

Exploring the Nine Tribes-Nisga'a Territorial Dispute with Reference to Tsimshianic Legal Principles from Published and Archival Sources

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1. Framing Issues

1.1 Disclosure

I have been asked (see Appendices 1 and 3) to provide Metlakatla First Nation and Lax Kw'alaams First Nation (hereafter the "Nine Tribes") with opinion evidence in connection with the following:

- Relating to the area "in the environs of Portland Inlet, Nasoga Gulf, Mylor Peninsula and the mouth of the Nass River at or near Kincolith, Greenville, and Arrondale" (hereafter, the "Study Area").

Regarding:

- "Whether the Coast Tsimshian were a distinct Indigenous group at contact and the assertion of sovereignty, and the relationship of Metlakatla First Nation and Lax Kw'alaams to this historic group and its territory."
- "Did Coast Tsimshian regularly use and occupy lands and waters in the Study Area as of, and prior to, the assertion of sovereignty?"
- "Did Coast Tsimshian interact with third parties in relation to the [Study Area] as of, and prior to, the assertion of sovereignty?"
- "Do the Coast Tsimshian still use the lands and waters ... in the Study Area?"
- Did the Coast Tsimshian engage in, "Harvesting and processing of fish, shellfish, animals, birds, plants (including medicinal plants), and any other marine resources" and/or "regulation, management, stewardship, and/or decision-making ... over specific matters or resources" in the Study Area, and whether such practices "were integral to the culture of the Coast Tsimshian prior to contact and today."

With reference to "Coast Tsimshian oral history, traditional use and occupation studies, as well as documentary history:"

Considering: "Coast Tsimshian's perspective on all matters ... including Coast Tsimshian laws and practices."

For the time periods: "at the date of first contact (at or about 1793), the date of Crown sovereignty assertion (at or about 1846), and the current time (2019)."

The following is my considered professional opinion on these issues, based on evidence available to me as of this date. I have received no compensation, financial or otherwise, for doing so.

Capacity. A current copy of my *curriculum vitae* is attached as Appendix 2. I am an anthropological archaeologist with experience in archival and documentary analysis. It is important to note that I am not a lawyer or a scholar of western legal traditions or Canadian law. When I use terms in this report that may have specific meanings in Canadian law, I am not intending to invoke those meanings. Rather, I use them in their vernacular sense. I do define a series of terms (See Section 1.7) that have meanings in Tsimshianic law and use these in their legal sense.

1.2 Executive Summary

I have been asked by the Nine Tribes to provide my opinion respecting certain matters, including the issue of ownership of the “Study Area” (as defined above and generally illustrated in Figures 1-4), with reference to documentary sources, for the following time periods: 1) before 1793, 2) between 1793 and 1846, and 3) after 1846 to the present day.

An answer to these questions requires the development, understanding, and application of several foundational logical elements including:

- The Tsimshianic legal system by which ownership was exclusively defined in the Study Area prior to the imposition of British, then Canadian law.
- That the wider Tsimshianic peoples (Nine Tribes, Southern Tsimshian, Interior Tsimshian, Gitxan, and Nisga’a) shared a common language family, social, economic, and political networks, and participated in a common legal system that defined issues of usage and ownership rights to lands and waters in their territories.
- That thus, the Tsimshianic legal system had established ownership of the Study Area prior to 1793. The system continued to operate through the 19th century, and continues to operate today. However, it was challenged, and in some instances purported to be supplanted, by the legal system introduced by colonial actors, including explorers, traders, missionaries, Indian Agents, Indian Reserve Commissioners, etc. Colonial legal principles and processes gained traction especially after missionaries arrived in the latter half of the 19th century. For the Study Area, key historical developments which imposed such effects were the creation of the Nisga’a mission town of Kincolith in 1867 and nearby Indian Reserves in 1881. Tsimshianic legal principles are discussed in Section 1.7.
 - Kincolith (Gingolx) was founded in 1867 by the missionaries Robert Tomlinson and Robert Doolan as a Christian mission town for Nisga’a people.
- The chronology of claims over time, and of the chronology of Tsimshianic history in general. Oral records are sorted in time with reference to specific events of history. An understanding of these matters is necessary to sort the primary evidence in time, which in turn permits the tracking of claims and an assessment of any potential changes to those claims. As I demonstrate below, when a correct chronology is applied to the primary data, it becomes clear that only the Nine Tribes hold an ancestral claim to ownership of the Study Area. It dates back over 3000 years and continues uninterrupted to today. Tsimshian sources have consistently claimed the Study Area as Nine Tribes territory, or placed the boundary of their territory to the east of the Study Area.
- That evidence of the Nine Tribes’ claim to ownership dates back thousands of years, and that therefore any analysis must include proper consideration and understanding of the following key historical events:
 - The coastal origin of all Tsimshianic peoples, which traces ancestry to many locations along the coast, including the Study Area. However, this appears to reference a time prior to the development of both Tsimshianic nations (such as the Nine Tribes and the Nisga’a) and territorial divisions. Only later events recorded in specific *adawx* appear to have weight in Tsimshianic law.
 - The foundation of the eulachon fishery by the ancestral chief Ts’oode, who carved a path from Metlakatla to the Nass River for the ancestors of the Nine

Tribes to use to exploit the eulachon fishery. This event likely dates to the early Holocene, perhaps well over 7000 years ago. Although this *adawx* is not a legal claim to the Study Area *per se*, it does indicate that Nine Tribes people were using the Study Area in ancient times. See Section 5.2.

- A foundational double feast (human and spiritual beings) that claims the Study Area (and all of the Coast Tsimshian territory) for its constituent house groups, sometime over 3000 years ago. This is a key event (discussed in Marsden 2002) in which newcomers from the interior who travelled west along the Skeena River were accommodated into the Nine Tribes. This feast invoked the spiritual beings of the landscape as a claim of ownership and established the socio-political alliance between house groups and tribes of the Nine Tribes with their territories, including the Study Area. These *adawx* do represent a legal claim in Tsimshianic law.
- A key historical event, the slaughter of Nine Tribes chiefs by the Nine Tribes Chief Haimas at Kincolith, which gives the location its name (“place of scalps”), dating to the War with the Tlingits, over 1000 years ago. Though these *adawx* focus on the narrative of Haimas, it presents the ownership of the Study Area by the Nine Tribes in a legal context (the consequences of Haimas’ actions).
- The consolidation of the Study Area under the Nine Tribes chief Ligeex during the early decades of the fur trade, likely around the early 19th century. This event resulted in a pictograph at Ten Mile Point which is still visible today. This is another direct legal claim to ownership of the Study Area by the Nine Tribes.
- The founding of Kincolith mission in 1867. This is the first permanent Nisga’a settlement in the Study Area.
- The allocation of reserve lands in 1881. This creates the concept of common reserve lands (“commonage”) between Kincolith and the Nine Tribes.
- A key meeting between Nisga’a and Nine Tribes chiefs in 1916, reported on by William Beynon, who acted as secretary. This meeting had legal implications in Tsimshianic law. Here, the Nine Tribes presented their oral tradition (*adawx*) detailing their ownership of the Study Area, including the narrative of Ligeex’s pictograph. The Nisga’a, in contrast, provided no *adawx* nor testimony as to their specific claims, and instead sought to invoke the coastal origin of all Tsimshianic peoples and a claim grounded in the house of Txalaxet (see below and Section 5.6.2).
- The nature and value of different sources of historical data. There are numerous documentary and recorded sources on the issues to consider for the Study Area, but not all are of equal value. I argue that to understand the legal issues for the relevant time periods (especially prior to 1846 and 1793), information that is germane to the Tsimshianic legal system and its agreed-upon allocations of rights is most significant. The Tsimshianic legal system records relevant data and agreements though oral records known as *adawx*. Thus, references to and recordings of *adawx* are most valuable in reconstructing issues of rights for the time periods of interest in the Study Area. These represent the **primary data** of this inquiry. Documents that make use of primary data are **original analyses**; these represent logical assessments of the primary evidence. Sources that rely on original analyses are **derived sources**, which are most distant from primary evidence and, usually also distant from, a correct understanding of the Tsimshianic legal system. See Section 2.2 for a detailed

discussion of differences in sources of evidence. As I discuss below (Section 5.3), the primary evidence is unanimous, but for one possible legal claim, that the Study Area belonged to the Nine Tribes prior to 1846 and 1793. The original analyses are similarly united in this view, but for one exception. A recent Ministry of Justice report from 2016 is the sole outlier that argues that the Study Area east of the Kwinamass River belonged exclusively to the Nisga'a. As I argue below, the data are clear that this conclusion is incorrect. I also argue that the data and logic used in this report are built out of faulty premises, and does not adequately represent the evidence.

Nisga'a claims to the Study Area, in contrast, post-date the founding of the Kincolith mission, and exclusively rely on colonial legal avenues to buttress their legitimacy. Specifically, Nisga'a claims to the Study Area consistently rely on colonial legal avenues and largely post-date 1867, the date when the Kincolith mission town was founded. I note that there is evidence of the Nisga'a similarly using colonial avenues to make similar claims to territory owned by their eastern neighbours (see Sterritt et al 1998).

The exception referred to above is the narrative of the house of Txalaxet, which appears to be a right of affinal privilege, not title, associated with the Gitwilkseba, a Tenth Tribe that disappeared well before contact. As a consequence, this *adawx* likely does not invoke title, but rather a Tsimshianic form of right that has no equivalent in Canadian law.

Other than the claim made through the House of Txalaxet, mentioned above (see also Section 5.6.2), the Nisga'a claim to the Study Area relies on:

- Reference to early Holocene era when people, including the ancestors of some Nisga'a house groups passed through the Study Area before establishing their defined territories;
- A map produced by Marius Barbeau that defines the Nine Tribes-Nisga'a boundary at Kwinamass River;
- A derived source by Mitchell and Donald (2001) that presents no evidence;
- A series of decisions by the Indian Reserve Commission to award partial ownership of lands in the Study Area to the Nisga'a inhabitants of Kincolith in 1881; and
- A Ministry of Justice report (2016) which does not consider 1) Tsimshianic legal principles, 2) Tsimshianic history, and 3) that historic information is of differential quality depending on its source and nature. I also note that this report provides contradictory evidence, makes incorrect statements on the accuracy of data compiled by William Beynon, and includes evidence that contradicts its own conclusion of Nisga'a ownership of part of the Study Area. See Section 3.14 for more details.

I conclude that there is considerable evidence that the Nine Tribes owned the Study Area, and that the boundary between Nine Tribes and Nisga'a territory was at the eastern end of Fishery Bay until the late 19th century, when these lands were claimed by the Nisga'a and then purported to be "awarded" to them via colonial avenues (through the allocation of Indian Reserves in 1881).

I also conclude that the available evidence requires little interpretation. In Tsimshianic law, which was operational in antiquity, at 1793, 1846, and still operates today, the Study Area is owned by the house groups of the Nine Tribes. This evidence includes:

- Numerous *adawx* recorded by William Beynon and others which detail the legal history of the claims of Nine Tribes house groups to the Study Area over the last 3000 or so years;

- Public presentations of Nine Tribes legal claims in appropriate ceremonial contexts with appropriate witnesses. Such actions constitute demonstration of legal rights in Tsimshianic law. There are numerous examples of Nine Tribes house groups presenting such claims in official events, and witnessed by appropriate peers, including from Nisga'a house groups. In contrast, there is no evidence of Nisga'a house groups making public presentations of their claims via *adawx* in appropriate ceremonies with appropriate witnesses. Thus, under Tsimshianic law, the Nisga'a have neither properly defined nor substantiated their claims; and
- Evidence of ancient and continued use of the Study Area up to today by members of Nine Tribes house groups.

In a key event, the Nisga'a chiefs met with the Nine Tribes chiefs in Port Simpson in 1916 to contest their contemporary claims to ownership of part of the Study Area. Only the Nine Tribes chiefs had Tsimshianic evidence (*adawx*) to substantiate their claims. The Nisga'a chiefs were silent when asked to present their *adawx* which would demonstrate to their peers the validity of their claims under Tsimshianic law. Instead, they made their case to non-Indigenous officials, who have largely misunderstood the nature and operation of Tsimshianic law and the nature and value of the evidence relevant to this issue. The result is that Tsimshianic law was ignored by colonial law beginning in the late 19th century, and purported to disenfranchise the Nine Tribes of their ownership of the Study Area.

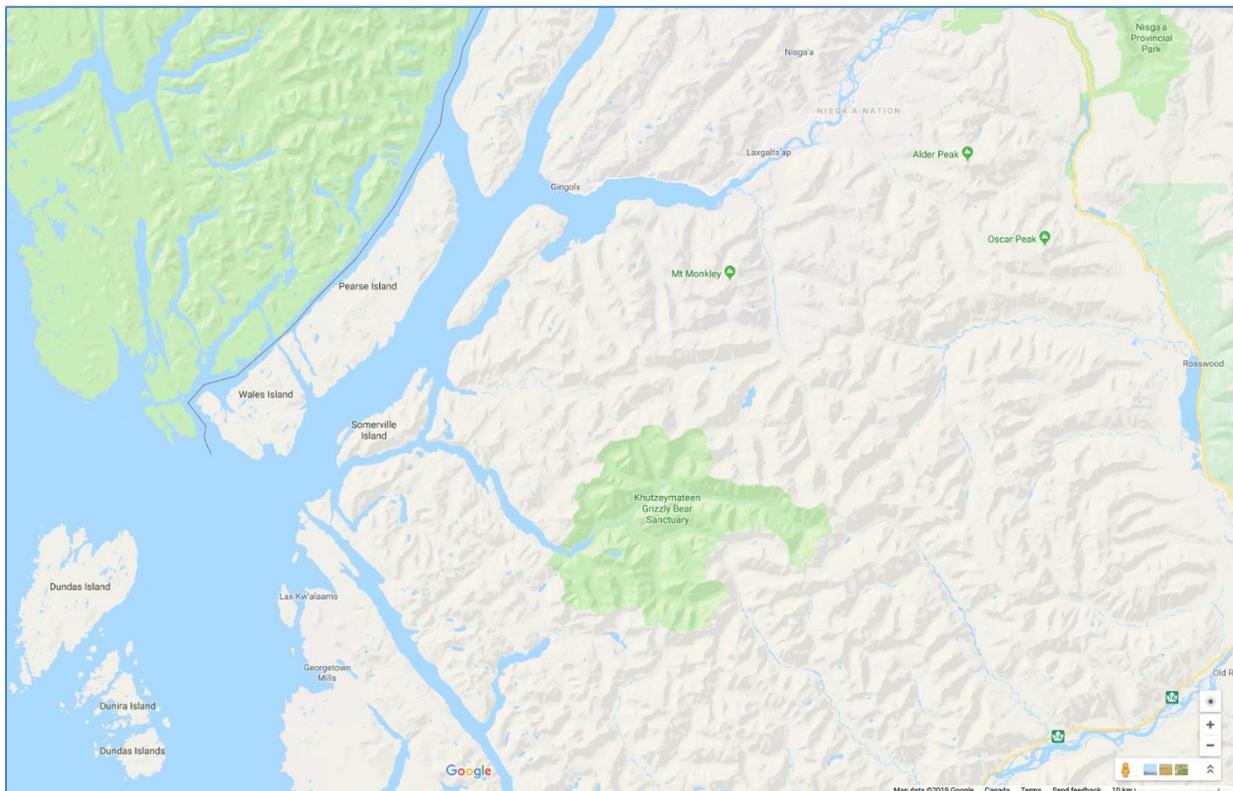


Figure 1. The region of the Study Area.

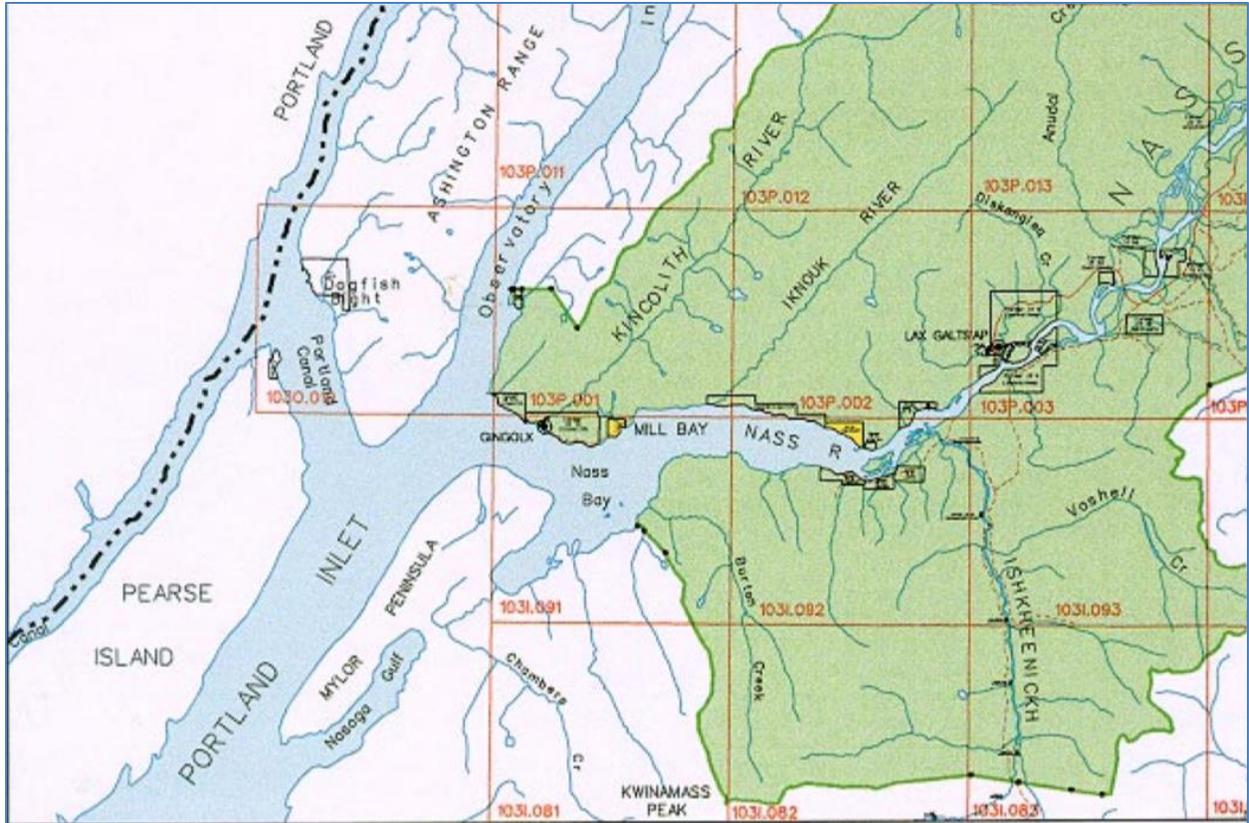


Figure 2. The Nisga'a Lands as defined by the Nisga'a Final Agreement.

PROVISIONAL DRAFT MAP OF
 TSIMSHIAN TERRITORIES
 BASED ON STATEMENTS BY TSIMSHIAN SM'OOGIT
 IN 1915, 1926, 1982 AND 1992.

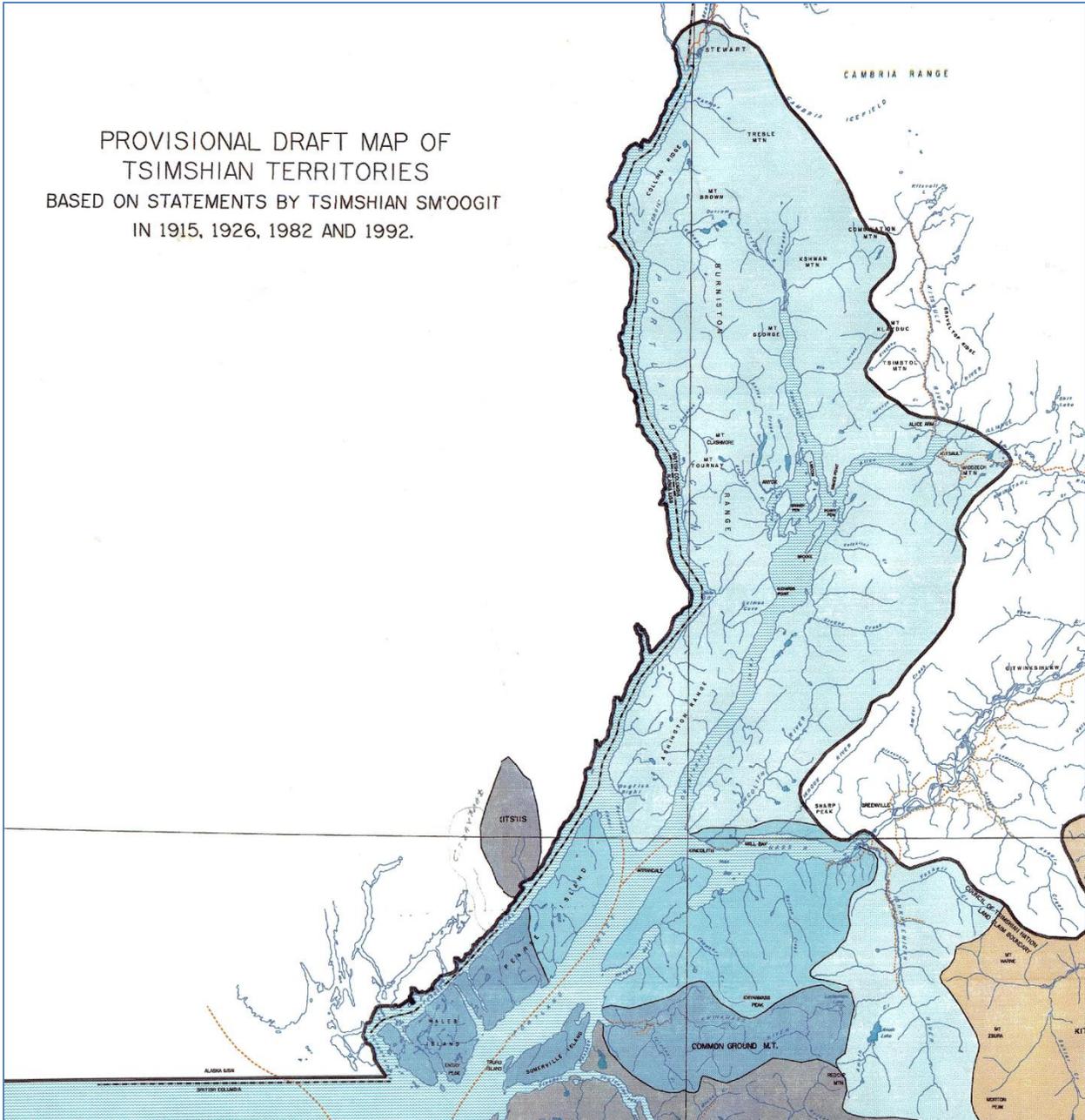


Figure 3. Map of the territory created by Susan Marsden based on evidence from Nine Tribes chiefs. Metlakatla First Nation uses a similar territory map for the Study Area.

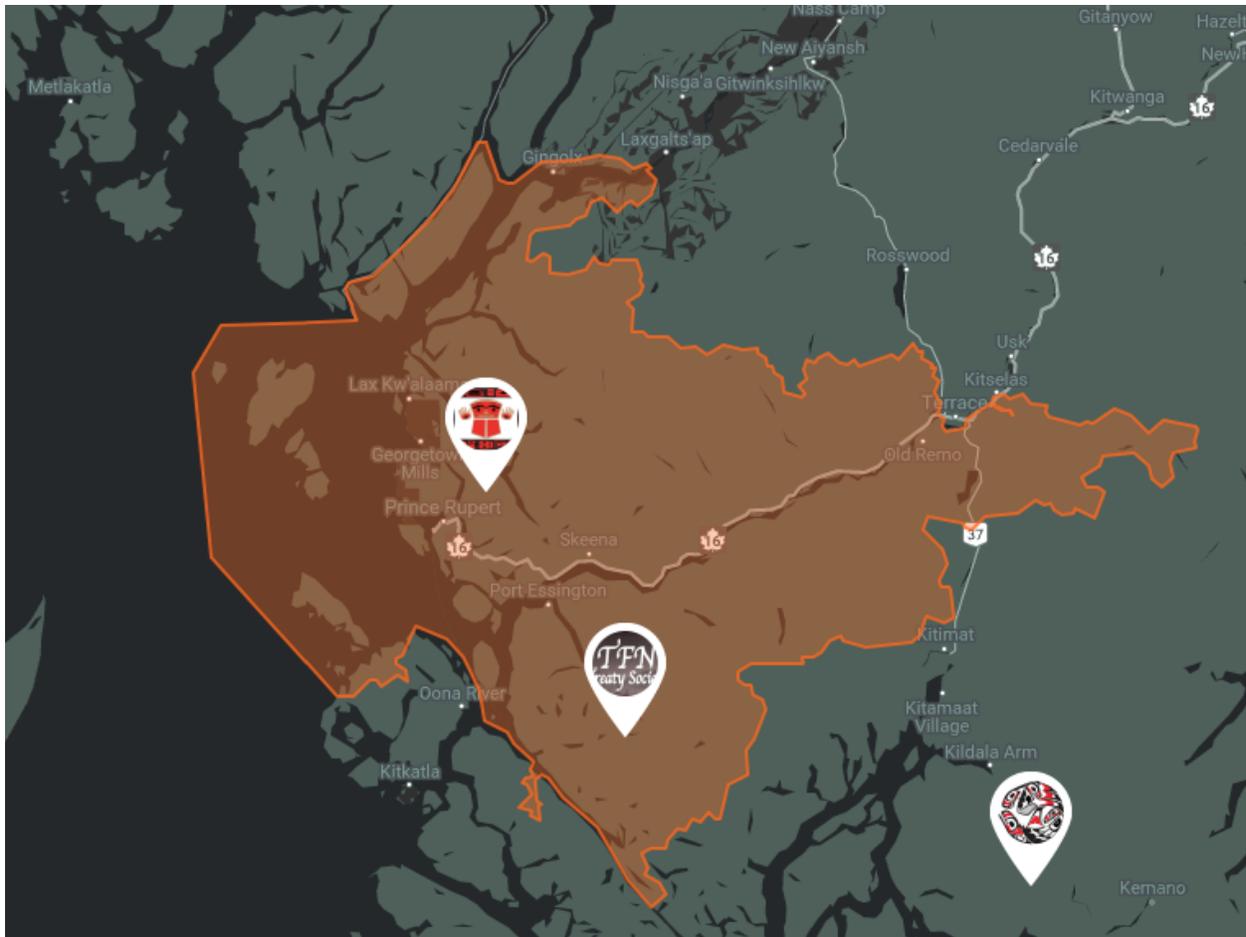


Figure 4. A map of the territory associated with the Nine Tribes of Lax Kw'alaams. This map conforms to my conclusions regarding boundaries which are associated with Nine Tribes territory in the Study Area.

1.3 Perspectives in Scholarship and Expert Witnesses

It is my understanding that scholars who act as expert witnesses are to assist decision-makers, and thus the broader society, by presenting their evidence, logic, methods, and conclusions clearly and transparently. While this report is not a court submission, it is clearly part of a legal dialogue. My participation is that of an academic expert, a role I take seriously. My allegiance in this matter is to the truth of history, as best as I can see it, and not to any current stakeholder in the debate. This research is conducted as part of my academic role at the University of British Columbia, and I have not received any compensation for this work, to minimize both the appearance and possibility of conflict of interest. See also the “Certificate of Expert Duty” included at Appendix 3 of this report.

This report also subscribes to academic standards of representation of data, evaluation of sources, and it builds out of a long sequence of peer-reviewed publications. Peer-review is uncommon in expert witness reports but is standard in academic forms of communication and publication. It requires that analyses be assessed by 2-4 external scholars with sufficient capacities to assess the claims of any document. Peer-review provides a reassurance that the claims of any document are logically coherent and consistent with the evidence presented and that they do not ignore contradictory data. Consult my CV (Appendix 2) for a list of my

peer-reviewed publications and the References Cited in Section 7 for those that are relevant to this analysis.

Menzies (2015) argues that academics tend to take up the concerns of the communities with whom they work, potentially becoming advocates for their views rather than neutral scholars. A similar dynamic exists in which scholars develop allegiance to their own hypotheses, a bias that impedes their ability to test their own ideas against data. It is, to some extent, a human predilection to adopt the perspective of people with whom you work closely and to defend one's interpretations. As Menzies notes, scholars' ability to work with communities is often informally contingent on the expectation that support for research will provide value to the community. This creates the opportunity for bias in academic analysis and expert opinion that every scholar is vulnerable to. There are avenues for minimizing the effect of such bias on both scholars and the consumers of scholarly output. These include:

- Making such vulnerabilities explicit at the outset for both individuals and scholars in general. Experts should serve the interests of improved understanding of issues, rather than specific contemporary constituents. In historical analyses, our highest allegiance is to the people of the past, to reproduce, as best we can, an understanding of their lives.
- Assessing representation in the analysis of data and avoiding errors of omission or selective use of sources, an error known colloquially as 'cherry-picking'. Comprehensive assessment of all available data is essential, and one of my efforts here is to both account for all the data at my disposal and identify data that are missing. New sources of data are also possible, and scholars must remain open to changing their analyses based on new primary evidence. See Section 2 for my assessment of the data relevant to this analysis.
- Recognition of the complexity of the task. History, like modern society, is complex, and we should not expect answers about what happened in the past to always be straightforward.
- Avoiding presentism, which is the tendency to interpret the past in logical frameworks that reflect modern sensibilities. See Section 1.7 for a discussion on this issue.
- Recognizing that historical events are interpretable within their own cultural context, and striving to understand that context as a logical avenue to understanding history. See Section 1.7 for an exploration of the Tsimshianic legal context necessary to evaluate the issues in this report.
- Assessing the source and value of any piece of historical information via a logically constructed and reproducible evaluation matrix. See Section 1.8 for a discussion of the logical matrix used here.
- Developing interpretations that are logically sound and representatively sampled. See Section 5 for my analysis of the relevant evidence and for the logic that I employ to assess the relevant issues.
- Testing hypotheses when possible. Refuting hypotheses is often logically easier than defending interpretations. The two work together since interpretations should be based on arguments that have been tested against data. In this analysis, I refute the Ministry's 2016 report's thesis that the Study Area was unambiguously owned by the Nisga'a using abundant contradictory evidence (including evidence presented in the Ministry's 2016 and past reports). Such a refutation is logically straightforward as it simply requires demonstration of contrary evidence. I also present an alternative

thesis, that the Study Area was owned by the Nine Tribes. This is logically more complicated, but I note that the preponderance of evidence supports this thesis and that the contrary evidence post dates sovereignty or does not demonstrate ownership in Tsimshianic law.

My approach to preparing this report has therefore been to: 1) present a model of the Tsimshianic legal system through which to understand the nature of claims made to the Study Area by Indigenous peoples, 2) develop a logical matrix through which contemporary and historical claims of ownership can be assessed, 3) assemble and review the relevant data from primary sources, original analyses, and derived sources, 4) outline the chronology of history to situate the timing of claims and the legal demonstration of claims, and 5) evaluate the merits of claims based on 1-4 to assess which claims were legally recognized before 1793 and 1846.

As I note in my analysis below (Section 5) logic is stronger when its inferential distance is minimized. Here, I sort the claims by time and proximity to Tsimshianic legal principles. Doing so reveals a clear pattern that, in my professional opinion, requires little interpretation: the Study Area has been owned by the Nine Tribes for thousands of years, with considerable evidence that this claim was established and defended in Tsimshianic law.

In contrast, there is very little evidence of ancient or historical claims to the Study Area by Nisga'a people or house groups. Rather, Nisga'a claims have been made through colonial legal avenues and largely post-date the founding of the mission town of Kincolith. I interpret this as evidence that the Nine Tribes have a stronger claim in Tsimshianic law and in ancient history before contact, at 1793 and 1846, and today.

1.4 Matters to Consider

I have been asked to assess certain issues regarding the Study Area, as defined above. These issues are listed in Section 1.1 and Appendix 1; I can summarize these as follows:

- What were the political and cultural polities (entities) over the time periods of interest (before 1793 and 1846 and today) and how do they relate to contemporary groups?
- Who used or occupied the Study Area in the time periods of interest?
- What was the nature of interaction between groups in the Study Area?
- What economic and resource-focused activities occurred in the Study Area over the time periods of interest?

As discussed in (Section 1.7), questions of settlement and use are connected to Tsimshianic legal principles of rights and titles, but not in and of themselves proof in Tsimshianic law. Rather, issues of rights and titles prior to 1793 and 1846, is determined by Tsimshianic law, which was the law of the land at these times with jurisdiction in the Study Area. How Tsimshianic law operates, its principles, and the nature and context in which evidence is presented, verified and transmitted is both a complex subject and one that is rarely referenced in non-Indigenous analyses of issues of ownership in the Study Area. Tsimshianic law is a full and complex legal system – see a detailed discussion in Section 1.7. The question of who has rights to the Study Area is more appropriately framed as who in Tsimshianic law recognizes as having ownership of or rights to the Study Area. Once we understand the legal system, sort the evidence by chronology and by proximity to Tsimshianic standards, we are better equipped to assess this issue and come to a reasoned conclusion.

It is important to note that within Tsimshianic law there are issues of contestation but, like any legal system, it also has mechanisms to address and reconcile these. Many authors have noted that ownership of the Study Area is deeply contested between the Nine Tribes and the Nisga'a, and there is a common expectation that there is valid evidence on both sides of this issue.

However, after considering the available evidence, the data sort clearly when assessed through Tsimshianic legal principles and time, and there is a consistent and singular answer to these matters: The Nine Tribes have the only ancient and enduring claim to the Study Area that is legitimated by Tsimshianic law, recorded in Tsimshian oral tradition (*adawx*), and demonstrated by occupation of the Study Area until the Kincolith mission was established in 1867.

Nine Tribes claim to and use of the Study Area extends back to before 3000 years ago and continues into the 20th century and to today. In contrast, there are no records of Nisga'a claims to the Study Area prior to the founding of the mission at Kincolith in 1867. As I explain in Section 5.6.2, there is one marginal claim by the house of Txalaxet, which appears to be a case of affinal privilege that was extinguished with the dissolution of the Gitwilkseba, sometime well before contact.

Other than this example, Nisga'a claims have been consistently made only through colonial legal avenues, and to non-Indigenous officials. Tellingly, in 1916 the Nisga'a and Nine Tribes chiefs met to discuss this conflict. As a witnessed meeting of peers, under the Tsimshianic legal system it was the venue or proceeding at which each was required to present and dispute their respective claims. The outcome therefore carried legal significance and consequences in Tsimshianic law. While the Nine Tribes chiefs presented their detailed *adawx* and legal records, the Nisga'a chiefs were largely silent (see Section 2.2.1 for further details of this meeting). I can only interpret the outcome of this legal proceeding as an acknowledgement that the Nisga'a claim has no basis in Tsimshianic law. If such basis exists, I have not seen it.

The Nisga'a at Kincolith have made contemporary claims to the Study Area through two primary avenues:

- To the Indian Reserve Commissioner Peter O'Reilly who allocated reserves in the Study Area to the Nisga'a of Kincolith to provide an economic foundation to the mission town. O'Reilly also acknowledged Nine Tribes claims to the Study Area and allocated several reserves to be used in common by Nisga'a and Nine Tribes. See Section 2.3 for my detailed analysis of this issue.
- To Marius Barbeau, a researcher who worked with Kincolith people and recorded their territorial claims on a map and in a series of recorded narratives. See Section 5.8 for my detailed analysis of this issue.

I have no preconceived bias in analyzing this issue. Indeed, I interpret the evidence discussed below as a common Indigenous response to colonization: leaders work diligently to help their communities address systemic constraints imposed upon them by colonial forces. The Nine Tribes have pursued this ambition through traditional law while the Nisga'a, especially those at Kincolith, have pursued it through colonial officials. However, in this report, I conclude that the only legal regime in operation prior to 1793 was Tsimshianic law which clearly designates the Study Area as belonging to the Nine Tribes house groups and not the Nisga'a. This legal system remained intact through 1846 and was only challenged with the Indian Reserve Commission's allocation of lands in 1881.

1.5 Definitions

In this report I use a suite of terms that benefit from definition:

- **Tsimshian:** I use this term to refer to the larger Tsimshian nations of the Northern Tsimshian (Nine Tribes), the Southern Tsimshian (Gitxaala and Gitga'ata), and the Interior Tsimshian (Kitsumkalum and Kitselas).
- **Northern Tsimshian and Nine Tribes:** I use these terms interchangeably to refer to the Nine Tribes represented by the Lax Kw'alaams and Metlakatla Indian Bands. These are Gitando, Gitzaxlaal, Gitsiis, Gitwilgyoots, Gitlaan, Gilutsaaw, Gitnadoiks, Ginaxangiik, and Gispaxlo'ots.
- **Tenth Tribe:** One tribe no longer exists: the Gitwilkseba. It was formed in the context of the War with the Tlingit, given lands by other groups, but ultimately failed to support themselves. Their houses and territories were absorbed back into the other Nine Tribes, in the aftermath of the War. Although the timing of this is not clear, I hypothesize that it was relatively shortly after the war, thus before 500 years ago. The HBC census of 1848 lists Nine Tribes people to identify with this house, because this ancestry is part of their history. See Section 5.4.3 for my more detailed analysis of the Gitwilkseba.
- **Tsimshianic:** I use this term to describe principles that are common across the Tsimshian world: Northern, Southern, and Interior Tsimshian, Nisga'a, and Gitxan.
- **Nisga'a:** the nation whose tribes and house groups are located on the lower Nass River. Sterritt et al (1998) define their territory's eastern boundary at the Cranberry River. In this report, I locate the western boundary at the eastern side of Fishery Bay.
- **Coast Tsimshian:** I use this term to refer to the Northern, Southern, and Interior Tsimshian collectively.
- **Adawx:** These are the legal and historical texts of Tsimshianic house groups that narrate their histories and define their territories and rights.
- **Nation:** I use this term, following Martindale and Marsden 2011, as synonymous with Indigenous-defined associations. The two nations of interest here are the alliance of Nine Tribes, and the Nisga'a.
- **Tribe:** I use this term not in its anthropological sense but as used by Tsimshianic groups to define an association of house groups managed by their constituent leaders. The highest ranked leader of the highest ranked house group acts as a Tribal chief (see Martindale et al 2019 for a more detailed discussion). Anthropologists would define these as local groups or village groups (Drucker 1983).
- **House group:** This is the primary rights-owning entity in Tsimshianic law. It is defined as the living members of an ancestral matrilineal lineage. Membership is by birth or, more rarely, adoption. The matriline is defined by a group of sisters and their daughters and granddaughters (etc.) and by the brothers at each generation. Note that the Tsimshian kinship system is both matrilineal (inheritance passes only through the female line), patrilocal for females (women live in the houses of their husbands), and avunculocal for males (men live with their brothers and maternal uncles once they come of age). This pattern is illustrated as co-resident houses of brothers living with their wives (who belong to other house groups), their daughters (who belong to their house group but move when they get married), their young sons (who belong to the

house groups of their mothers and who move to their uncles houses when they come of age), and their nephews (the sons of their sisters who grow up in the houses of their fathers but who move to the houses of their uncles when they come of age and whose wives join them when they get married). It is a complex but logical system that is necessary to understand to in turn understand Tsimshianic legal principles. For example, as a response to depopulation during the colonial era, fathers at times adopted their own sons into their matrilineal lines to take positions of office that had no matrilineal heirs. It is important to remember that legal claims can only be inherited matrilineally.

- **Clan:** Clans are ancestral divisions that define marriage exogamy (people cannot marry within their own clans), and ancestral identity but which do not have legal roles. The Tsimshian have 4 that are known by their most ancestral crest images: Raven, Wolf, Eagle, Blackfish (coast)/Fireweed (interior). There are three known exceptions to this. In earlier times, before the War with the Tlingit (see Section 1.6.1), Nine Tribes villages were single clan communities (see Martindale et al 2017a) – a pattern that continues in some Tsimshianic communities such as the Gitxaala (Menzies 2016). In recent times, Nine Tribes were composed of house groups from all four clans. Second, Haimas (see Section 5.4.1) is known to have created a Raven clan-based community of warriors that participated in the War with the Tlingit. Third, Ligeex (see Section 5.4.2) is known to have created an Eagle clan trading alliance during the fur trade era of the early 19th century. It is important to remember that clans are not rights-owning entities.
- **Orthography:** Many Tsimshian names and place names have different orthographic iterations. I have tried to maintain consistency in my use of these, but where I quote from the records and work of others, I use the published forms. This creates some difference in how the same names are spelled.

1.6 Historical Context

There is an inherent suite of contradictions in the effort to understand history. This is not to say that history is not understandable, nor able to resolve complex questions such as who owns a specific territory (even a territory in dispute as between parties) but rather that such tasks are not simple.

The temptation is to expect that history is both self-evident and straightforward. In this context, I use the concept of “history” beyond simply a recounting of events. Rather, history is the understanding of the context in which events were meaningful to the people involved, and the cultural implications of such meaningfulness. Thus, history extends beyond events and individuals and includes abstractions such as frameworks of understanding, cultural coherence, shared logic and meaning systems.

1.6.1 Who Are the Nine Tribes?

The Nine Tribes are the traditional political, social, economic, spiritual, historical, and legal entities whose modern population and leadership include the Lax Kw’alaams and Metlakatla Indian Bands. As discussed in Section 1.5 and 1.7, the Nine Tribes are a complex and interconnected web of relationships. Foundational to these are their constituent house groups, the territorial and rights owning entities within Tsimshianic society. I explain this issue in a recent article (Martindale et al 2019):

In order to evaluate how tribes responded to colonization, it is necessary to define them in social, legal, and historical terms. Socially, Tsimshian tribes are not synonymous with

anthropological constructs, US legal definitions, or with vernacular non-Tsimshian usage. Tsimshian people and their governments use the term *tribe* as an Anglicization of the Sm'algayax word *galts'ap* (*contra* Halpin & Seguin 1990, 274), which refers to one of a series of nested and interconnected political entities in Tsimshian society. The *galts'ap* are associations of *wilnat'aal* or lineages, which are themselves associations of *wilp/walp* or house groups. House groups are thus the coresident elements of the intergenerational lineage, which have allied to form tribes. This nested arrangement is crosscut by clan identities, which are ancestral exogamous associations that link closely related lineages through connection to spiritual beings/communities. Importantly, lineages within tribes are not all from the same clan; indeed all four clans are usually represented in each tribe, at least in its contemporary manifestation. It is also significant that the territorial owning entity in Tsimshian law is the house group, not the lineage, tribe, clan or individual. This complex arrangement was managed in traditional society matrilineally and with avunculocality for men and patrilocality for women. This means that house groups are defined by their constituent female siblings and transmitted from mother to daughter, creating matriline (see Rosman & Rubel 1971). However, since marriages are patrilocal, the women of a matriline did not traditionally live in their house groups, but in the house groups of their husbands. The house group as a residential entity that coresides in the physical houses was composed of the brothers of the matriline, their wives and children who belong to the matriline of their wives. The house group was avunculocal, which means that when boys came of age they left the home of their father (who belongs to a different lineage) and returned to the ancestral home of their uncles, the male representatives of their matriline.

