, 2004.