The social entity that is the tribe is thus a product of a Tsimshian legal system in which rights, including title rights, were held by house groups collectively, as the living representatives of ancestral matriline. Rights include territory (both land and water) from which to extract resources and on which to build settlements and live. Although title rights confer access to resources, they appear to have been conceived of via a spiritual lens in which humans find or negotiate acceptance with the spiritual beings whose realms are accessible via portals in territorial spaces (Marsden 2002). Tsimshian law also includes a category of right referred to as a privilege, an agreement to allow other lineages access to one's territory (Sterritt et al. 1998). Privilege was a kind of usufructuary right, often between affines, that was often perpetuated intergenerationally; but it was not an inheritable right. Both rights and privilege are important in the understanding of tribes since tribes are associations of lineages and house groups that often have conjoining territory. While tribes do not own territory, the territories of their constituent house groups represent a larger contiguous space, a tribal territory in which privilege mediates access.

The history of the concept of tribes is complex but relevant to this analysis, for it is in the development of this sociopolitical construct that we see patterns that recur in response to the intrusion of colonial settlers. Oral records indicate that at some point in the mid-Holocene, larger aggregations of lineages formed in response to emerging networks of trade and ceremonialism (Martindale et al. 2017a). These are associated with the emergence of larger village forms, although the spatial data of this period is modest in part because these components are often buried under later settlements. What is clear is that population and settlement frequencies increase dramatically from around 4,000 to 2,000 years ago, likely due in part to the arrival of waves of newcomers from the north (Martindale & Marsden 2003). By 2000 BP, the settlement pattern had expanded with villages across the coastal territory and concentrations of settlement in the Prince Rupert Harbour, Dundas, and Stephens Passage areas. This pattern of small villages associated with land ownership and large villages in clustered regions came to a dramatic end after 1500 BP, when war broke out between the Tsimshian and northern invaders, who are referred to as the Tlingit in the oral record (Marsden 2000, 2001). The conflict spread across Tsimshian territory and resulted in a wholesale retreat from the coastal region by Tsimshian house groups into the Skeena Valley (Martindale et al., 2017b).

The war transformed the spatial and political landscape (Marsden 2000). This trend is visible in settlement patterns (Martindale et al., 2017b). The oral record describes how both the southern and the northern Tsimshian formed local alliances and launched

counterattacks against the invaders, eventually driving them out of their territory. The northern communities had borne the brunt of the invasion, and upon reclaiming their lands these Tsimshian groups did not rebuild their settlements throughout their territories. Rather, they relocated to the more defensible Metlakatla Pass region of the Prince Rupert Harbour, where they constructed permanent villages from which they traveled to their lands for resources, establishing the seasonal logistical pattern identified in the ethnohistoric records (Halpin & Seguin 1990).

The northern communities who had retreated into the Skeena Valley formed an alliance that was distinct from their southern neighbors and included ten tribes (Gitwilgyoots, Ginax'angiik, Gitnadoiks, Gitzaxlaał, Giluts'aaw, Git'iis, Gispaxlo'ots, Gitlaan, Gitando, and Gitwilkseba). The latter was comprised largely of earlier northern migrants who had become integrated into Tsimshian territory via gifts of land from extant house groups. It did not remain viable and these lands and people were reabsorbed, leaving nine tribes. Thus, by 1100 BP, the northern Tsimshian had formed a military alliance that had transformed into a parliamentary association of ten, later nine, tribes. The Nine Tribes alliance was in place when Europeans first appeared in the northern territories, and remains the traditional leadership of the northern Tsimshian, represented by the Lax Kw'alaams and Metlakatla First Nations.

1.6.2 Historical Approach to Tsimshianic Legal Issues

History, in the sense noted in Section 1.6, can be experienced differently by different people and can have contesting interpretations both to descendants and to the participants of the past. Understanding history is a large task made more difficult by the often non-representative sample of data from historical records.

However, to understand who owned territory in the past, we must consider such cultural constructions and the challenges of sampling from incomplete records and different points of view. We are assisted in this specific matter, of who owned the Study Area, by the well-developed Tsimshianic legal system (see Section 1.7). There was a collectively-agreed upon process for determining rights in Tsimshianic territory, thus our question can be narrowed to “who did the legal system of the past attribute ownership of the Study Area to?”

This is an essential point developed further in Section 1.8: assessing ownership of the Study Area in history requires a logical matrix that considers Tsimshianic legal principles, legal forms of record and demonstration of claims, and an understanding of the chronology of events in Tsimshian history.

This work and my scholarship are based on a review of documentary sources available to me. From these I have constructed a view of Tsimshianic legal principles and legal history. A source that I do not use, but which is a similar authority on these matters, is the knowledge held by Tsimshian people, especially traditional leaders. I do not have access to this knowledge for this report, and as a result, I may have details in error or make omissions. However, I am confident that I have presented the primary data correctly, data which capture the voices and knowledge of earlier generations of Tsimshianic leaders. I argue that the broad patterns of my conclusions are thus, both correct as assessments of records and accurate in their depiction of the main principles of Tsimshianic law and history.

The existence of a formal and logical Tsimshianic legal system defines the following:

- 1) Everything was owned by someone. In fact, the rights-owning entity in Tsimshianic law was the House Group (see Section 1.5). Only House Groups, the living population of ancestral lineages owned territorial rights. Clans, tribes, villages, bands, and individuals could not own territory under Tsimshianic law, though they often came to do so once British and Canadian law gained traction in indigenous affairs. There is some evidence that the political entity of the Tribe was developing territory in common,

but the evidence of this is minimal. Like any legal system, Tsimshianic law evolved over time, though all evidence suggests that the system was generally stable over thousands of years.

- 2) A legal system existed to identify rights-owners, to demonstrate ownership such rights to others and to transmit ownership of such rights to heirs.
- 3) Conflicts over territorial rights were legal conflicts, resolvable through the Tsimshianic legal system.
- 4) Although rights in Tsimshianic law were largely stable, there were mechanisms by which rights could be transferred between House Groups.

In the following sections, I have presented my understanding of the Tsimshianic legal context and the evidence available to me. I have then sorted these data temporally and spatially to create a historical matrix that extends back to before the mid-18th century and into the mid-20th century. I have then assessed the conclusions of the 2016 Ministry report and provide an opinion of my own.

1.7 An Overview of Tsimshianic Legal Principles and Practices from Published Sources.¹

The assessment of aboriginal rights, including title rights, is often considered a subject within Canadian law. However, it is important to know that the Tsimshianic peoples, (Tsimshian, Gixsan, Nisga'a) also had, and indeed still have, a legal system that existed prior to, and still operates in parallel with, Canadian law.

Much of the data on this and other issues of Aboriginal rights in this region exists in the context of Tsimshianic law. This is especially true of oral testimony recorded as *adawx* or otherwise by hereditary leaders. The record of statements by Tsimshianic people invoked to justify ownership of territory frequently does so to meet the standards of Tsimshian law, not Canadian law.

The key issue for this analysis is that claims predating 1846 and 1793 were defined by the Tsimshianic legal system (which included both the Nine Tribes and the Nisga'a house groups); thus, an understanding of this legal system and its practices and principles is a necessary precursor to evaluating claims of ownership and rights.

Only some of the scholars who have produced original analyses (MacDonald, Marsden, Sterritt) show any clear and consistent awareness of the significance and operation of Tsimshianic law in their work. None of the derived sources or any of the other original analyses demonstrate a coherent understanding of Tsimshianic law or apply its principles to their analyses. As a result, their work is inconsistent and at times incorrect on the matters to consider in this analysis.

1.7.1 Summary of Tsimshianic Legal Practices and Principles

This review summarizes the Tsimshian legal principles outlined in Martindale and Marsden (2011) as an introduction to Tsimshian legal practice and concepts. This analysis is divided into two sections. The first section describes legal practices and the second describes legal principles.

¹ This Section derives from a brief I composed in 2014 and revised in 2015. It was circulated to a few colleagues, but not distributed widely. This is a revised version.

The reader is cautioned that a) these are complex issues in their own right and b) understanding one culture from perspective of a second, such as would occur if a non-Tsimshian person attempts to understand Tsimshian culture, is vulnerable to oversimplification and ethnocentrism, specifically the universalizing of one's cultural values and assumptions as being normal standards for humanity. As a result, this report is an effort at translation between two cultural frames: Tsimshian and Euro-Canadian.

This latter point is a central anthropological tenet, and one that is worthy of consideration since the exercise of translation is complex. It is widely believed that universal cultural principles are both pervasive and self-evident, but anthropologists caution that the expectation of universality often emerges from a culturally specific context such that what is perceived to be normal or natural for humans is often an arbitrary cultural construct. Thus ethnology (the study of human cultural variation) suggests that the expectation that culture is the local manifestation of universal human tendencies is inverted and instead culture lays the philosophical foundation that creates the appearance of universality in human nature.

This phenomenon has two implications for translation: 1) observers are always vulnerable to the ethnocentrism of their own cultural perspective, and 2) universal principles may well exist, but they are likely to be in the form of the effect of culture on humanity rather than the content of human culture. For example, culture must facilitate human survival (the universal effect), but it does not universally do so in the manner that many western social scientists hypothesize via an analogy to the mechanisms of biological evolution (the cultural content of western culture). Readers should refer to Rosen (2006) for a more detailed discussion of this issue.

The Tsimshian legal system is characterized by the following principles:

- Tsimshian people have a legal system in the full sense of the term: it is jurisprudent such that it is founded upon deliberated principles of justice derived from history and the scholarship of human nature and society. It negotiates and applies the concepts of collective and individual rights, as well as a wide array of relational principles.
- Tsimshian law achieves much of what other legal systems do: it adjudicates disputes and establishes appropriate as well as sanctioned behaviour and practice.
- It is cumulative scholarship that reflects social values: although Tsimshian history is marked by remarkable continuity over millennia, Tsimshian law refers to precedence and thus accommodates flexibility.
- Tsimshian law is integrated throughout society and culture: the Tsimshian legal system is not as visible as a separate entity as is the modern Euro-Canadian justice system. However, it functions systematically and it is manifest and related to all forms of cultural principle.
- Law is a cultural domain (Rosen 2006:4): thus an understanding of Tsimshian law benefits from an understanding of Tsimshian culture and its philosophical tenets.

1.7.2 Central Tsimshian Legal Practices from Published Sources

Tsimshian legal practices (*sensu lato*) and laws exist as both legal conventions (rules that apply) and case law (precedent). They are enshrined in principles and culture, but there is no single authoritative source that summarizes them. The formal nature of Tsimshian law has not always been evident to non-Tsimshian people. Tsimshian legal principles are identifiable within the corpus of oral records (*adawx*) of the Tsimshian as well as in the analysis of some ethnographic observers. We can divide Tsimshian law into subsections. Here I focus on three: rights/title, criminality, and social law.

1.7.2.1 Land and marine territories are owned.

All parts of Tsimshian territory are owned and have been since the earliest times, likely since the beginning of human occupation on the landscape in the early Post-glacial era (over 10,000 years ago). The *adawx* indicate that the first Tsimshian defined the landscape features and marked boundaries of ownership. As Sterritt et al (1998) note in their analysis, Indigenous people have been making the case for both the existence of a system of land tenure and the specific forms of title that it recognized since they first encountered Europeans more than two centuries ago.

1.7.2.2 There is no common land in Tsimshian law.

The idea that some parts of the Tsimshian territory were held in common or as un-owned areas has been refuted in Martindale and Marsden 2011 (page 73-74). The idea appears to have been a misunderstanding of the practice of either general use of one house group's territory by other members of the Nine Tribes (such as at Lax Kw'alaams) or the dense subdivision of land into small parcels for large annual gatherings (such as at the eulachon fishery/trade fair in the Nass River estuary). Susan Marsden corrected this error in conversation with tribal chiefs of the Nine Tribes in the 1990s (ibid.). Indeed, her summary of house group territories shows no such thing as common land. Since title confers rights to resources, common access to resources is also not legally possible in Tsimshian law. Marine and terrestrial areas and the resources therein are owned by house groups.

1.7.2.3 The concept of Tribal land may be emerging.

As noted in the previous point, rights, including title rights, are held by house group lineages. As Martindale et al (2017a) argue, these are ancient social and legal constructs that appear in the earliest histories. In contrast, Tribal identity is a relatively recent phenomenon that took on greater meaning after the resolution of the War with the Tlingits (see Marsden 2000) and the creation of the Nine Tribes (originally Ten Tribes) alliance about 1000 years ago. Beynon (Beynon Manuscript #166) notes that there are some reference to tribally shared lands. It is not clear how these two intersect. References to Tribal lands may be simply a shorthand for practices that had no title implications, or they could be an emerging construct in Tsimshianic law.

1.7.2.4 Ownership is collective for the house group.

Ownership is held collectively by an extended family unit known as a house group (Martindale et al 2017a; Martindale and Marsden 2011; Sterritt et al 1998). The construct of house groups is ancient and extends back to the beginning of recorded Tsimshian history. Tsimshian society is organized in several entities which coalesce and cross-cut (see, "Entities within Tsimshian society have different legal roles" below), but the title owning entity is the extended family house group. House groups exist as intergenerational households, often co-resident; but they are also descent communities that trace a common history via the *adawx*.

House groups are comprised of different roles for individuals both within the house groups and as positions of responsibility in the larger entities (village group/tribe, nation, etc.) of which the house group is a member.

However, these individuals do not own title, except on behalf of the house group. Thus, ownership is identified and traced historically via the house group, all members of which have equal access to the rights and titles held by the house group. However, no one individual can 'own' any of these rights or titles. The idea of common ground or territory owned by groups of house groups was proposed in error in the 1980's. The Tsimshian have no such concept; all territory is owned by house groups and all parts of Tsimshian territory are owned.

1.7.2.5 *Clans, tribes, and individuals are not title owning entities.*

To many outsiders, the most apparent Tsimshian social entities are clans and tribes, but these are not title-owning units. Clans are ancestral lineage affiliations that subdivide all Tsimshian individuals into four exogamous (marriage is not allowed within) groups. Each clan is known by its major crest (*ganhada* [Raven]; *laxgibuu* [Wolf]; *laxskiik* [Eagle]; *gispwudwada* [Killerwhale]). Clan identity extends beyond the Tsimshian nations and across the region, allowing marriage to occur between widely distributed groups.

It is very rare for individuals to associate in collective action based on shared clan identity – only two cases are known, a Raven group led by Haimas' and an Eagle group led by Ligeex. Tribes are village groups (and thus not tribes in the anthropological sense). Currently there are nine tribes in the Northern Tsimshian² alliance (Gitwilgyoots, Gitzaxłaał, Gits'iis, Ginaxangiik, Gitnadoiks, Gitando, Gispaxlo'ots, Giluts'aaw, Gitlaan; a tenth tribe, Gitwilkseba appeared for a short time after the formation of the defensive alliance (see Martindale and Marsden 2003) but failed to sustain itself, and its houses were absorbed into the established tribes).

Tribes are composed of house groups, the title-owning entities. House groups are ranked within tribes and the tribal chiefs and headmen are selected from the most powerful of these. The tribe is thus a composite of many different house groups, each with its own clan identity. Thus, a tribe does not have a single clan identity, but it is sometimes associated with the clan identity of its chief (and thus its leading house group). There is some evidence to suggest that tribes were once single-clan entities, but this is not the case, and has not been for at least 1000 years (it likely coincides with the development of the defensive alliance, see Martindale and Marsden 2003). Although tribes are associations of house groups, they do act as coordinated entities under the leadership of their chiefs in some matters.

Importantly, however, house group rights of title are beyond the purview of tribal leaders (except as extends to their own house groups). Similarly, individuals do not hold and cannot inherit or transfer the rights or titles of the house group. Individuals share these rights as members of a house groups. If they change house groups, they either leave their rights behind, or share the rights of two house groups for only the duration of their lives. Even adoption (see below) cannot transfer rights out of or into a house group.

1.7.2.6 *Title is related to but not synonymous with resource use.*

One of the principal reasons for title is to own resources (although there are other reasons). In literature and action, resource use and title can be synonymous, but the relationship is complex. House groups use the resources of their terrestrial and marine territories as the foundation of their economies (food for consumption, storage, exchange, trade, and to fund occupational specialization and discretionary activities beyond food production). Thus, use of resources can signal title. There are however, three exceptions to this principle: 1) privilege, 2) transgression, and 3) post-colonial transformations.

- **Privilege.** House groups can confer privilege (see “Legal negotiations often invoke the concept of privilege” in Section 1.7.3.4 below) to guests permitting a range of activities in their terrestrial and marine territories including the privilege of transit, short term residence, long term residence, annual residence, resource collection, etc. As

² Note that the Anglicized names of the alliance are numerous. “Coast Tsimshian” is preferred by some, but Franz Boas (1916) used this term to describe a linguistic division that may not be entirely coincident with the Nine Tribes. Martindale and Marsden (2011) propose the use of Northern Tsimshian to avoid confusion.

noted below, privilege is granted by the house group, not individuals, and is renegotiated for renewal upon the death of the guest. Note that long-term reciprocal relations of privilege can perpetuate in this fashion for many generations, but can be terminated at the will of the title holding house group (see Martindale and MacDonald 2013 for an example of this termination).

- **Transgression.** Entry into another house group's territory without permission or without seeking permission is trespass. Prior to enforcement of colonial law, trespass was punishable by death.
- **Post-colonial transformations.** Tsimshian legal practices (but not necessarily Tsimshian law) changed after colonization, which resulted in massive transgressions on house group title and the eroding of some legal activities of enforcement. For example, the Tsimshian legal right of killing trespassers became criminalized as murder after colonization. In addition, the settlement and urbanization of the landscape obscured and ignored house group title. In addition, many Indigenous peoples moved into new cities, towns, canneries, etc. in contradiction of Tsimshian law, but with permission of colonial authorities. These actions occurred after 1793 and frequently after 1846, and thus have no bearing on the issue of rights and ownership in Tsimshian law.

1.7.2.7 *Inheritance is matrilineal.*

House groups are matrilineal lineages in which the 'spine' of inheritance is mother-daughter links. In practice, this translates into descent between groups of sisters or female parallel cousins and their daughters (descent) from their mothers (inheritance). Men belong to their mother's house groups, not their wives'; however, residence is patrilocal (wives live with their husbands) which means that the co-resident household is a group of brothers/uncles/nephews related matrilineally and living with their wives (who represent different house groups).

This creates two important legal constructs: 1) patrilineal inheritance is irrelevant in Tsimshian law, though it is important socially and 2) the matrilineal/patrilocal system generates proximity between two house groups that marry (the children of fathers become members of the mother's house group. Conflicts can be resolved intergenerationally via marriage as the children of such alliances become members of each other's group. Tsimshian history has examples of this principle in practice to create alliances between house groups (and thus tribes and even nations) via marriage.

Point 1 above is significant as it contrasts with colonial law. Thus, in post-colonial times using Euro-Canadian law, individuals may have tried and may have succeeded in inheriting rights patrilineally, but this practice is not legal in Tsimshian law.

1.7.2.8 *Political transformations rarely change title because house group rights and titles are non-transferable (with three exceptions).*

The construct of the house group and its rights and titles is very stable through time in part because members of the house group do not own rights or titles as individuals. Thus a house group may lose or gain individuals via processes of (for example) adoption or marriage, but the rights and titles (i.e., territory) of the house group remains intact.

Chiefs of tribes (collections of house groups) may speak as representatives for the tribe, but they do not own and cannot discharge the rights and titles of their own house group (as these are owned by the group and such changes require a collective approval) or the rights and titles of other house groups within the tribe (as these are owned by a different house group

than their own). Indeed, much of Tsimshian history is about the origin, establishment, accommodation of newcomers into, and defense of the house groups' rights and titles (i.e. territory) rather than the individuals within house groups. The obligation of house group members (especially chiefs) is to pass on to the next generation the intact house group's rights and titles.

Territory can be transferred between house groups in three contexts: 1) as compensation for a crime or debt, and 2) as part of peace negotiations after war to accommodate allies, especially newcomers, and 3) in cases where a house group population has been decimated (by war, for example) and is no longer viable. In the latter, the house group may become absorbed by a close peer group (thereby creating an expanded house group) or broken up and divided between other groups (this occurs only after war – and is the foundation of existing competing claims/overlaps in Tsimshian territory, of which there are three: see Martindale and Marsden 2011).

1.7.2.9 *Rights and titles are publicly acknowledged (via ceremonies) and recorded (via adawx).*

House group ownership or rights and titles are continually re-stated in ceremony (aka potlatches or feasts) in which the histories of the house group (*adawx*) are retold to an appropriate audience of witnesses. This is the core of the Tsimshianic legal system: a collective presentation and witnessing of facts, via history, of who (i.e., house group) owns what. Importantly, such presentations are conducted in the context of peers whose interests abut that of the presenting house group. This means that ceremonies a) re-enshrine rights and titles, b) represent legal negotiations when there are conflicts, and c) provide a record within each house group's *adawx* of their own rights and titles and that of their peers. This creates an integrated network of knowledge in which everybody knows (and records) the rights and titles of their peers.

Thus, the *adawx* are legal documents that individually record rights and titles and collectively present the corpus of ownership. It is important to note that ceremonies (meetings/feasts) represent the main venue for presenting and disputing legal claims. With appropriate witnesses (peers of similar rank and those whose legal interests are impacted by any claims made), house groups present their claims and the supporting histories (*adawx*) that define them. Witnesses approve such claims or dispute them, as warranted. Disputes are rare since the legal system works in all directions (witnesses become claimants in other contexts) and can lead to economic or military reprisals. Thus, a history of Tsimshianic legal decisions can be seen as a history of feasts in which the history of such claims is acknowledged.

As Sterritt et al (1998) note, when Indigenous meetings and feasts were banned by the Canadian government between 1880 and 1951, Tsimshianic peoples were prevented from acting as witnesses to legal claims. They argue that, as a result, Nisga'a people expanded their claims of ownership eastward into Gitanyow (Gitxan) territory.

1.7.2.10 *Agreements between house groups include trade alliances and granting of privilege.*

Various agreements analogous to contracts are known to exist between house groups. Agreements to trade resources and permission to access rights (territorial or resource) are common forms of such contracts. These are reciprocations, though not always of similar form (food for food), but can take on any mutually acceptable exchange. Usually such agreements exist between house groups that have some social proximity (i.e., via marriage), but such agreements can also create social proximity when the interests of two socially distant house groups align.

Agreements of privilege allow non-members of a house group to have access to a house group's territory for resource collection, temporary resident, transit, etc. Such agreements last for a fixed duration, often the lifetime of the individuals involved, but they can be renegotiated through generations in a manner that creates a long-term use of rights that do not belong to the individuals of house groups gaining the privilege.

For example, the Nass River eulachon fishery attracted many neighbouring peoples to visit Nine Tribes territory for trade. To get to the Nass River fishery location, these neighbours would acquire rights of transit through territory and rights to camp and extract resources in specific locations. These privileges may have been continually renegotiated to allow neighbouring groups use of Nine Tribes territory through many generations, but they did not transfer any rights of titles to these groups.

1.7.2.11 *Illegal actions create a collective responsibility.*

Illegal actions and even accidents between individuals create a debt between house groups that is resolved via negotiations the resolution of which is confirmed at public ceremonies. Unresolved debts linger across generations and can be the cause of war many years after the original event. Thus, crimes are punished via compensation (peacefully) or retribution (via war).

1.7.2.12 *Trespass is a crime.*

House group territory (i.e., its rights and titles) is sacrosanct. Individuals who enter the territory of another must a) have an established agreement for the privilege of doing so, b) actively seek such an agreement, or c) be subject to retribution. Prior to contact, the penalty for trespass was death on sight. This illustrates both the definitive nature of territory (boundaries were well-established and known) and the significance of territorial integrity (triggering one of the severest forms of punishment). Importantly, as European law made the penalty for trespass illegal (i.e. defined it as murder), house groups' ability to defend their territory from acts of trespass was weakened in the post-contact era.

1.7.2.13 *Adoption is a formal process that does not transfer rights and titles between house groups.*

House groups can formally add individuals via adoption and did so in the post-contact period as a result of depopulation from war and disease (i.e., too few people to fill roles within house groups from within the house group). Importantly, if individuals transfer between house groups or take on responsibilities in more than one house group, the rights and titles do not transfer between the house groups or to the individuals. This issue was complicated by the pattern of adopting sons into their father's house group (i.e., in opposition to the principle of matrilineality). This created a patrilineal link that could be recognized in European law, but had no legitimacy for the transfer of rights and titles in Tsimshian law.

1.7.3 *Central Tsimshian Legal Principles from Published Sources*

The effort to locate and describe Tsimshian legal principles is complex. The primary sources for this summary are Martindale and Marsden (2011), Sterritt et al (1998), Roth (2002), and Cove (1987), all of which provide detailed bibliographies.

1.7.3.1 *Tsimshian law is negotiated law between parties; there is no role for judges or arbiters.*

Legal disputes are raised between affected parties and resolution is negotiated between them with reference to legal principles and past precedent. For example, accidental death by one

person of another generally results in compensation by the family of the responsible party to the family of the deceased. The nature and value of this compensation will be contingent upon the status of the individuals involved, the relationship between the two parties (both individuals and families), the circumstances of the death and the weighing of responsibility, the historic forms of such compensation in similar situations, the overarching principles of Tsimshian law that define the nature of responsibility between individuals, and the declared responsibility of the principals involved.

Weighing such factors, the parties negotiate compensation and each has the option of a) accepting compensation and declaring the debt resolved, b) rejecting the compensation as inadequate and declaring the debt unresolved, or c) accepting inadequate compensation and declaring an unresolved debt. Both forms b and c, can create longstanding disputes between parties that can result in other forms of conflict such as the unilateral taking of compensation and even war. Negotiations are at times referred to by the Tsimshian as part of the “work” done at ceremonial meetings.

1.7.3.2 *Witnessing is an important legal role.*

Although there is no independent arbitrator role in Tsimshian law, there is a role for outside, but situated views. Peer groups act as witnesses and have influence over proceedings as well as conferring approval of any resolutions. The role of witness is both prestigious and central and has similarities to that of a juridical role; that is, discussions with legal implications cannot be resolved without a mutually agreed upon and appropriate witness or witnesses. “Appropriate” here refers to a witness who is of sufficient rank and merit to provide a view that will be widely accepted beyond simply the participants. Witnesses are not individuals but other groups, although they are represented by their leading figure or chief.

1.7.3.3 *Entities within Tsimshian Society have different legal roles.*

Tsimshian society is composed of a range of relational forms, the principles of which are (from small to large scale):

- **Individuals.** Individuals are born into families and into roles within the larger scales. Different forms of these produce different legal contexts. A visible example is status: people born into nobility, commoner or slave parents will have different opportunities.
- **Families.** Families are ranked through systems of relative status and take on different roles within different scales depending on this status. Status emerges from ancestral ranks, which emerges from history, thus there is some opportunity for mobility in the status system, although it is generally very conservative and stable.
- **Extended family.** The nuclear family is a sub-unit of the larger extended family. Tsimshian law recognizes matrilineality, so families are defined by the genealogy of mothers to daughters. Men’s roles are within their mother/sister’s lineages; their father’s lineage is affinal (in-laws).
- **House group.** An extended family generally comprises the house group: the living group of relations who collectively own rights (including title) and who are administered and led by a chief (usually the highest-ranking male in the matriline).
- **Lineage.** Ancestral populations of house groups form a lineage. The *adawx* are principally the histories of house groups.
- **Village.** A set of closely linked house groups forms a co-resident village group or a local group for at least part of the year.

- **Tribe.** Villages are the settlement manifestation of tribes: the alliance of house groups that operates as an entity in some contexts. Tribes are led by the highest ranking member of the highest ranking house group and take that person's title as the name of the tribe. Tribes act in concert in many contexts, but do not share rights or title, as these are owned by house groups alone. However, tribes generally comprise house groups with contiguous territories such that the concept of tribal territory is a simplification of the collective face of house group ownership.
- **Clan.** Lineage ancestry is linked across one of four larger ancestral entities that share common origin called clans. Clans represent a form of cultural proximity in some ways (they are exogamous – a person cannot marry within their clan) but not in others (clans do not necessarily correlate with social or political allegiance). It is likely that at one time, Tsimshian tribes were comprised of house groups of the same clan, but this has not been true for at least 1000 years (Martindale et al 2017a). In the recent (i.e., post-1000 years ago) period, tribes and villages became comprised of house groups and lineages of different clans. Clan identity retains important philosophical and spiritual dimensions but lacks social and political significance when compared to tribes.
- **Nation.** Tribes that have long shared histories and act in concert in some contexts (such as relations beyond the nation) are nations in the anthropological sense (though not synonymous with the Canadian legal construct of First Nation). In this sense, nations are political alliances of tribes as well as communities of cultural proximity. The Nine Tribes of the Coast Tsimshian are a nation in this sense, and they are represented by the Lax Kw'alaams and Metlakatla Indian Bands (both of which are post-colonial inventions).
- **Interaction sphere.** Tsimshian people have historically interacted with a wide range of peoples from a large area. Generally spatial proximity correlates with socio-political and cultural proximity such that Nine Tribes people generally have had closer relations with Interior and Southern Tsimshian nations than, for example more distant nations such as the Haida. Such relations can become standardized and result in shared capacity for legal and economic relations.

1.7.3.4 *Legal negotiations often invoke the concept of privilege.*

Different legal entities within Tsimshian society engage in relationships of transaction or exchange in which the concept of privilege is invoked. Privilege is the legal obligation of compensation in return for some boon. Thus, the privilege of being granted the boon creates an obligation of payment. However, the concept is more complex than a simple fee for service.

Indeed, relations of privilege are often intergenerational, creating an expectation that a legal arrangement can be renegotiated after the death of the original parties (note that such arrangements carry no legal obligation beyond the lifespan of the individuals, so privilege is not a right to something, simply an opportunity to ask). Privilege also conveys the sense that what is being given access to is curated by its owners (see Sterritt et al 1998). Thus, a common class of privilege agreements involves access to territory (there are a range of these, for simply moving through, to temporary residence en route to resource collection, etc.). The privilege thus belongs to the house group owners of the territory, but can be extended to guests as part of negotiated agreements that are often reciprocal in some manner. Thus, privilege contains within it principles of balance and responsibility.

1.7.3.5 *Legal resolutions to disputes and negotiations are advanced via formal face-to-face meetings, sometimes over many years or even generations.*

The ceremonial feast, often referred to as the potlatch, is a class of gatherings that includes resolution of issues of jurisprudence. Judicial negotiations can coincide with other purposes such as parliamentary discussions of collective policy and practice, negotiations of trade, alliance building including toward a specific purpose such as war, ceremonial recognition of individual ascension to formal roles, marriage, education and discussion of scholarly knowledge, assertion of legal rights including title via recitation of formal texts (*adawx*). Such meetings are arranged to include the relevant participants in the resolution of the specific issue.

For example, in the case of accidental death discussed above, if a resolution was achieved, it would be formally recognized in a ceremonial feast in which (among other things) the shared history of the two groups would be recounted and re-established, the principles of Tsimshian law that applied to such cases would be reviewed and the specific cases re-examined, and the evidence of the specific event would be presented and reviewed along with all the relevant issues (such as the status of the individuals, the nature of their relationship and the purpose of their activities).

The acknowledgement of responsibility would be made from all parties, and the legal agreement for compensation would be presented and discussed. Finally, the aggrieved parties would formally accept the compensation and the matter would become closed and archived as precedent. Such meetings can take many days, even for a relatively minor issue such as compensation for accidental death. In the case of more significant negotiations, such as resolution of war or creation of alliance, the negotiations often required many meetings/ceremonies. In some cases, such as a resolution for war triggered by a transgression of rights, the resolution may come many generations after the original event.

1.7.3.6 *Adawx are records of case law and legal resolutions.*

It is difficult for people who live in the context of written documents to imagine that cumulative scholarship is possible in its absence (Menzies and Martindale 2019). However, anthropologists and historians recognize many such examples of capacities for recollection and formal recording of knowledge in the absence of writing. Tsimshian oral records, *adawx*, are one such example.

They are formal texts in the sense that they contain specific information, specific language, specific narratives of events, and specific forms of scholarship emergent from the analysis of those events. Tsimshian people developed a system of transmission of the *adawx* that achieves a remarkable capacity to transmit texts through generations with very little, if any, transformation of the text. Indeed, the capacity to transmit such texts is effectively rote, although this should not be seen as a suggestion that the transmission of texts occurs in the absence of understanding of their contents.

Adawx are legal documents owned by house groups; formal roles within house groups include the learning and capacity to recite the *adawx* associated with the role. Each house group owns its own version of *adawx* that speak to its lineage's understanding of events in the past, the meanings of those events, and the legal implication and agreement that emerged from those events.

Thus, the *adawx* function as a single corpus of records within which a series of views on related phenomena are presented. At the same time as owning their own *adawx*, house group

members are knowledgeable of the *adawx* of other house groups, especially as if they influence their own rights.

Thus, as legal issues are being negotiated, all parties involved can draw on the entire inventory of historical texts to establish both specific information regarding what happened in the past and what was agreed to as well as general information that reflect principles of law and morality. The content of such texts must pass the collective scrutiny of both the owners of the specific *adawx*, others whose rights or history are referenced in the *adawx*, and the witnesses. Non-Tsimshian people routinely underestimate the significance and scope of the *adawx*.

1.7.3.7 *Legal principles and resolutions are manifest in multiple ways (place names, adawx, crests, roles, alliances).*

History is the fabric of Tsimshian life and, to extend this metaphor, the tapestry of this knowledge is woven across all facets of life, not just in the *adawx*. The complex semiotics (encodation) of this knowledge should not be underestimated.

For example, it is well known that specific *adawx* are often symbolized by an image that captures the events of the narrative and that this image or crest, becomes a formal representation of both the *adawx* and the legal implications that it enshrines. Crests that invoke powerful significance become powerful crests that stand for both the significance and the house group or tribe. Indeed, the four main clan symbols are a form of crest image that are important and widespread, but not exclusive, images of the clans.

However, such meaning is encoded in all aspects of Tsimshian life from images represented on houses, objects, and clothing, to the forms and materials used in the manufacture of the things themselves. Consider, for example, a ceremonial feast in which a legal issue is being debated, such as the accidental death illustration used above. The feast would appropriately be held in a building/house owned by the highest-ranking member of the responsible party. The aggrieved party would be the honoured guests, and peer groups would be invited to witness the deliberations. Almost everything in the building, from its shape, decorations, and contents references specific meanings/*adawx*, and thus the Tsimshianic legal history. The people are themselves symbolic of the roles they represent which in history would have interacted to create the past as it is known. Their clothing, their actions, their words, the rules of comportment and formal speech, the seating arrangements, the food, the songs and illustrative dances, the gifts, everything broadcasts the knowledge of history and its significance to the participants. The knowledge is recognized during the ceremony via the recitations of the *adawx*, but it also forms the entire cultural context of the events. Knowledge is thus invoked in every detail of the proceeding and in some ways in every detail of life. To the outsider who is ignorant of these meanings, such events may seem simply to be feasts or potlatches, but that simply reflects the high barrier of necessary learning that is often absent in outsiders.

1.7.3.8 *Names are foundational to the identity of individuals and the perpetuation of the network of social relations and its obligations and rules.*

Individuals emerge within Tsimshian culture to fill specific roles and identities that they inherit from their ancestors. The system of names is the formal taxonomy of places within the social network; names are linked to positions of responsibility and status, to specific *adawx* and crest images, and to a specific lineage of ancestors who occupied the role. In many ways, the individual becomes the name rather than the other way around; this is to note that as children mature, they are educated in the role that they will fulfil as adults, learning not only

the responsibilities and knowledge of the role but the character of the identity of the name that has accrued through generations of history in which people with that name acted.

Thus, individuals are not simply individuals, but representatives of a great accumulation of knowledge, responsibilities, obligations, and capacities. All individuals ascend to pre-existing names thus the relations between names also gets inherited. Indeed, one of the challenges of reading the *adawx* as an outsider is that there appears not to be any distinction between different holders of the same name, such as is done in European monarchic systems, where Kings and Queens are enumerated (e.g., the current British monarch is Elizabeth II).

In fact, the *adawx* do contain chronological indexing, but not using enumerated names. This is in part a recognition that all people who hold a name in generational sequence are to some extent a shared identity. In this manner, the entire social network within and beyond Tsimshian people gets reproduced each generation.

1.7.3.9 *Wealth is not just economic value.*

Western society assumes that all value is convertible into a fluid standard of exchange value (money). Value in this sense is part of Tsimshian evaluations, but value extends beyond economic wealth to include moral, cultural, historical, and scholarly facets. Status is thus not simply an assessment of economic capacity, although at times it does correlate with economic wealth. Rather, high status is a form of moral standing that comes from many arenas including ancestry, comportment, character, and fulfillment of the goal of well-being. Similar principles operate in all cultures, but it is formalized in Tsimshian history in part through the system of names, which connote forms of non-economic value. Thus, the roles of individuals within the social and legal system emerges in part from their status or the position of their names and their fulfillment of the obligations of their name as credentials.

1.7.3.10 *Tsimshian people are responsible for ensuring the well-being of their communities; chiefs are specifically responsible for maintaining their house group/lineage's well-being and that of its territory.*

The primary responsibility of the chief, a responsibility that is shared by all members of a house group, is to maintain the well-being of the group and its territory. Such a responsibility has many implications, including social and economic well-being, stewardship of scholarship and *adawx*, management of resources and ecosystems, defense against threat including military threat, etc. This principle is ethical: i.e., it has both an ontological form (well-being is morally appropriate) and a consequential form (well-being is an appropriate result).

Arguably, one of the reasons Tsimshian culture has such long continuity both as a series of linked generations and as a continuation of cultural knowledge over those generations, is due to this responsibility for stewardship and curation of well-being. Well-being can be measured and defined in numerous ways, but it includes a lack of harm. Thus a purpose of the interpretation and practices of Tsimshian people regarding their culture is to defend their interests from harm as well as to advance their interests. The formal acts of surveying and naming the landscape and the contents of a person's house group territory as well as the formal learning and recitation of *adawx* are practices and structures (i.e., formal conventions) for protecting what the house group is responsible for and advancing its interests when appropriate.

Importantly, this principle extends beyond the boundaries of the house group such that the well-being of the tribe, nation and larger community of nations is also an individual and collective responsibility. For example, when the tenth tribe (Gitwilkseba) could no longer sustain itself in the post-contact period, possibly as a result of depopulation from epidemics.

Following this, its members, territories, house groups and history became the responsibility of the other Nine Tribes.

1.7.3.11 *Balance is a cosmological principle with legal implications.*

One of the recurring philosophical principles in the *adawx* that is often invoked in legal resolutions is balance. The universe exists in balance such that the central relationship between forces is a balance of interests. The western notion of the Golden Rule is a similar construct, though with different cultural content. Thus, the Tsimshian concept of balance operates to explain reality and is a proscriptive guide to identifying concerns (things out of balance) and resolving them (restoring balance). The example of compensation for accidental death is not a manifestation of cost, loss, or liability *per se*, but rather an attempt to restore balance to a circumstance in which something happened (loss of life) that should not have occurred. The event cannot be reset, but balance can be sought via compensation.

Indeed, when done correctly according to Tsimshian principles, loss and compensation will bring two families closer together than they would have been without the loss. Importantly, compensation is not simply about the transfer of value in either an approximate for what a lost life represents or against some standardized scheme of liability. Rather, the transfer of goods or value simply signifies the moral act of accepting collective responsibility. Thus legal transgressions in Tsimshian history are not simply about loss of value so much as they are violations of cosmological or moral principles.

For example, trespass is punishable by death not because of potential loss of value from illegal culling of resources, but because the violation of a house group's territory without permission is a declaration that the house group and its long intergeneration lineage in history is non-existent or insignificant. It is an existential threat to the balance of life rather than an economic one.

1.7.3.12 *Spirituality is the illustration and causal metaphor for the construct of Tsimshian culture.*

Non-Tsimshian people, and non-Indigenous people in general, struggle to reconcile the importance of spiritual causality in Tsimshian culture. It seems fanciful that spiritual beings could intervene in human affairs to create history. Western people juxtapose this against a belief in their own capacity to perceive the reality of the world unvarnished by cultural constructs.

However, it is important to remember two things:

- **Spirituality is an explanation for the causal forces of reality, not simply reality itself.** This means that spiritual forces are understood to have intervened in human affairs when they appear to have done so. Tsimshian spirituality, like everybody's spirituality, is an understanding of why reality is the way it is, not itself reality. The line is blurred, and this explanation is somewhat an academic effort to understand a culture from outside the culture. For people who see reality in this manner, the spiritual domain is real.
- **All people construct a belief in reality that is not reality.** Western people pride themselves on a capacity to see an objective truth to reality. However western people participate in numerous forms of collective imagination in which the perception of reality is different from reality but believed to be reality. This is a complex concept that is easily illustrated with an example: the perpetuation of the fiction of race. Race as a biological construct does not exist (an argument that can be proved using genetics). However, most people today believe that races exist and that they are real biological

categories with cultural consequences. The fiction of race perpetuates despite its obvious imaginary status as a belief in reality. Even people who consciously declare that races do not exist can be demonstrably shown to act differently when encountering people of different “races”. The point is that all people perceive reality through a cultural lens, but perceive their own cultural lens to be non-existent and the cultural lens of other people to be fanciful obstructions to an understanding of truth.

Thus, the spiritual world illustrates how Tsimshian people understand cosmological principles and provides guidance for human relations. The forces of balance, hierarchy, connectedness, and the taxonomy of souls are all principles that are manifest in spiritual domains and illustrate the relations between people and within nature. These principles form the philosophical foundations of Tsimshian culture and are manifest in Tsimshian law.

1.8 A Legal Test of Ownership Under Tsimshianic Law

This overview should be interpreted as an introduction to some of the basic tenets of the Tsimshian legal system as reconstructable from published sources. Issues of territorial ownership are central to this discussion. Ownership of territories is collective and held by the House Group (*wilp*), the living members of the ancestral matrilineal lineage (*wilnat'aaf*). Thus, membership in a House Group defines an individual's rights.

Individuals do not own rights except as members of House Groups. Similarly, tribes and clans are not rights-owning entities, although individuals within House Groups belong to a tribe and a clan. Tribes are composites of different House Groups, with the leader of the most powerful House Group acting as the tribal Chief, although this individual has rights only to their own House Group territories. Thus, the analysis of ownership of the Study Area should focus on House Group territories as much as possible. However, it is common in archival documents and *adawx* to refer to territories by the tribal names – this is a shorthand for the constituent House Group or Groups.

Note that there is some debate about this in the derived literature (see Section 4). For example, Cove (1982:5-6) is unsure if title rights existed in Tsimshianic law and whether clans, lineages, or House Groups were the “title owning” unit. Sterritt et al (1998) make clear that title existed, that it was analogous to title in Canadian law, and that the title owning entity was the House Group (see also Martindale and Marsden 2011).

The second key point is that there is a category of right in Tsimshianic law that appears not to have a direct analogue in Canadian law: the concept of privilege. Privilege confers rights of access and use to title-held territory to someone or some group (usually a House Group) outside the title-owning House Group. Privilege is commonly extended to affines (in-laws) or allies. It may also be common between House Groups within a tribe. Such relations of privilege are often reciprocal and perpetuated intergenerationally. Although privilege is renegotiated each generation, it seems to confer a degree of expectation or even obligation such that, all things being equal, privilege agreements continue. They discontinue in times of conflict or abeyance, both of which are endemic to the post-contact era.

The third key observation is that tribal territories (the collective title of its constituent House Groups) are largely contiguous, such that a tribe collectively owns a connected territory. There is not much evidence on the evolution of this pattern, but the accommodation of new House Groups into existing tribes seems to involve transfer of territory. Thus, it is possible that later tribal territories represent original House Group territories before tribal alliances were established. Regardless, this pattern of contiguity extends from House Groups to tribes to what Martindale and Marsden (2011) refer to as Nations: not First Nations, but rather pre-

contact analogues for nations of which the Nisga'a and the Nine Tribes represent two. Thus, there appears not to be cases of territorial isolates within other peoples' territory.

These principles provide us with **three possibilities** for the claims of ownership of the Study Area:

- 1) **It was and is owned by House Groups from tribes belonging to either Nisga'a or Nine Tribes, or with a boundary line somewhere within, in which the territory up to the boundary was Nisga'a to the northeast and Nine Tribes to the southwest.** This pattern would follow the principle of contiguity discussed above. If this is the case, then the task becomes defining the boundary.
- 2) **Parts of the area were and are owned as isolates within the territory of another nation.** This would be unusual and contrary to the pattern of contiguous territory discussed above, but is possible. If this is the case, then the task becomes defining the larger territorial boundary between the Nisga'a and the Nine Tribes and the boundaries of any isolates within one or the other. Presumably, this pattern would confer the regional ownership of the Study Area to one nation and the isolates around the Study Area to the other.
- 3) **There are both issues of title and privilege operating in the region.** In this pattern, the Study Area would be owned by one nation, and the rights of privilege access would have been conferred to the other. In this case we would expect to find evidence of use and residence in the area, but not conferring title rights as a result. Here the task becomes to define who was the title owner, and who had rights only by privilege.

The challenge of historical analysis is that these possible patterns may have changed over time. Thus, the task becomes not only identifying which of the three possibilities was in place, but which was in place at specific dates. As discussed above, there are three key time periods in question (see Table 4 for a detailed historical sequence):

- 1) **Prior to contact (1793).** This is the date defined in the *Lax' Kw'alaams* court case as the first contact between Tsimshian people and Europeans. Foreigners were in the North Pacific since 1741, and the British explorer Colnett was in Tsimshian territory in 1787. Thus, knowledge of Europeans was likely widespread in the late 18th century, and Tsimshian people likely met or at minimum knew of Europeans prior to 1793.
- 2) **Between 1793 and 1846 (the signing of the Oregon Treaty).** This period was a time of dramatic change in Tsimshian history (see Martindale et al 2019), but the date of 1846 has no specific meaning in this context.
- 3) **After 1846.** The late 19th century did mark a shift toward new forms of settler colonialism and new kinds of Tsimshian responses, but again the date 1846 does not mark a specific event or threshold significant to Tsimshian law or culture.

Since the dates of 1793 and 1846 are largely meaningless in Tsimshian history, we need to coordinate this calendrical system with the sequence of events narrated in the corpus of Tsimshian *adawx* which act as chronological markers to better assess the merits of potentially competing claims to the Study Area.

The key issues for this analysis, that I apply here, are:

- 1) **When is a claim made?** Earlier claims create a lineage of ownership; most recent claims demonstrate current ownership. Continuity of claims demonstrate continuous ownership. **To whom was the claim made and who was present to hear it?** There are only witnesses in Tsimshianic law, not arbiters, thus in Tsimshianic law, claims are

more robust when made to an audience of appropriate peers (witnesses of similar rank and leaders of house groups impacted by the legal claims). The strength of claim increases when the appropriate peers act as witnesses, i.e., the people who are impacted by any variance in the nature of the claim.

2) **What Tsimshianic legal evidence is presented to support the claim?** Tsimshianic constructs of rights are defined by the *adawx* and the history of rights that have been inherited. Thus, any claim is strengthened by reference to:

- a. **The house group declaring the right.**
- b. **The individual and tribal affiliation of the house group.**
- c. **The events of history and the ancestors involved in the events which define the right.** If it is a transfer of rights, the circumstance of the debt or obligation that results in the transfer is usually defined or noted. Since the history of rights' transfers are key aspects of house group legal rights, there is usually a statement of continuity from the events that define the right to today.
- d. **The location is defined in terms of house group lineage.** Rights of territory are specific to locations defined by agreed-upon boundaries. Thus, there is a connection between places (and place-names), people (including spiritual beings), events (and time) and rights.

Claims that include all of these elements, and are witnessed by appropriate peers, are the basis of Tsimshianic legal rights, and represent the claims which are most likely to align with traditional, pre-contact law.

2. Evidence

Archival and documentary evidence of Tsimshianic history, including legal history, can be divided into three broad categories: primary, original analysis, and derived. Each is of different value in assessing historical patterns.

- **Primary evidence** is a record of data from the time period in question. In documentary contexts, it refers to evidence recorded at the time, but this category can include documentary evidence composed by individuals familiar with the time period, but writing at a later date. Traditional Indigenous records are orally transmitted via systemic protocols that do not include written versions but which maintain record accuracy. Thus, this category also includes accurate versions oral records from the time period in question, but recorded at a later date. This is the most significant form of recorded historical evidence in Tsimshian history.
- **Original analysis** is the arrangement, evaluation, and interpretation of primary evidence to draw original conclusions regarding the time period in question. Studies by scholars, both Indigenous and non-Indigenous, to assess the nature of society, culture, behaviour, and events from a comprehensive review of all available primary evidence present the most logically robust assessment of history.
- **Derived sources** do not provide a comprehensive review of primary evidence but rely instead upon the conclusions drawn from original analysis. Academic use of derived sources creates a vulnerability to citational inflation, a kind of house of cards in which logical strength accrues through re-citation of a claim rather than by its basis on primary evidence. These sources are generally weak in assessing history or historical claims as they lack analysis of or reference to primary evidence.

Analyses that are based on primary evidence or original analyses are logically superior to those from derived sources. As with any interpretation of evidence, the situatedness of the analyst can sway interpretations. However, strength of argument (see Section 1.3) can be assessed independent of perspective via a review of: (1) the representation of the sample of evidence (i.e., how much of the available evidence is considered), (2) the empirical basis of the interpretation (i.e., how much data is available upon which to base a claim and how comprehensive is the review of contradictory evidence, and (3) the strength of the logical inferences from data to conclusion (i.e., how likely is the conclusion to be historically accurate compared to alternate conclusions).

I will return to these logical issues in the Analysis, below. First, I review the sources and take an inventory of the evidence. In this analysis, I also employ the legal test as discussed in Section 1.8 to evaluate the primary evidence and assess the evidence and strength of claims made in Tsimshianic law for the Study Area covering the time periods of interest.

2.1 Missing Evidence

I do not have access to all the primary evidence referenced by others and known to exist that could be relevant to this analysis. This includes:

- The Barbeau-Beynon archive. This suite of documents is housed at the Canadian Museum of History. It contains both *adawx*, interviews, maps and analysis based on

these. I do have access to some of this archive through MacDonald and Cove (1987a, 1987b) and in various reports which make use of the archive.

- The Wilson Duff archive. This suite of documents included analyses by Wilson Duff of the Barbeau-Beynon archive. It is housed at the Museum of Anthropology at UBC.

However, I do have access to several reports (Cope 2012, MacDonald 2012; MacDonald and MacDonald 2012; Marsden 1997) that do make use of these archives. My expectation is that, if primary evidence exists that deviates from the clear pattern identified here, it would likely be referenced in one of these original analyses.

2.2 Primary Evidence - *Adawx*

As discussed in Section 1.7 and 1.8, Tsimshian legal history is recorded in Tsimshianic oral records, known as the *adawx*. We have only a partial record of the Tsimshianic *adawx*, but this still represents a considerable corpus of narratives. Marsden (1987; 1997; 2000; 2001; 2002; 2008; 2011; 2012) argues that Beynon's work and that of other recorded Tsimshian leaders and scholars presents a sufficient sample of the *adawx* to identify major patterns in Tsimshian history.

The *adawx* present multiple parallel records of historical events – house groups all record their own versions of relevant historical events. Since these are presented at public events, there is a considerable degree of peer-vetting that occurs which increased both coherence and transmission fidelity. Although there are critics of the success of this recording system (Henige 2019 – but see Menzies and Martindale 2019), the foundation of the system is the transmission of owned narratives to heirs within a house group. Walter Wright (2003:10-11), a Kitselas chief who inherited his house groups' history from his grandfather explains how he learned the *adawx*:

When I was a boy my Grandfather, who was Neas Hiwas, taught me the history of Medeek. It had been his duty of carrying it through his generation. His was the responsibility of choosing one of the Royal Blood to keep it safe after he had died. As a lad I sat at my grandfather's feet. Many times he told me the story. It was long. In the Native tongue it takes eight hours to tell. So several times each year, I sat at his feet and listened to our records. I drank the words, in time I became word perfect. So I became the historian of Medeek. So I took my place in the long line that had gone before me. For so it is. In our land of Ksan there is no written word; the record had to be passed down from man to man by word of mouth.

Wright (2003:11) explains how the consequences of colonization had created “new models of life” that “have drawn the minds of our young men from the habit of peacefully listening to their elders.” As a result, he dictated his house lineage's oral tradition in English to Will Robinson, a local non-Indigenous friend. Years later, Robinson's descendants discovered the manuscript, which was published by the Kitselas Indian Band in 2003.

Beynon is a valuable resource, for several reasons:

- First, he worked throughout the Tsimshianic world recording hundreds of *adawx* (Barbeau-Beynon n.d.; Beynon 1939, MacDonald and Cove 1987a, 1987b).
- Second, he was of aristocratic rank, thus a peer to holders of the *adawx* of their house groups. Chiefs and other leaders would be motivated, perhaps even compelled, to present their histories to Beynon because of his rank.
- Third, Beynon worked for the key ethnographic figures of the early anthropological era: Franz Boas, Viola Garfield, and Marius Barbeau. He was employed to record

adawx and to provide analysis of them. Given his training and his scholarship, he likely had an unparalleled understanding of Tsimshianic history from this work. His notes, emendations, and supplemental maps that append his records are an invaluable source of insight into Tsimshianic history and culture.

- Fourth, he traveled across the Tsimshianic world and recorded *adawx* from Nine Tribes, Gitxaala, Gitga'ata, Kitelas, Kitsumkalum, Gitxan, and Nisga'a leaders. This gave him a broad sample of historical perspectives. It is likely that, if significant contradictions of conflicts existed in the *adawx*, he would have been aware of them and noted them in his work.
- Fifth, he was a scholar of Tsimshian language and recorded the *adawx* using interlinear transcription (three lines of text: Smaly'ax, direct translation, English - that permits re-assessment of his translation) and he recorded relevant meta-data for the *adawx* (speaker, Tribal affiliation, etc.) indicating that he was working within the Tsimshianic legal system.

All scholars who present original analyses rely on Beynon's work and, with one exception, find it internally consistent. Only the Ministry's 2016 report concludes that Beynon is self-contradictory regarding the ownership of the Study Area. Specifically, the report argues that Beynon's maps of the mouth of the Nass River disagree on the existence and placement of Nine Tribes villages. This is demonstrably incorrect (see Section 5.8); the report writer is in error and Beynon's maps are consistent (see also Table 6).

In Section 2.2, I review each reference to the Study Area that I have located in the *adawx*, most of which were recorded by Beynon. Table 1 lists these and sorts them regarding to whom these *adawx* assign ownership of and settlement in the Study Area.

Table 1. The Position of Primary Sources on the Ownership of the Study Area.

Owned by the Nine Tribes	Ownership unclear and Associated with both Nine Tribes and Nisga'a	Owned by the Nisga'a
Beynon 1954	MacDonald and Cove 1987b 29	MacDonald and Cove 1987b 55**
Beynon MS 64	MacDonald and Cove 1987b 39	Maps by Barbeau (see Section 5.8)
Beynon MS 76	MacDonald and Cove 1987b 53	
Beynon MS 110	MacDonald and Cove 1987b 59*	
Beynon MS 120	MacDonald and Cove 1987b 60*	
Beynon MS 121	MacDonald and Cove 1987b 61	
MacDonald and Cove 1987b 7	O'Reilly 1882	
MacDonald and Cove 1987b 17	O'Reilly 1898	
MacDonald and Cove 1987b 19		
MacDonald and Cove 1987b 30		
MacDonald and Cove 1987b 35		
MacDonald and Cove 1987b 41		
MacDonald and Cove 1987b 42		
MacDonald and Cove 1987b 49		
MacDonald and Cove 1987b 50*		
MacDonald and Cove 1987b 56		
MacDonald and Cove 1987b 62*		
Maps by Beynon (see Section 5.8)		

Notes:

*Post-contact narrative.

** Post-contact narrative collected from Kincolith by Barbeau.

I discuss this in more detail in Section 5, but it is clear from Table 1 that the majority of the *adawx*, which constitute the primary evidence in Tsimshianic law, indicate that the Nine Tribes owned the Study Area.

In the next section, I summarise the key data of each source and then provide detailed information from that source (listed as main bullets – solid fill). My comments on these points are listed as sub-bullets (hollow fill). This section and the subsequent sections providing the data and analysis of the relevant sources are detailed but necessary for the reader to review all the relevant information that I considered in this analysis. Readers who wish to review these data quickly can skip from summary to summary in each source subsection.

2.2.1 Beynon, William. 1952. A Niskae Dispute of Legyaerh's Rights

This unpublished document was produced by Beynon in 1952 in Port Simpson, and represents his clearest statement on ownership of the Study Area. It is summary of an important set of two meetings held in 1916 between the Nisga'a and Nine Tribes Chiefs over the ownership of the lower Nass River, at which Beynon was the secretary. **The importance of this meeting cannot be overstated.** This is the only recorded event when these two groups met to discuss the ownership of the Study Area, and they did so without non-Indigenous intermediaries.

Although ceremonial meetings of this nature were outlawed by the potlatch ban of 1880 (and would not become legal again until 1951), this witnessed meeting of peers conforms with Tsimshianic legal principles (see generally the discussion in Section 1.7.3). It therefore was a legal process which had significance and consequences in Tsimshianic law. It is the official venue in which the two sides, represented and witnessed by appropriate peers, met to discuss and resolve a dispute. By this time, the Nisga'a had established Kincolith (1867) and made reference to the mission town's well-being as an argument for the allocation of reserve lands to it in 1881. The Nine Tribes had consistently opposed what they saw as incursions into their territory.

The formality of this meeting suggests that it was a version of a ceremonial event that would be permissible during the potlatch ban. The meeting was between Nisga'a and Nine Tribes chiefs. It was mediated by spokesmen, as it is tradition in Tsimshian ceremonies for chiefs to be represented. The subject of the meeting was an ownership dispute of the Study Area that both sides recognized. *Adawx* were presented at this meeting to defend claims of ownership – signaling the legal significance of the event. Beynon was tasked as secretary, likely because of his ability to write in both Sm'algyax and English. Beynon later composed his notes in typewritten form. It is the only example of his notes regarding a meeting that I know of. All of these points indicate that this was a formal meeting in Tsimshianic law.

In these meetings, the Nine Tribes reference *adawx* and present a key narrative (Beynon MS 64) in full to stake their claim. The Nisga'a, in contrast, make no reference to specific *adawx* but instead rely on 1) ancient common Tsimshianic ancestry (which Marsden (1997) argues dates back to the early Holocene and a time when territorial boundaries were still forming), 2) references to salmon fishing villages situated at Kwinamass that I argue (Section 5.6.2) demonstrate a temporary right of privilege that must be continually renewed by subsequent generations to have any legitimacy in Tsimshianic law (and therefore cannot relate to ownership in any event), and 3) references to occupation at "Place of Echoes" that lacks any history or *adawx*, and appears to be the same claim as the access rights of the wolf house of Txalaxet.

The conclusion from this meeting is clear: the Nine Tribes hold *adawx* (legal documents in Tsimshianic law) indicating ownership of the Study Area, while the Nisga'a do not. If the Nisga'a had *adawx* that defended or demonstrated their claim to the Study Area, then this is the context in which such claims (made within Tsimshianic law) would be heard, understood and respected. That the Nisga'a do not invoke any *adawx* is a legal admission that they have

no claim under Tsimshianic legal rules. In Section 5, I discuss how, other than this meeting, Nisga'a legal claims to the Study Area are exclusively made through non-Indigenous channels.

- Page 2: “The Port Simpson spokesman: ‘Chiefs of the Nass River and your spokesman, we have asked you to meet together and discuss what to us is a very serious situation. We refer to the clause in your petition in which we feel you have included and claimed as yours certain territories which belong to us. We claim Knemas, and for that matter all of that country of Pearse Island from the mouth of the Nass River, with the exception of our individual oolachan fishing territory on the Nass. The rest, we know, belongs to you. But everything on the coast belongs to us, Tsimshian, and we can tell you the traditions of each of these territories, how we acquired them, especially Knemas, this being the property of the Gitlan tribes, through the Ganhada chief Kake. There the Tsemkneaesem-Welp (In-red-house) was built for Hai'mas, while he was Kanhade chief; also Konde (Hidden Inlet). This was the property of Hai'mas because of his having built his village there while he headed the Wudzen'aek society. So our claims are based on facts that you do also recollect,’”
 - This Section notes that at the meeting, the Nine Tribes presented their claim to the lands from the Knemas (Kwinamass) to the mouth of the Nass River and all the coast and islands in between, including Pearse Island. The statement that, “We can tell you the traditions of these territories, how we acquired them,” is a clear reference to the *adawx* that the Nine Tribes possessed as legal claim to ownership of these lands and waters. Though they are not listed here, Beynon recorded many of these (see Table 1 and Section 2.2.2 and 2.2.3). These documents represent a legal claim in Tsimshianic law to the Study Area. If the Nisga'a are to counter this claim in Tsimshianic law, they must do so with their own *adawx* to demonstrate the history and legitimacy of their case. The statement regarding the eulachon villages may refer to either a pattern in which individual houses or tribes of the Nine Tribes owned specific places or to the reserve allocation of commonages as a modern exception to the traditional pattern.
- Page 2: “The Niskae spokesman did not reply at once. Then he said, ‘We have heard what you say. Remember, we are also of coastal origin and, in many cases, had the same origin as the Tsimshian, and we feel that we are in our rights in claiming this property which you now dispute. We are not originally river people, but we were in search of a plenteous place for food and game and shelter. Some went to the headwaters of the Nass and established themselves there. Many of you are of the same migration Men'aesk, Git'iks, and other Larhskeek (Eagles); just the same as Skagwait and Legyaerh, and others among the Tsimshian. Only the Nass group chose to stay at Klusems. Some made Kn'emmas their village. The same with the Wolf clan and the Raven clan. These people established settlements all over the country, using these as their exclusive hunting territories. We base our claims upon these events, and maintain our rights to claim this as Niskae territory.’”
 - In this section, we hear the Nisga'a reply, which invoked ancestral claims to coastal origin. As discussed in Marsden 1997, most coastal and many interior peoples have similar ancestry that refers to an early post-glacial time in which the first peoples moved through recently deglaciated or recently exposed lands from sea level change. Marsden notes that this was prior to territorial claims which became enshrined in the *adawx*. Thus, the Nisga'a are acknowledging

at this meeting that they do not have any *adawx* that substantiate their claims to the Study Area. This meeting can be considered a legal event in Tsimshianic law, analogous to a feast. The appropriate Nisga'a response in Tsimshianic law would be to state their *adawx* to the Nine Tribes to make their counter claim. However, since they do not invoke nor reference any *adawx*, we must conclude that none exist since this would be the one audience to which such *adawx* would have legal significance. The *adawx* that do exist (Table 1) substantiate this pattern: the Nine Tribes have a consistent and demonstrable legal claim in Tsimshianic law that dates from several thousand years ago up to today, while the Nisga'a claim does not include *adawx* and dates from the late 19th century.

- Page 3: “At the next session, the Port Simpson spokesman asked the Niskae delegation, “Do you all know why Legyaerh [Ligeex] made the picture which today is known as Welgilkstrhael-demkte-Legyaerh...” Here the spokesman recounts a version of this *adawx*, similar to Beynon MS #64 (see Section 2.2.4.1).
 - Here at the second meeting, the Nine Tribes provide a detailed recounting of the most recent demonstration of their claim to the Study Area (there are 4 such demonstrations recorded dating back over 3000 years – see Section 5): the painting of Ligeex at Ten Mile Point. This is also described in Beynon MS #64. This is a significant legal statement in Tsimshianic law that both invokes the most recent *adawx* -recorded events, i.e., those with the most legal precedence, and material evidence of this claim, the painting at Ten Mile Point. Both of these are standard and meaningful legal statements in Tsimshianic law.
- Page 4: “The Niskae delegation through their speaker answered, “We claim only that which belong to the Niskae people, and we do so knowing that when the original people arrived here, they separated. We came to the Nass and you who are now Tsimshian went to the Skeena River, where you all made villages, and to Metlakatla, even on farther south to Kitrhahla and Hartley Bay, and other points. So that even when Legyaerh painted the picture you refer to, we do not recognize it as giving him the right to proclaim his authority over what is ours. The Niskae were already living at Kne'emas, and there were salmon villages there. Gitiks presumably had his fishing village here, as did the Larhkibu (Wolf) who were at Welaegwel'aet, Where-echo or “Place-of-Echoes.” That is why we have the right to include this in our petition. It belongs to the Niskae.”
 - The Nisga'a response to this specific *adawx* is more general and speaks again of beginning times, before divisions existed between the Nine Tribes and the Gitxaala and Gitga'ata (this likely puts these events at well before 5000 years ago, perhaps as old as 9000 years ago). Again, as Marsden (1997) argues, these early migrations preceded the defining of territory, certainly preceded the later Nine Tribes claims that began sometime before 3000 years ago and persisted until this meeting in 1916. The Nisga'a case makes reference to Git'iks, a known and recorded Nisga'a village east of Fishery Bay which is not disputed by the Nine Tribes (thus this seems to be a logical red herring), a Wolf clan presence at “Place of Echos” or Welsegwel'aet, and salmon fishing villages at Kne'mas (Kwinamass). The claim to the Kwinamass appears to be a reference to the house of Txalaxet, which I argue is a right of affinal privilege and this not ownership (see Section 5.6.2). As the Ministry (2016:168) report argues, “Place of Echos” is a Gitlan (Nine Tribes) village location on the Kwinamass River that was inherited from the Gitwilkseba upon its dissolution.

2.2.2 Beynon, William. 1954. *Ethnical and Geographical Study of the Tsimiyaen Nation.*

Unpublished manuscript on file with the American Bureau of Ethnology. This volume dates from about 1954 and is a draft manuscript compiled by Beynon for Philip Drucker at the latter's request. This was Beynon's effort to create an anthropological style ethnography in the mid-20th century form (see as an example Garfield 1951 or Drucker 1955). While this document is an intriguing hybrid of both *adawx* and western-style ethnography, this text is most useful as an overview of patterns in the *adawx* and an inventory and index to the *adawx*. Use of these data should be made in reference to actual *adawx* recorded by Beynon (see Sections 2.2.4 and 2.2.5).

Beynon's additional reference to the 1916 meeting (see Section 2.2.1) reminds us of its importance and points to the influence of colonial factors behind the Nisga'a claim to the Study Area. The reference to 'alkusoxs speaks to a Nine Tribes feast at the mouth of the Nass prior to 3000 years ago (see Marsden 2002) and the reference to Wiseks points to the event so Haimas and his slaughter house during the War with the Tlingits (see Section 5.4.1), i.e., before 1000 years ago. Each of these are key moments in the Nine Tribes' legal claim to the Study Area.

- Volume 1, Page 81-82: A reference to the 1916 meeting discussed in Section 2.2.1. Beynon's note on this is worth transcribing in full:
 - I recorded this [here Beynon refers to the *adawx* of Ligeex commissioning the painting at Ten Mile Point] in 1916 at a meeting of the Nishga and Ts'msiyaen over a dispute in tribal boundaries. The situation was somewhat tense. The Nishga petition on the land question included lands that were claimed by the Ts'msiyaen. It was at this point that Gae'waelae, a Laxskik (Eagle) clan spokesman for the Ts'msiyaem delegation spoke up referring to this picture making of L gex [Ligeex] and the establishing of authority of Lagex on these areas even including the Nass River and also the establishment of K'n g li (Kincolith) by Hai'mois [Haimas]. The reference to the speech made by L gex [Ligeex] was made at this occasion. (The writer was the secretary of the meeting held at Port Simpson in 1916.
 - Volume 4, Page 9: description of the Nass estuary as a place where each house of a village had its own "established house and spot to fish." Also, that, "The T'semsiyaen using the area on the Nass River for oolichan fishing from 'alkusoxs to the mouth of the Nass River. From this point up the River was used by Nisga'a. Thus was the Nass oolichan fishing territory divided."
 - 'alkusoxs is likely Red Bluff – the location of the natural stone pinnacle referenced in Marsden (2002). The "mouth of the Nass likely refers to the constriction in the river to the east of Fishery Bay. Such a location would be consistent with all of Beynon's maps.
- Volume 4, Page 9: Wiseks had a specific and individual claim on a Nass River territory that he "had gotten with his own endeavours" in compensation for rescuing a Wolf princess.
 - Wiseks is a leading name of the Ginkangiik tribe. These events likely took place before the War with the Tlingits, so prior to 1000 years ago.
- Volume 4, Page 15-19: a description of Haimas' construction of the feast house at Kincolith, his retribution against the other chiefs for his sister, and the claim that Kincolith, "was the personal property of Haimas until the coming of the missionaries."
 - See Section 5.3 for a discussion of the timing of this event.

- Volume 5, Page 11: Beynon makes reference to “tribal territories” owned collectively by members of a tribe.
 - This is the only reference I can find to support the idea that tribes owned territory. See Section 1.7.
- Volume 5, Pages 17-18. Beynon notes that the creation of bands caused much conflict among the Tsimshian, for example over sale of land for Prince Rupert. Regarding the Nass, Beynon writes:

The separating of the t'semsiya'en by bands and reservations brought considerable feelings among the Bands concerned. For instance in the case of the oolichan fishing rights on the Nass River, when the government made different Bands, practically all of the area formerly used by all T'semsiya'en on the Nass River for oolachon fishing came under the Section set aside for the Kincolith Band, who at once claimed complete authority on these areas, as it was in their allotted reserve. The Kincolith people through their council elected under authority of the Indian Act of the Dominion of Canada, wrote all of the other tribes of t'symsiya'en that before they could fish or come on their old fishing villages would have to get permission of the Kincolith Council and pay a license. They were unaware of the fact that the O'Reilly Commission, in setting aside these reserves for British Columbia, and creating groups into Bands and allotting to these bands certain lands. But in cases such as the Nass River where a section of any particular reserve had been used in common by many other tribes, that this shall prevail and made such areas 'common aides', a legal phrase which meant that these lands could never become the property of any one individual group, but would be used as always used as from time immemorial....So that the new governmental changes has brought considerable confusion which exist today.

 - Beynon is making a case here that the conflict between the Nine Tribes and the Nisga'a over the Study Area dates from the establishment of Bands such as the Kincolith (which was established after 1867). His point is that colonial intrusion has both exacerbated conflict and ignored the Tsimshianic legal system. Specifically, he argues that the Kincolith Band has attempted to take rights held under Tsimshianic law away from the Nine Tribes, using mechanisms under colonial law.

2.2.3 Maps by Beynon from 1954.

There are two maps, shown below, that I think may be associated with the 1954 manuscript; they cover similar material and are of similar scope and the 1954 document makes reference to maps (which do not accompany the version I have). It is not essential to know their provenance to make use of them. The first is from Beynon and shows Nine Tribes house territories across the region. It is incomplete, and likely only a summary of the places listed in specific *adawx*, which was Beynon's habit, rather than a comprehensive inventory of all house territories. Though I do not have a key to this map, it is notable for listing locations up to and within the mouth of the Nass area. If it is showing Nine Tribes house territories, it is consistent with all other Beynon maps:



Figure 5. A map by Beynon of the Nine Tribes territory.

The second is also from Beynon and appears to show the migrations into Northern Tsimshian territory associated with the movements from the Stikine. These would predate the rise and fall of Temlaham (3500 years ago) and the War with the Tlingit (3500-1000 years ago). This map is notable for not showing any Nine Tribes locations, but rather showing the places of their neighbours including the Nisga'a and the Interior and Southern Tsimshian. If this is the pattern, it is notable that Nisga'a places extend west down the Nass River to only Git'iks which is located east of the constriction that is at the east end of Fishery Bay:

represent the most comprehensive collection of primary evidence in Tsimshian legal history regarding the Study Area. I list these here in numerical order as annotated by Beynon, but this puts them out of historical sequence. The chronological order for these *adawx* is:

- 110: The origins of Haimas and the Raven Warriors
- 105: The downfall of Haimas and the humiliation of his father (Wiseks)
- 76: Rehabilitation of Haimas during the War with the Tlingits
- 121: Conflict between Ligeex and Ts'bassa (Gitxaala) that defines villages at the mouth of the Nass
- 64: Pictograph at Ten Mile Point
- 120: More events surrounding the painting of the pictographs at Ten Mile Point and Tyee.

2.2.4.1 *Beynon 64, "When Ligeex Painted his Portrait on the Cliff of the Nass River." Spoken by Matthew Johnson.*

In this narrative, the process of producing the painting at Red Bluff is recorded. This pictograph is a form of claim to ownership of the lands beyond the image. The key information for this analysis is that this is the most recent of four major feasts (going back over 3000 years) in the Study Area that define it as belonging to the Nine Tribes. This event likely took place in the early 19th century.

It is notable because of who attended: the Nine Tribes, which we can interpret as evidence that this was a legal matter internal to them. That the Nisga'a were not included indicates that it was not an issue of concern for them. In Tsimshianic law, if legal claims are to be recognized, the impacted groups must be in attendance. If the Nisga'a were excluded despite their rights, then protest and possibly war would result. There is no record of either and, importantly, at the 1916 meeting (see Section 2.2.1), the Nisga'a reference no protest of this event at the time – they simply state that they no longer recognize its legality. This suggests that their opposition to it emerged subsequently. Indeed, in Section 5, I argue that it was likely consequent to the founding of the mission at Kincolith.

- This *adawx* explains how the pictograph was painted.
 - We will chose one who knows how to make pictures and he will paint my face onto a cliff at the mouth of the Nass River...
 - "Good" said Ligeex, "good, and how will the artist who will paint get down the sides of the cliff?"...
 - "We will make a wicker fish basket and also cedar bark rope and then we will lower him down from the top of the cliff, and there we will suspend him until the artist is finished."
 - "Well, alright," said Ligeex, "Only I do not agree that we use cedar bark rope because it will not be good should the cedar bark rope suddenly break, the artist will be hurt and all of the tribes will laugh at us... we should find strong root rope."
 - Dzemks (the artist) in making Ligeex's portrait painted a face... and the name of this cliff was, "The Portrait of Ligeex"
- Beynon records a note: "The writer (Beynon) saw the picture as late as 1915, it was then just about gone, but outlines could be made of it. Now the painting has disappeared."

- Despite Beynon's concerns, this pictograph is still visible today at Ten Mile Point:



Figure 7. The pictograph at Ten Mile Point showing tribal crests and Ligeex's face.

- The location of this pictograph is:

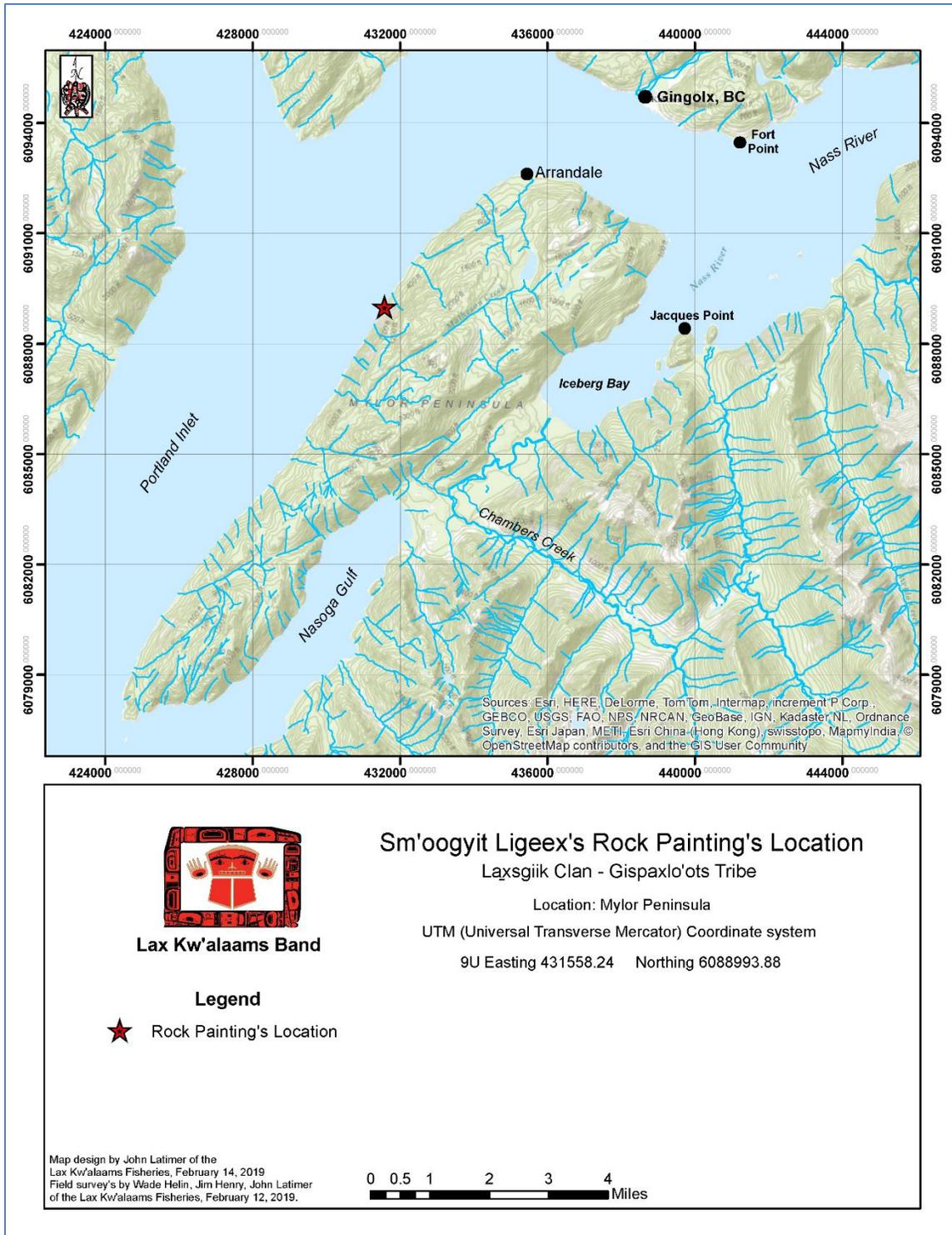


Figure 8. The location of the pictograph at Ten Mile Point.

- A similar portrait was made at Tye on the Skeena River. It remains visible:



Figure 9. The pictograph at Tye showing tribal crests and Ligeex's face.

- The significance of such images is discussed in Martindale (2009) and Martindale et al (2019). These are public statements placed on the main water travel corridor to the Nass and Skeena, respectively, which announce the Nine Tribes' ownership of the lands and waters beyond the pictographs, i.e., the Nass and Skeena Rivers. Neither watershed was claimed in its entirety; the Skeena territories were owned up to Kitsumkalum, while the Nass territories were owned to the Nisga'a lands. Importantly, these images are not at the boundaries of these sections of their territory but rather at the entrance to them. The images are part of Ligeex's ascension to power via fur trading (see Martindale 2003; Martindale et al 2019) and represent both a form of alliance building under his leadership and the fourth in a series of ceremonial events that define the Study Area as belonging to the Nine Tribes. These events are discussed in Section 5.
- There is another image (IMG2008-0642) in the Barbeau-Beynon files that is captioned, "A cliff with pictographs painted red on the face of the rock, above water, below Grenville opposite Gitiks." It is not clear what the meaning or history of this pictograph is, but it is similar to those at Ten-Mile-Point and Tye. It appears to be of the Nine Tribes crests, although there does not appear to be an image of Ligeex's face. Its placement at the eastern end of Fishery Bay (opposite the Nisga'a village of Git'iks) suggests it could be a boundary marker, although as noted above, the other two images are located at the entrance to territories rather than at their boundaries. The sample of such images and their placement is very small, however, from which to infer larger organizational principles. Minimally, it appears to represent another Nine Tribes statement of

ownership, this time at the eastern end of Fishery Bay. This image is not associated with any *adawx* that I am aware of.



Figure 10. An archival photo of a pictograph, possibly at Fishery Bay showing tribal crests.

2.2.4.2 *Beynon 76: “The Narrative of the Battle of the Stikine and the Tsimshian”, spoken by Mark Luther.*

This narrative tells of the events after Beynon 110 and 105 in which Haimas’ Raven warriors are defeated and he brings shame to his father. In this story, Stikine raiders attack the Nine Tribes as they travel to their eulachon fishing grounds. Haimas rallies the Raven warriors to lead the defense of Nine Tribes territory against northerners (Stikine). Beynon includes a sketch map showing the locations of the conflict between Metlakatla and the Nass River. These events occur during the War with the Tlingits, thus before 1000 years ago (see Section 5).

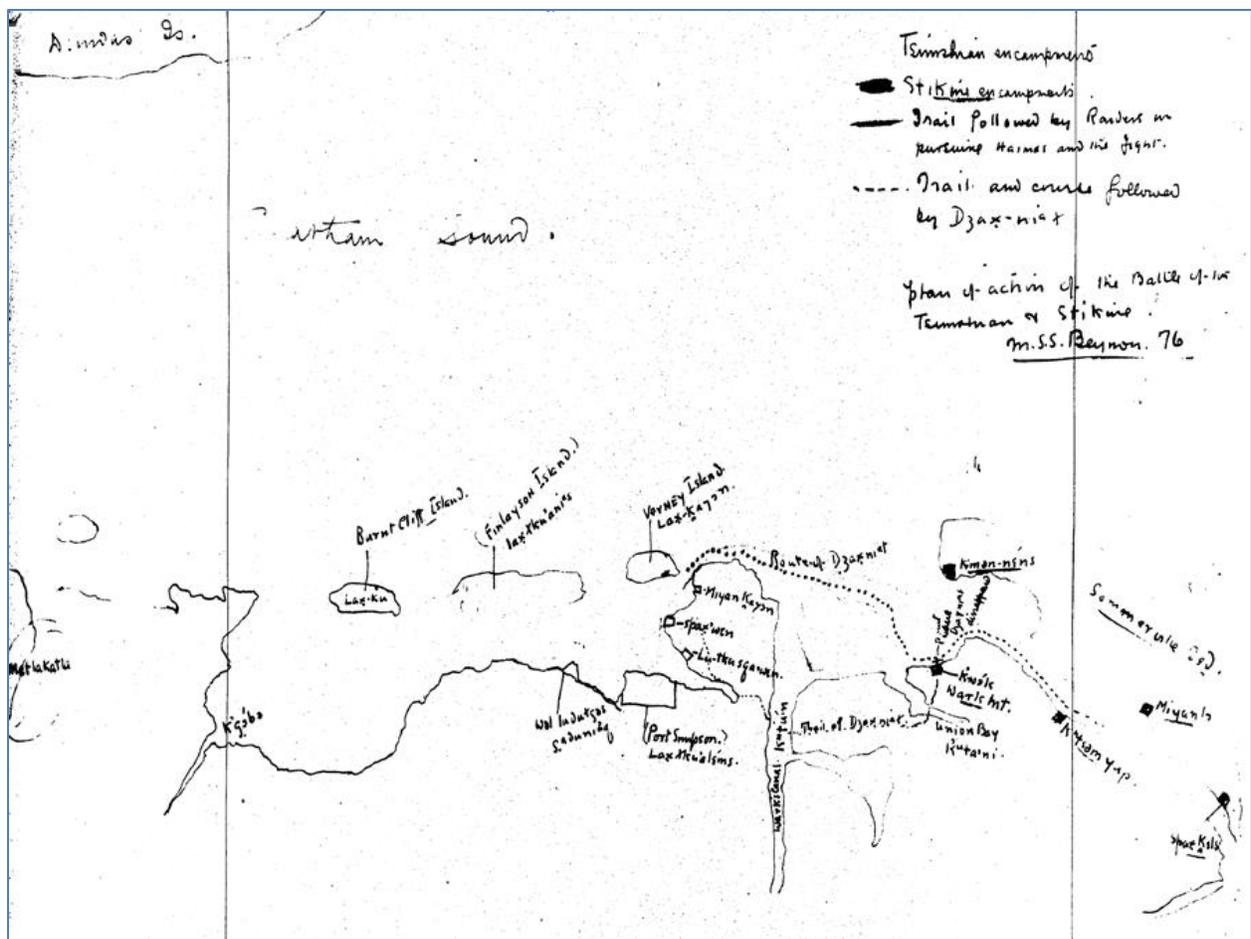


Figure 11. A map by Beynon showing the Nine Tribes camping locations between Metlakatla and the Nass estuary.

2.2.4.3 Beynon 105: “When the Ginax’ongik Lost their Foremost Standing to the Gitxalas”, spoken by Mark Luther.

This story tells of how Wiseks, Haimas’ father and leader of the Ginakangiik Tribe sought a large copper from a Stikine chief, who was his relative. At this time the Ginakangiik were the most powerful of the Nine Tribes and Wiseks wanted copper for his own funeral. Haimas engages in a wealth challenge with the Gitxaala and loses his father’s copper. Wiseks dies impoverished and the Ginakangiik lose their position of status.

- Note that this event occurs after the Kincolith scalp house feast, but within the lifetime of the same Haimas (according to Beynon 110) – so before the War with the Tlingits.

2.2.4.4 Beynon 110. “The Narrative of Haimas and the Wudzan-alu’k”, spoken by Henry Tate.

This narrative tells the story of the origins of Haimas, which (since it is an origin story, we can define as the first Haimas – there may be subsequent people who hold this name after, but not prior). The events of this narrative include attacks on the Nine Tribes by northerners (Stikines) as they travel to the Nass River for eulachon. This conflict places the story in time as part of the War with the Tlingit narratives, thus before 1000 BP.

This narrative describes how Haimas creates the Wudzan-alu'k warriors, who are Raven clan from other Nine Tribes, but also some other clan members from the Gitsees. Haimas' sister marries a chief on the Stikine who adores her. His other wives become jealous, so they employ a shaman to curse her. He makes a concoction that they sneak into her food which gives her bowel problems, including flatulence. As this persists, the Stikine chief returns her to Haimas. She is ridiculed by the Nine Tribes, which Haimas takes as an insult to him and his house group. He cremates her alive, solidifying the Wudzan-alu'k warriors. Then he plots his revenge against the other tribes by building a house with a trench by the door so he could kill the chiefs as they came in. He did not invite one chief, who was his friend (Gan-ganems-Haida, "Like a Haida Tree" – he was tall), but he arrives anyway.

All the chiefs were killed and Haimas put their scalps outside the house – this was at Kincolith, "Place of Scalps." Haimas becomes an outlaw. He kills the wife and child of one of his warriors – who does not complain because it is their code to obey orders and show no emotions. Kincolith becomes their base, though they move to avoid the other Tsimshian.

Time passes, and Haimas is visited by his uncle who tells him he is not mentioned in feasts anymore by the other Tsimshians. Haimas kills him and moves to Hidden Inlet. Haimas raids the Chilkat and raiders from Klawak attack Haimas' village, killing the aged, burning the houses, and taking slaves, including the wives and children of Haimas.

Haimas leads his warriors in a counter attack, discovers it was a Klawak raid and attacks their village, recovering his kin and taking captives. Among these is a chiefly woman who is redeemed by the Tlingit chief, who gives Haimas the "K'tsemadin" (Kutzemateen) River, which is why how it became Gitsiis territory. Haimas continues to raid Tlingits, Tsimshian, and Gitxaala. The Nine Tribes planned to attack him at the Nass when all were gathered for eulachon; their plan was to kill all the Wudzan-alu'k warriors. They are successful and the Raven warriors break up and return to their tribes. Haimas does not return to the Gitsees, but rather his father (Wiseks) tribe (Ginakangiik) because he had murdered his uncle.

Haimas causes trouble for his father (Beynon 105), but leads raids against the attacking Tlingits (Beynon 76). The latter event places this story prior to the War with the Tlingits, thus at least 1100 years ago. The direct quote from Beynon is: "And afterwards he (Haimas) brought great trouble to the Ginax'angik when his father was very old (see Beynon 105) and once Haimas led all of the Tsimshians against the raiding Tlingits (Beynon 76) and won. And the Tsimshians really feared him."

- There are three lines of evidence which place this set of narratives at or prior to the time of the War with the Tlingits (i.e., before 1100 years ago): 1) Haimas leads his reconstituted Raven Warriors against the Tlingit as part of the war, an act that rehabilitates him somewhat, 2) the leading Nine Tribes chief of the era is his father Wiseks of the Ginakangiik, whose only peer is T'sibassa of the Gitxaala (i.e., this occurred before Ligeex became pre-eminent chief; and 3) there is no reference in any of these narratives to Ligeex; this suggests it occurred prior to the arrival of Ligeex's name to the Gispaklo'ots; MacDonald (2012) suggests Ligeex's name arrived around 1750, but in my view it was several centuries earlier, as an estimate from the number of Ligeex's in these narratives.
- Note that Klawaks is a "Tlingit village on the N.W. coast of Prince of Wales Island" (Note 12, page 24).
- This narrative also appears in different versions in MacDonald and Cove (1987b) as Narratives 41 and 42. In both the timeline makes clear that these

events took place prior to and during the War with the Tlingits, which concluded about 1100 years ago.

- Beynon includes this map as part of this narrative, showing the many locations of this story. Of interest here is the location of the Nine Tribes villages at the mouth of the Nass. See Table 6 for a summary of these maps and their place names.

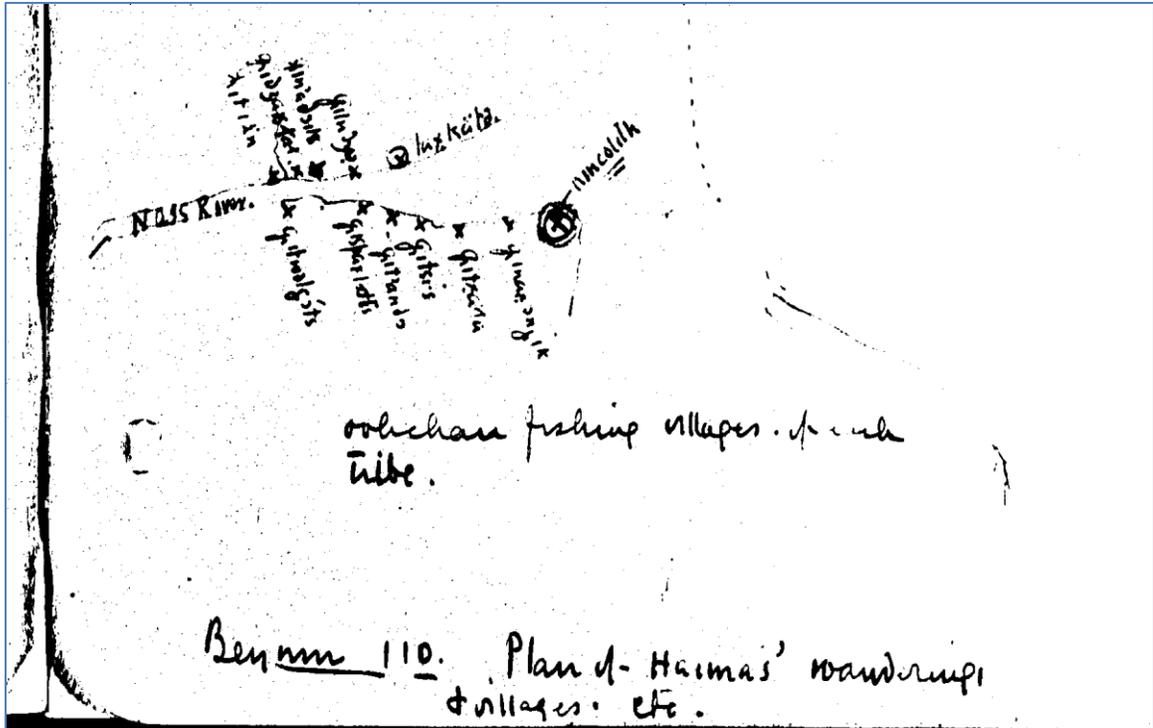


Figure 13. A section of the map shown in Figure 12.

2.2.4.5 **Beynon 120. “The Reason Why Ligeex is Foremost of All Chiefs”, spoken by H.D. Pierce.**

This narrative documents the rise of Ligeex (aka Legaic), leader of the Gispaklo’ots (one of the Nine Tribes) and his ascension to pre-eminent leader of the Nine Tribes. In this narrative, likely taking place in the early 19th century, Ligeex wins a debate about his power relative to other chiefs and proclaims that we will memorialize his victory:

“Ligeex said to them, “Well now you will see my plans. We will give a big feast and it is then I will combat them with wealth, all of the people. I will challenge anyone to combat with me and I will use my copper shields. Well if I am defeated with my coppershields and then my wealth I will use, and if I am again defeated then I will use my slaves and if I am again defeated, well then we will really have to fight.

If anyone wants to challenge me let him walk out and we will combat with wealth...

And in this way, without warning, Ligeex elevated himself above all of the Tsimshians...

No one knew how many coppershields he possessed...

Now the mouth of the Nass River is where every canoe goes to when gathering eulachons and it will be a good place to make the picture and Kisi-yanant (Ten Mile Point) will be a good place to make it...

They made a picture which was to be the face of Ligeex and all around the human face there were three score and fourteen coppershields...”

- This *adawx* provides another record of the events found in Beynon MS #64, explaining how the pictography at Ten Mile Point is a statement of ownership to the Study Area that is, at the time, unopposed by the Nisga’a.

2.2.4.6 *Beynon 121: “When Tsibassa Tried to Shame Ligeex” spoken by H.D. Pierce.*

Page 49 of this narrative contains a map (Figure 2) of the Red Bluff/Fisheries Bay area that clearly designates the territories of the Nine Tribes, “oolichan fishing sites” also described on the map as “Tsimshian Villages for Oolichan” on the Nass River. The map is oriented so that the top is east (upriver). Visible on the map are the “Fishery Bay Nishga Village”, “Greenville” and “Kincolith” as well as the mouth of the Nass River. It is important to remember that evidence of use or occupation in Tsimshian law does not automatically equate with title (see Section 1.7).

There is however a class of rights in Tsimshian law that permits resource use of and occupancy within someone else’s territory. We cannot determine from just the map evidence what these village locations represent, although all of Beynon’s maps are consistent in showing Nine Tribes, Tlingit, Gitxaala, and Gitga’ata villages in the Study Area. To determine ownership of the Study Area as distinct from rights of privilege, there must be a record of this in the *adawx*. The *adawx* only contain legal histories of Nine Tribes ownership of the Study Area. Note that the Ministry (2016) report misidentifies this map as containing Nisga’a villages.

Except for the areas at Greenville and Fishery Bay, these places are Nine Tribes villages, and a village of Gitxaala and Gitga’ata. Note that the Nine Tribes villages are divided as tribes, while the other communities are listed as nations. This suggests that the ownership belongs to the Nine Tribes, and the other groups have rights of access and use but not title, since title is owned by house groups, possibly tribes, but not nations.

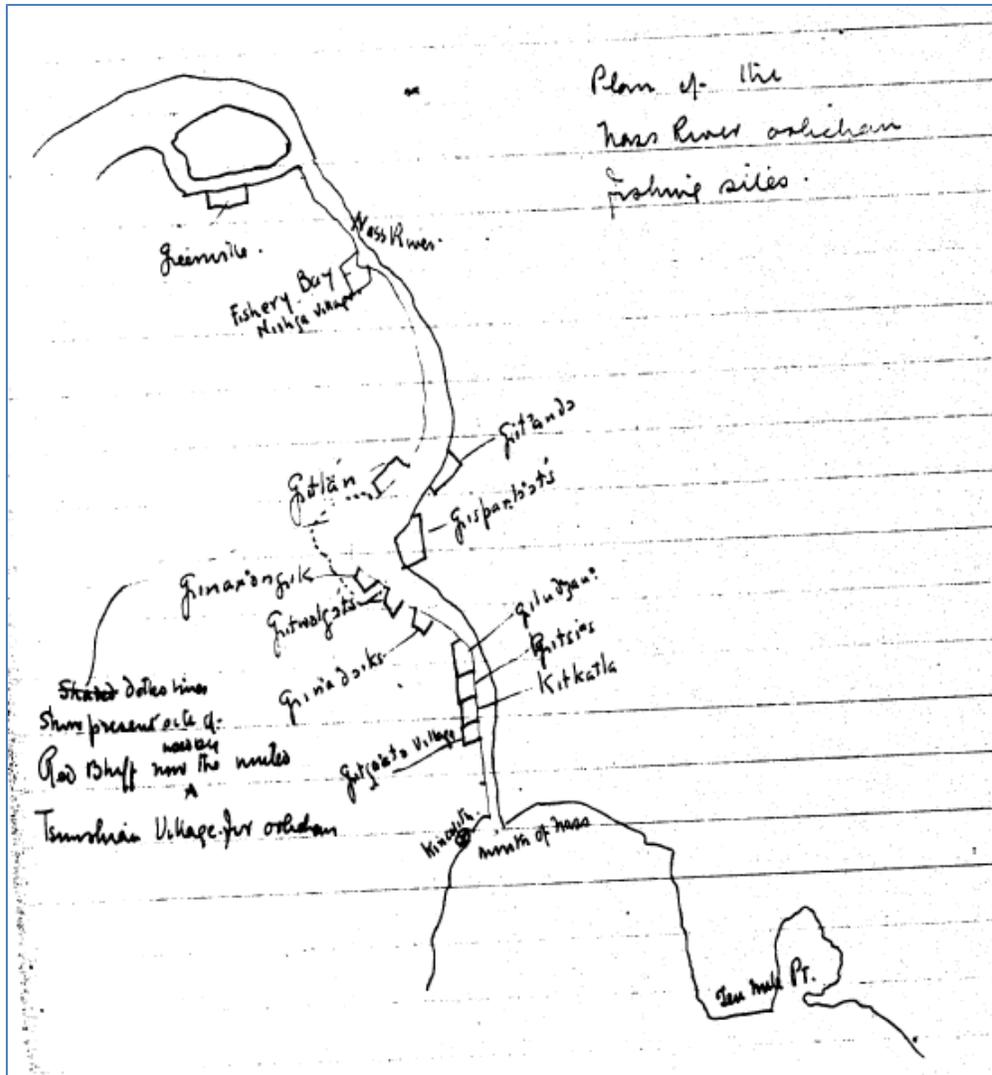


Figure 14. A map by Beynon showing the Nine Tribes village locations at the mouth of the Nass River.

2.2.5 MacDonald and Cove (1987b). *Tsimshian Narratives 2: Trade and Warfare*. Canadian Museum of Civilization Mercury Series Directorate Paper Number 3.

George Macdonald and John Cove compiled two volumes of *adawx* from the files of Marius Barbeau and William Beynon, some of which have appeared in other published sources. Several are also similar to those in the Beynon Manuscript of 1939. MacDonald and Cove published two volumes focused on “Tricksters, Shamans, and Heroes” (Volume 1) and “Trade and Warfare” (Volume 2). The narratives which are relevant to this discussion appear in Volume 2. MacDonald and Cove appear to have made some orthographic adjustments to the original texts – largely, it seems, to accommodate the Sm’algyax proper names on a standard typewriter. Beynon used orthographic conventions that extended beyond the font set of a typewriter – thus these volumes use phonetic equivalents.

There are two consistent patterns here that also appear in the Beynon Manuscript: 1) the *adawx* referencing ownership of the Study Area consistently point to the Nine Tribes as the legal owners; 2) the Nisga’a claims to the Study Area all appear in the late 19th century, with

one exception: the house of Txalaxet's claim to areas on the east side of the Kwinamass River. I discuss that this appears to be a claim of privilege rather than ownership in Section 5.6.2. Note that, as with the Beynon Manuscript, I list these narratives in the order that they appear in the volume. The chronological order for these is:

Pre-Contact

- 41: Early life of Haimas.
- 42: Haimas' sister marries into the Stikine, is humiliated by the Northern Tsimshian; Haimas kills chiefs at Kincolith in the slaughter house.
- 44: the defeat of Haimas and humiliation of his father, Wiseks.
- 17: origin of the name of Ligeex.
- 39: Stikines arrive at Nass and are welcomed by Ligeex.
- 19: use of Study Area by Gispaklo'ots.

Post-Contact

- 17, 30, 35: Painting of pictograph at Ten Mile Point.
- 61: Haida attack on the Nisga'a village of Witunoaks at the mouth of the Nass.

Post 1846

- 56: gun battle between Nine Tribes and European traders on a ship at the mouth of the Nass, no mention of Nisga'a. Occurs after the establishment of Fort Nass in 1831. This could be a reference to the *Sparrow Hawk* incident of 1862 (Narrative 60).
- 53: gun battle between the Gitxaala and some Nisga'a (not Git'iks) at the mouth of the Nass.
- 49: a gun fight between the Nine Tribes at a feast at Red Bluff.
- 7, 50, 59, 64: Conflict between Hlitux and Ligeex in the mid to late 19th century; one *adawx* (64) locate this after the establishment of the Kincolith mission in 1867, but it might also date from the mid-19th century, during the height of the inland fur trade.
- 55: post-contact reference to Nisga'a ownership of Hidden Inlet.
- 60: the *Sparrow Hawk* incident, occurring after Duncan has established the mission at Metlakatla in 1862.
- 29: Combat of wealth between Ligeex and a Nisga'a chief after Kincolith was established as a mission town in 1867.

These records match the patterns established in the Beynon Manuscript (see Table 1), and indicate that all the *adawx* which refer to times before 1793 show that the Nine Tribes owned the Study Area. The Nisga'a have several narratives which place them in the Study Area, and a few which claim parts of the Study Area. However, these date exclusively to post-contact times and largely to times after the establishment of the mission at Kincolith in 1867.

Note that there are some internal inconsistencies in these *adawx*. For example, #64 locates the events of the conflict between Ligeex and Hlitux as after the mission is established at Kincolith, where the other versions (7, 50, 59) indicate it is during the height of the inland fur trade, so early to mid-19th century. There is a pattern to the outliers. They are recorded by Barbeau at Kincolith.

These are the only *adawx* that I know of that are recorded by Barbeau, and he appears only to have collected data at Kincolith. Several of these are recorded by unknown informants and appear in informal prose. Barbeau's maps also at times contradict the main body of *adawx* (collected by Beynon), thus I infer that Barbeau's narratives may include oral histories (personal recollections) rather than actual *adawx*. Beynon's records have no such informalities or inconsistencies, thus he is the more historically and legally accurate source.

2.2.5.1 ***No 7, Pages 19-22: Trading Feud of Hlitux on the Skeena River (1857). Informant: Robert Stewart, Kincolith.***

This is another version of the conflict between Ligeex and Hlitux (aka Hlidux). It dates from post-contact times.

- Page 19: The Nisga'a at this time could not trade with anyone other than the Haida. This is likely a reference to the Gwinhuut monopoly on trade.
- Page 20: this account adds a detail, that the Gitlan village on the Nass was a "fortress village."

2.2.5.2 ***No 17, Pages 62-65. The Bella Bella Origin of Legaix. Informant: John Tate, Gispakloats.***

This is a version of the narrative of the challenge to Ligeex by the other 8 chiefs and his ascension featuring the painting of the pictographs at Tyee and Ten Mile Point. It parallels the *adawx* 64 and 120 from the Beynon Manuscript. Note also that this event defines the origins of the name Ligeex, and is an event that I argue dates to several hundred years ago, based on the many different Ligeexs and the numerous events associated with them. MacDonald (2012) argued that the name originates around 1750.

- Page 64: Ligeex has the paintings commissioned to signal his control over the Skeena and Nass Rivers, respectively.
- Page 65: Ligeex hosts a surprise feast en route to the eulachon fishing grounds at Miyanhlaw, from where the pictograph is visible at Ten Mile Point. It was renamed Wel-gilktrah-tamkl, the place of painting of Ligeex.

2.2.5.3 ***No. 19, Pages 69-74: When Legaix's Mother Was Made a Captive. Informant: Herber Clifton, Hartley Bay.***

This narrative mentions the Gispaklo'ots use of the Study Area.

- Page 74: account of travel to the Nass for the eulachon fishing season, where the Gispakloats had a village.

2.2.5.4 ***No. 29, Pages 103-107: Legaix Tries to Conquer the Nishga. Informant: Walter Haldane, Kincolith.***

This is an account of Ligeex's attempt to take the Nass River away from the Nisga'a. This story dates from after the time that the mission at Kincolith was established in 1867.

- Page 103: Ligeex challenges Kindzadux, the leading Nisga'a chief to a combat of wealth in front of Kincolith.
 - Ligeex uses a trick copper (attached to a string so he can throw it in the water and retrieve it. The Nisga'a wolves pool their wealth and outlast Ligeex until his deception is realized. Ligeex retreats.

- This narrative is evidence of Nine Tribes efforts to regain their territory after the establishment of the mission at Kincolith began to erode their ownership, at least in the eyes of colonial officials. It is notable both as a demonstration of the lengths to which this Ligeex (likely the successor to Paul Legaic, who died in 1867) went to make their claims, and of the decline in the fortunes of the Gispaklo'ots after the conversion of Paul to Christianity (see Martindale 2009).

2.2.5.5 *No. 30, Pages 106-107: The Supremacy of Legaix. Informants: Henry Pearce and James Percy, Port Simpson.*

Another account of the painting at Ten Mile Point.

- Page 107: another account of the pictograph at Ten Mile Point as evidence of Ligeex's ownership of the Study Area.

2.2.5.6 *No. 35, Pages 120-122: Legaic's Triumph. Informant: Matthew Johnson, Gispakloats.*

Another account of the painting at Ten Mile Point.

- Another account of the painting at Ten Mile Point and the ownership of the Study Area by the Nine Tribes, now controlled by Ligeex.

2.2.5.7 *No. 39, Pages 129-130: A Stikine Raid upon Kitisu. Informant: John Robertson, Port Simpson.*

An *adawx* about the Stikine arriving at the mouth of the Nass and being welcomed by Ligeex.

- This narrative of exiles among the Stikine who travel south along the coast and up the Nass (thinking it was the Skeena) where they meet Tsimshian people and are taken to their relative, Ligeex, who hosts his nephews before they return home to Kitisu.

2.2.5.8 *No. 41, Pages 135-138: The Origin and Adventure of Haimas. Informant Mark Luther, recorded 1947.*

This narrative follows closely Beynon 76 from the Beynon Manuscript, describing how Haimas and the Raven Warriors join with the Nine Tribes to defend against raids from the Stikine. This conflict occurs between Metlakatla and the Nass River, the first attack occurring as the Nine Tribes travel to the Nass for the eulachon fishery.

- The narrative (as with 76) defines camping locations of the Nine Tribes along the route, including Steamboat Passage and Sommerville Island.
 - Beynon 110 clearly dates these events to during the war with the Tlingits, thus before 1000 years ago.

2.2.5.9 *No. 42, Pages 139-146: The Marriage of Haimas' Sister to Gusran. Informant: Mark Luther, Recorded 1947.*

This narrative is similar to Beynon 110 from the Beynon Manuscript and includes the story of Haimas' sister's failed marriage to Gusran of the Stikine, because of jealous sabotage by his other wives. It recounts her affliction and embarrassment as well as her death by Haimas who takes revenge on the other Tsimshian. Haimas invites the other chiefs to a feast at Kincolith and kills them all, the location becoming known as "Place of Scalps" as a result. Haimas then turns to raiding with the Raven Warriors and the battle with the Tlingit is told after the attack

on his village at Hidden Inlet. In this version of the story, Haimas helps the Nine Tribes attack the Haida and the Bella Bella, thereby regaining his place in Nine Tribes society.

2.2.5.10 ***No. 44, Pages 150-156: The Rise of the Kitkatla over the Tsimshian. Informant: Jas. Lewis, (Kaimtkwa), Kitkatla.***

This narrative follows Beynon 105 from the Beynon Manuscript, describing Haimas' time between the battle with the Tlingit and the disbanding of the Raven Warriors and his return in defense of the Nine Tribes. Here he lives with his father, Wiseks, loses the great copper "Hahulk", and causes the humiliation of his father and tribe (Ginakangiik).

- Note that in this narrative, the rivalry between the Gitxaala and the Nine Tribes is manifest in their two greatest chiefs, T'sibassa and Wiseks (Ginakangiik). Haimas (Gitlan) is Wisaiks' son. This indicated that these events took place prior to the rise of Ligeex as the pre-eminent chief of the Nine Tribes, thus they cannot be from the 18th or 19th centuries.

2.2.5.11 ***No. 49, Pages 174-178: The Murder of Maws. Informants: John Morrison and Mrs. McKay, Port Simpson.***

A post-contact (made clear due to the presence of guns) story that identifies (page 176) the Gitwilgoats village on the Nass at (Laxate) which was between two Gintando villages, Ahlkusaws (upriver) and Klaerle (downriver).

2.2.5.12 ***No. 50, Pages 179-184: Hlidex, The Wolf Chief of the Nishga. Informant: unknown.***

This narrative references the taking of belongings from Hlidex's family at Kitselas. This event appears to be the same as referenced by Marden and Galois (1997: 173) as occurring after contact.

- Page 179: Guns are mentioned, indicating that this occurred after contact.
- Page 179: The following are listed as tribes with village locations on the Nass River, around Red Bluff, on both sides of the river: "Gitxahla, Gitaata, Gitlan, Kitselas, Kitsumkalum." Note that only the Gitlan are one of the Nine Tribes. The Haida and Tlingit are noted to have come to trade.
- Page 179: The Nisga'a village of Laxtawzep was at Fishery Bay. Hlidex' village was on the opposite side of the river from this.
- Page 180: conflict between the Nisga'a and the Kitselas continues at the Tsimshian village of Gilodzar, on the Nass, where a prince of the house is shot and killed by mistake. (This indicates that the list above is not complete). The tensions cause the Nisga'a to retreat to their upper villages and the Tsimshian to stay in theirs on the lower Nass. They then retreated to the village at Lax Kw'alaams to plan retaliation.
- Page 180: tensions increased the following eulachon season with shots exchanged between villages. The Gitlan chief Nislaganos, (who was related to the Nisga'a Wolf house of Nisyaux), argued to the other Nine Tribes that without peace, they would not be able to go to the Nass for eulachon and they would starve.
- Page 181: Peace is brokered by compensation payments for all the deaths. Reciprocal feasts were held on the Nass and at Port Simpson.
 - Note that Narrative No. 64 (Pages 236-238) describes the same event and locates it in time after the Kincolith mission, thus after 1867.

2.2.5.13 ***No. 53, Pages 191-193. The Gitxaala Fishing Eulachon on the Nass. Informant: James Lewis.***

The Gitxaala had a “fishing station” on the Nass for eulachon. The Tsimshian controlled the lower part of the Nass and the Nisga’a had the upper part. There was tension since the lower part was free of ice sooner, resulting in an easier fishery.

- Page 191: the Nisga’a view the Gitxaala presence on the Nass as “robbing their foodbox” i.e., using the resources of their lands and waters. They viewed the Nass as “the property of the Nisga’a.”
- The Gitxaala respond that they are coming to the village of their grandfathers (i.e., ancestors) where many of their people were born and where they have hosted great feasts. The Gitxaala plan an attack and warn their relatives in the Nisga’a village.
- Only a “small group” of Nisga’a are prepared to attack over this claim. Even the Nisga’a of Gilaxdamks are being treated as invaders by this group (Gitiks).
- The conflict came to a head when the Gitxaala fired a gun at the Nisga’a (the first firearm seen by many – reportedly acquired from the Russians).
- Wisaiks (Tsimshian/Ginakangiik) and Wisaiks (Nisga’a/Gitwinskiik) negotiated peace, cemented by mutual feasting.
 - This conflict occurs after contact.

2.2.5.14 ***No. 55, Pages 201-203. The Fight of Hlkuwasan. Informant: Charles Barton, Kincolith. Recorded by Marius Barbeau.***

This story defines Hidden Inlet as belonging to the “Nishga Killer Whale house of Hawa” and to Hlkuwasan.

- This story is post-contact (presence of guns).

2.2.5.15 ***No. 56, Pages 204-205. The Massacre of White Traders at Kamtoop. Informant: John Tate, Gispakloats. Recorded by William Beynon.***

A story of conflict between the crew of a trading ship and the Nine Tribes in Nass Bay. Gunfire is exchanged between the Tsimshian and the ship, which destroys Nine Tribes “hunting camps” (for sea otter) on shore. The schooner leaves and returns to continue the fight, with deaths on both sides.

- This story occurred after the construction of Fort Nass (1831-32).
- There is no mention of Nisga’a in this incident.

2.2.5.16 ***No. 59, Pages 213-218. A Trading Incident between the Nisgha and the Gispakloats. Informant: Agnes Haldane, Kincolith.***

This narrative relates the story of the conflict between Hlidex and Ligeex’s Eagle clan allies at Kiteselas and, later, on the Nass.

- Page 215: Hlidux tells Gihawn (a Kiteselas chief) not to visit the Nass next year, or if he does to live in a village separate from the other Kiteselas. This implies some flexibility to village locations.
- Page 215: all the tribes gather for the eulachon fishing in their usual places, the Nine Tribes at Fishery Bay (Kwarapal and Laxtawtzep).

- Page 218: during the conflict, the Nisga'a travel overland to attack the Tsimshian and vice versa. This suggests separate territories. This is made clear as Hlidux ends the hostilities by traveling down river in a canoe to the Tsimshian villages.
 - This event occurs in the middle of the 19th century, during the height of the inland fur trade.

2.2.5.17 ***No. 60, Pages 219-221: The Wolf Chief Nislaganos. Informant: unknown.***

Account of feast at Tsimshian villages on the Nass River during the time of William Duncan in which a Nisga'a man was accidentally killed, triggering retaliation. Duncan alerts the British who sent the *Sparrow Hawk* to arrest Nisga'a chiefs.

- Note that the Nisga'a are guests of the Nine Tribes at their villages at the mouth of the Nass.
- This event is also described in Narratives 50 and 64.

2.2.5.18 ***No. 61, Pages 222-224. The Gitraitz Haida are Defeated by the Gispakloats. Informant: C. Abbott, Nishga. Recorded by William Beynon 1927.***

This story takes place before the Fort was built at the Nass, but during the fur trade. Duke Island (Alaska) "Laxkye" was a trade depot for ships.

- The narrative describes an attack by the Haida on the Nisga'a at the Nass River village of "Witunoaks" in Nass Harbour.

2.2.5.19 ***No. 62, Pages 225-233. The War of the Gispakloats and the Haida. Informant: John Tate, Gispakloats.***

This narrative occurs when the Nine Tribes are living in separate villages around Metlakatla. This was a battle that occurred long before the battle at the HBC Fort at Lax Kw'alaams.

- Page 225: The Nine Tribes leave their villages on the Nass and move to their villages at Metlakatla.
 - This dates to after the establishment of Kincolith, so after 1867.

2.2.5.20 ***No. 64, Pages 236-238. Recent Tsimshian Warfare. Informant: Charles Barton (Pahl), Kincolith. Recorded by Marius Barbeau.***

Another version of the conflict between Ligeex and Hlaidex (Hlitux).

- Page 237: The Kincolith Mission had been established at this time.
 - This timing differs from the other versions of this story. I would place these events in the mid-19th century.

2.3 Primary Evidence - Historic Documents

Non-Tsimshian historical documents (i.e., documents and records compiled by non-Indigenous people) appear in various forms, usually by European, British, or (later) Canadian officials who have recorded the statements or claims of ownership by Indigenous people. In some specific cases, such as the allocation of reserve lands, the issue of record is title. Here I evaluate only a small subset of these, those focused on the allocations of reserve lands in the Study Area.

This was done by Indian Reserve Commissioner Peter O'Reilly in 1881. His reports provide a record of Indigenous claims to the Study Area. His allocations influenced later claims.

Specifically, O'Reilly was motivated to find a suitable economic base for the recently established Kincolith mission but provide it with nearby arable land for farming. This is interpretable as part of the Reserve Commission's application of state-craft for the new country by supporting mission communities and as part of the larger effort by the Canadian state to convert Indigenous people toward non-Indigenous practices.

The Study Area is proximal to Kincolith but distant from the Nine Tribes urban centres of Port Simpson (Lax Kw'alaams) and Metlakatla. As a result, Kincolith had a stronger claim to the area in O'Reilly's view because of proximity. At the same time, Nine Tribes leaders made their case to O'Reilly that the Study Area was their ancestral lands and waters and he accommodated them by creating a concept of "commonage" a shared access to the reserves in the Study Area. I know of no other examples of this concept in reserve allocations. O'Reilly bifurcated reserve lands in several cases, granting the land to Kincolith and the waterfront and fishing rights to shared usage for, particularly, the Nine Tribes. The concept of commonage faded quickly, and by the early 20th century, Kincolith was trying to impose access and usage taxes on Nine Tribes people making use of these reserves. Nine Tribes leader Arthur Wellington Clah went so far as to move to and build a homestead on IR 12, in order to claim Nine Tribes land using O'Reilly's criteria of farming.

2.3.1 O'Reilly Correspondence

Peter O'Reilly was the Indian Reserve Commissioner who assigned the reserve lands for the Nine Tribes and the Nisga'a. His correspondence represents his reports to the Superintendent of Indian Affairs. In it he describes his decisions and logic for allocating reserves. Of interest to this analysis is his use of the concept of commonage (see Section 2.3.1.1) as a solution to avoid dealing with disagreements over territorial claims. Specifically, he denotes a series of reserves in the mouth of the Nass River area (IR 10, 12, 13) as being for common usage of all Tsimshian tribes. By 1882, the Kincolith mission (founded 1867) had been operational for 15 years, and its residents had claimed use of the region. IR 11 (Black Point) is noted by O'Reilly as not having any trees or soil and only usable for fishing. Since it is between IR 10 and IR 13, it is possible that he intended it to be a commonage, but does not state as such.

2.3.1.1 Letter of March 25, 1882 to the Indian Reserve Commission.

This letter is a report by O'Reilly to the Reserve Commission. Two issues are established in this letter: 1) the concept of a commonage that O'Reilly applies to the reserves established in the Study Area and 2) that the Nine Tribes make a consistent case that this is their territory and that it is used primarily, but not exclusively, for eulachon fishing. Not that the Nine Tribes claims to reserve lands (those that become commonages, IR 10, 12, 13) align with the areas defined by Beynon as within Nine Tribes territory. It appears that, unlike the Nisga'a, the Nine Tribes did not use the reserve allocation system with a view to extending their territorial claims.

- 5th Page: O'Reilly recounts that he explained to the Nisga'a that reserve allocations were not for individuals or families, but to be used in common by the tribe, by which he meant the 4 main Nisga'a villages.
 - This point indicates that even among the Nisga'a, the concept of a reserve was an imperfect fit, as it granted title to an entity (tribe, nation) that had not previously been title owning under Tsimshianic law.
- 14th Page: "No. 9 Contains 3,700 acres, and is situated at the head of tidal water on the Nass River, 22 miles from its mouth. On it stands the village of Lac-kal-tsap, the

headquarters of the Wesleyan Mission; and here an excellent school and mission house have been built. This being a large reserve it includes the smaller villages of Kiticks, Kit-an-kee-da and Wil-ski-tumwil-wil-i-kit, together with the sites of some old encampments, the members of which have been gradually absorbed by the mission. The total population is 302, viz.: 94 men, 109 women and 99 children; "Mountain" being the chief. Though this land is much divided by sloughs and water courses, and subject to overflow during the summer freshets, it possesses, nevertheless, many valuable tracts of land above high-water mark, which, with little labor, may be cultivated and made to produce large quantities of vegetables and grain of all kinds except wheat. North of the river, some distance from the village, is a large tract of swamp meadowlands, which will be of great advantage when the Indians carry out their intention of procuring cattle. Timber of all kinds is found on this reserve in abundance. Besides, being an excellent salmon fishery, this is the highest point at which oolachan, or small fish, are taken. The old established fisheries on the Nass River within the limits of this reserve, as also the right to fish in the various sloughs running through it, are reserved for the use of this tribe.

"It is to be regretted that a small patch of land containing 35 acres, immediately adjoining the principal Indian village of Lac-kal-tsap, is in the possession of Mr. James Grey, who purchased it from the Local Government, a Crown grant for which was issued to him on the 3rd January, 1878. The Indians object strongly to Mr. Grey being allowed to hold this land almost within their village, and believing his residence there to be very objectionable, I asked him what he would be disposed to take for his interest. He replied that having lived there for so many years (since November, 1874, the date on which he pre-empted), he did not wish to dispose of it. The piece of land now held by Mr. Grey was formerly the site of the Hudson's Bay Company's trading post, but was abandoned prior to its occupation by Mr. Grey."

- This is a Nisga'a reserve that does not have record of being claimed by the Nine Tribes. Note that it is also the location of Fort Nass. MacDonald (2012) places Fort Nass within the territory of the Nine Tribes, but this evidence suggests otherwise.
- 17th Page: "No. 10 "Stoney Point" 5 miles below the Village of "Lac-kal-tsap" on the right bank of the Nass River. Contains 380 Acres; it is a place of much importance not only to the Nass River Nation, but also to many of the Coast Tribes, who resort there in the early spring, during the Oolachan fishing season, for the purpose of obtaining a supply of Grease from that fish, an article much prized by the Indians."
 - This reserve is claimed by the Nine Tribes and is within the area of their ownership defined by Beynon.
- 19-20th Pages: "As before stated the Indians of various tribes congregate here, and also on Reserves 12 and 13, for the Oolichan fishing, which lasts about six weeks (commencing in the early part of March, and continuing till about the middle of May)³ after which they return to their respective homes. I arranged that the resident Indians should have the exclusive privilege of cultivating the land, while the rights of those who have been in the habit of fishing should not be interfered with. For the purpose of carrying out this arrangement, a frontage on the River of one chain in depth extending the entire length of the respective reserves, must be considered Commonage; this

³ Note that O'Reilly's math is in error. Early March to mid-May equals 11 weeks, which makes his estimate align with other sources that indicate the eulachon fishery lasted about 3 months.

settlement of the question met with the hearty concurrence of the Indians, and was highly approved by Messrs. Shute and Robertson, the Missionaries of the Episcopal and Wesleyan Societies (who were present at my interview with the Indians), and subsequently, by Mr. Duncan of Metlakatla who takes a deep interest in the adjustment of the matter. The carrying out of the details of this arrangement will devolve upon the local Indian Agent, when one is appointed for this District.”

- Here O’Reilly defines commonage as rights of fishing “that should not be interfered with.” The land of this reserve is allocated to the Kincolith. Given the historic value of the eulachon fishery, this may have been a reasonable trade for the Nine Tribes.
- 21-22nd Pages: “No. 12, Known as “Lac-tesk” or “Canaan”, contains 250 acres on the left bank of the Nass nearly opposite to No. 11. I reserved this land for the resident Indians of “Kincolith” (at the mouth of the Nass River), subject however to the rights of the numerous Tribes that congregate here for the Oolachan fishing, as previously stated, and for whose use a Commonage of one chain in depth is set apart. On this land some few acres have been cleared, and cultivated which may be increased to 30 or 40, but for the most part it is swampy, and subject to overflow; there is a limited quantity of timber at the Western extremity. Contrary to the wishes of the Indians of “Kincolith”, who have always claimed this land, two sub-chiefs, from Fort Simpson (50 miles distant) named Clah, and Moses McDonald have established themselves here, and were on the ground when I visited it, and they stated, that they wished to hold the land for purposes of Agriculture. At the request of the “Kincolith” Indians I explained to them that they could use the frontage for fishing as they had been in the habit of doing, but that they must not interfere with the cultivable land, that being the property of the Nass River tribe.”
 - This is the reserve that Arthur Wellington Clah occupies to defend his rights.
- 25th Page: “No. 14. Kincolith, a reserve on the right bank of the Nass, at its mouth, contains 1,250 acres. Its population numbers 180, viz.: 46 men, 59 women, and 75 children, Quock-shaw (Robert) being the chief. The reserve includes their village, church, school-house and saw mill. This land forms part of a Government reserve of 4,000 acres, made on the 1st September, 1869, by order of His Excellency Governor Seymour. The Church Missionary Society has expended a large sum in aid of the erection of the buildings above referred to; the site unfortunately was badly chosen, being surrounded by mountains of rock, with no land of value, nor any fisheries in the immediate neighborhood.”
 - This established the reserve lands around the mission at Kincolith, effectively transferring Nine Tribes territory to the new community, which was largely composed of Nisga’a families.
- 26th Page: “The fifteen reserves above enumerated represents the land set apart by me for the tribe of the Nass River⁴, and includes every fishing station and patch of cultivated land pointed out to me by the several Indian Chiefs for, a distance of fifty miles from the mouth of the river, and also one small fishing station, known as Kinnamax, in the Nass Straits.”

⁴ This contradicts O’Reilly’s statement on common usage for the “various tribes” noted above.

- Here the claim of fishing rights by the Nisga'a house of Txalaxet is translated into a reserve on the Kwinamass River.

2.3.1.2 *Index Volume 15. Minutes of Decision, Correspondence, & Sketches. Peter O'Reilly, A.W. Vowell, January 1898-1902. File 29858. Vol. No. 9 [pp. 1-168] May 1902 to January 1906. File 29858, Vol. No. 10 [pp. 169-455]. [Reg. No. B-64650].*

This document is the archived correspondence between O'Reilly and the Reserve Commission, and includes reference to the reserves in the Study Area. It is clear from these letters that as early as 1898, Kincolith is claiming exclusive ownership of the reserves previously designated as commonages by O'Reilly, specifically to acknowledge rights of access and use by the Nine Tribes.

- Page 10, Table Row 1: 02/24/1898. The footnote (51) for the "Nass River" entry in the Band/Tribe column includes this: "McLean discusses the issue of the rights of other Indians to encamp during the fishing season on certain reserves allotted to the "Naas Indians" and the ability of the Indian Reserve Commissioner to arrange separate agreements between different Bands. McLean states that, "there should be no doubt as to the intent of the Minutes of Decision [sic] of the Indian Reserve Commissioner. These are framed with the intention evidently, to set apart and to state the limits of the different parcels of land allotted for the use of the Indians. This is all that is necessary for the information of the British Columbia Government [sic]." (p. 162) McLean refers specifically to reserves 10, 12 and 13 of the Nass River Indians. These reserves, Stony Point 10, Lachtesk 12 and Red Bluff 13, are all currently held by Kincolith. In McLean's opinion the reserves "belong to them for all agricultural purposes, but for the entire lengths of their frontage on the River, and for one chain in depth all Indians who had been in the habit of encamping thereon at certain times of the year, for fishing purposes, should continue to have that privilege." (p. 163)."
- Here Kincolith's claims to the reserve lands in the Study Area are expanding, and the correspondence records the Commission's attempt to correct this.
- Page 10, Table Row 2: 02/09/1898. The footnote (52) for the "Nass River" entry in the Band/Tribe column is: "Reference is made to Nass reserves 10, 12 and 13 in relation to ongoing rights of Tsimshian Indians to use the frontage of the reserve for seasonal fishing. As well, there is a reference to the "Blue Book" (p. 165), this would be the Dominion Sessional Papers."
- Another reference to the Nine Tribes rights to these reserves.

3. Original Analysis

I am aware of a few scholars who have addressed issues of territorial ownership in the Study Area from primary evidence: Franz Boas, Clarence Bolt, Brian Cope, Viola Garfield, Jonathan Dean, Robert Galois, George MacDonald, James McDonald, Susan Marsden, Christopher Roth, and one (or more) anonymous report writers for the BC Ministry of Justice, Aboriginal Research Division. Each of these scholars explore history with reference to *adawx*, the primary data on these issues. As discussed in Section 2, original analyses are a valuable form of scholarship only if they operate with an understanding of the Tsimshianic legal system and thus an evaluation of the differential value of different sources of data. Of the scholars who have conducted original analyses, only Marsden, MacDonald, and Roth present an understanding of how the *adawx* operate as part of the Tsimshianic legal system. Thus, their analyses are superior to others in determining issues of ownership which, because of the time in question, are only defined via Tsimshianic law.

Writers such as Dean, Bolt, Galois, and McDonald rely largely on historic texts and events after 1846, thus a clear understanding of Tsimshianic legal principles is less relevant to their work.

Writers such as Boas, and Garfield were assisted by Tsimshian informants such as Beynon, who provided them with a corrective influence.

Writers such as Cope and the anonymous Ministry scholars both make use of primary evidence but present no clear understanding of Tsimshianic legal systems to evaluate the variable quality of the available primary evidence, original analyses, and derived sources. This renders these reports susceptible to errors. For example, the Ministry's 2016 report both contradicts previous reports, such as those by Cope (2012), and is thereby unable to distinguish between derived sources (such as Mitchell and Donald 2001), and different primary sources (such as Beynon vs Barbeau). The report writer is thus forced to choose, based on undeclared logic, a preferred interpretation that requires some data to be ignored. In contrast, my analysis provides both an evaluation of different sources (Section 2) and a legal test for strength of claim based on Tsimshianic law (Section 1.7). Consequently, my analysis is internally logical, reproducible and not capriciously selective of data.

A summary of the original analyses considered in this report (Table 2), shows a clear pattern that is consistent with what is visible in the primary evidence: all but one of the original analyses define the Study Area as either belonging to the Nine Tribes, or an area within which the Nine Tribes have a legitimate legal claim. The outlier to this pattern is the most recent report by the Ministry (2016) which not only deviates from all other sources, but from previous Ministry original analyses (Cope 2012) and other derived sources (Table 3).

As I discuss in Section 3.14, the Ministry's 2016 report makes several key omissions, inconsistencies of logic and empirical errors. Thus, prior to developing my own analyses (Section 5), it is clear that a substantial body of work exists which contradicts the conclusions of the Ministry 2016 report, including that of the Ministry's own scholars.

Note that I have listed these sources alphabetically by first author (then date) which puts them out of chronological sequence. Time is less of an issue here than with the *adawx*, but note that MacDonald and MacDonald (2012) is followed by Cope (2012) which is followed by MacDonald (2012).

Table 2. The Position of Original Analyses on the Ownership of the Study Area

Owned by the Nine Tribes	Ownership Unclear or Associated with both Nine Tribes and Nisga'a	Owned by the Nisga'a
Galois 1997	Boas 1916	Ministry Report 2016
MacDonald and MacDonald 2012	Bolt 1992	
MacDonald 2012	Cope 2012	
Marsden 1997	Dean 1993	
Marsden 2002	Garfield 1939	
Marsden and Galois 1995	Garfield 1951	
Martindale and Marsden 2011	Martindale and Marsden 2003	
Roth 2002		

3.1 Boas, Franz. 1916. *Tsimshian Mythology: Based on Texts Recorded by Henry W. Tate. Thirty-First Annual Report of the Bureau of American Ethnology to the Secretary of the Smithsonian Institution 1909-1910.* Washington: Government Printing Office.

Boas's Tsimshian opus was not collected by him, but rather is his compilation of the work of Henry W. Tate with assistance from Archie Dundas. Ralph Maud argues (2000) that the distance, errors, and unclear motivations of all involved renders this work less than reliable for scholarship on Tsimshian history. There is merit in this view, but Maud's argument is overstated. Boas' errors included issues of translation and transcription, but also his lack of understanding of the nature of the Tsimshianic legal system and the role of the *adawx*. He thought that variation in narratives was divergence from an original version, thus he compiled different versions into what he judged to be the most correct, ancestral form. In fact, differences in *adawx* are often attributable to history being preserved by different house groups from different perspectives.

Despite these errors, Tate's work was considerable and derived from conversations with Tsimshian leaders in the late 19th century, making this one of the earlier ethnographic compilations. Minimally, the Boas/Tate compilation substantiates the work of Beynon whose collected *adawx* often have stylized peers in this volume. However, Beynon's work is the more precise (less errors) and accurate (closer to historical reality).

- Page 44: Boas defines the Tsimshian as occupying the Nass and Skeena Rivers. Since he sometimes uses the term "Coast Tsimshian" to refer to both the language group and the Northern and/or Southern Tsimshian, it is not always clear whether he is conflating the Nine Tribes with the Nisga'a (and others) in this usage.
 - His student, Viola Garfield (1951) makes a similar gloss. Throughout the book, Boas, whose interest and focus is in myths not history, presents versions of traditional narratives which make numerous references to the eulachon fishery at the mouth of the Nass and to Nine Tribes people participating.
- Page 225: In the narrative, "32. The Prince Who Was Deserted", the Gitwilgyots are noted as moving from their village on Metlakatla to their village at the mouth of the Nass for the eulachon fishery.
 - Another of many examples indicating the Nine Tribes used and occupies the Study Area.
- Page 272: In the narrative, "42. The Water Being Who Married the Princess" the story of the Nass feast described with better citations in Marsden (2002) is summarized.

- The highly stylized version of Boas' prose here is an example of the difference between these versions and the *adawx*. Note that this event is a key feast in the history of legal claim to the Study Area by the Nine Tribes.
- The narrative cycle of Haimas and the War with the Tlingit is also presented, again in stylized form in a supplemental Section (Pages 355-392).
- From page 393 onward, Boas presents an ethnographic summary of the Tsimshian as gleaned from the recorded narratives.
- Page 394: The Gidzex;a'l and Git'qxa'la have camps on the Nass for eulachon fishing.
- Page 408: "On Nass River each tribe had its own camping place."
- Page 510: "The Lige'x who ruled about 150 years ago (the sixth back from the year 1888) had his figure painted on a vertical precipice on Nass River, a series of coppers standing under his figure."
 - I think Boas' timing is incorrect and place this event in the early 19th century. See Section 5.4.2.

3.2 Bolt, Clarence. 1992. Thomas Crosby and the Tsimshian: Small Shoes for Feet too Large. Vancouver: UBC Press.

Bolt's book is a historical biography of the missionary Thomas Crosby. It relies on published and unpublished archival documents, oral records, and analyses. His relevant points:

- Page 15-16: Fort Nass site chosen in 1830 and constructed in 1831. It was moved to Fort Simpson to be closer to coastal trade and at the urging of the Tsimshian, who disliked the "stiff trading competition" from the Nisga'a and Tlingit.
- Page 75-75: In October 1881, Indian Reserve Commissioner Peter O'Reilly visited Port Simpson and the Tsimshian, "handed O'Reilly a written petition stating that they wanted the whole Tsimshian Peninsula between Works Canal and Chatham Sound and all the fishing stations on the Nass and Skeena." [DIA Annual Report 1882:90.] Six months later Crosby penned a letter from the Port Simpson chiefs making the same demands.
 - This reference is another line of evidence that the Nine Tribes were immediately and consistently opposed to granting reserve lands to the Nisga'a in the Study Area. It complements the discussion of O'Reilly's correspondence in Section 2.3.
- Page 80: At a meeting in October 1887 with J.B. Planta, a provincial appointee in Port Simpson, the community makes the same case for lands from the Nass to the Skeena Rivers.
 - As above, further evidence of Nine Tribes protestations to the Reserve Commission.
- Page 81: At the same meeting, Tsimshian noted that the land of the Nass fisheries and hunting stations had been given to "Anglican Natives under the leadership of Ridley, and traditional village sites and graveyards had been destroyed."
 - Here we see the Nine Tribes attributing the granting of the Study Area to the Nisga'a as a process within the development of the missionary town at Kincolith. Beynon makes a similar case (Section 2.2.1).

3.3 Cope, Brad. 2012. *Kitsault Mine: Review of Ethnographic and Historical Sources*. Ministry of Justice, Legal Services Branch, Aboriginal Research Division.

This document presents a response to MacDonald and MacDonald (2012), and marshalls primary data to draw its conclusion that the areas up to Alice Arm including Study Area, belonged to the Nisga'a, thus contradicting MacDonald and MacDonald (2012). I approve of Cope's reference to data, especially the primary data of Beynon, whose work he holds in high regard. However, this report is weak in three areas: 1) the data set is not comprehensive and missing key *adawx*, 2) Cope is unfamiliar with how the Tsimshianic legal system works, which weakens his assessment of the quality of specific information and sources, and 3) most importantly, he has an incorrect understanding of how to identify and chronologically sort relevant events in Tsimshian history.

The latter error creates considerable confusion here. The conflict with Haimas (and the Nine Tribes) and the Tlingit did not occur in the 19th or 18th century, but more likely between 1300 and 1000 years ago (see discussion of this issue in Section 5). As a result, while Cope's specific data has some value, his conclusions are less robust. Note however, that Cope largely assigns ownership of the Study Area to the Nine Tribes and not the Nisga'a. In this, his report contradicts the Ministry's most recent report of 2016.

- Page 6: "They (*adawx*) are often chronologically ambiguous, as long passages of time and whole generations are sometimes conflated, and different stories may refer to different generations of a chiefly name such as Ligeex or Hai'mas, creating apparent contradictions."
 - This is not correct. While chronology is difficult, it is possible to reconstruct as Martindale (2003, 2009), Marsden (1997, 2001, 2002), Martindale and Marsden (2003) and Martindale et al (2017a, 2017b) have shown.
- Page 7: "Anthropologists, historians, and ethnographers sometimes refer to aboriginal groups as having "occupied" or "being in occupation of" certain areas, as well as to such concepts as "ownership", "property", "title", and other terms of land tenure. This report uses the same terminology when citing directly from referenced source materials, commentary, and/or expert opinions. No particular legal meaning or conclusions should be ascribed to, or drawn from such usage, however. It is recommended that legal advice be sought in conjunction with the contents of this report for any assessments relating to particular parcels of land within the Study Area."
 - The author does not take into account that Tsimshianic law has meanings for these concepts, though they are not entirely equivalent to Canadian law (see Section 1.7 and Sterritt et al 1998).
- Page 7: "The Nisga'a are a division of the Tsimshian speaking nation who have long lived along the Nass River below the confluence of the Cranberry River."
 - Note that the Nisga'a now claim parts of the Cranberry River, which Sterritt et al (1998) argue is a 20th century claim that has no basis in history. Thus, the Nisga'a appear to have attempted to expand their territory to the east outside of traditional Tsimshianic legal principles (see Section 1.7).
- Page 7-8: "Halpin and Seguin's map of Tsimshian territory in mid-19th century shows two Nisga'a villages near the mouth of the Nass: Gitkateen near the Iknouk River and Kincolith at the entrance to Nass Bay (Map 3)."

- This is an error. The Halpin and Seguin map shows only three triangles (defined as “Modern Reservation or Reserve, see page xii), including Kincolith and one circle (defined as a “Native Settlement”, see page xii) in the area of IR 13 – Red Bluff/Cliff.
- Page 8: reference to the Halpin and Seguin map which indicates that the lands to the west of the mouth of the Nass belong to the Nisga’a.
 - However, this map is acknowledged as not being definitive on Page xv: “The tribal territories as mapped normally do not indicate regions shared with adjacent tribes.” Halpin and Seguin is a derived source (see Section 4), and a general ethnographic overview and therefore should not be relied on for specific historical data.
- Page 8: “The Coast Tsimshian consisted of 9 tribes with territories on the lower Skeena River and around Prince Rupert Harbour. This group of tribes is also sometimes referred to in ethnographic and historical texts as the Northern Tsimshian, the Tsimshian proper, or simply the Tsimshian, but they do not include the Nisga’a, the Southern Tsimshian or the Canyon Tsimshian. They may also be referred to as the Metlakatla Tsimshian and later the Port Simpson Tsimshian. Each of these tribes had ancient summer camping locations at Metlakatla on Venn Pass, which had become their principle winter villages by the middle of the 18th century.”
 - The settlements in the Metlakatla Pass are not “summer camping locations” that had become “principle winter villages by the middle of the 18th century” As stated on this page. Rather these are significant year-round settlement some of which were occupied for over 5000 years.
- Page 9: “However, the Coast Tsimshian tribes, like many other Northwest Coast groups, had been coming to the mouth of the Nass for the early spring oolichan fishery for centuries prior to the arrival of Europeans on the coast, and it is mostly in the context of this fishery that they will be considered here. The Coast Tsimshian held fishing privileges on the Nass and had their own house and camp sites there. At times, they asserted political dominance at the mouth of the Nass, engaging in both strategic alliances and territorial conflicts with the Nisga’a. Much of the available information about the early history of the Study Area comes from Tsimshian narratives of the careers of the Coast Tsimshian chiefs Ligeex and Hai’mas, as recorded by Barbeau and Beynon in the early 20th century.”
 - The Tsimshian legal concept of privilege is invoked here, but not defined (see Section 1.7). See Table 4 for a full ordering of these events in history.
- Page 9: “Sometime probably in the late 18th century, Hai’mas assembled this band of elite Raven clan warriors and their families recruited from among not only the Coast Tsimshian tribes, but also from among the Southern and Canyon Tsimshian, the Heiltsuk, Haisla, Nisga’a, Haida and Tlingit. They were therefore, not strictly a Coast Tsimshian group and held no territories as a corporate group, apart from those they conquered. Early in his career, Hai’mas and his Wudzen’aenk became outlaws and went to war with the Coast Tsimshian after he murdered most of their other chiefs. During their renegade years they established themselves at Kincolith, Hidden Inlet, and Work Channel, often in hiding from the Coast Tsimshian. They appear to have taken refuge for a while with the Tlingit in Portland Canal, but ended up at war with them too. Eventually, when this Tlingit war spread to the Coast Tsimshian, the latter reconciled with Hai’mas and invited him back to be their war leader. In other narratives,

it is reported that the Coast Tsimshian under Ligeex defeat Hai'mas and his Wudzen'aenk on the Nass during the oolichan fishery. In any case, the Wudzen'aenk dissolved, members returning to their original tribes and some remaining on the Nass among the Nisga'a. Beynon claims these events happened prior to European contact."

- This is in error. The dating of these events is not the 18th century (see Section 5.4.1). They occurred around the time of the War with the Tlingit, thus about or prior to 1000 years ago. This issue is relevant as it has impact on the single Nisga'a claim to the Study Area that references Tsimshianic law – the claim to part of the Kwinamass valley though the house of Txalaxet.
- There is no mention of Ligeex in the Haimas narratives, likely because these events occurred prior to the arrival of this name among the Gispaklo'ots.
- Page 10: "The Tsimshian referred to the Tlingit as Git kaneets, or 'people of the north' (Laguna 1991:16). The village at Cape Fox (*Laxail*) figures prominently in Tsimshian narratives as a former home of many of the Gwinhuut Eagle houses which settled among the Tsimshian."
 - The Tlingit ancestry of several Nine Tribes house groups originates with the first wave of northerners who move south into Nine Tribes territory. Our best evidence (Marsden 2000) suggests that this was sometime around 3000 years ago.
- Page 11: "Apart from those described above, many other groups came to the lower Nass on a seasonal basis either to fish for oolichan or to trade for oil. The Haida came to trade, and stayed for a significant part of the year, but did not fish. The Kitsumkalum, Kitselas (both Canyon Tsimshian), Gitxaala, Gitga'at, Kitasoo (Southern Tsimshian), and Haisla all came to fish at Nass Bay, as did some of the interior Gitksan."
 - The issue of ownership is complex and requires an understanding of Tsimshianic law. It is incorrect to assume that no such legal system operated to allocate use and ownership to the Study Area. Such an assumption is not stated here, but without a clear discussion of the Tsimshianic legal system, that is the impression given.
- Page 12: "While Hai'mas was still very young, his Tlingit stepfather, Kakae or Qaga, gave a feast for him at *Knemas* (Kwinamass River) while all the Coast Tsimshian tribes were travelling to the Nass for the oolichan fishery (Barbeau and Beynon, *Raven Clan Outlaws*: 10). *Knemas* was evidently a territory Kakae owned since before he left the Tlingit to settle at Metlakatla, but at the end of the feast he made a gift of it to Hai'mas."
 - Haimas' Tlingit ancestry likely traces back to before the War with the Tlingit (1300-1000 years ago). See Beynon Manuscript 110 for this narrative.
- Page 12: "Charles Abbott, a Nisga'a informant, told Beynon of *The Hai'mas Raid of Ktoon (Warks Canal)* which indicates that Work Channel (*Ktoon*) and Khutzeymateen (*Ktzim'adin*) Inlet were also Tlingit territories. Hai'mas led an overland invasion from the Skeena River and conquered these inlets for the Coast Tsimshian tribes (Barbeau, *Raven Clan Outlaws*:126-127). These stories suggest that both the eastern and western shore of Portland Inlet north of Work Channel were previously under Tlingit control."
 - Again, these events are likely part of the War with the Tlingit which dates from about 1300-1000 years ago.

- Page 12-13: “These comments suggest that prior to the conquests of Hai’mas, the Coast Tsimshians’ movement through Portland Inlet between Port Simpson and the mouth of the Nass was constricted by Tlingit power in the area. If the Tlingit controlled Pearse and Wales Islands and the area around Pearse Canal as well as these places on south coast of Portland Inlet, it would suggest that they controlled all access to the Nass River and the upper inlets prior to the conquests of Hai’mas.”
 - Again, these events are likely part of the War with the Tlingit which dates from about 1300-1000 years ago.
- Page 13-14: “Hai’mas soon ended up at war with the Tlingit, who attacked *Kawnde*, capturing most of the Wudzen’aenk women. Hai’mas destroyed a Tlingit village in return, after which he had to retreat to a safer location. According to Mark Luther’s narrative:

This last raid upon the Tlingit made it impossible for Hai’mas to re-establish his village at **Kawnde**. So he now travelled farther south and established a village at **Kemilen (Kamelia Inlet)**, some distance from the mouth of the Skeena River (Mark Luther in Barbeau and Beynon, *Raven Clan Outlaws*:68).
- There is no further reference to the use of Hidden Inlet by Hai’mas or the Wudzen’aenk after this. As this inlet is inside the area which De Laguna has described as Tlingit territory in the 19th century, it appears likely that it reverted to them after they drove Hai’mas out.”
 - In the main, this analysis is likely correct – although I do not have sufficient primary evidence to assess it - but the timing is not. They occurred at the resolution of the War with the Tlingit, sometime after 1000 years ago.
- Page 15: “Captain Vancouver met a number of groups of aboriginal people in Observatory Arm, Alice Arm and Portland Canal in July 1794. Lamb, the editor of the Vancouver expedition journals indicates in a number of his footnotes that these people were, or probably were Tsimshian, despite admitting that they displayed many characteristics typical of the Tlingit. He seems to be relying on ethnographic publications which include these waterways in the Tsimshian territories as they were understood to exist in the 19th century. The term Tsimshian includes the Nisga’a, and these same publications attribute these areas specifically to the Nisga’a division of the Tsimshian (Map 2). Lamb does not distinguish between the various Tsimshian divisions, and where he uses it in relation to upper Portland Inlet, he is presumably referring to the Nisga’a in particular. However, as noted above, the Tsimshian narratives indicate that the Tlingit may have held a broader range of territory in Portland Inlet before contact.”
 - Relying on the impressions of internal Indigenous divisions by an outsider with little knowledge who spent little time in the area seems spurious. There is also a degree of presentism in this logic since the linguistic dialects were not understood by non-Indigenous people until the mid-19th century. Note again the error in chronology.
- Page 23-24: “There is also evidence of Nisga’a use of territories in the lower part of Portland Inlet at an early date. As discussed above, Knemas, or the Kwinamass River had originally belonged to Hai’mas’ Tlingit step-father, and had been given to Hai’mas as a gift, and is thus claimed by the Gitsees. However, at some later date the Kwinamass came to be used by other tribes, including the Nisga’a. Frank Bolton told Beynon that the Gitkateen House of Txalaxet

...had as their exclusive territory the whole valley of Kwenamas River. This was the exclusive property (where red) of this house and the village of txalaxet was known as gidzaxsen. About three miles another village about one mile above was known as alag.aldzap...At these places they hunted and fished and they got groundhog, beaver, bear, marten and wolves and many other fur bearing animals. They also got from this territory their food supply of deer meat and mountain goat meat. They also got berries and 'ax. (fern roots) and crabapple. They also got from here salmon and they fished. (BF 104.18).

- “While Bolton emphasized the exclusivity of Txalaxet’s tenure at Kwinamass, Joseph Morrison of Port Simpson told Beynon in 1927 that *Knemes* was held jointly by the Coast Tsimshian and Nisga’a. It was the shared fishing station of the Nisga’a House of “Trhalaarhaetk” (Txalaxet) and the Gitando of the Skeena River. He claimed that “The Git’andaw were privileged to go there and to dry their fish but not to hunt” (Morrison in *Raven Clan Outlaws*: 201). Robert Stewart also refers to the Nisga’a hunting ground on the Kwinamass River, which he says was across the river from the Gitando fishing camp (Stewart in *Raven Clan Outlaws*:189). No reference is made here to the Gitsees claim to *Knemes* based upon Kakae’s gift of it to Hai’mas.”
 - This represents one of the few primary sources on a Nisga’a claim to the areas west of Fishery Bay (see Section 5.6.2).
- Page 24: “Emma Wright, discussing either the House of Txalaxet or Kwaxsu, said “They also had large hunting territories which extended down to Knemas and had exclusive properties there” (MacDonald and Cove 1987[b]:194). This statement suggests that the Nisga’a territory on lower Portland Inlet was not limited to Kwinamass River, but included a broad area of the land between the Kwinamass and the mouth of the Nass. Furthermore, Wright gives some chronological context:

It was just at the time when white traders first arrived at the mouth of the Nass River, before the Hudson’s Bay Company had established their post at the mouth of the Nass River (MacDonald and Cove 1987, Vol. 2:194).
- This would seem to indicate that the Nisga’a had these territories and were using these lands before 1831 and possibly as early as the 1790’s.
 - This story relates how Ksrawremdzuist left Kitsumkalem and moved to Gitlaxdamks and eventually to Laxtawdzep where his Eagle clan relatives from Txalaxath and Gitkis advised him to “acquire all the hunting territory he would require. Thus, it was that many of his nephews married into the Wolf house of Gwaxsu. They also had large territories which extended down to Knemas and had exclusive properties there. It was just at the time when the White traders first arrived at the Nass River. The trading ships came and anchored there. Many different people came to meet them: Haida, Tlingit, Kitselas and Tsimshian.”
 - The full quote indicates that the territory of Knemas is defined as belonging to Gwaxsu. Git’iks/Git’yaks is a Nisga’a group/leader that had a village across from Laxtawdzep. The narrative indicates that when the first European traders entered the mouth of the Nass River, they met with many local people, but not the Nisga’a.
- Page 24: “Charles Barton’s narrative referring to Hidden Inlet is clearly set in the period after the advent of the fur trade, as it involves guns. In 1927, F. Bolton of Kincolith told Beynon of House Txalaxet fishing stations, as well as hunting and gathering areas on Pearse Island (Barbeau Notes B-F 104.18).”

- This narrative takes place after the arrival of guns and the establishment of potato gardens. The latter places the timing after the arrival of missionaries, likely after 1870.
- Page 25: “The information presented here represents only a very incomplete review of the vast volumes of narrative and field note materials available in the Barbeau files. Nevertheless, it is enough to establish that the Nisga’a had expanded their range of activity beyond the Nass watershed into the waterways of Portland Inlet at some very early date, which cannot be later than the 1830’s and may be as early as the late 18th century. This activity included travel, residency and resource harvesting in upper Portland Canal, Hastings and Alice Arms, Observatory Inlet, the lower Portland Inlet between the Nass and the Kwinamass, and Hidden Inlet and Pearse Island. The Nisga’a assimilated the territory of the Tsetsaut on the upper inlets, conquered Hidden Inlet from the Tlingit, and apparently shared the Kwinamass with the Coast Tsimshian.”
 - The dating of these events appears to be incorrect. See Section 2.3 for a summary of the events recorded in these *adawx*. The Nisga’a claims to the Study Area largely post-date the establishment of the mission at Kincolith in 1867.
- Page 25: “The Coast Tsimshian still had a significant presence on the lower part of Portland Inlet. They continued to travel to the Nass River for the oolichan fishery throughout the 19th century, and camped along the shores of the lower inlet along the way. The Gispaxlo’ots House of Ligeex also exercised considerable and specific power in this area during the early decades of the fur trade. Around this time, Ligeex asserted control over access to the Nass Bay oolichan fishery (which will be discussed in Section 4.2). He used his clan and kinship networks to leverage a strategic control over the trade furs being supplied from up the Nass and Portland Inlet. As Marsden and Galois point out, Ligeex dominance of this trade rested in part upon his relationship with powerful Nisga’a chiefs. Ligeex and Sagawan were part of the Gwinhuut, a network of related Eagle Clan chiefs, and their alliance was essential to Ligeex power. According to Marsden and Galois, Sagawan already controlled Portland Canal in the first quarter of the 19th century, and thus the supply of furs from the Tsetsaut. The flow of furs from the upper Nass was controlled by the Nisga’a Wolf Clan chief Sgat’iin, and Ligeex established an alliance with him through marriage (Marsden and Galois 1995:171-172). These alliances were mutually beneficial arrangements, which illustrate the complex overlay of clan, kinship and tribal powerbases in the Tsimshian world. Ligeex’ position as the dominant intermediary in the fur trade did not derogate from Nisga’a territorial rights on the Nass or in Portland Inlet.”
 - This information aligns with Nine Tribes claims to ownership of the Study Area, specifically the mouth of the Nass River.
- Page 26: “In 1927, Charles Barton of Kincolith described to Beynon how in earlier times the lower Nass was a congregation place for a number of tribes, including the Nisga’a, Haida, Coast Tsimshian and Southern Tsimshian. He reported that the Tsimshian also came each spring for oolichan, and according to Beynon’s grandfather “The Tsimshian all had their places on the Nass” (Beynon 1927).”
 - This information aligns with Nine Tribes claims to ownership of the Study Area, specifically the mouth of the Nass River.

- Page 26: “In the late 18th or early 19th century, the Coast Tsimshian chief Ligeex of the Gispaxlo’ots asserted control over access to the Fishery Bay oolichan fishery. This prerogative was acknowledged in a feast and advertised by a pictograph portrait of Ligeex on a cliff overlooking his Nass fishing village. However, Ligeex feast and proclamation of superiority appears to have been directed specifically against the other Coast Tsimshian tribes which had conspired against him, and not necessarily the Nisga’a. Narrative of this event specifically list the 12 tribes that were invited to be humbled, and they include the Metlakatlan tribes, the Gitga’at, the Kitasoo and the Kitamaat, but not the Nisga’a, nor the Gitxaala (Matthew Johnson in *Gwenhoot of Alaska*: 412). It may be that Ligeex did not presume to assert such authority over the Nisga’a who lived on the Nass, but only over those Tsimshian tribes that visited for the oolichan each spring. It may also reflect the important alliances Ligeex had with Nisga’a chiefs, which supported his own position on the Nass. Marsden and Galois point out that his specific prerogative to control access to the fishery overlaid Nisga’a territorial claims in the same area, but that conflict over these competing claims was to some extent alleviated by the solidarity of the Gwinhuut Eagle Houses among both the Coast Tsimshian and the Nisga’a, and note that the House of Ligeex, the Gitando House of Sgagweet and the Nisga’a Houses of Gitiks and Sagawan all had interests at the mouth of the Nass (Marsden and Galois 1995:171, 181 fn 15).”
 - This information aligns with Nine Tribes claims to ownership of the Study Area, specifically the mouth of the Nass River.
 - It is unlikely, we might even consider it unlawful, in Tsimshian law to host a feast without inviting the groups who have a material interest in the legal claims asserted in that feast. This is called witnessing, and it is a key element of Tsimshianic law. When witnessing erodes (as in the case of the Nisga’a encroachment on Gitanyow territory discussed in Sterritt et al 1998 resulting from the ban on “potlatching”) spurious claims can be made and perpetuated. That Ligeex’s audience reflected only Nine Tribes is a significant piece of evidence that points to the control of the Nass River eulachon grounds as being an internal Nine Tribes issue. The pictograph itself and the associated feast were not opposed by the Nisga’a, see Section 2.2.1.
- Page 27: “This does not mean that the Nisga’a/Coast Tsimshian relationship on the Nass was without conflict. McNearly adds that the Coast Tsimshian had rights to fish oolichan on the Nass, but that these rights had been the cause of wars up until the early 19th century. He cites Arctander as referring to a final fight over Coast Tsimshian fishing on the Nass in 1829, but notes that Arctander does not cite a source for this (McNearly 1976:45). McNearly also describes one of these conflicts (without indicating a date or source):

The Niska as a whole defended the eulachon fisheries against outsiders. The coast Tsimshian wished to obtain the right to make fish camps at Fishery Bay and according to tradition a battle was fought over this issue on a gravel bar in the Bay. The Tsimshian were forced to make their camp farther down the river at Red Bluff, where a few Tsimshian still fish today. Some Skeena people are said to have sided with the Niska in this battle (McNearly 1976:151).
- “Agnes Haldane describes a post-contact conflict between the Coast Tsimshian and the Nisga’a Wolf House of Hlidux, which she claims ended in a lasting peace between these groups on the Nass. This may be the same event which McNearly is referring to. Hlidux had been involved in an alliance against Ligeex, and according to Marsden and Galois a series of widening conflicts resulting from this had the effect of weakening

the Tsimshian position at the mouth of the Nass by the 1820's (Marsden and Galois 1995:173). Walter Haldane reports a last attempt by the House of Ligeex to get control of the Nass, by proxy through his Eagle Clan Nisga'a allies, by a war of wealth with the Nisga'a Wolf Clan. This occurred in the 1860's, about the time the Kincolith mission was established. Ligeex lost and the Nisga'a Laxkibu were left as the leading power on the Nass (Haldane in *Gwenhoot of Alaska*: 521-524)."

- These events occurred in the 19th century (see Section 2.3 for a chronology). The narratives is recorded in MacDonald and Cove (1987b) during the height of the inland fur trade and the rise of Ligeex's Gwinhuut trading monopoly.
- Page 27-28: Discussion of the origins of Kincolith and its meaning. "Place of Scalps" may not only refer to Haimas' treachery, though the source for these alternates is McNeary (1976) rather than the *adawx*. Kincolith was a salmon fishing location prior to being a mission. Cope reports that Sagawan established a village there in the early 19th century and that Nisga'a people fleeing conflict on the upper Nass also settled here in the early 19th century, but no source is cited for this information.
 - Beynon 110 (Beynon Manuscript) and Beynon 41 (MacDonald and Cove 1987b) are clear that these events occurred during the War with the Tlingits, so over 1000 years ago and that Kincolith was named after Haimas' actions.
- Page 28: reference of the use of the area by many groups, and that it was used primarily for the eulachon fishery until the 19th century.
 - An oversimplification, but one that contradicts the subsequent Ministry of Justice 2016 report, which argues that this area was the exclusive territory of the Nisga'a.
- Page 31: "There is no evidence that the establishment of the Kincolith mission and reserve impacted the Coast Tsimshian in any other way than to impede their access to very specific oolichan fishing sites in Nass Bay, such as Red Bluff. Third, it implies that prior to this government intervention, the Nisga'a had no established interests at the mouth of the Nass or beyond into the various waterways of Portland Inlet. The evidence reviewed in Section 4 of this report establishes that the upper inlets of Portland Inlet were used and politically dominated by the Nisga'a chief Sagawan in the first half of the 19th century, and that the Coast Tsimshian chief Ligeex depended upon his alliance with Sagawan and another Nisga'a chief, Sgat'iin to support his position at the mouth of the Nass and his access to furs from the Tsetsaut on upper Portland Inlet. Furthermore, the Tsimshian narratives tell us that Kincolith itself, while founded by a Coast Tsimshian chief (Hai'mas) in the pre-contact era, was the site Sagawan's village at least by the 1830's, if not earlier."
 - Cope does not present any data indicating that the Nisga'a were at Kincolith before the mission "in the first half of the 19th century."
 - Cope again acknowledges that the Nine Tribes have use and ownership of territory in this area, something that is contradicted in the subsequent Ministry of Justice report from 2016 (see Section 3.14).

3.4 Dean, Jonathan R. 1993. *Rich Men', 'Big Powers' and Wastelands – The Tlingit-Tsimshian Border of the Northern Pacific Littoral 1799 to 1867*. Unpublished PhD Dissertation, Department of History, University of Chicago.

Dean's (1993) PhD thesis focuses on the political dynamics of the Tsimshian-Tlingit area from 1799-1867 largely using historical documents and archival and published sources including the Barbeau/Beynon files. His research is extensive and comprehensive for this subject and dataset, though it largely explores events of the 19th century beyond the Study Area. He argues:

- Page 12: Eulachon grease was a “crucial” element of the regional trade prior to contact and, since it had no imported equivalent, remained so through the contact era.
 - This explains in part why the area is contested and claims to it vociferously defended by the Nine Tribes.
- Page 39: Many Indigenous groups visited the Nass estuary in the spring (late February) to produce or trade for eulachon grease, which was used as a food preservative, an essential dietary supplement, and a desirable condiment. Eulachon grease was stored in boxes and shipped across the region. Tsimshians and others had “camps” on the Nass for the fishery.
- Page 39, Footnote 26. Dean cites personal communication with John Corsiglia that the eulachon fishery was controlled by the Nisga’a, making them the region’s “oil sheiks.”
 - I can find no published reference by Corsiglia where he makes this case or the evidence he relies upon for this assertion.
- Page 40-41: Dean cites Beynon’s original field notes that eulachon fishing technology included a funnel-shaped net, called a *dagal*, which had been introduced from the Haislas.
 - Indicates that mass production of eulachon grease was part of technological innovation (see Patton et al 2019).
- Page 48: Citing John Tate, he notes that the Ginaxangiks supplied the Stikine Tlingits with eulachon grease.
 - Grease was part of a valuable regional trade.
- Page 53: Incidents of conflict between Tsimshians and Nisga’a are resolved to not hinder the eulachon fishery.
 - In the early 19th century there are 2 cases of regional conflict being alleviated to preserve collective access to the eulachon market: this one between Nine Tribes and Nisga’a and another between Haida and Nine Tribes (see Section 2.3).
- Page 55: Evidence from Barbeau of a battle between Gitxaala and Nisga’a at Fishery Bay over access to the area; first use of a gun. Notes that the boundary was at tidewater on the river.
 - This defines Nisga’a land at the eastern side of Fishery Bay, similar to Beynon. There are *adawx* of this event (see Section 2.3).

- Page 58: Narrative from Beynon noting that Haida visited Gispaklo'ots "village on the Nass" with gifts to resolve a conflict.
 - Evidence of Nine Tribes settlement in the Study Area.
- Page 250: Evidence from HBC operative Simpson that Nass (Nisga'a) people were fishing on the Skeena in 1828, which Dean suggests might have been a reciprocal arrangement to allow Tsimshian people to fish eulachon on the Nass.
 - There is no other evidence for this claim that I can locate.
- Page 261: HBC John Work reports that in 1837, 340 canoes of Tsimshian travel north to eulachon fishery, down from 760 in 1836.
 - Likely a result of a small pox epidemic in that year, but evidence of Nine Tribes use of the Study Area.
- Page 270: 200-300 canoes of Tsimshian travel north for the eulachon fishery in 1839.
 - Evidence of Nine Tribes use of the Study Area.
- Page 276: HBC factor Kennedy notes Nisga'a travelling to the Skeena to trade eulachon oil with the Tsimshian.
- Page 289: Nisga'a attempted to take control of the Lower Nass and eulachon fishery after contact, which the Tsimshians objected to.
 - Here Dean dates the Nisga'a efforts to control the Study Area to after contact, and as a result of post-contact events. He dates this to after the 1840's.

3.5 Garfield, Viola E. 1939. *Tsimshian Clan and Society*. University of Washington Publications in Anthropology.

Garfield's PhD thesis is ethnographic, but relies on archival texts and oral traditions as well as Tsimshian advisors. Her work notes:

- Page 177, 275, 277: The Tsimshian who lived at Metlakatla also owned a stretch of beach line at the Nass for eulachon fishing. Groups also had traditional camping places en route. House groups of a tribe would remain spatially contiguous. All members of a tribe kept within this territory. Clans did not have territory.
- Page 270: Traditionally, truce is declared in advance of the eulachon fishery to allow all groups to participate. An indication of its importance.
- Page 276: the concept of common property existed within tribes. When a house abandoned a territory (such as a camping beach), it could be claimed by another house in the tribe.
 - Garfield has an incomplete understanding of Tsimshianic law (see Section 1.7).

3.6 MacDonald, George. 2012. *Kitsault Mine: Review of Ethnographic and Historical Resources* Ministry of Justice, Legal Services Branch, Aboriginal Research Division, Sept. 26, 2012 by Brad Cope, Response by Dr. George F. MacDonald.

This document is a reply by MacDonald to the assessment by Cope (2012) of the MacDonald and MacDonald report from 2012. Cope's criticism is twofold in that they: 1) overstate the case of Nine Tribes territories beyond the Study Area for this analysis and 2) lack specific

data. MacDonald rectifies both issues in this reply, which largely focuses on the Study Area. Both authors (Cope and MacDonald) agree that the Study Area was used by the Nine Tribes; MacDonald makes a clear case that the Nine Tribes own the Study Area in Tsimshianic law.

- Page 2: MacDonald refers to the conflict between the Nine Tribes and the Tlingit as dating to between, “500 BC and 1,000 A.D.” Recent research (Edinborough et al 2017) now dates this to before 1100 years ago, starting as early as 3000 years ago (see also Martindale et al 2017a, 2017b).
 - The implied point here, which I agree with, is that Cope does not have a correct understanding of the chronology of Tsimshian history as recorded in the *adawx*.
- Page 3: reference to Marsden 2002 (see Section 3.10) in support of Nine Tribes claims to the Study Area.
- Page 4: The Nine Tribes are argued to have controlled the mouth of the Nass through the 19th century until the mission was built at Kincolith.
 - The Kincolith mission was established in 1867.
- Page 5: “Reverend Tomlinson notes that the Nisga’a, who settled with the Tsimshian at the original Fort Simpson near Kincolith, returned to their traditional villages upriver on the Nass between 1834 when the fort was abandoned, and 1867 when Nisga’a families were encouraged by the missionary, Reverend Doolan (Patterson, E.P. 1981) to move down to the former Gitsees village of Kincolith from their traditional villages up the Nass. Although Cope (2012: 33) implies that the time Hai’mas spends at Kincolith is very brief, the relevant *adawx* (Beynon, W., 1947), covers at least several years of his residency there, which would be required for him to build his large house there with a deep excavated floor, to invite the chiefs from Metlakatla that he killed, and for the second episode there where he murders his uncle. Since this is the earliest oral history of a permanent settlement at Gingolx and by a Gitsees chief of the Coast Tsimshian and occurs in the pre-contact period with Europeans it is a milestone event in the Nass Estuary. The Nisga’a did not wrest it from the Coast Tsimshian through warfare, but they did capitalize on missionary intervention in the 1860s. The Nass River itself, above tidewater, is called Lisims, the particular supernatural being that marks the boundary of ancient Nisga’a territory is called Goothl Lisims (or “Heart of the Nass” in the Nisga’a language). The River above this point belonged to them and their traditional villages in pre-contact times began at this point. A large smooth rock marked the transition from the intertidal zone to the fresh water of the river. The Nisga’a Nation honour this boulder today in their ceremonies despite the fact that it was considered a hazard to navigation and was removed with dynamite by B.C. Hydro in the 1960s.”
 - Indeed, Beynon 110 (Beynon Manuscript) indicates that Kincolith was Haimas’ main village after the attack on the other chiefs.
- Page 7: “The spring runs of eulachon were beyond the capacity of single tribes to harvest and consume them. Literally billions of the herring-like fish spawned in the estuary and lower courses of the Nass River each spring. Consequently, the rights to harvest the fish was shared by all of the Coast Tsimshian tribes clustered around the estuary up to Fishery Bay, and above the tidal zone was the prerogative of the Nisga’a. While the Haida from Haida Gwaii and Southeast Alaska, as well as the Tlingit from Alaska came to the area each spring with their goods to trade for the eulachon products, and for slaves, they were not privileged for fish themselves.”

- Page 7: “The Provincial Ministry review document (Cope, 2012/8/26, p.14) compresses the time factor over which the shifts in occupation of the Alice Arm/Portland Canal by different tribal groups took place. The Tlingit occupation of the Inland Passage from the Alaska border to Milbank Sound has been established through the extensive radiocarbon chronologies from the burials from this period in the Prince Rupert Harbour back to ca. 500B.C. to 500 B.P. (Cybulski, J., 2000). The Gitsees chief who held the name Hai’mas (II), and who lead the warrior group to establish a village at Kincolith, was active in the latter half of the eighteenth century.
 - MacDonald’s chronology is generally correct, see Section 5.2.
- Page 7: “Cope (2012/8/26, p.14) raises a key point in his statement concerning the aftermath of the defeat of the Tlingit and the breakup of their blockade of the Prince Rupert Harbour more than a thousand years ago, “The victory leaves the Coast Tsimshian relatively secure in their travel route to the Nass, and in the territories that Hai’mas had acquired at Work Channel, Khutzeymateen Inlet.”
 - Again, this occurred before 1000 years ago.
- Page 9: “The first Chief Legaic was born in Bella Bella (probably around 1750) of a Tsimshian mother and Wudsta father (ref.). His birth coincided with the first impacts of European contact, when Russian trade goods reached the Tsimshian through intertribal trade from Alaska. Dean (1993; 244) reasons: “Given that the refugee Eagles from whom Legaic descended came among the Tsimshian only around 1840, this would make for a meteoritic career rise for the refugees, and the title Legaic can hardly have risen to chiefly status much before 1780.”
 - I disagree slightly with this chronology, see Section 5.4.2.
- Page 10: “He probably took on his uncle’s name of Legaic around 1810. We know from the Hudson’s Bay Company records that he died in 1840 as an old chief. During his career as a warrior and trader he declared his supremacy and trade monopoly over both the Skeena and Nass rivers to their headwaters and painted his claim on the rocks ledges at the mouths of both the Nass and Skeena rivers. “The enhancement of leaders was especially true of those tribes who were fortunately placed to capitalize upon the new commerce and its ramifications...Legaik on the Nass route (was) elevated far above the wealth and prestige of any who had preceded him,” (Cole and Darling (1990:125): The Northwest Coast, Smithsonian Institution Handbook of North American Indians, vol. 7. Washington, D.C).”
 - This Ligeex is often referred to as “Old Ligeex” as a means of distinguishing the different individuals with the same name. Unlike in European aristocratic traditions, which enumerate monarchs, the Tsimshian use a relative chronology of events to sort time (see Martindale and Marsden 2003; Martindale 2009).
- Page 10: “The name of Kincolith as “place of scalps” is convincingly explained by Rev. Wm., H. Collison (1981:153). According to Collison, Chief Gaioutlins and another Haida chief from Hiellan village at Tow Hill on Graham Island, Haida Gwaii undertook a revenge raid on the villages of the lower Nass River before European contact. As the attackers reached the estuary of the Nass they decided to slaughter the many Nisga’a captives who were threatening to upset the Haida canoes once they were at sea. The captives were killed and their scalps displayed on a rock below the traditional Tsimshian eulachon fishing grounds in Tsimshian territory. The name “Place of Scalps”

was subsequently known as Kincolith (Gingolx), (Collison, Wm. 1981:52). According to Collison's Haida informants, the Nisga'a launched a retaliatory raid on the Hiellan villagers, which was countered by yet another Haida raid on Nisga'a villages on the lower Nass above Kincolith and Fishery Bay. Collison states: 1981:154:

The Haida again attacked the Nisga'a, and succeeded in burning part of one of the lower villages, but were repulsed. On their return down from the Nass they encountered four canoes, which they attacked and overpowered, killing some of the occupants and capturing the remainder. The Haida had thought these were Nisga'a, but they turned out to be Tsimshian. This aroused the Tsimshian and a large fleet set out against them.

- This account provides a clear indication that the Tsimshian were in possession and use of the Nass River estuary, including Fishery Bay, and were prepared to defend it against other tribes.”
- There is record of conflict between the Haida and the Nisga'a after contact (see Section 2.3). However, the designation of the name Kincolith derives from Haimas and events that occurred over 1000 years ago (see Section 5.4.1). This narration from a missionary is less convincing than the *adawx* recorded on the subject by Beynon (see Section 2.2).
- Page 11: “This association between the site of Kincolith and the Coast Tsimshian continued from the time of Hai'mas through the subsequent period of Haida raids through to the arrival of the Hudson's Bay Company in 1832. The company built its first post within sight of Kincolith through negotiations with the Coast Tsimshian who were recognized as the traditional owners of the site. The Nisga'a were not involved as residents then, nor were they a few years later, when the H.B. Co. negotiated with Chief Legaic of the Gispaxloats tribe of the Coast Tsimshian to relocate the Fort Simpson from beside Gingolx to Lax Kwa'alaams (present day Port Simpson).” William Beynon, who did work with both Tsimshian and Nisga'a informants in the 1920s, held a Nisga'a chief's name (Gusgain), which clearly reflects the same view that the Nisga'a were encouraged by the missionaries in the late 1860s to move from their traditional lands on the Nass River above Fishery Bay to the site at Kincolith in Coast Tsimshian territory. Specifically Beynon states in his concluding work on the Ethnical Geography of the Tsimshian speaking peoples, which includes the Nisga'a:

The case of the oolichan fishing rights on the Nass River, when the Government made different Bands, practically all of the area formerly used by the t'semsiyans on the Nass River for oolichan fishing came under the Section set aside for the Kincolith Band, who at once claimed complete authority on these areas, as it was in their allotted reserve. The Kincolith people through their Council elected under authority of the Indian Act of the Dominion of Canada, wrote all of the other tribes of t'semsiyans that before they could fish or come on their old fishing villages would have to get the permission of the Kincolith Council and pay a license. They were unaware of the fact that the O'Reilly Commission, in setting aside these reserves for British Columbia, and creating groups into Bands and allotting to these bands certain lands. But in cases such as the Nass River where a Section of any particular reserve had been used in common by many other tribes, that this shall prevail and made such areas 'common sides', which meant that these lands could never become the property or ownership of any one individual group, but would be used as always used as from time immemorial. (Ms. 1954, vol. 5:17-18)

- As William Beynon points out above, this combined action of the missionaries backed by government authority quickly led to attempts by the Nisga'a to redefine traditional rights that continue to have repercussions to this day. This

important claim by Beynon is neglected in the Cope 2012 response. See Section 2.2.1.

- Page 11: “In his extensive study of the history of Kincolith (Gingolth), E. Palmer Patterson (1982:234) states:

The village may also have seemed a good strategic move to lower Nass Chiefs. It increased their presence on the coast and may have been thought to enhance their claims to the area or at least to render the Nass fishery more defensible against Tsimshian competition. The Nisga'a had immemorably shared the Nass mouth with Coast Tsimshian and others: by establishing a permanent settlement there, they may have hoped to consolidate their position.
- Page 13: MacDonald argues that the establishment of a Nisga'a settlement at Kincolith refers to the establishment of the mission village and not an earlier settlement.
 - In both of these pages, MacDonald argues that the Nisga'a claims to the Study Area post-date the establishment of the mission at Kincolith in 1867.

3.7 MacDonald, George F. and Joanne MacDonald. 2012. Kitsault Mine Report.

This document is an analysis of territorial claim by Metlakatla First Nation to areas northwest to Alice Arm, including the Nass River estuary. MacDonald and MacDonald argue that there is evidence that Metlakatla territorial interests and use extended to this region. I find that this source presents a thesis without a full review of the data; however in his reply to Cope (2012), MacDonald (2012) does provide extensive reference to the *adawx*. I find value in the claims made here about the zone up to and including the mouth of the Nass River area (the Study Area for this report), but I make no assessment of his analysis regarding Alice Arm.

- Page 5: “In a broader frame of reference, this region, including Observatory Inlet and Portland Canal, were at the frontier between Tsimshian and Tlingit speaking People for thousands of years. The boundary between the two fluctuated from one generation to another and saw many Tlingit and some Tahltan moving south on the coast over a millennium ago to eventually be either repulsed by the Tsimshian, or more often, absorbed into their villages on the mainland as far south as the Skeena River and on the islands off the coast, to just south of Gitxaala.”
 - The chronology of these events is more refined than this (see Table 4).
- Page 7: “These two Christian mission villages also isolated the fledgling Christians from the traditional religious practices of their fellow tribesmen. A subsequent change this created was a shift from matrilineal to patrilineal naming and inheritance practices that complicate issues of occupation and ownership of traditional territories.”
 - This is a common phenomenon and may explain some of the conflicting claims in Tsimshianic lands. As patrilineality became the law of the land, Tsimshianic law was not always followed or allowed to be followed, which created errors in inheritance, at least according to Tsimshianic legal principles (see above).
- Page 7: “The relocation of Nisga'a from their villages up the Nass to Kincolith inserted a permanent mission village into an area that had been used intensively, but seasonally, as an eulachon harvesting area shared by the Coast Tsimshian tribes as well as hunting and harvesting territories up Observatory Inlet and Alice Arm. The traditional boundary between the Coast Tsimshian and the Nisga'a was blurred by this administrative action of government.”

- Page 12: A recounting of Haimas' construction of the feast house at Kincolith before the mission was established.
 - The dating for this is clarified in MacDonald 2012 as during the Tlingit War.
- Page 12-13: The first (upriver/westernmost) Nisga'a village on the Nass River is Gitiks, east of Fishery Bay, near where the HBC built Fort Nass. MacDonald and MacDonald argue that this was "on land they negotiated with the Tsimshian Chief Legaic" and that, "Lax Tawdzep' is a prehistoric fort that defined the pre-contact boundary between the Coast Tsimshian Metlakatlans and the Nisga'a".
 - This is possible, but I can find no reference to who the HBC negotiated with for establishing Fort Nass. This seems like an overstatement by MacDonald.
- Page 13: A map of the area drawn by Beynon.

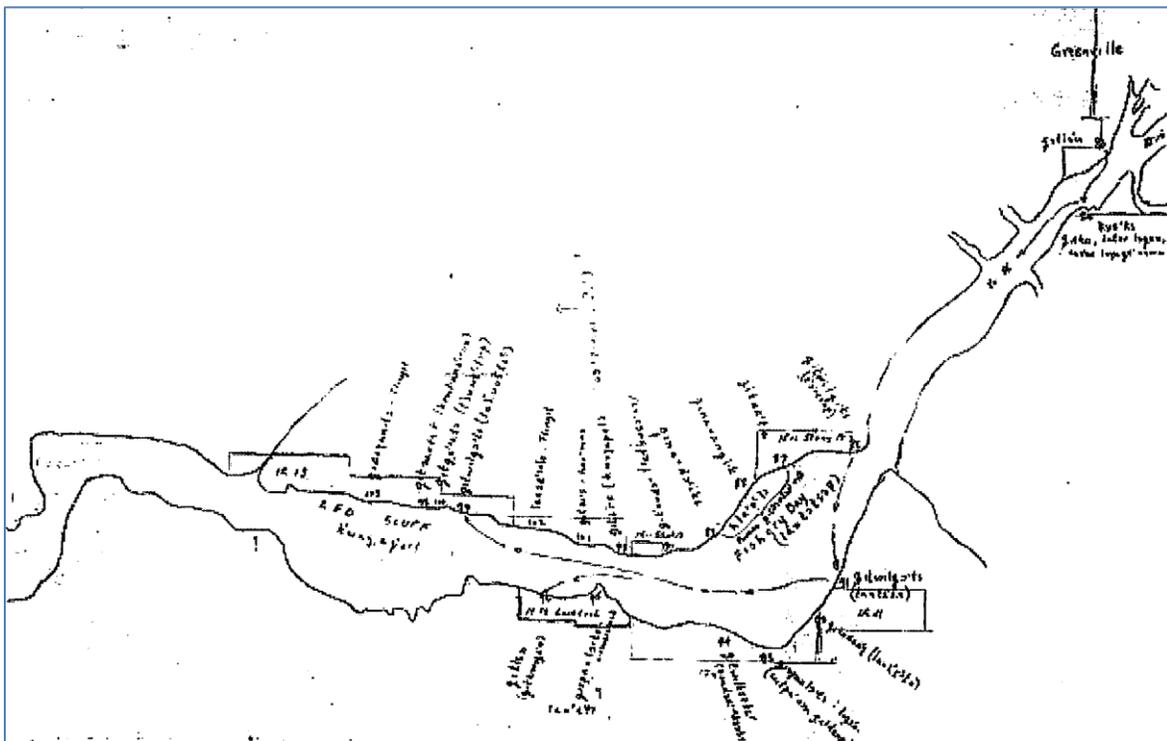


Figure 17. A map of the villages at the mouth of the Nass River by Beynon.

- A clearer version of this map is here:

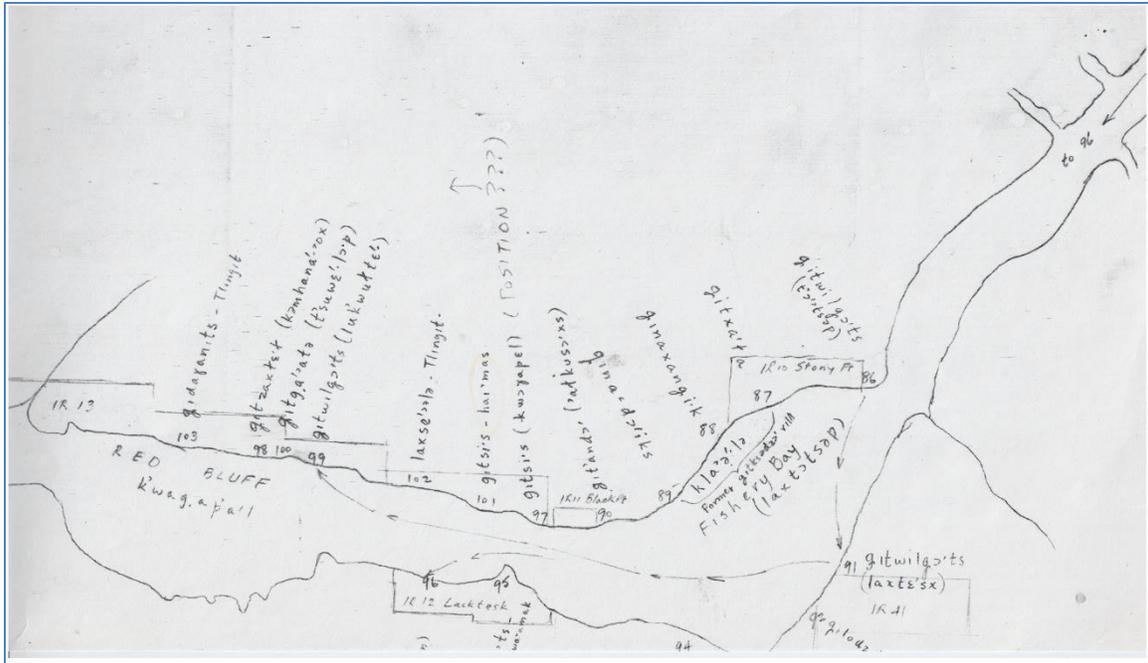


Figure 18. A clearer but incomplete view of the map in Figure 17.

- Page 13: “It was the source of Tsimshian wealth derived from the grease trade that made the Tsimshian the richest people on the coast according to the early maritime fur traders. Before the contact period with Euro-Americans, the Tsimshian excluded other coastal tribes from fishing directly for eulachon. They were encouraged to come to special camping areas adjacent to the Tsimshian fishing villages in order to trade for grease but not catch them themselves. Each tribe of the Coast Tsimshian had trading partners in villages of the Haida and Tlingit, which provided the trust, and exchange priorities for trade between the Tsimshian and other tribal partners at trade fairs that were timed to coincide with the eulachon runs. The Nisga'a harvested the eulachon inland from the coastal peoples from their own fishing stations above those of the Coast Tsimshian.”
 - MacDonald argues that title belonged to the Nine Tribes.
- Page 14: A map of the area drawn by Beynon:

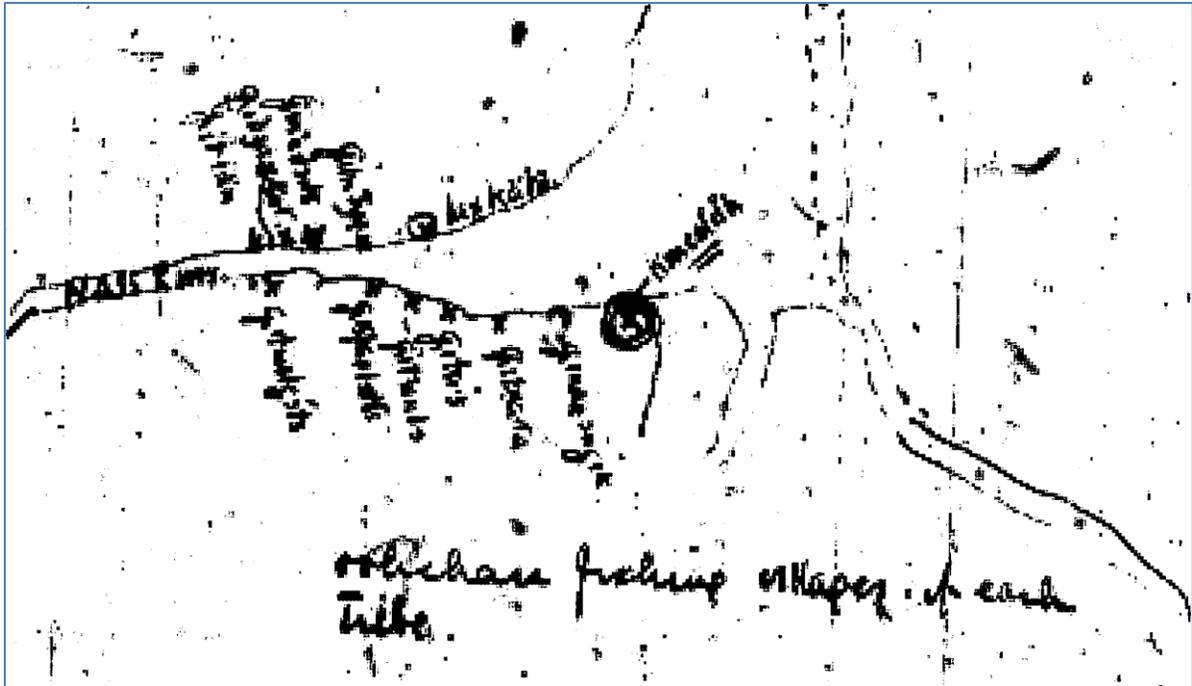


Figure 19. A map of the villages in the mouth of the Nass by Beynon; this is similar to Figures 12 and 13.

- Page 14-15: Account of the epic of Haimas including the murder of fellow Nine Tribes chiefs at Kincolith, the retaliation by the Nine Tribes, and Haimas' subsequent retreat to Hidden Inlet on Portland Canal.
 - “Haimas was soon able to build a substantial new house at what is now Kincolith. Once established there he invited those chiefs of the ten tribes who had mocked his sister to a feast in his new house. Each of the offending chiefs was killed by Haimas' warriors as they entered the door (MacDonald and Cove, 1987:135-138). The house was given the name "Slaughter House" at a big feast that Haimas gave after the conflict. His action inevitably lead to further conflict among the Coast Tsimshian tribes. Haimas' uncle told him that the people at Metlakatla no longer remembered or talked about him which Haimas took as an unforgiveable insult and killed him in anger (Boas, F,"1916"366).”
- Page 15: Reference to *adawx* from Beynon Manuscript (#110) that relays how Haimas was granted the “K'tsmadin River” by a Tsongass chief for rescuing one of his relatives.
 - This event occurred over 1000 years ago.
- Page 15: “Eventually all of the Coast Tsimshian people became tired of Haimas and his warriors and defeated them. After the battle, his Raven warriors returned to their original ten tribes of the Coast Tsimshian. Kincolith remained in the middle of Coast Tsimshian territory down river from their eulachon fishing grounds in Fishery Bay. Haimas returned to his father Wiseks, Chief of the Ginaxangik (as he had murdered his Gitsees uncle, that tribe did not want him). It was this second Haimas who stole his father's copper in a wealth dispute with Chief Tsibassa of Kitkatla.”
 - See Beynon 76, 105, 110 from the Beynon Manuscript.
- Page 15: A map of the area by Beynon, number 47 is Hidden Inlet.

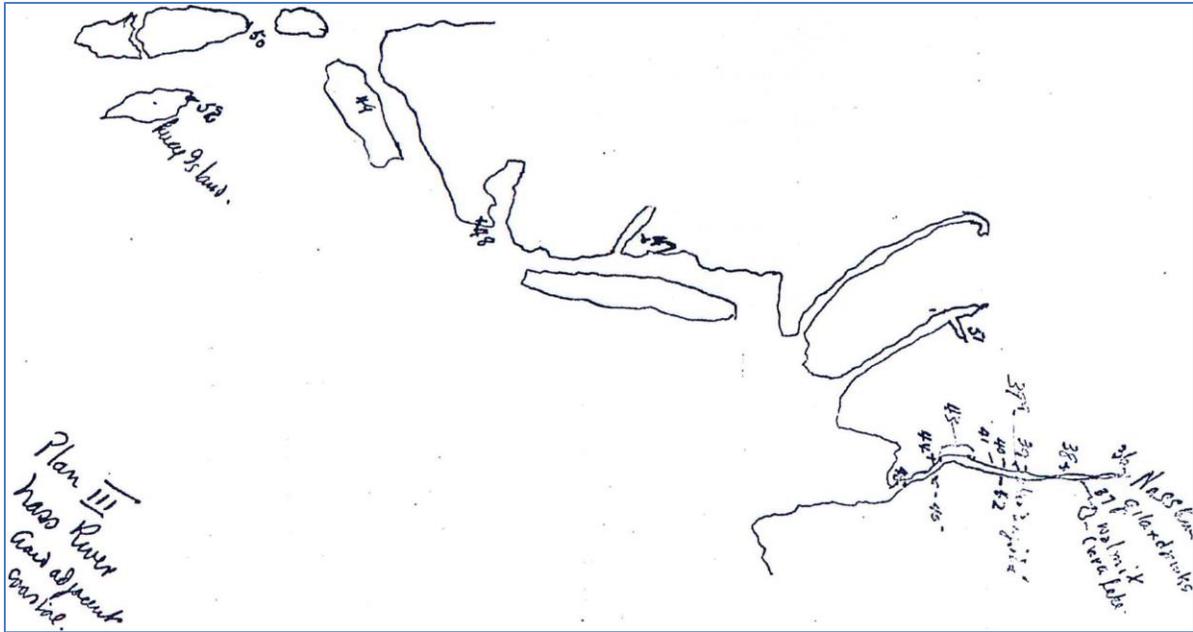


Figure 20. A map of part of the Study Area by Beynon.

- Page 16: MacDonald and MacDonald conclude that the lower Nass River and Alice Arm areas were owned by the Nine Tribes for thousands of years, and that it was only after colonization and specifically the creation of missions, that the Nisga’a asserted claims to these areas.

3.8 McDonald, James A. 2016. Tsimshian Wil’naat’al and Society: Historicizing Tsimshian Social Organization. IN *Of One Heart: Gitxaala and our Neighbours*. C. Menzies, Ed. Pp.11-40. Vancouver: New Proposals Publishing.

This chapter is an overview of the political, economic, and cultural frameworks, history, and dynamics of Tsimshianic peoples from his long scholarship. It references historical, ethnographic, and oral tradition scholarship. While it is original analysis, McDonald does not have a complete view of Tsimshianic legal principles (see Section 1.7). His focus is also 19th and 20th century history, thus not specific to the time periods of interest here.

- Page 12-13: In ancient times the Nisga’a owned the Nass and the Tsimshian owned the Skeena.
 - This seems to be a reference to the “early times” defined by Marsden (1997).
- Page 17: Port Essington is Gitzaxlaal territory and situated at a traditional camping place (Spokeshute). It became the home to many Kitselas and Kitsumkalum people (via the steamship lines).
 - This is another example of how colonial forces changed settlement, in this case giving Nine Tribes land to Interior Tsimshian people.
- Page 18: Tsimshian property law was complex and had different categories of ownership. Citation to Garfield 1939 page 275, but she does not make this point clearly.
 - McDonald does not present a complete view of Tsimshianic law.

3.9 Marsden, Susan. 1997. Review of Archival Materials for Information Pertaining to Tsimshian Use and Occupancy of the Nass River Area Greenville to Kincolith Highway Section. IN. *Greenville to Kincolith Road: Tsimshian Traditional Use Study and Impact Assessment*. J. McDonald, ed. Unpublished report for the BC Ministry of Transportation and Highways.

This report focuses on the specific question of who owned the Nass River estuary. Marsden's report relies on the Tsimshian oral record. Marsden divides time into four periods: an early period, well prior to contact with Europeans; a subsequent middle period, a late precontact period prior to contact; and a post contact period.

- Page 4: The earliest *adawx* appear to reference post-glacial geological landscapes. River and coastal were the main differences. A foundational group moved down the Nass, settled at the mouth before most moved to found Gitxaala. The village on the lower Nass was known as Laxksedzox (aka Gitksidzo'ox). This was a time when there were only two clans (Ganhada and Gispwudwada).
 - This era is when the Nisga'a base their 18th and 19th century claims. Over the intervening millennia, the Study Area became claimed by the Nine Tribes (see Section 5.2 and 5.3).
- Page 5: Lineages from this village became founding families for two Tsimshian tribes (Giluts'aaw, Gispaxlo'ots) and one Nisga'a (Gitxatin).
 - This defines the Wolf clan claim presented by the Nisga'a chiefs in 1916 (see Section 2.2.1).
- Page 6: House group territories were established in this earliest time including the lineages of: 1) Nisyuus (Gilutss'aaw/Tsimshian): Mouth of the Nass, and 2) Nits'oolh (Gitxatin.Nisga'a): Xnukw River.
 - The Nine Tribes' claim to the Study Area are ancient. Nisga'a have similar claims to lands east of the mouth of the Nass.
- Page 6-7: The house of Ts'oodo also connects to the Nass as he cleared a path from Goedu (Metlakatla area) to the mouth of the Nass for eulachon. This path could be past Bernie Island. Descendants of Ts'oodo own Kincolith River. An offshoot of this family joined the Gitxatin (Nisga'a) and some now reside at Kincolith through this ancient link.
 - Ts'oodo uses magical powers to shape the earth – this suggests these events date from early post-glacial times as many geological phenomena from this geologically active time are attributed to spiritual power.
- Page 7: A period of migrations from the interior and north (which we now date to before 3000 years ago) disrupted settlement patterns. The movement in, resulting conflict and war, left many new houses in Tsimshian and Nisga'a tribes.
 - These are early events associated with the War with the Tlingit (see Marsden 2000).
- Page 8: Several groups came down the Nass and settled at the mouth, including the Gwinhuut Laxskiik who became both Nisga'a (e.g. Txalaxatk) and Tsimshian. (This connection becomes the basis of Ligeex's Eagle clan network later). The Gwinhuut often sought each other out for chiefly heirs if there was none local and never joined

- in fighting between Tsimshian and Nisga'a. These were: Gispaklo'ots, Git'ando (Tsimshian) and Git-yaks (Nisga'a).
- This connection becomes active during the fur trade – an indication of how long Tsimshianic records maintain historical continuity.
 - Page 8-9: Ganhada lineages that came down the Nass and settled at the mouth around Greenville and also joined the Tsimshian (Gitlaan).
 - This is a complex connection, one that is the basis of the Nisga'a house Txalaxet's claim to part of the Study Area. This indicates that the land was first owned by the Nine Tribes, thus the Nisga'a gained rights of privilege by marrying into the Gitlaan.
 - Page 9: After the War with the Tlingits, the Tsimshians consolidated settlement at Metlakatla, but retained their territories on the lower Nass River.
 - Despite internal re-arrangement, the Nine Tribes territory remains intact.
 - Page 10: After the arrival of the newcomers down the Nass, a feast was held, the record of which lists all the eulachon fishing camps of the Tsimshians. These include (orthography from original): Gityaeks, Ginarhangik, Gitwilgyawts, Gitsees, Gitzarhlaehl, Gitludzau, Gin'adoiks. Also listed are two lineages from Gitxaala. These places remained Tsimshian thereafter.
 - This is the second key legal event in the Nine Tribes claim to the Study Area; it is described in more detail in Marsden (2002).
 - Page 10: a narrative that notes that 1) some Tsimshian fishing camps were taken over by the Nisga'a and 2) some Tsimshian tribes took the sites of other tribes. Reference is made to boilers in houses, which places this in the post-contact era.
 - Another example of the temporal association between Nisga'a claims to the Study Area and the latter part of the contact era.
 - Page 11: the Gitxaala also had a place they used on the Lower Nass.
 - The Tsimshianic legal system was complex. This is likely a right of privilege.
 - Page 12: the importance of the lower Nass to the Tsimshian (and all people in the region) cannot be overstated. Eulachon was an essential food and resource; the trade and social connections that were part of the fishery were key parts of the regional dynamic.
 - Page 12-14: Marsden associates the Gwinhuut trade alliance and the Haimas-led Wudzen'anth alliance with the pre-contact period, although acknowledges that the dramatic changes which triggered these strategic responses could be from the proto-contact period: 1) After an internal challenge to his leadership, Ligeex consolidates power and has his portrait painted at Ten-Mile point to signal his power and control. All of the other Nine Tribes plus the Gitga'at (Gitrha'ata) were invited. 2) Haimas was a Gits'ees Ganhada chief, who created a Raven-clan alliance of warriors who attacked Tsimshian enemies, notably the Stikine Tlingit after an attack on the Tsimshians travelling to the Nass for the eulachon fishery.
 - Following Beynon (see Section 2.2.4), I argue that these events are actually not close in time. Ligeex's alliance dates from the early fur trade era, while

events associated with Haimas' Raven Warriors begin during the War with the Tlingit.

- Page 15-16: Haimas seeks revenge on the other Tsimshian chiefs, perhaps for a slight against his sister. His Raven warriors build a house at the Nass and invite all the chiefs except Ligeex to a feast, where he murders them all. The place is Knerawli (Kincolith), translated as "place of scalps". The 8 tribes exact revenge on Haimas years later (when he was an older man), and his Raven warriors were defeated and scattered. This did not happen too many years ago. Charles Barton, who related the narrative in 1927, met people who had met the Raven warriors (i.e., 2-3 generations previously, perhaps 50-150 years).
 - Note that Marsden's proposed timing of the Haimas who created the Raven Warriors is at odds with Beynon Manuscript numbers 76, 105, and 110 (see above) which strongly suggest that they occurred as part of the War with the Tlingit, i.e., before 1000 years ago.
 - There is a discrepancy in one important detail of these versions. The Beynon Manuscript narratives identify Haimas' friend (whom he does not invite to the slaughter feast) as Gan-ganems-Haida, "Like a Haida Tree", who is killed at the feast. Marsden identifies him as Ligeex, who does not attend the feast and is not killed.
 - Note also that Barton is a Nisga'a from Kincolith. I do not have a copy of this narrative, so it difficult for me to evaluate this claim. I can only point out that the preponderance of evidence collected by Beynon associates the slaughter house incident with the War with the Tlingit.
- Page 17: During the fur trade era (after around 1790), ship records note the importance of the eulachon fishery.
- Page 17: T'sbassa hosts a feast at the Nass to assert their right to control grease trade to the Haida, which led to a conflict between the Haida/Gitxaala and the Tsimshian/Nisga'a. The Tsimshians helped the Nisga'a to prevent the Haida from having more control over regional trade.
 - More evidence that the conflict discussed by Cope (2012) dates to after contact.
- Page 19: Conflict over the fur trade embroil Ligeex and the Nisga'a. The Tsimshian incorporated specific traders and trading vessels into their system of alliance networks.
- Ligeex's effort to control trade at the Nass lead to his machinations to have the HBC move its fort to Lax Kw'alaams, where the Tsimshian and the Gispaklo'ots could more easily control access.
 - See Marsden and Galois 1995 for more details.
- Page 20: Thomas Wright made the case to O'Reilly that the mouth of the Nass was Tsimshian in 1887:

This is the only land God gave the Tsimpseans, since the beginning of the world. If you ask where the old boundaries are, we can show you one on the Nass, the other on the Skeena. We were not troubled about it, for God marked it out for us. We don't ask the Govt. for anything, it is our own. It is not lately that we have claimed it, but for generations. We know it is ours, and we will not give way. We want the land we had before on the Nass, as far as Ka-oo-la (Stoney Point). Where Kincolith stands, belongs to the Tsimpseans. It belongs to one of our chiefs.

- Note that Wright’s testimony is consistent with Beynon’s records (Section 2.2.4) and the Nine Tribes evidence presented at the meeting in 1916 (Section 2.2.1).
- Map: noting the location of the Tsimshian villages at Nass Bay. Maps by Wilson Duff of the same, likely from Beynon’s archive.
 - This map presents Beynon’s consistent summary of place names and villages. It contradicts the claims made in the Ministry’s 2016 report that Beynon is inconsistent in his presentation of data on maps.

3.10 Marsden, Susan. 2002. *Adawx, Spanaxnox, and the Geopolitics of the Tsimshian. BC Studies. 135:101-135.*

This article presents a detailed study of three *adawx* narrative sequences to illustrate how recorded history is foundational to Tsimshian legal and geopolitical constructs of territoriality. It makes several references to Nine Tribes on the lower Nass, including an analysis of a key feast in which the spiritual denizens of the Nine Tribes territory feast in parallel with the humans – as a means of accommodating newcomers from the interior via the Skeena River.

One of these is the house of Wiseks, the name that is Haimas’ father. Thus these events must predate the War with the Tlingits (which Marsden 2002 argues they do). This event is the second of four key legal moments in Tsimshian history that define and re-affirm the Nine Tribes’ ownership of the Study Area: see Section 5.3. Note that if the Nisga’a had *adawx* demonstrating ownership of the Study Area, it would need to exist in concert with these narratives – demonstrating how Nisga’a came to take or otherwise own the land, and showing how such a claim was acknowledged or not opposed by the Nine Tribes. There are no such *adawx* – indicating that the Nisga’a have no legal claim in Tsimshianic law.

- Page 102, Footnote 4: Nine Tribes territory is defined as including, “the mainland coast from the mouth of the Skeena to the mouth of the Nass River.”
 - A consistent message from primary evidence (Table 1) and original analyses (Table 2).
- Page 119: The Coast Tsimshian claim to the mouth of the Nass is established during the feast of Algusooxs (Red Bluff) in which the Coast Tsimshian chiefs and the spiritual beings associated with them travel to the mouth of the Nass for parallel feasts. This event is marked by the erection of a natural stone pinnacle (pts’aanmlo’op) by the spirit being Yagagwin’usk below the tide at Crabapple Point (it was an underwater being). At this feast, peace is established between humans and the spirit beings from the region. Marsden argues that this rapprochement is analogous to territorial associations (between spirit beings who live at specific places and the Houses that take them as crests - thereby becoming owners of the territories in which the spirits reside) and between the Houses themselves (which now associate themselves into a kind of alliance, a precursor to the Nine Tribes). As Marsden (page 118-119) writes:

“The spanaxnox form a cohesive sociopolitical unit in their own realm. As chiefs they feast among themselves – a defining feature of any Northwest Coast political group. They also view themselves as a cohesive unit... The Tsimshian tribes also attended the feast as a cohesive group. In a society in which economic and political power resides primarily in the house and tribe, there are few political events, even today, in which all Tsimshian tribes join to achieve a common objective. Yagagwin’usk as leader of the Gitzaxlaal, gathered tribes together for the express purpose of inaugurating a joint Tsimshian/joint spanaxnox alliance... The

spanaxnox also mark the controlling positions of the various Tsimshian tribes at the mouths of the three major waterways, the Skeena River, the Nass River, and the Douglas Channel, and thus the ability of the Tsimshian to control access to them. The spanaxnox at the mouths of the Nass and Skeena Rivers, especially indicates the key geopolitical position the Tsimshian as a nation had established in this region. At the mouth of the Nass, the Tsimshian protected their coastal territories from upriver peoples and their access to an important eulachon fishery."

- This paper and this Section in particular define both the establishment of the Coast Tsimshian as a nation and the alliance that is a precursor to the Nine Tribes and its claim to the mouth of the Nass River as ancient. These events took place before the War with the Tlingit. Note that the spirit being Yagagwin'usk is the crest of the House of Weseks, which becomes the chief of the Gitzaxlaal. A later Weseks is the father of Haimas who fights in the War with the Tlingit and established the slaughter house at Kincolith. At that time, Weseks is the most powerful chief among the Coast Tsimshian. Much later, that position is taken by Ligeex. The fall of the House of Weseks is in part a result of the actions of Haimas. These events are part of thousands of years of Tsimshianic legal history that established Nine Tribes claim the Study Area and re-states that claim at key points in history. See Section 5.3.
- Page 120-134: The *adawx* of several houses are traced as narrative sequences that describes how these houses moved to the coast from other places, including the interior and established themselves among the coast Tsimshian prior to the development of the Nine Tribes alliance. These houses were among the few to join the coastal people at this time, and did so via overcoming a series of calamities and misfortunes that were attributed to the intervention of spiritual beings, who became house crests. Survival of the houses through misfortune was a key part of acceptance by coastal people who admired both the houses' resilience and their association with spiritual power. One of the key events in this story cycle is a feast at the mouth of the Nass that is attended by key and powerful spiritual beings of the coastal landscape. This event was memorialized by a pinnacle of rock at Crabapple Point in the Nass estuary, visible at low tide. In the 1930's Beynon recorded the significance of this feature and its history:

"A sharp pinnacle of rock, which is almost dry during extreme low waters. At Crabapple Point, just about 2 miles up from Kincolith on the same bank. The writer [William Beynon] in 1927 while with Dr. Barbeau, tried to get some information from the Nisga'a, on this point, but owing to the fact that there is a dispute of territorial ownership between the Nass and Tsimshians, the Nass would not admit the narrative. But I recorded the myth from six or seven different older informants in 1915-16. And also from one Nass informant in 1917."

- The reference for this is: Harry Brooks, "The Myth of What Happened to Yagagwinusk," in William Beynon, *The Beynon Manuscript* (Ann Arbor: University Microfilms International, ca. 1930), no. '3', pp. 79-81.
- This is a significant quote for two reasons: 1) it identifies a series of *adawx* that make the case that the Nass estuary belonged to the Nine Tribes from ancient times; 2) it signals that similar *adawx* are held by the Nisga'a. Third, it argues that the Nisga'a refuse to "admit" to these narratives because of a contemporary land dispute.

3.11 Marsden, Susan and Robert Galois. 1995. *The Tsimshian, the Hudson's Bay Company, and the Geopolitics of the Northwest Coast Fur Trade 1787-1840. The Canadian Geographer. 39(2):169-183.*

This article is an analysis of the pre- and post-contact fur trade era and the political dynamics therein. It relies on historical documents and Tsimshian oral traditions, notably the Beynon/Barbeau archive. It summarizes the fourth key legal event demonstrating the Nine Tribes' claim to the Study Area: the circumstances surrounding Ligeex's ascendancy during the fur trade the leads to the pictographs at Ten Mile Point and Tyee (see Section 2.2.4.1)

- Page 170: Ligeex and his tribe (Gispaklo'ots) had "preferred access to trade at the mouth of the Nass River."
 - This is noted in Footnote 8 to include Fishery Bay and Nass Bay.
- Page 171: All Tsimshian had "specific trading rights" at the mouth of the Nass River associated with the eulachon harvest and grease trade. However, Ligeex controlled access to the eulachon fishery, a prerogative recorded in the pictograph just west of Fishery Bay.
 - In Footnote 15, the authors acknowledge that this event might have occurred after contact.
- Page 171: Control of the eulachon fishery was associated with the Eagle clan trade network "Gwinhuut" whose ascendancy is associated with the interior-coast fur trade.
- Page 172: Ligeex's control of the Skeena fur trade and the mouth of the Nass put him in powerful position during the fur trade era with the Europeans.
- Page 173: Ligeex's main rival for control of the Nass was the Nisga'a Wolf clan chief Hlit'ux who sought ways to bypass the Gwinhuut network.
 - Hlitux (see Section 2.2.5) is Ligeex's main rival in the early fur trade, events that are recorded in the *adawx*. These all take place after contact and show that the Nisga'a lived in villages east of Fishery Bay.
- Page 174: Ligeex's control over Nass Bay increased in the 1820s through the marriage alliances of his sons and daughters.
 - These events are largely internal to the Nine Tribes, though the idea of a patrilineal succession suggests both the influence of colonial forces such as missionaries and smallpox epidemics in the mid 19th century (see Martindale et al 2019).
- Page 175: In 1830, The HBC survey for Fort Nass at the mouth of the Nass. They are driven off from their preferred location by Txagaxs' (Ginaxangiik) people who owned the land. Fort Nass is constructed further downriver at Crabapple Point.
- Page 175: Once Fort Nass is operational, Chief Trader Peter Ogden reports good relations with Indigenous people. Ligeex strategizes to have his daughter marry Ogden, further solidifying his control over trade at the mouth of the Nass.
- Page 175: Chiefs and their representatives do not travel beyond the borders of their territory. In 1832, HBC Clerk Donald Mason travels up the Nass to Gitlaxdamks where he meets the Nisga'a chief (likely Sgat'iin) who led him east as far as the Cranberry River, the limits of his territory.

- Page 177: In 1834, the HBC moves its fort to Lax Kw'alaams, the authors argue as a result of the machinations of Ligeex. At Fort Simpson, the Tsimshian and Ligeex have increased control over the fur trade.
 - These events all indicate the power of Ligeex and the Nine Tribes during the fur trade era.
- Page 181, Footnote 15: A note discussing the complexity of ownership at the mouth of the Nass and recurring and ongoing disagreement between the Tsimshian and the Nisga'a over this region. Ligeex's Gwinhuut Eagle clan network is argued to have provided "a limited solution" to this tension. When it dissipated in the mid-19th Century, the conflict arose again.
 - Evidence that the Nisga'a claim to the Study Area occurs largely, perhaps exclusively, in the 19th century.

3.12 Martindale, Andrew and Susan Marsden. 2003. Defining the Middle Period (3500 BP to 1500 BP) in Tsimshian History through Comparison of Archaeological and Oral Records. *BC Studies*. 138/139:13-50.

This article explores the conjunction between published archaeological data and *adawx* and makes the case that there is evidence in the *adawx* for Nine Tribes ownership of the Study Area.

- Page 20: Nine Tribes territory defined as including the mouth of the Nass, though no primary evidence is cited.
- Page 27: Archaeological evidence at Ridley Island (GbTn-19) associates high quantities of eulachon bones dating from over 3000 years ago as evidence of the eulachon fishery.
 - Indicates an early date for this seasonal settlement pattern. The narrative of Ts'oode (Marsden 1997) suggests that this pattern may date to the very early Holocene.
- Page 29: Evidence from the *adawx* that as a consequence of the War with the Tlingit, the Nine Tribes moved *en masse* to the PRH area and travelled together to their eulachon fishing grounds in the Nass estuary, for defense.
 - Indication that the Nass was part of Nine Tribes territory after and during the War with the Tlingit.
- Page 34: An argument that the lower Skeena was combined with coastal areas as house groups connected into alliances in the Late Period, i.e., after the War with the Tlingit.
 - Thus, legal ownership of territory was changeable – though in this case, the owners stayed the same, but combined to form Tribes.

3.13 Martindale and Marsden 2011. Analysis of territorial claims made in “Lax Kw’alaams: Review of Historical and Ethnographic Sources” and “Metlakatla: Review of Historical and Ethnographic Sources” documents prepared by the Aboriginal Research Division of the British Columbia Ministry of Attorney General Legal Services Branch. Unpublished Report prepared for the Lax Kw’alaams and Metlakatla Indian Bands.

Marsden returned to the issue of ownership of the Study Area in an assessment of competing claims between the Nine Tribes and their neighbours. The Nass Bay was one of three areas of competing claim. Their logic follows Marsden 1997.

- Page 87: “The importance to the Tsimshian of their eulachon fishery sites at the mouth of the Nass River cannot be overemphasized. These were not seasonal camps, but rather a major settlement area at which it was common to spend up to three months of the year. A significant portion of the annual trade of the Tsimshian also took place at this location, and here also the Tsimshian developed the alliances and feasting relationships that allowed them to establish and retain their positions as a wealthy and powerful nation.” This is followed by an inventory of each Nine Tribes village location on the Nass.
 - Gitlaan
 - Gitwilgyoots
 - Gitxaala, Ginaxangiik, Gitnadoiks
 - Gitando
 - Gits’iis
 - Gitzaxlaal
 - Gitwilgyoots
 - Gitka’ata
 - Gits’iis
 - Gitnadoiks, Gitxaala, Ginax’angiik
 - Laxse’el (Tlingit)
 - Gidaganits (Tlingit)
 - Gitxaala

- Marsden's Map. In the 1980's Susan Marsden produced a territorial map (Figure 4) in conjunction with the traditional leadership of the Nine Tribes. This document was reproduced in Martindale and Marsden 2011:

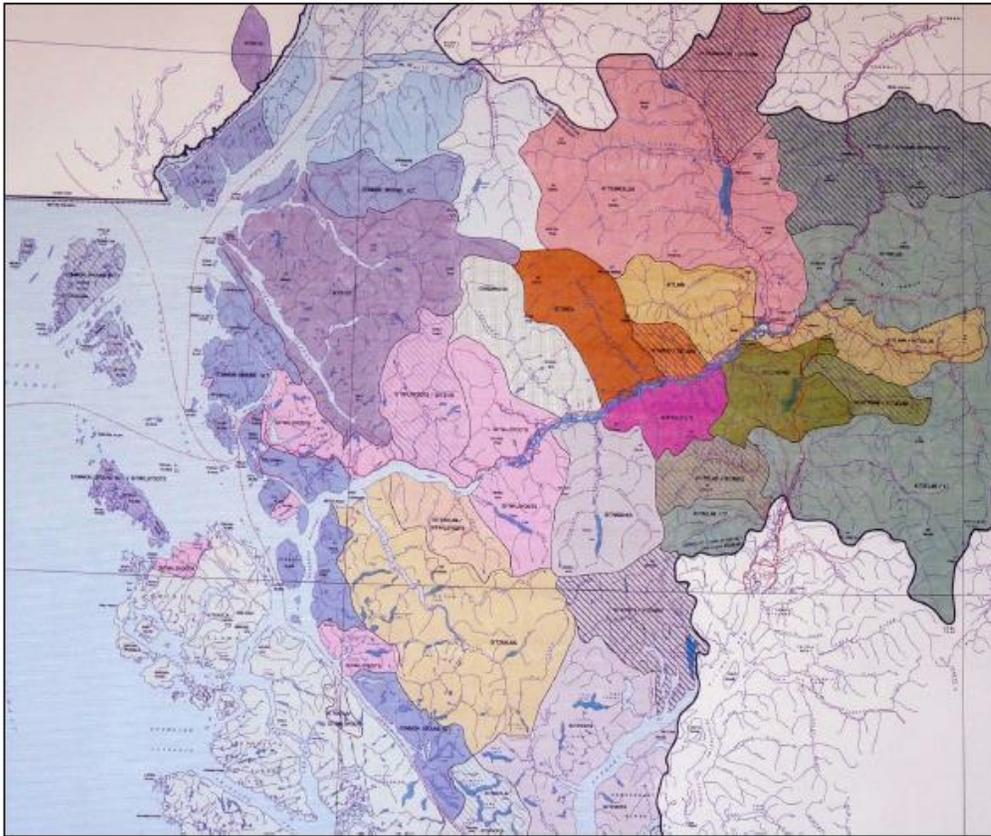


Figure 21. Martindale and Marsden's Figure 3.2, showing a version of the Nine Tribes territory map from 1992.

3.14 Ministry of Justice, Legal Services Branch, Aboriginal Research Division. 2016. Lax Kw'alaams and Metlakatla First Nations: Review of Ethnographic and Historical Sources.

This document is an assessment of territorial claims. Volume 3 includes a discussion of the Study Area. The anonymous report writer presents an improvement over previous Ministry reports by making use of primary evidence. There are several systemic issues of scholarship that warrant consideration: 1) a lack of evaluation about the value of specific sources, 2) a lack of understanding of Tsimshianic law by which evidence and claims to territory can be evaluated, and 3) a lack of understanding of the events and chronological sequence of Tsimshian history.

As a result, I do not agree with the report writer's thesis that the Study Area indisputably belongs to Nisga'a tribes or house groups. The Ministry's use of anonymous researchers who are not subject to peer review differs from academic orthodoxy and scholarly practices that are designed to ensure the value and internal coherence of scholarly output.

- Volume 3 Page 143: The report defines the boundary between the Nine Tribes and the Nisga'a as Kwinamass River. As a result, I will focus on the locations from

Kwinamass to the east. I concur with the report that lands and water to the west of Kwinamass are owned by the Nine Tribes.

- This is the key thesis of this report that I evaluate in this section. See also Section 5.3.
- Volume 3 Page 144-145: The report writer references the narrative of Haimas to define Work Channel and the Khutzeymateen Valley as belonging to the Gits'iis (one of the Nine Tribes). There is a reference to Barbeau's Raven Manuscript that indicates metal was captured from the Tlingit.
 - This could be an indication of post-contact times, but if so it stands in contrast to a substantial body of evidence that places these events before 1000 years ago (see Section 5.4.1). It is possible that this is a reference to precontact metal. Copper was well known and widely traded from the north prior to contact. Iron was also likely circulating along the coastal trade routes, either from meteoric iron from the arctic or Asian iron recovered from ship wrecks. Metal is not a reliable chronological marker. The widespread use of copper among the Nine Tribes is associated with the prelude to the War with the Tlingit, where it is identified as coming with the northerners about 3500 years ago (see Martindale and Marsden 2003).
- Volume 3 Page 148: Reference to ships logs of the *Otter* from a trip in March 1810 in which a Gits'iis chief ('Wiilaxha) is transported from Metlakatla to the "Nass Harbour" where he is taken home in a launch, "eight to 10 miles distant up a narrow inlet where no vessels go."
 - The report writer argues that the narrow inlet is the Khutzeymateen, but this is illogical. It suggests that the *Otter* travelled east to the Nass Harbour and then sent a launch back the way it had already come to drop 'Wiilaxha at his village. It would be more logical to simply stop at the Khutzeymateen/Kwinamass area and send the launch from there.
 - The distances recorded by the *Otter* do not accord with the analysis proposed by the report-writer. The Khutzeymateen/Kwinamass area is about 20 miles east of the Nass Harbour, so this does not align with the distances recorded in the ships log (8 miles). In contrast, eight to ten miles up the Nass River from Nass Harbour places 'Wiilaxha's village at Fishery Bay, which is the most likely location of 'Wiilaxha's village in the Nass River, the only inlet near the Nass Harbour.
 - It is unclear to me why the report-writer makes such an unusual case for the location of 'Wiilaxha's village – other than to argue that Nine Tribes villages were not in the Study Area. They clearly were: see Section 5. This appears to be a case of an author preferentially selecting and interpreting data to substantiate a preferred interpretive outcome – a form of logical teleology that I warn against in Section 1.3.
- Volume 3 Page 149: The *Otter* stays in the Nass Harbour for several days, and its logs identify the Nass Harbour area as home to "six different tribes" all engaged in the eulachon fishery. The logs later indicate that the *Otter* returned to the Nass River a month later and continued their relationship with 'Wiilaxha and others of the Nine Tribes.

- These logs reinforce the claim that the Nine Tribes participated in the eulachon fishery and owned villages in the Study Area. The idea of a village, as noted in the *Otter's* logs is important: it suggests that the Nine Tribes facilities were not simply temporary camps, but permanent settlements. Note that the Nine Tribes traditionally left houseframes in place and moved their wall boards as they travelled between Metlakatla, the Nass and Skeena Rivers.
- Volume 3 Page 155-157: The report cites Beynon (1953) noting locations of Nine Tribes camping stations en route to the Nass River. These include Somerville Island.
 - Note that this map references locations from the Tlingit attack on the Nine Tribes to which Haimas helped marshal a response. Thus, it dates from before 1000 years ago.
 - Here is the map from page 155. The Somerville Island sites are listed as 4 and 5.

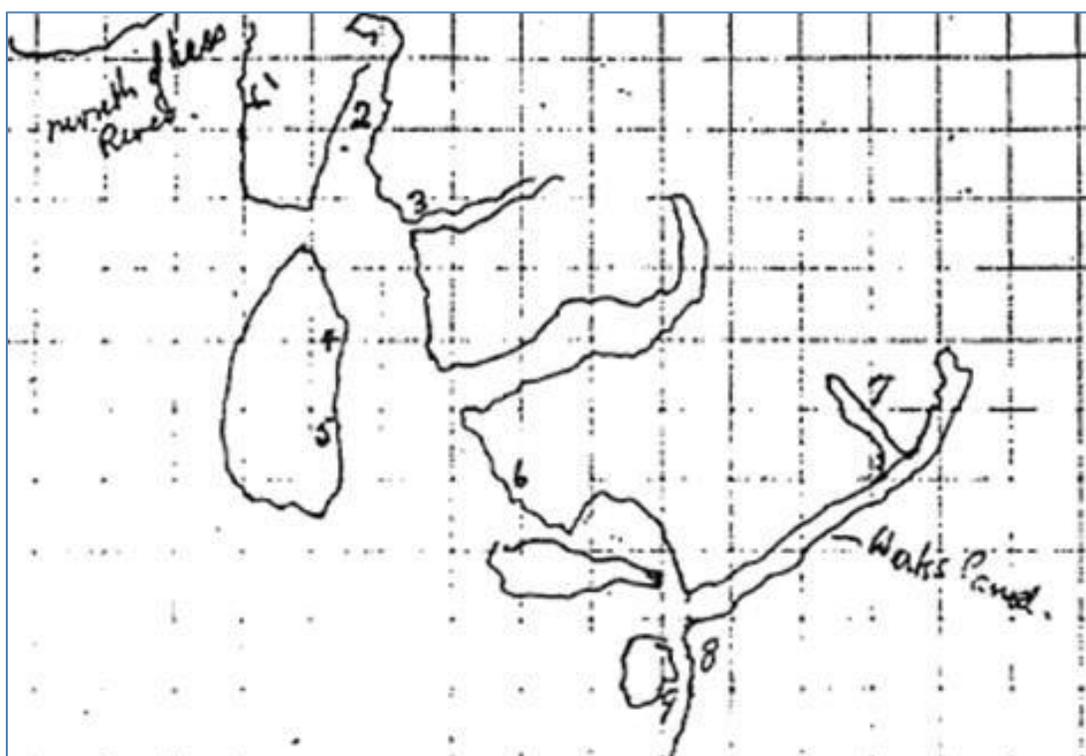


Figure 22. A map by Beynon of part of the Study Area showing Nine Tribes settlements.

- Volume 3 Page 157: The report references a map by Beynon (see Section 5.8) that identifies a Section of the eastern side of Somerville Island as belonging to the Nisga'a (the green dots highlight the line with the script "Boundary of Tsimshian and Nisga'a":



Figure 23. A map by Barbeau locating the Nisga'a-Nine Tribes boundary at the Kwinamass River.

- This map appears to be the work of Marius Barbeau rather than William Beynon (the handwriting is not Beynon's). Halpin and Seguin (1990) follow Barbeau and place the boundary at this location as well. It is important to note that Barbeau's boundary is a clear outlier to all of Beynon's scholarship. Beynon consistently located Nine Tribes villages in the mouth of the Nass River, thus it is difficult to assess Barbeau is drawing this conclusion from. Barbeau relied largely on Beynon for the collection of *adawx*; Beynon travelled across the Tsimshianic world, but Barbeau's field work is more limited and includes Kincolith and Kispiox.
- Volume 3 Page 161: Reference to the records of Pym Compton, an HBC employee who worked at Fort Simpson. He notes that while the Khutzeymateen was used by the Nine Tribes, especially for salmon, it was used by the Tlingit for hunting.
 - The report writer suggests that this is connected to the transfer of the area from the Tlingit to the Gits'iis at the time of Haimas, although these events occurred over 1000 years ago. It is more likely that this is simply a post-contact pattern reflecting the erosion of traditional practice and law. Compton worked at Fort Simpson from 1858-1862.
- Volume 3 Page 165. The report argues that the territorial boundary between the Nine Tribes and the Nisga'a is the Kwinamass River: "**Ethnohistorical sources indicate**

that Kwinamass Inlet and Kwinamass River were a point of intersection between the Northern Tsimshian and the Nisga'a."

- This is the key thesis of this section of the report that references the Study Area. While it is true that this map by Barbeau places a boundary here, it is not true that all sources do so. Indeed the majority of sources, including all of Beynon's work (see Table 6), locate the boundary at or east of Fishery Bay. Here is another, slightly more legible version of this map.



Figure 24. A map by Barbeau showing the location of Nisga'a hunting territories in the Kwinamass valley.

- Volume 3 Page 165: the Kwinamass is associated with Kincolith by E.N. Mercer, recorded by Barbeau, who noted the area as "Kincolith hunting grounds." Here is the associated map from Barbeau (taken from page 175 in the report):



Figure 25. A map by Barbeau showing Kincolith hunting grounds in the Kwinamass area.

- This pattern is consistent across the data: Barbeau locates the boundary here, while Beynon places it at the eastern end of Fishery Bay. Barbeau’s conclusion seems to rest on usage and, possibly, on settlement, for hunting and fishing. As I have commented throughout this report, while use and occupancy derive from ownership, they are not in and of themselves evidence of ownership in Tsimshianic law. The only legal claim in Tsimshianic law exists because of oral records, *adawx*. Rights of privilege can and often do grant usage and settlement to non-owners of territory (see Section 1.7). Thus, Barbeau’s claims are weak within Tsimshian law since there are no *adawx* to make connections between house groups from Kincolith and the Study Area. Note also that Kincolith is not a legal entity in Tsimshianic law (neither, are Lax Kw’alaams and Metlakatla, which is why the Nine Tribes claim is more robust in Tsimshianic law – it invokes *adawx* and the house groups of the Nine Tribes).
- It is possible that Mercer was referring to specific house groups who resided at Kincolith, but without clarification, this claim could be a post-contact conflation. See Section 5.8.
- Volume 3 Page 166: “In 1929, a Nisga’a resident of Kincolith named Frank Bolton informed Beynon that the Kwinamass River drainage was part of a broader region belonging to the Nisga’a Laxskiik house of Txalaxet who “used it exclusively.” This territory featured two villages on Kwinamass River, occupied for several months each year, and it was used for hunting game and other animals, plant gathering, berry harvesting, and salmon fishing.

“This house had as their exclusive territory the whole of the valley of Kwinamass River [Figure 88: 1]. This territory was known as *x'ɛnmɛs* ‘where red’ and was the exclusive property of this house and the village of *txala'xɛt* was known as *gidzaxsen* marked **A** about three miles [up Kwinamass River]. Another village about one mile above was known as *atagald.zɛp* [or] ‘out standing village, out standing in a prominent place so it would be most noticeable’ marked **B** and they were all known among the [Nisga'a] people as *Gidzaxsen* group of people. At these places they hunted and fished and they got groundhog, beaver, bear, marten, and wolves and many other fur bearing animals. They also got from this territory their food supply of deer meat, and mountain goat meat. They also got berries and ‘ax (fern roots) and crabapple. They also got from here salmon and they fished salmon here most of the time in front of villages **A & B** and the first fish caught was steelhead during the season of the month of the ‘Spring Salmon’ *ɔxs'ɔiy'ɛ* (month of May), and during the month of the ‘Green Leaves,’ June and July, which was known as *ɔxs'ɔiyɛns* ‘month of/moon of leaves,’ and then the humpback and dog salmon followed during the season of the salmon *ɔxs'hɔn* ‘moon of salmon’ and then the next salmon to come was the coho salmon during the moon of the groundhog *ɔxs'gwisk* ‘moon of groundhog.’ There was no sockeye in this river. They used this territory and river exclusively . . . From *x'ɛnmɛs* [Kwinamass] *Txalaxɛt* made his permanent village at [Gitiks, on the Nass River near Greenville].”

- Here is the map associated with Bolton’s testimony from page 165 in the report:



Figure 26. A map showing claims to the Study Area by Frank Bolton from Kincolith.

- This is the only Nisga'a claim to lands and waters west of the eastern end of Fishery Bay that connect title statements to Tsimshianic law (other than Kincolith, established in 1867, and the reserve lands, allocated in 1881). I would like to see the full document, as it is not entirely clear from the excerpt

who “this house” refers to. Again, use of the location by Txalaxet is not in and of itself evidence of ownership in Tsimshianic law. Unfortunately, this quotation has no reference.

- Note that this statement differs from many coming from Kincolith Band members, most of whom base their claim on contemporary (i.e., late 19th or early 20th century) practices and not on historic title. See Section 5.6.2.
- Txalaxet is noted to be from Git'iks (a Nisga'a village on the Nass east of Fishery Bay) and this Section lists the place names of key locations in the territory. What is missing is any house group or tribal affiliation. Since individuals do not own territory in Tsimshianic law, any claim by an individual must be substantiated with reference to a larger group, ideally a house group lineage, although a house group is sometimes obvious by the leading name of the house (the chief's name). As always, the time from which such claims date is critical. In Tsimshianic law, such claims must be witnessed by peers who are impacted by their proclamations. According to Sterritt et al (1998), the Nisga'a have made non-witnessed claims to Gitanyow territory which date from the 19th and 20th centuries.
- Volume 3 Page 167: “In 1927, Joseph Morrison told Beynon about a time when the Haida planned to attack the Gitando at Kwinamass River, where the tribe had the privilege of fishing for salmon in Txalaxet's village.

The Haida... were on a war raid on the Tsimshian, knowing that there were many of them at *knemaes*... during the season when they dried the salmon. *Knemaes* was the fishing station of the [Nisga'a] house of [Txalaxet] and the [Gitando] . . . who had intermarried together. The [Gitando] were privileged to go there and to dry their fish, but not to hunt. The household of [Txalaxet] and the [Gitando] were living together at *knemaes* at this time... There was a great number of people now at the fishing station [when the Haida attacked, unsuccessfully].”

- This quote is significant in Tsimshianic law as it places Txalaxet's use of a “fishing station” (i.e., not a village as Bolton indicates above), as part of an affinal relationship (via marriage) between the Gitlan (Nine Tribes) and the house of Txalaxet (Nisga'a). This suggests that a relationship of privilege exists in which one party has access to another's territory by virtue of a marriage alliance and does not own it. In this case, Txalaxet is an individual and the partner is listed as “Gitlan” a tribe. This asymmetry suggests that the owner was Gitlan and the individual with privileged access was Txalaxet. Otherwise, Txalaxet's house and tribe would be listed. The report writer argues that the Gitlan have married into Txalaxet's lineage and thus acquired privilege, but this is not certain from the quote. As I note, the more logical explanation is the reverse.
- On page 168, the report notes that Bolton identifies Txalaxet as part of the Laxskiiik (Eagle) division of Gitiks that owned the north side of Kwinamass and that the south side was owned by a division of the extinct Gitwilkseba Tribe (the tenth tribe). He notes that his children inherited the claim to the southern side of the Kwinamass via the house group 'nis'yust. This could be a Gitwilkseba connection (see Section 5.4.3).
- It is important to note that at the key legal meeting between the Nisga'a and the Nine Tribes in 1916 (see Section 2.2.1), there is no specific mention of the claims of the House of Txalacet. This undermines their significance in support

of claims of ownership. If indeed, this was an *adawx* that referenced ownership, rather than privilege, one would expect it to be presented in detail at the 1916 meeting. If it was a right of privilege, then all in attendance would know that it was not a claim to ownership under Tsimshianic law.

- Volume 3 Page 167: The report references the Kwinamass valley as belonging first to the Tlingit and then the Gitlan during the time of Haimas.
 - As noted in the preceding paragraph and in Section 5.4.1, these events took place over 1000 years ago, thus the historical claim to the Kwinamass belongs to the Gitlan. This is a fundamental and recurring chronological error in this report that adds undue weight to the Nisga'a claims to the Study Area.
- Volume 3 Page 168: The Nisga'a connection to the Kwinamass appears to derive from the Gitwilkseba. The report writer indicates that this tribe existed until 1846 as there were people identified with it in a census at Port Simpson conducted by the HBC.
 - It is unlikely that the Gitwilkseba were a tribe in the 19th century, though it is true that many Tsimshian people (from the Nine Tribes and Nisga'a) have Gitwilkseba ancestry. This error is another example of the report writer's lack of understanding of Tsimshian history. As Marsden (2000) has shown, the Gitwilkseba began as northern migrants to Tsimshian territory, originally from the Stikine, but fleeing strife along the northern coast. They move into Tsimshian territory about 3000 years ago and form alliances, but are followed by their enemies, who continue the conflict. This becomes the War with the Tlingit, which is resolved through the formation of a political alliance of Ten Tribes (who become the Northern Tsimshian). Upon the resolution of the war (which involved Haimas), the Northern Tsimshian forge an alliance to defend their territory from further invasion. Those with northern ancestry become the Gitwilkseba. However, their territory was scattered and, since it was gifted to them by the other tribes, insufficiently productive and the tribe disbanded. The lands were returned to their original owners (the Nine Tribes), the alliance was reduced in number, and the Gitwilkseba house groups were absorbed into other tribes. Importantly, these events were resolved long before contact and did not affect the ownership of the Study Area by Nine Tribes house groups, as recorded in the *adawx*.
 - On Page 169, the report writer includes a narration of the dissolution of the Gitwilkseba and their absorption into (primarily) the Giluts'aaw. This passage traces the lineage connections of the Gitwilkseba house groups, but does not confer the title rights. The transfer of house group territories is a complex issue that is infrequent in the *adawx* (but known). House groups forfeit their territories when they are unable to fund key ceremonial events (in this case, the appropriate ceremony for a deceased chief). When this occurs, it is likely a symbol of a deeper economic hardship (see Section 1.7). The transfer occurs when a closely aligned house steps in to fund the ceremonies, thereby transferring the territories and the people of the impoverished house to the benefactors. In this case, the Gitwilkseba were themselves created by territorial grants from Nine Tribes house groups in the aftermath of the War with the Tlingit; thus at their dissolution, the lands granted to them reverted to their former owners (see Marsden 2000 for full details).

- However, a Nisga'a Gitkateen claim to the Kwinamass River though the Gitwilkseba is not legitimate in Tsimshianic law, since their territories were transferred back to their original (Nine Tribes) owners when they dissolved. If the lands had been transferred to the Nisga'a, then we must ask both why 1) the *adawx* that detail this are not available, and 2) they were not presented at feasts or at the 1916 meeting (see Section 2.2.1). The key passage is:

"The Gitwilkseba survivors were now only a handful, and while they were here, one of the leaders, who was *Alulaxae*, a Gispwudwada, fell into a precipice in the hills back of his hunting grounds at [Kwinamass], and it was difficult to recover his body, as it had gone into a crevice. [The Gitando helped to retrieve the body and brought it to Metlakatla, where the Giluts'aaw Gispwudwada chief *Niistgümüik* paid them for its recovery.] Because [*Niistgümüik*] had come at once with his contribution and had taken in the body, the [Giluts'aaw] virtually by so doing absorbed the [Gitwilkseba] survivors. These tribesmen now became members of [Giluts'aaw], as their lineage of chiefs was extinct. As they could no longer have a successor, [*Niistgümüik*] became their head chief, as he was of the same [*wilnaat'al*]. A few of the remaining houses went to the [Gitkateen] tribe of the Niskae, such as *Lae'l*, a Laxskiik, and *Neeshoos*. But the *Neeshoos* group divided itself. Some stayed with the [Giluts'aaw]. That is why you have today two *Neeshoos* houses, one at [Gitkateen] and another among he [Giluts'aaw]. So this is the end of the [Gitwilkseba] tribe."
- In Tsimshianic legal terms, the inability of the Gitwilkseba to maintain their feasting obligations upon their chief's death is the event that triggers their dissolution. Related house groups from the Giluts'aaw step in to fund the ceremony, thereby creating a legal transfer of the Gitwilkseba rights. This kind of event is uncommon, and indeed it is the only example that I know of, of an entire tribe failing. However, other similar cases are known for specific house groups. The result is always the same: the lineage retains its history, but it transfers its rights to the new lineage. This is why such an *adawx* exists: to record this legal event.
- This is also why some people in the Nine Tribes continue to have Gitwilkseba ancestry even though the tribe no longer exists.
- Volume 3 Page 169: The report notes that there are contested claims to the Kwinamass from the Nine Tribes and Kincolith. As in other contexts, Kincolith claims are complex because the community is an invention as a mission town in 1867. Kincolith-based claims consistently invoke late 19th and early 20th century usage patterns and traditional claims that are woven through the complex history of the Gitwilkseba. The claims mentioned here are from the 19th century and were the basis of granting reserves to Kincolith in Kwinamass (IR 15 and 16).
 - These are complex claims that are not fully supported in Tsimshianic law. The report notes (Page 170) that this decision was immediately objected to by Nine Tribes people, who were given reserves in Kwinamass (IR 45 and 46).
 - This appears to reflect a colonial strategy in addressing disputes: subdivide the area into small reserves for each party. The alternate strategy, used at the mouth of the Nass, was to allocate reserves in common.
 - See Section 2.3 and 5.6.2 for a discussion of these data.
- Volume 3 Page 171: The report notes that a reserve in Nasoga Gulf was assigned to the Nine Tribes (IR 40), but was later removed by the Reserve Commission.

- Reserve allocations are complex, post-colonial phenomena that seem to not rely on Tsimshianic legal principles or precedent.
- Volume 3 Page 171-172: This Section (8.5) lists the Nisga'a claims to the Mylor Peninsula. Barbeau recorded these claims by unidentified informants, who the report writer suggests may be Nisga'a. These locations are associated with chief names listed on a map:

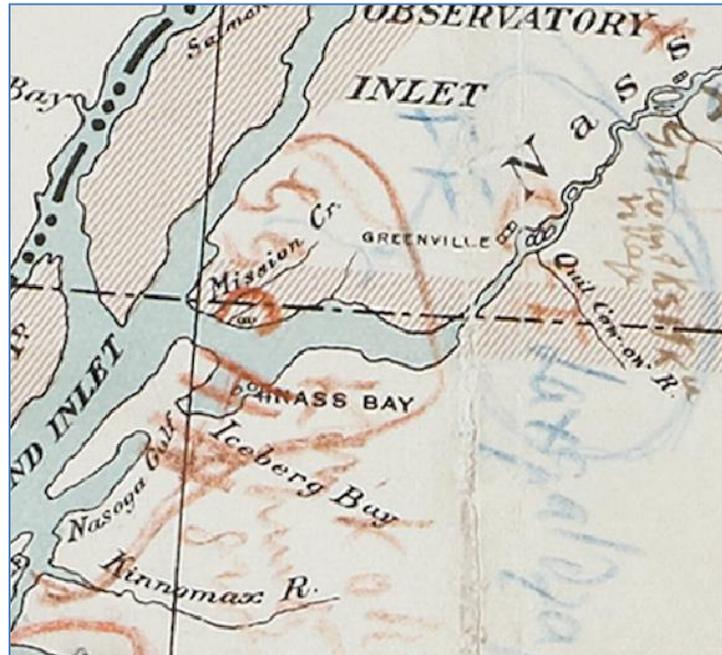


Figure 27. A map by Barbeau showing Nisga'a claims to the Study Area.

- As discussed above and in Sections 5.4.3 and 5.6.2, the Nisga'a claim to the Mylor Peninsula derive from Kincolith member Frank Bolton who relies on Gitwilskeba ancestry. E.N. Mercer makes a claim based on contemporary usage (Barbeau notes the area as "Kincolith Hunting Grounds") which are, by themselves, not legally sound claims to ownership in Tsimshianic law.
- They were also consistently contested by Nine Tribes people, who invoked *adaawx* associated with Ligeex's pictograph at Ten Mile Point (see Section 2.2.1 above).
- Volume 3 Page 174: The report notes that the Nisga'a claims to the Mylor Peninsula were contested by the Tsimshian and vice versa. The report includes a passage from Beynon framing the two sides at a meeting in 1916 (Beynon was the secretary and took extensive notes (see Section 2.2.1):

"At a joint meeting of the Niskae and the Tsimshian, an attempt was made, in 1916, to settle a claim which both people made, in what was called "the Niskae Petition," to the possession of the [Kwinamass] and certain territories at the mouth of the Nass River. The Tsimshian stated, "Everything on the coast belongs to us, and we can tell you the traditions of each of these territories, how we acquired them, especially [Kwinamass], this belonging to the [Gitlan] tribe, through the [Ganhada] chief, Kakae. The Red-House there was built for [Gitlan Ganhada chief] Haimas"

The Niskae countered, “We are also of coast origin and, in many cases, came from the same places as many of the Tsimshyan, and we feel we are in our rights in claiming this property which you now dispute. We were not originally a river people, but were in search of a plenteous country for food and game and shelter. Some went to the headwaters of the Nass and established themselves there. Many of you [Tsimshyan] belong to the same migration: Men’aesk, Gitiks, and other [Laxskiik], just the same as [Sgagweet] and [Ligeex], and others among the Tsimshyan. Only the Nass group chose to stay at [Nass River]. Some made [Kwinamass] their village. The same with the [Laxgibu] and [Ganhada] clans. These people established settlements all over the country, using these as their exclusive hunting territories.”

“[In response to the claims associated with Ligeex’s cliff painting . . .] the Niskae representatives answered, “When the original people arrived here, they separated. We came to the Nass, and you who are now Tsimshyan went to the Skeena River, where you all built villages, and to Metlakatla, and even farther south, to [Gitxaala] and [Gitga’at], and other points. So that even when [Ligeex] painted the picture you refer to, we do not recognize it as giving him the right to proclaim authority over what is ours. The Niskae were already living at [Kwinamass], and there were salmon villages there. Git’iks presumably had his fishing camp there, as did the [Laxgibu]. That is why it belongs to the Niskae.”

- As discussed in Section 2.2.1, it is useful to note that the Nine Tribes base their claims on Tsimshianic principles of law: 1) ancestral house territories which they are prepared to enumerate, and 2) the Ligeex pictograph and its accompanying *adawx*. To this list we might also add the evidence from the Haimas narratives and the double feast prior to 3000 years ago. All of these are part of a long history of legal claim and evidence of Nine Tribes ownership of the Study Area. The first of these is an invocation of Tsimshianic law which records title through *adawx* of house groups. The second is a (likely) post-contact development that reflects an internal Tsimshian resolution to the ownership of the area. Significantly (see Section 2.2.4.1), no Nisga’a were involved in the pictograph feast, suggesting that as it was an internal Nine Tribes matter. This indicates that there is solid evidence that Tsimshianic law saw this location as belonging to the Nine Tribes before contact and up to the early 19th century.
- In contrast, the Nisga’a base their claim on a coastal origin of all peoples. As noted by Marsden (1997) this common ancestry derives from some of the earliest times in the area, likely well before 5000 years ago and probably as old as 9000 years ago. As she notes, much changed over the last millennia, including the establishment of Nisga’a and Nine Tribes as tribal organizations with constituent territories. It is unclear when these relatively modern jurisdictions developed (but see Martindale et al 2017a for an overview), but by the time of resolution of the War with the Tlingit, the territory in question was clearly owned by the Nine Tribes. None of the early events referenced here have any merit in Tsimshianic law. This is an important point (see Section 5.5.2 below): in this instance, it is Nisga’a people debating with Nine Tribes people over this issue. There are no non-Indigenous people involved. The Nine Tribes representatives invoke Tsimshianic law and evidence, the Nisga’a do not. The likely reason is because they do not have a legitimate claim to the area under Tsimshianic law, otherwise they would have made their case to this audience.

- Although the claims and counter-claims appear conflicting, they are resolvable through an understanding of Tsimshianic law (Section 1.7) and history as recorded in the *adawx* (Section 5.3).
- Volume 3 Page 178: The report defines the lower Nass River as Nisga'a territory.
 - As noted elsewhere, the report does not provide any compelling evidence in support of this claim. It is also the sole outliner for this claim in the body of primary evidence (Table 1) and original analyses (Table 2).
- Volume 3 Page 178: "Mitchell and Donald (2001) observe that the "most notable thing about the property regime in effect" at the Nass was that "kinship groups who did not belong to the local group in whose territory the fishery occurred, had rights to participate in the fishery." In other words, it was remarkable that the Nisga'a would tolerate the seasonal occupation of their territory, and permit the exploitation of one of its most valuable resources, by non-Nisga'a.
 - This is a mis-citation. Mitchell and Donald in this quote do not clearly define the eulachon fishery as owned by the Nisga'a. Indeed, they state (2001:25-26) that the eulachon fishery, "brought together members of the ten Lower Skeena River Coast Tsimshian local groups, the two Canyon Coast Tsimshian local groups, two southern Tsimshian (the Kitkatla and Kitkiata) at least two southern Tlingit, and at least two Gitksan local groups and the Nisga'a – through whose territory the Nass River flowed." Since the fishery was at the mouth of the Nass, this statement is at best neutral or ambiguous regarding ownership of the Study Area.
 - On page 30 they state, "The various non-Nisga'a descent groups who came to the Nass to take eulachon returned to their own areas to fish for salmon." This is a stronger statement of ownership of the Study Area by the Nisga'a, however no references are provided. In contrast, they state (page 21) that the eulachon fishery was one of the most valuable resources for the Tsimshian, citing Drucker (1965), Garfield (1951), Beynon (1929-30; 1952) and Boas (1966). They also note (page 31) that the Haida and Gitxaala had rights of privilege to the Nass, but do not make any statement on the Nine Tribes. At best, this source is therefore also ambivalent or ambiguous (the thesis regards the larger issue of access to resource rights, not specifics of any one of the five locations considered across the Northwest Coast). Unfortunately, Mitchell and Donald consider such rights to be primarily defined by use and by military defense; however, they do not consider the significance of Indigenous legal systems. See Section 4.10.
- Volume 3 Page 180: Figure 95 is captioned, "Nisga'a Villages on the Nass (1932-1939) referenced to the Beynon Manuscript, #166. However, the map is not only of Nisga'a villages (which are only Numbers 4, 5, 6, and 7). Number 1 is "Tsimshian oolichan ground; Number 2 is Gitwilkseba (one of the Ten Tribes); Number

3 is Fishery Bay with sub number (a) the Fort (at Fishery Bay, not the HBC Fort Nass). See Table 4, below, for more details.

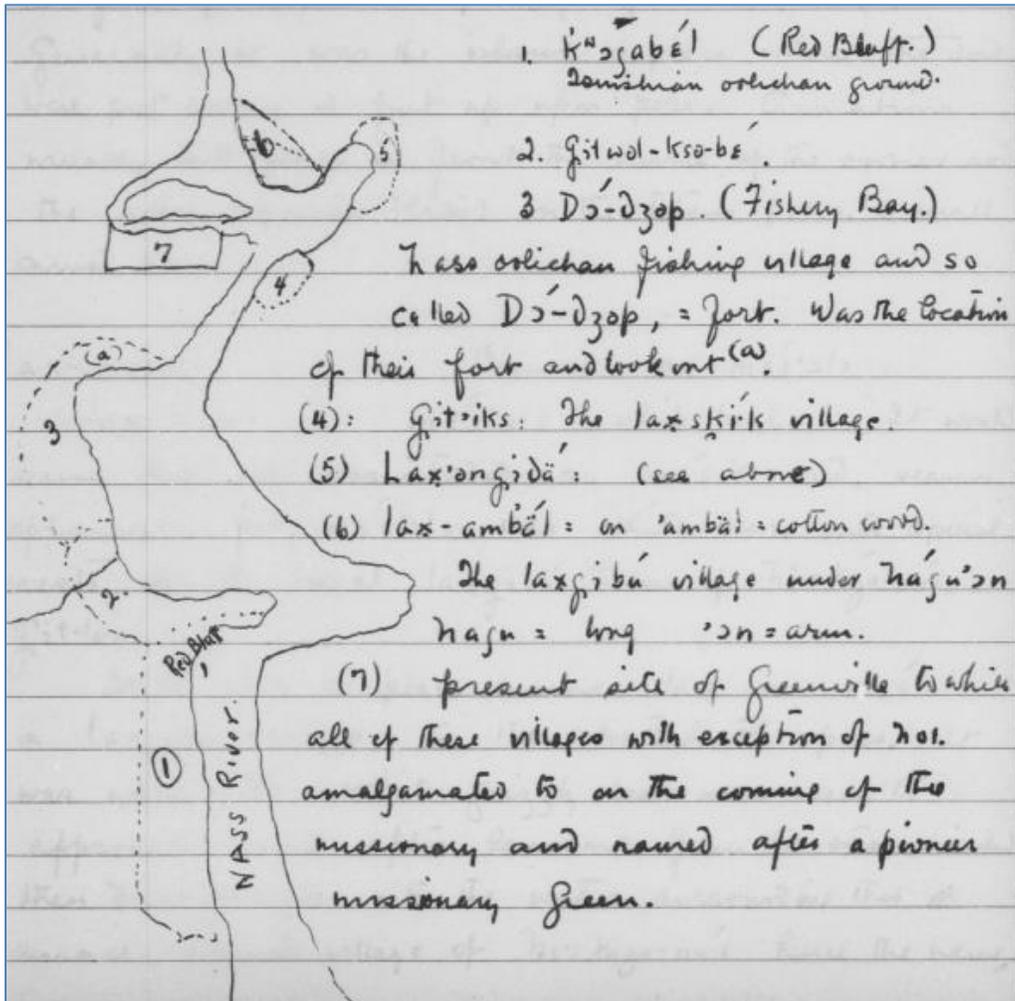


Figure 28. A map by Beynon showing Nine Tribes villages in the Study Area. The ministry report misidentifies this map.

- Note that this *adawx* (Beynon MS #166) is a glossary of key terms, names, and place names and not a specific *adawx*. It appears under the heading for “Lax-ungida” the Nisga’a village on the Nass (Number 5 on the map).
- Note that this map likely presents a historic view of the area (the Gitwilkseba no longer exist as a tribe). Beynon MSS #166 notes:

“Gid-wul-kse-ba’: Beynon, Git-wol-kseba: place name and a former group of people who afterwards were married into the Giludza’u tribe and into the Gitxadi’n groups of the Nisge’. They had a village which was located just below what is now the oolichan fishing village of Fishery Bay, the fishing village of the Nisge’. The name is derived from a creek running through the village site. Git=people of, Wol=where, kse=out, be’=runs. In the Giludza’u all that remains of this tribe is one group of Gispewudwada and the House of Yu’s and the same name on the Nass Gitxadi’n tribe. (The writer remembers that, according to former wars, these people became few and had only been a few in number ad were a group of the Temlax’um Gispewu’dwa’da who were of the same origin as the royal house of Nistgu-mi’k that went to the Tsimshians, while those that stayed behind went to Gitxa-di’n and

established themselves in that tribe as an independent house and had hunting territories in the Portland Canal and Kne-me's river (Quinamass, half way between the Nass and Port Simpson."

"Gitxade'n: Beynon Gitxa-di'n. These were the Nisga' tribe that lived in the lower reaches of the Nass River. Git=people of, txa-di'in=fish traps, "The People of the Fish Traps." The village site is where Greenville now stands."

- This is Beynon's most complete statement on the Nisga'a claims to the Kwinamass. It appears to be both specific (hunting) and minor (a limited subset of territories), thus should not be used (as the report writer does) to infer a wider Nisga'a claim to the Study Area. Also, as noted above and in Section 5.4.3, this claim appears to be one of privileged access derived from the Gitwilkseba, and not of ownership.
- Volume 3 Page 181-183: This Section presents data from Herbert Wallace, who recounted to Beynon the locations of all the fishing stations at the mouth of the Nass River. These included all Nine Tribes, Gitxaala, and Gitga'at. Wallace also notes that some, perhaps all of the Nine Tribes moved their villages to Red Bluff, though it is not clear when this happened.
- Volume 3 Page 183: Nisga'a informant E.N. Mercer located the Nisga'a villages on Beynon's map as in the vicinity of IR 10, with Tsimshian villages downstream.
 - These sections contradict the report writer's thesis on this subject (from Page 165). One measure of academic standard is the coherence between data compiled and interpretations presented. This report consistently presents evidence that the Nine Tribes had use and ownership rights to the Study Area, but still concludes that it was Nisga'a territory. These data and this conclusion are at odds.
- Volume 3 Page 184: Reference to three *adawx* in the Beynon Manuscript showing Nine Tribes village locations at the mouth of the Nass. The report argues that, "In most respects, the maps' placements are not in accordance, either with each other or with the information provided by Wallace in 1915."
 - This statement is incorrect (see Table 4, below). The location of the Tsimshian villages on this map is similar to all other sources and maps produced by Beynon, including the maps reproduced in the Ministry report as Figures 95, 96, 99, 100 and 101. This map is a significant spatial summary of "Tsimshian Villages for Oolichan" and Beynon's clearest statement along with the map shown in Figure 99) on the subject. It is impossible in my view that Beynon was not aware of the tensions between the Nine Tribes and the Nisga'a when he drew this map, considering that he was the secretary and note-taker at the 1916 meeting of the Nine Tribes and Nisga'a chiefs in Port Simpson. To dismiss this source and this expression of his scholarship, and to suggest that it is inconsistent with his own and other works, is erroneous. There are a range of sources on this subject, but all scholars acknowledge the value of Beynon on this subject, thus an internal contradiction in Beynon's work would be a most significant error. It appears that, *contra* the suggestion to this effect in this report, no such error exists.
 - In this drawing, Beynon makes a definitive statement that the Nisga'a villages are near Fishery Bay and the Nine Tribes villages are downstream. This is

consistent with the map show in Figure 96 and other statements and *adawx* recorded by Beynon.

- Volume 3 Page 186, Footnote 382: This note indicates that Fort Point (Crabapple Point) is the location of the original Fort Simpson (est. 1831; relocated in 1834).
 - This is incorrect. Fort Nass (not Fort Simpson) was established at Fishery Bay, upriver. The land for the Fort is within IR 9, and as Peter O'Reilly noted, was sold to James Grey. The fort at this location, is likely the same one referred to by Beynon in his map (listed as Figure 95 in this report) which is a Nine Tribes defensive site, created at the eastern boundary of their territory, perhaps as a defense against the Nisga'a. Errors creep into any complex analysis, but one of this magnitude aligns with others (the mis-calculations of the *Otter's* logs and the mis-characterization of Beynon's maps) to suggest a misunderstanding as to how all the data fit into broader legal and historical patterns.
- Volume 3 Page 186-189: This section contains details from Beynon's work recording Nine Tribes villages at the mouth of the Nass River, specifically the zone just downriver from Fishery Bay.
 - This section shows the pattern of consistency and reliability on this point in Beynon's work and contradicts the earlier statement on Page 184 and the thesis for this section (page 165), that the entire area was owned by the Nisga'a.
- Volume 3 Page 190: "The following extract (1927) notes the location of the Gitlan village at *dawdzep* [Fishery Bay], describing it as the highest point occupied by the Northern Tsimshian on the Nass."
 - This quote contradicts the caption of Figure 95 which lists Dɔ-dzɛp as Number 3, a "fort and lookout." The report on Page 184 (footnote 377) defines this as a "Nisga'a village" and erroneously conflates this location with the Nisga'a fortified village at Greenville. These are separate and Beynon (Figure 95) and this report (Page 190) both show that Dɔ-dzɛp is a Nine Tribes (Gitlan) fortified village just west of Fishery Bay.
- Volume 3 Page 190: "There was a gun battle between the Nisga'a and some of the Tsimshian at the Nisga'a village of *Gitiks*. The Nisga'a were going to capture the fort of *Ta'awdzep*, where the Gitlan and the [Kitselas] camped, and had fired the first shot. [The Nisga'a attacked them, killed many, and drove away the others.] The Gitlan and the [Kitselas] left their houses and fish and never went back to this place anymore since. The Niskae have taken over this place ever since... This is about 1850..."
 - This quote clarifies that the eastern end of Fishery Bay belonged to the Gitlan at least up to about 1850, and was defended by a fortified village. This narrative is one of several similar incidents (see Section 2.2.5), all of which occurred after 1846, and possibly after 1867 (the founding of the mission at Kincolith).
 - This is the earliest indication in any of the *adawx* of the Nisga'a claiming the lands and waters west of Fishery Bay. It stands as an apparent origin for their claim to the eulachon fishing grounds at the mouth of the Nass River. However, it is not uncontested by the Nine Tribes, who at the conflict and subsequently asserted their ownership of the Study Area. In Tsimshianic legal terms, this is the start of a territorial dispute, originating with an attack by the Nisga'a on the Nine Tribes in the Study Area. This clarifies that: 1) the Nine Tribes, not the Nisga'a, owned the Study Area at 1850, 2) the Nisga'a claims to the Study Area

were contested and defended by the Nine Tribes, and 3) the Nisga'a claims to the Study Area post-date 1793 and 1846. See Section 5.5.5 for a detailed chronology of these events.

- This contradicts the thesis of this report (page 165) regarding the ownership of the mouth of the Nass River because, as this Section makes clear, the Nisga'a claims originated after 1846.
- The tension between the Nisga'a and the Kiteslas may echo an earlier conflict in which Kitselas allies of Ligeex attacked Nisga'a who were bypassing the Ligeex's monopoly on interior-to-coast fur trade. I would date this earlier conflict to the 1810's to 1820's because its focus is on the inland fur trade, which replaced the coastal fur trade around 1805.
- Volume 3 Page 191: "The story of the Nisga'a attack on Gitlan and Kitselas was also recorded in 1948-1949. This narrative positions the Gitlan at tawdsep [Fishery Bay], the Kitselas downstream at welmaesmae sgahl-lawp [Red Bluff], and the Northern Tsimshian and Gitxaala at kwaekaepael [Red Bluff]. This extract is noteworthy because it seems to imply that after the eulachon season was concluded, some of the residents of Red Bluff who remained behind went out to harvest cedar and wild celery.

"It was now the oolachen season, and right below the Niskae village was the Gitlan village at the Tawdsep (Fishery Bay). Below this was the [Kitselas] at what was known as Welmaesmae sgahl-lawp 'where red stones; place of red stones' (Red Bluff). The Tsimshian and Gitxaala villages continued on down, way past Red Bluff... The Gitlan were now afraid of a big invasion, and they immediately moved down to where the Tsimshian were all living together at Kwaekaepael (Red Bluff)... [After the eulachon season was done, most of the Tsimshian tribes left the Nass to gather other seafoods] When the Gitlan were still at Kwaekaepael (Red Bluff), many of the women went into the woods to get cedar bark, to weave mats and baskets with; others, to get wild celery for food..."
- This section signals that, in addition to eulachon, Nine Tribes house groups harvested other resources including cedar and wild celery. This further indicates that the territory as well as the waters were owned by the Nine Tribes.
- Volume 3 Page 192: sections from a record by Barbeau, which appears to be the same as Beynon 50 in MacDonald and Cove (1987b), see above. This narrative states: "When the oolachen fishing and curing season began, the people came from all the various tribes, that is, from among the Tsimshian: the [Gitxaala], the [Gitga'at], the Gitlan, the [Kitselas] and the [Kitsumkalum], not the others. The Haida and the Tlingit came to trade. Each one of these tribes had its own location or village at the mouth of the Nass River, from a little below Red Bluff extending to [Angidaa], on both sides of the river."
 - Another document cited in the report that establishes Nine Tribes villages in the Nass River estuary, aligning with all of the data collected by Beynon and Barbeau. This also contradicts the report's thesis from Page 165.
- Volume 3 Page 192: The continuation of the quote from the previous point indicates that the Nisga'a village in the area was defined by: "[Nisga'a Laxkibu chief Hlidux's] village was away from all the other Niskae locations, at [Lax'ata] At certain stages of the tide, the canoes would pass very close to [Lax'ata] and just above this location where the Gitlan and the [Kitselas] had their village above, and on the same side of the river, almost opposite the Niskae village of Laxtawdzep 'on trout' (Fishery Bay)."

- Again, this illustrates that the Nisga'a villages were not in the area, except Lax'ata. Beynon's maps (see above) locate Lax'ata at the eastern end of Fishery Bay during the events of this narrative – the mid 19th century.
- Volume 3 Page 192: The continuation of the narrative locates a fight in front of Lax'ata, and makes reference to other locations: "There was a quarrel at a Nisga'a whiskey feast at [Angidaa], to which the Tsimshian had been invited, and guns were fired. There was a back-and-forth of revenge and retaliation involving some Nisga'a and Giluts'aaw. At this point, the Nisga'a were the attackers: "All the Nass went down, the next morning, to fight the Tsimshian. I was told to go and I went [the informant states]. They got in front of [Lax'ata] That is where the [Giluts'aaw] and the [Gispaxlo'ots] were encamped (between here and Fishery Bay, [which are] on this [north] side of the river)."
- This description conforms to Beynon's maps of the Nine Tribes villages in the Study Area and defines the Nisga'a locations as being to the east of Fishery Bay, with the Nine Tribes locations to the west.
- In Footnote 399 that accompanies this quote, the informant locates Lax'ata as "on Arthur" or a reference to Arthur Wellington Clah. However, the report writer correctly located Clah's homestead as across the river at IR 12. This error suggests that the unknown informant might not be reliable. There are several versions of this narrative in MacDonald and Cove 1987b (see Section 2.2.5), all date to the middle or latter half of the 19th century.
- Note that this is not an *adawx*, i.e., not a formal text passed through inheritance protocols. Thus, it is not as reliable as formal *adawx*. It appears to be an oral history (individual recollection, perhaps of *adawx* or stories of history) rather than a legal text because it lacks the formal structure of an *adawx*, and it appears not to have been presented at any ceremony (such as Section 2.2.1).
- Volume 3 Page 193: Reference to Mitchell and Donald's 2001 use of Gitxaala access to the eulachon fishery. Earlier, the report writer uses this source incorrectly as evidence that the Nisga'a own this territory (see Section 4.10 below).
 - Mitchell and Donald (2001) make no reference to primary data, and the data they do cite (derived analyses by anthropologists) indicates the area was owned by the Nine Tribes. In one section, they imply that the area is owned by the Nisga'a, but there is no evidence on which to base this claim. I consider this component of this report to be unsupported. While I agree with the thesis of the article (that complex legal negotiations existed in Indigenous resource management) and this is superficially appealing, I also note that this article lacks any actual examination of Indigenous legal systems.
- Volume 3 Page 194: "Some lineages on the northwest coast have roots among the Gwinhuut Laxskiik or 'Eagle Fugitives.' This term refers to a group of the eagle clan which migrated from its original territory in southeastern Alaska beginning about 1500 years ago and then dispersed in numerous branches throughout the region, establishing a broad network [*wilnat'aaf*] of related Laxskiik houses among the Nisga'a, Tsimshian, Haisla, and Haida. Several recorded traditions of the Gwinhuut lineages and their histories have been collected by Barbeau in "Gwenhoot of Alaska."

- This ancestry is part of the early histories that lead up to the War with the Tlingit (which dates to about 1300-1000 years ago). This is discussed in detail in Marsden 2000.
- Barbeau's compilation of this narrative sequence was compiled before we knew the Holocene chronology of Tsimshian history (Martindale and Marsden 2003; Martindale 2009) and before the war itself had been dated (Edinborough et al 2017). Thus, his sequencing and dating should be considered tentative.
- Note that *wilnat'aał* are not "networks" but rather house group lineages (see Martindale et al 2017a).
- Volume 3 Page 194: Reference to Ligeex, his control over the Nass fishery, and the pictographs at Ten Mile Point.
 - These substantiate Nine Tribes claims to the Study Area by referencing one of the key events recorded in the *adawx* that present the Nine Tribes' claim to the Study Area. See Section 5.3.
- Volume 3 Page 194-195: The narrative of Ligeex's failed combat of wealth with the Nisga'a Wolf chief. As the report notes, this dates to around the time of the mission, 1867.
 - Prior to this, and for at least 1000 years, the evidence points consistently toward a Nine Tribes ownership of the mouth of the Nass River.
 - This is an illustration of the importance of chronological control in understanding Tsimshianic legal history. This event, occurring in the late 19th century, reveals the effects of colonization on Tsimshianic legal history.
- Volume 3 Page 194: Reference to Tsimshian people collecting salmon berries at the Nass.
 - This indicates that their Nass territories in the Study Area were used for more than just fishing. This Section is similar to Volume 3, Page 191 and reveals how the Nine Tribes use of the Study Area exceeded eulachon fishing, contra O'Reilly (see Section 2.3) who focused on the Nine Tribes' fishing rights.
- Volume 3 Page 194: Quote from Barbeau-Beynon archive dating from the mission era that notes that the Tsimshian villages occupied the area up to Fishery Bay and that the Gitlan village (Laxtawtsep) was the upper most Tsimshian village.
 - This narrative appears in MacDonald and Cove 1987b (Section 2.2.5).
 - This record indicated continuous Nine Tribes used of their Nass River territories until the late 19th century.
- Volume 3 Page 195: The Haimas story recounted. See Section 5.4.1 for more details on the timing and significance of these events.
 - This report writer makes a similar error as Cope (2012) by placing these events in the 18th and 19th centuries. They date to over 1000 years ago.
- Volume 3 Page 196: "According to Beynon, Kincolith was the "personal property of *Haimas* until the coming of the missionaries" in the 1860s, when "the place was opened as a mission village which brought people from all the other Nass villages." Along with the cliff painting commissioned by Gispaxlo'ots chief Ligeex at Mylor

Peninsula, the existence of Haimas' settlement at Kincolith was cited in support of Northern Tsimshian claims to the Nass during the early twentieth century.

- This concise statement makes the case that the territory of the mouth of the Nass River belonged to the Nine Tribes. It contradicts its own thesis presented in this section (page 165), that the area belonged to the Nisga'a.
- Volume 3 Page 196: "Haimas seems to have used Kincolith for no other purpose than as an occasional habitation site or refuge. There appears to be no evidence in the ethnographic literature of his ever having hunted or taken salmon there, for instance, and his eulachon fishery was located further up the Nass."
 - This is incorrect. As many sources note (see for example Beynon 110 in the Beynon Manuscript), Haimas built a village here and hosted feasts. The implication is clear: Kincolith became his permanent settlement for a village. The village then moved to Hidden Inlet after the massacre of the Tsimshian chiefs at the feast in a modified feast house. These were clearly substantial and permanent occupations. The errors of the report-writer consistently over-state the Nisga'a settlements in the Study Area prior to the establishment of the mission at Kincolith.
- Volume 3 Page 197: "In contrast, at the time when Haimas built his infamous "slaughter house," the Nisga'a were already in the habit of harvesting salmon from the Kincolith River. Beynon reported that the whole river valley, called ksəkənəoli or 'waters of place of scalps,' belonged to the Nisga'a Laxgibu of Angidaa, who "held it for a long while" before giving it to a Nisga'a Gispwudwada group as compensation for the burial of a Laxgibu chief. In 1929, Lazarus Moody indicated to Beynon that this group used it for hunting, berry gathering, and fishing three species of salmon, as well as trout, and that there was a house at the mouth of the river. According to one tradition, the highest-ranking Nisga'a Laxskiik chief "established his village at Kincolith, about the time when the white people first made their appearance," so that one wonders by what means it could also have been Haimas' property in the late 1800s, as Beynon alleged."
 - I can find no other references in the *adawx* to the Laxskiik chief at Kincolith. These events seem to date from after contact, and may relate to the Gitwilkseba claims of the house of Txalaxet. See Section 5.6.2.
- Volume 3 Page 199: Discussion of O'Reilly's use of the concept of commonage to apply to IRS 10, 12, and 13, but that IR 14 was for the Nisga'a. IR 14 is Kincolith, the mission reserve.
 - Kincolith appears to have been an emergent community that drew on the ancestral connections of its constituents and the usage practices of its inhabitants to make claims in Canadian law that would not stand up in Tsimshianic law (see Section 2.3). This government report presents no clear understanding of Tsimshianic legal principles, relying in this context on O'Reilly's similarly situated perspective. O'Reilly is clearly motivated to encourage farming and resource extraction activities and to support mission towns; thus, his interests in outcomes suggest he is likely less concerned with historical title and more concerned with pragmatics that align with Canadian policy regarding Indigenous peoples, which appears to focus largely on making act as non-Indigenous Canadians and within Canadian legal and cultural principles. O'Reilly's approach appear to align with larger Canadian policy of attempting to convert Indigenous people to non-Indigenous practices, in this

case farming. O'Reilly also seemed concerned about the economic stability of the Kincolith mission, which seems to be part of his justification for providing local arable land to its people.

- Volume 3 Page 200: IR 11 assigned to the Nisga'a, though O'Reilly notes that it was used for eulachon fishing by Nine Tribes people.
 - Although this reserve is between IR 10 and 13, it is not defined as a commonage, while the others were. It is unclear why this inconsistency exists.
 - Another indication that O'Reilly's work was not directed towards a determination of traditional ownership but rather contemporary interests. This suggests that his decisions were based on incomplete data and in ignorance of Tsimshianic law. This, combined with his interests in minimizing the amount of land held by Indigenous people in reserves, indicates that we consider his conclusions as reflecting these contemporary issues. Nevertheless, he does repeatedly note that Nine Tribes people have claims to the mouth of the Nass River and in a sense looks to define these rights on his own by creating the concept of commonage. Subsequently, these reserve lands (10, 12, 13) become associated principally with the Nisga'a at Kincolith.
- Volume 3 Page 201: O'Reilly makes a similar point as above regarding IR 12. O'Reilly also notes: "Contrary to the wishes of the Indians of 'Kincolith,' who have always claimed this land, two sub-chiefs from Fort Simpson (50 miles distant) named [Arthur Wellington] Clah and Moses McDonald have established themselves here, and were on the ground when I visited it, and they stated, that they wished to hold the land for purposes of agriculture. At the request of the 'Kincolith' Indians I explained to them that they could use the frontage for fishing, as they had been in the habit of doing, but that they must not interfere with the cultivable land, that being the property of the Nass River tribe."
 - This passage raises several complex issues: 1) it is further evidence of O'Reilly's pragmatic approach and contemporary sensibilities. He is interested in encouraging farming, something that is only feasible for local people, i.e., those from Kincolith; 2) he makes no use of sources of history or reference to Tsimshianic law; rather he treats all Indigenous claims as equal, which is a misunderstanding of Tsimshianic law. Third, we can see from this passage that Clah and McDonald are working within O'Reilly's legal framework to make their case: if O'Reilly insists on farming as an indicator of claim, then they start farming. Fourth, this is another example of O'Reilly acknowledging the Nine Tribes' claims to the area for eulachon fishing.
 - The report writer notes in a later passage that O'Reilly observes that the area was "unoccupied except during the fishing season," apparently as evidence of the tenuousness of the Nine Tribes' claims. This suggests a flawed understanding of the Tsimshianic logistical economy in which the Nine Tribes resided at Metlakatla and made seasonal use of their lands. Non-Indigenous people have consistently over-simplified Tsimshian economic principles and organization. It was a logistically organized (i.e., made use of labour task forces), delayed return (i.e., storage-based), surplus (i.e., production in excess of necessity) economy in which owners made use of territories on which they did not fully reside.

- Volume 3 Page 201: “In 1882, O’Reilly described Red Cliff [Red Bluff] IR13 as a reserve that “contains 650 acres, and has a frontage of [6 kms.], the greater part of which is used during the Oolachan season as a fishery, by the Indians of numerous Tribes. A similar Commonage to that on Reserves 10 & 12 has been set apart for this purpose . . . This also has been assigned for the use of the ‘Kincolith’ Indians who are destitute of agricultural land.”
 - This quote reveals a key motivation of O’Reilly’s when assigning these reserve lands: finding agricultural land for the new mission town of Kincolith. This again suggests that he is less attentive to historical claims and more interested in contemporary pragmatic issues of finding an agricultural base for a town established only in 1867.
- Volume 3 Page 203: “The creation of these reserves, and their allocation to the Nisga’a, did not sit well with the Northern Tsimshian. According to Beynon (1954), the Kincolith Band—which was not aware that O’Reilly had made allowances for common use—assumed “complete authority” to exclude others from those areas, which naturally “brought on considerable feelings” of confusion among the Port Simpson and Metlakatla Bands, who had been accustomed to resorting there “from time immemorial.”
 - Here the report writer notes the contemporary conflict between the historical claims of the Nine Tribes to this territory (focused primarily on eulachon fishing) and the contemporary (late 19th century) claims of the Kincolith community (focused on agriculture and industries such as logging).
- Volume 3 Page 203: This is a quote from Beynon (1954): “For instance in the case of the oolichan fishing rights on the Nass River. When the Government made different Bands, practically all of the area formerly used by all *tsemsiyaen* on the Nass River for oolichan fishing came under the Section set aside for the Kincolith Band, who at once claimed complete authority on these areas, as it was in their allotted reserve. The Kincolith people through their Council elected under authority of the *Indian Act* . . . wrote all of the other tribes of *tsemsiyaen* that before they could fish or come on their old fishing villages would have to get the permission of the Kincolith Council and pay a license. They were unaware of the fact that the O’Reilly Commission [Indian Reserve Commission] in setting aside these reserves . . . in cases such as the Nass River where a Section of any particular reserve had been used in common by many other tribes, that this shall prevail, and made such areas [commonages], a legal phrase which meant that these lands could never become the property or ownership of any one individual group, but would be used as always used so from time immemorial . . . So that the new governmental changes has brought considerable confusion which exists today.”
 - Here Beynon presents the early and mid-19th century view. There is good evidence that Beynon aspires to a neutral historical view on these issues. He collected data from Nisga’a people, including at Kincolith, so was aware of the competing claims. His conclusion seems to point to the concept of commonage as being a reasonable solution to impose, given the tension between the Nine Tribes’ historical claims and Kincolith’s contemporary claims. See Section 2.2.1.
- Volume 3 Page 203: Reference to Matthew Aukland from Metlakatla’s testimony at the Royal Commission in 1915 arguing that Nine Tribes people had rights to the mouth

of the Nass and that his interest was specifically in the areas around Fishery Bay and IR 12.

- Likely Aukland was invoking a general use and the specific places of his lineage.
- Volume 3 Page 204: This Section narrates the efforts by the Nine Tribes to petition the Indian Agent (Perry) to recognize their rights to the mouth of the Nass. Perry made seven requests on their behalf and a new reserve (IR 88) was allotted for the Nine Tribes at one of the few remaining open locations, on the south side of the river opposite IR 13. The location of this reserve was moved to the north bank between IR 11 and IR 13.
 - Further evidence of Nine Tribes people using Canadian law to make their case for rights to the mouth of the Nass River.
- Volume 3 Page 205: The Kincolith Band also testified to the Royal Commission, objecting to the sharing of land in the mouth of the Nass as commonages.
 - The objection focused on the Nine Tribes' use of land that might otherwise be agricultural.
 - Much of the Kincolith testimony establishes three things:
 - The Nine Tribes have used the area deep into history, primarily for eulachon fishing. Indeed, this claim is over 3000 years old.
 - The Kincolith Band members base their claims on patterns of late 19th century usage of the area.
 - The Kincolith Band members appeal to Canadian law to redirect commonages toward Kincolith control based on the premise that Nine Tribes people no longer use the area, other than at IR 13.
- Volume 3 Page 206: This section notes the requests from Kincolith and one from the "Naas River Tribe" to the Royal Commission in 1915.
 - The Kincolith requests focus on contemporary use and specific parcels of land to expand the economic capacities of Kincolith.
 - The "Naas River Tribe" makes a single claim to all the lands of the Nass River from IR 11 east.
 - This pattern suggests the mixing of two legal arguments: 1) Kincolith are advancing their claims on the basis of colonial law, which values occupancy, usage and purpose of specific locations, in the reserve allocation model; and 2) much broader claims to entire territories and watersheds, likely based on Tsimshianic law. The pattern again appears in which Kincolith claims focus on contemporary legal avenues; when the Nisga'a appear to make a collective territorial claim based on Tsimshianic law, it places their boundary with the Nine Tribes at Fishery Bay.
- Volume 3, Page 207: Further testimony at the Royal Commission from Kincolith Band members.
 - It is worthy to note that none of the Kincolith claims to the Royal Commission make reference to history beyond the last generation of use. This is in contrast to Nine Tribes claims which always invoke a long-standing historical claim, backed up by specific associations between Tribes or house groups and places

via *adawx*. This suggests that the Kincolith claims do not have much grounding in Tsimshianic law – otherwise such evidence would be consistently marshalled. See Sections 2.2.1 and 6.

- As noted in Section 1.7, Tsimshianic law operates by means of oral records (*adawx*) which compile relevant histories of events and legal agreements (at feasts, etc.) with implications of geopolitical patterns over time. If the Nisga'a possessed *adawx* to support their claims to the Study Area, we could expect to see them raised to key audiences, including non-Indigenous audiences such as the Royal Commission. The Nine Tribes present their *adawx* to the commission, but the Nisga'a do not, which implies that they do not have legal claim in Tsimshianic law.

3.15 Roth, Christopher F. 2002. *Becoming Tsimshian*. Seattle: University of Washington Press.

Roth's ethnography is based on analysis of archival documents and oral traditions as well as information from contemporary Tsimshian hereditary leaders.

- Page 16-17: Roth references Marsden (1997, 2002) to locate the Tsimshian (i.e., not Nisga'a) territory as including "a significant portion of the lower Nass watershed."

4. Derived Sources

Derived sources are those which reference original analyses of the *adawx*, but do not address primary sources in detail. Rather, these are assessments of arguments proposed in original analyses. As such, they represent a more distant view of the primary data. Since the primary data are complex, and are understandable only within a complex legal and historical framework, derived analyses are often less valuable in exploring historical questions such as explored in this report. This issue is discussed in detail in Section 2.

Derived sources on this issue are numerous and include archaeological reports, expert witness reports, and summaries produced but government agencies. As noted in Martindale and Marsden 2011, these sources are of variable quality and uncertain logical strength as they often make little reference to either primary data or to an evaluation of the strength of primary data in original and other derived analyses. I do not include a complete review of these sources here, but present examples to illustrate their evidentiary role. Despite their inherent frailties, such sources can act as summaries and pointers of general patterns in primary evidence and original analyses. However, they are also vulnerable to errors, which can take on unwarranted citational strength when repeated (see Martindale 2009 for an example from Boas and Garfield who incorrectly date the Tlingit War to just prior to contact).

As a result, patterns based on a logical and representative assessment of primary evidence are the strongest form of evidence. Some original analyses which correctly understand history and Tsimshianic legal principles as a result correctly interpret Tsimshian legal history. Others, (such as the Ministry’s 2016 report) arrive at conclusions inconsistent with both evidence and Tsimshianic law. Because derived sources generally lack citations to primary evidence, it is difficult to evaluate the strength of their analyses and conclusions. Often, these are based simply on current views or on a specific citational history, often to other derived sources, that the authors prefer. As a result, I treat these with caution, though I note that the pattern within them (Table 3) is consistent with that found in primary evidence (Table 1) and original analyses (Table 2) – most derived sources allocate the Study Area to the Nine Tribes.

Table 3. The Position of Derived Sources on the Ownership of the Study Area

Owned by the Nine Tribes	Ownership Unclear or Associated with both Nine Tribes and Nisga’a	Owned by the Nisga’a
Archer 1988	Garfield 1951	Barbeau maps
Galois 1997	Mitchell and Donald 2001	Halpin and Seguin 1990
Grumet 1975		
MacDonald 2016		
Miller 1997		
Ministry of Justice 2007		
Ministry of Justice 2009		
Murray 1985		

4.1 Archer, David JW. 1988. *The North Coast Heritage Inventory Project: A Report on the 1988 Field Season. Unpublished Permit Report for the BC Archaeology Branch.*

Archer is the author of numerous archaeological reports in Nine Tribes territory. His analysis defines the territory as, “Collectively, their territories included the Skeena River drainage up to the canyon, Tsimpsean Peninsula and the offshore islands, Work Channel, selected locations along Portland Inlet, and certain areas at the mouth of the Nass River between Red

Bluff and Fishery Bay. Each tribe had its own territory within which household groups owned particular sites.

- Archer has been an archaeologist in the Prince Rupert area since the 1960s. While his summary is derived from other derived summaries, it reflects a common consensus among scholars about the nature of claims by the Nine Tribes to the lower Nass region.

4.2 Galois, Robert. 1997. Colonial Encounters: The Worlds of Arthur Wellington Clah, 1855-1881. *BC Studies*. 115/116: 105-148.

Galois' article is a biography of Tsimshian diarist, Arthur Wellington Clah. He uses archival and historical documents and analyses. He notes:

- Page 112: The Tsimshian annual round saw people move from villages near Metlakatla to "oolachan sites on the Nass River in the spring." This information is cited from the Historical Atlas of Canada.

4.3 Garfield, Viola. 1951. Tsimshian and their Neighbors. IN *The Tsimshian: Their Arts and Music*. New York: J.J. Augustin.

This ethnographic overview is in the mold of mid-20th century ethnographic summaries which lack specific data but provide an accessible survey of key organizational and cultural issues.

- Page 5: "The Tsimshian lived along the banks and tributaries of the Nass and Skeena Rivers in British Columbia. They ranged the lakes and plateaus between the two streams, and to Portland Canal northwest of the Nass. The sea coast and coastal islands between the estuaries of the Nass and Skeena belonged to them."
 - It is not entirely clear from this quote whether Garfield is using the term "Tsimshian" to include the Nisga'a or not. Later she distinguishes between the Nisga'a and the Coast Tsimshian. This pattern is common to Garfield and Boas, and an indication of the need for caution when using sources other than primary evidence in a Tsimshianic legal context.

4.4 Grumet, Robert. 1975. Changes in Coast Tsimshian Redistributive Activities in the Fort Simpson Region of British Columbia, 1788-1862. *Ethnohistory*. 22(4): 295-318.

Grumet's historical analysis focuses on how settler colonialism influenced Indigenous economics and politics, specifically the redistributive principles associated with feasting (potlatching). As with many such analyses, the article contains only modest research on topics not directly related to the thesis. Our interest is in the summary of territory and ownership in the Study Area: "The move to Fort Nass did not, however, necessitate the erection of new houses. The ten Coast Tsimshian groups simply continued to live in their traditional villages along the fishery beaches between Red Bluff and Fishery Bay. Fort Nass was located at the heart of the Coast Tsimshian fishery territories."

- His summary is imprecise, but in general terms, correct. Fort Nass was not at the centre of Nine Tribes fishing territories, but the Nine Tribes did have fishing villages in the estuary between 1788 and 1862.

4.5 MacDonald, George F. 2006. Coast Tsimshian Pre-Contact Economics and Trade: An Archaeological and Ethno-historic Reconstruction. Unpublished Report for Lax Kw'alaams and Metlakatla Indian Bands.

George MacDonald's 2006 assessment of the rights of the Nine Tribes makes reference to the Study Area in general terms. Note that his assessment includes the idea that Ligeex's claim of Nine Tribes territory in the Nass River was a post-contact expansion (Page 8). However, he also notes the great antiquity of the eulachon fishery and Nine Tribes ownership of village and camping sites in the Study Area.

- Page 5: "The Northern Coast Tsimshian had their permanent villages to the north of the estuary of the Skeena River in the Prince Rupert Harbour area and their main resource harvesting sites on the lower Skeena River, below Kitselas Canyon, and at the mouth of the Nass River."
- Page 28: "The eulachon harvest required drawing in much of the able-bodied population of the Tsimshian on the Coast and the Gitksan on the Upper Skeena as well as the Nishga from the villages on the upper Nass. Each group had their own fishing areas as well as campgrounds near the mouth of the Nass River. The Tsimshian territory was on the lower Nass around Fishery Bay and Red Bluffs."

4.6 MacDonald, George. 2016. A Visual History of Nineteenth Century Lach Klan (Gitxaala). IN *Of One Heart: Gitxaala and our Neighbours*. C. Menzies, Ed. Pp.187-221. Vancouver: New Proposals Publishing.

A chapter exploring the inventory of houses at Lach Klan from archival photos and records. He notes:

- Page 203: Gitxaala had traditional fishing sites at the Nass River for eulachon.

4.7 Miller, Jay. 1997. Tsimshian Culture: A Light Through the Ages. Lincoln: University of Nebraska Press.

Miller's book considers Tsimshian history, modern life and worldview using oral records, linguistics, ethnography and archival and published sources. He observes:

- Page 15: "The Nishga occupied the upper Nass Valley, moving downriver in historic times."
- Page 21: During the eulachon fishery, the Tsimshian occupied "ancestral neighbourhoods" at Red Bluff. [Ref is McNearly PhD, Bryn Mawr].

4.8 Ministry of Justice, Legal Services Branch, Aboriginal Research Division. 2009. Lax Kw'alaams: Review of Historical and Ethnographic Sources.

Martindale and Marsden (2011) assessed this report and found numerous errors. I will not reproduce this analysis here, but simply note that our primary concern was the lack of reference to primary data and the unsophisticated analyses of Tsimshian history and culture, including the Tsimshianic legal system. I note that later reports from the Aboriginal Research Division (Ministry 2016 and Cope 2012) demonstrate some improvements on the former concern (hence they are listed as original analyses (Section 0) while these are listed as

derived sources), although Ministry researchers still do not demonstrate an adequate understanding Tsimshian history or legal principles, as I have already noted above.

Given my many concerns with this document, I am hesitant to attribute much weight to its conclusions. However, I do note that in 2009, the Ministry viewed key parts of the Study Area as belonging to the Nine Tribes, not the Nisga'a:

- Page i: Lax Kw'alaams territory is defined as, “encompassing a region extending from the mouth of the Nass River to the mouth of the Skeena River.” Elsewhere on this page: “Lax Kw'alaams lived in winter villages on Metlakatla (Venn) Pass in Prince Rupert Harbour. They maintained eulachon fishing stations at the Nass River, which were utilized in early spring.”
 - This argument also appears in Cope (2012), but not in the Aboriginal Research Division's 2016 report. It is not clear why the government has changed its view on this issue – but in Section 3.14 I note that the Ministry's 2016 report incorrectly relies on a single derived source (Mitchell and Donald 2001) and on historic records from the Kincolith mission community (founded in 1867) and their participation in the reserve allocation process. A common criticism is that none of these reports demonstrate an understanding of Tsimshianic legal principles on which ownership and rights prior to 1793 and between 1793 and 1846 were defined.
- Page iii: “Quantities of salmon were traded to the fort, and continued to form an important food supply for the Tsimshian, who also continued to participate in the Nass River eulachon fishery until the mid-1860s.”
- Page 8: “The Lax Kw'alaams First Nation is made up of Nine Tribes who, at the time of contact, had their winter villages in the vicinity of Prince Rupert Harbour, and seasonal fishing and hunting territories on the lower Skeena River and at the mouth of the Nass. There were originally ten tribes as follows:
 1. Gitwilgyots,
 2. Gitzaklalth,
 3. Gitsees,
 4. Ginakangeek,
 5. Ginadoiks,
 6. Gitandau,
 7. Gispakloats,
 8. Gilutsau,
 9. Gitlan, and
 10. Gitwilkseba.
- As Halpin and Seguin note, the Gitwilkseba had ceased to exist by the early nineteenth century (1990:267).
 - I disagree with the timing of the end of the Gitwilkseba (see Section 5.4.1). This has implications for the Nisga'a claims to the Kwinamass valley through the house of Txalaxet.
- Page 35: The report consistently describes parts of the Study Area as belonging to the Nine Tribes, but on Page 35, there is a short note on potential competing claims for ownership to the mouth of the Nass area with the Nisga'a, citing Marsden and Galois (1995) (referenced incorrectly as Galois and Marsden 1995).

4.9 Ministry of Justice, Legal Services Branch, Aboriginal Research Division. 2007. Metlakatla: Review of Historical and Ethnographic Sources.

This report follows its peer (the 2009 Lax Kw'alaams report from the Aboriginal Research Division from section 4.8) closely and suffers from the same problems I have already noted in that section. This document notes (at page 41) that the mouth of the Nass River is claimed by both the Nine Tribes and the Nisga'a, and that this conflict has existed since the reserve allocation process of 1881 (see Section 2.2.1).

- Page 42: The Nine Tribes are described as having “fishing rights” at Nass Bay, where all the tribes had “permanent camps.” The document reproduces a reference from a Nisga'a website that states that a 1869 “Sparrow Hawk treaty” conferred Nass fishing rights to the Nisga'a. The report notes that there is no corroborating evidence for this treaty, nor of the claimed recognition/transfer of rights.
- The report notes that Reserve Commissioner O'Reilly used the concept of a commonage as a solution to the conflict. The report summarizes the tension as: “The Nisga'a (Kincolith) felt they were left with insufficient reserve lands; the Tsimshian, that their hereditary rights had been extinguished. This continued to be contentious through the next century”
 - This is an apt description of the late 19th century situation. Note that the report signals that the Nine Tribes have the hereditary claim to ownership, while the Nisga'a at Kincolith were concerned about sufficient land, presumably for the post-colonial economic wellbeing of the mission town.

4.10 Mitchell, Donald, and Leland Donald. 2001. Sharing Resources on the North Pacific Coast of North America: The Case of the Eulachon Fishery. *Anthropologica*. 43(1):19-35.

I list this article as a derived source since it is largely a theoretical exploration of abstract issues and, especially for the Nass River context, makes no reference to primary data. As a result, it should be treated with caution since the authors do not engage with any of the significant scholarship on the issue of territoriality in the Nass. Consequently, I have concern that the Ministry report writer (2016) relies heavily on this document, reliance that I think is unwarranted given the abundance of primary data and the lack of citation to primary evidence or original analyses in this document. Here is the article's data on the issue of ownership of the Study Area:

- Page 21: General reference from derived sources that the eulachon fishery was of great importance to the Tsimshian.
- Page 22: Reference is made to Boas' (1916) mythological exploration of the eulachon fishery that asserts only that the mythological figure Raven taught humans how to make fishing nets.
 - This illustrates how Boas focused on myth rather than history in the *adawx*; it also reflects Mitchell and Donald's relative lack of experience using primary evidence in this context.
- Page 26: The Nass River eulachon fishery brought together people from across the northern coast. The Nass is noted as passing through Nisga'a territory, but this Section of the paper is ambiguous regarding who owed the eulachon fishing grounds.

- These details are overstated in the Ministry 2016 report which presents this article as authoritative on this subject. It is not and this reveals the dangers of over reliance on derived sources.
- Page 27: The Nass is noted as having records of armed conflict. This is likely a reference to an accidental gun discharge at a feast in the late 19th century; three versions of this story appear in MacDonald and Cover (1987b) which is the citation here.
 - This event occurs in the post-contact era, and this article contains no discussion of colonial dynamics.
- Page 27: A reference to the early 19th century conflict between the Haida and the Gispaxlo'ots (Ligeex's tribe) in the post-contact era in which the Haida seek resolution to preserve their access to the Nass River eulachon fishery. Although the Haida's access was via trade, this does imply that the Nine Tribes controlled the fishery.
 - This issue is largely irrelevant to the discussion of ownership of the Study Area, as it refers to privilege access, not ownership.
- Page 30: They state, "The various non-Nisga'a descent groups who came to the Nass to take eulachon returned to their own areas to fish for salmon."
 - This is a stronger statement of ownership by the Nisga'a. However, they provide no references for this claim.

4.11 Murray, Peter. 1985. *The Devil and Mr. Duncan: A History of the Two Metlakatlas*. Victoria: Sono Nis Press.

Murray's biography of the missionary William Duncan relies on historical documents and published analyses. He notes:

- Page 53: In 1860, Duncan visited the Nass River to "inspect the fishing camps of the Port Simpson natives and the villages of the Nishga."
- Page 55: "Duncan did not venture far on this trip, but returned in September to visit Nishga villages further up the river."

5. Analysis

As noted in Sections 1.1 and 1.4, I have been asked to provide my professional opinion respecting certain matters relating to the Study Area:

- What were the political and cultural polities (entities) over the time periods of interest (before 1793 and 1846 and today) and how do they relate to contemporary groups?
- Who used or occupied the Study Area in the time periods of interest?
- What was the nature of interaction between groups in the Study Area?
- What economic and resource-focused activities occurred in the Study Area over the time periods of interest?

I have argued (in Sections 1.2 and 1.4) that for questions of legal history in Tsimshianic territory prior to 1846 and 1793, the relevant analysis and conclusion lies within Tsimshianic law. As discussed in Section 1.7, Tsimshianic law was a complete functioning legal system that defined geopolitical issues including title, use, and ownership in the Study Area and included the Nine Tribe and the Nisga'a (see also Sterritt et al 1998 for further evidence of the larger Tsimshianic legal region). Tsimshianic law is both a collective system shared by the parties in this region and a legal system capable of adjudicating and recording legal agreements. It was also capable of recording and resolving conflicts, including conflicts over territory. Thus, the relevant subset of interactions between groups in the Study Area was within the legal realm.

As discussed in Section 1.7, legal proceedings in Tsimshianic law are meetings, often ceremonial meetings (aka feasts, potlatches) at which claims are made, the history of those claims are defended using *adawx*, and the witnesses (both neutral and those impacted by the claims) are present to vet and confirm the claims. Many such events are liminal processes in Tsimshian society, such as the transfer of hereditary roles to new individuals, thus the legal arrangements become embedded within all facets of Tsimshian political and ceremonial life.

I have also discussed (Section 1.7) the legal entities within Tsimshianic society. Although changes in these are known and recorded, most have remained stable since they appeared in Tsimshian history and law. For example, as Marsden (2002) notes, the house group of Wiseks, joined the Ginakangiik sometime after the dispersal of Telaham (about 3500 years ago) and since then, the name has been a fixture in the Ginakangiik tribe. There are two exceptions that are relevant to this analysis.

Some groups have disbanded as entities, notably the Tenth Tribe, which was reabsorbed into the groups that donated territory to it, sometime after the War with the Tlingit (which, as stated throughout this report, ended around 1000 years ago). This has legal consequences for the Study Area, since one Nisga'a house (Txalaxet) claims territory on the Kwinamass Valley based on ancestry traced to the Gitwilkseba. See Section 5.4.3.

Second, the depopulations of the post-contact era saw several names, and likely several house groups, disappear (legally absorbed into other house groups), or at least functionally disappear (no longer operating, but with living descendants). Names such as Ligeex are no longer held by Tsimshianic peoples. Thus, the post-contact era was a period of legal dynamism, especially during the late 19th century. For this analysis it is important to note that 1) the legal system from before contact was operational at 1793 and 1846, and 2) late 19th century ignorance of the Tsimshianic legal system came from individuals using colonial legal

mechanisms. Thus, it remains intact, but has been ignored by colonial-imposed decisions. As a result, what I have defined as Tsimshianic nations, tribes, house groups all remained constant from prior to 1793 to after 1846.

I have also noted (see Section 1.7) that use/occupancy and ownership are not necessarily synonymous in Tsimshianic law: the latter permits the former, but not vice versa. Thus, owners use and live on their territories, but people living on and using territories are not necessarily owners. Tsimshianic law has a right of privilege, which usually operates between affines (in-laws). The opportunity to request privilege is itself an apparent right, but the determination of it resides with the owning entity (the house group). Privilege agreements tend to occur between closely connected house groups who exchange both privilege and marriage partners. However, privilege does not confer ownership, regardless of its duration, and it must be re-negotiated at each generation, or if it disappears.

At the same time, use and occupancy, especially over the long term, are evidence of increased likelihood of ownership. By this measure, there is evidence that the Nine Tribes have used the Study Area for residence, fishing, eulachon fishing, plant harvesting, and hunting, for thousands of years (see Table 4). This use continued through the contact period, including the 19th and 20th centuries. There is consistent evidence of the Nine Tribes maintaining their seasonal focus in the Study Area into the mid-19th century.

After the reserve system was implemented in 1881, some Nine Tribes leaders, such as Arthur Wellington Clah, moved to the Study Area and began farming as a means of fulfilling the Reserve Commission's metrics of ownership. There is considerable evidence from traditional use studies of Nine Tribes people using the Study Area for traditional practices through the 20th century and up to today (Clarke 2013; Menzies 1997; Pacific Northwest LNG 2014; Roth 1997). In contrast, the earliest evidence for use and occupancy of the Study Area by Nisga'a people is after 1850 (Table 4), with the exception of the claims of the House of Txalaxet (see Section 5.6.2).

Traditional use studies (Clarke 2013; Menzies 1997; Pacific Northwest LNG 2014; Roth 1997) are a complex but valuable source of information on Tsimshianic legal history. They generally rely on original analysis and derived sources for basic ethnographic and historical information; thus they are partly themselves derived sources. However, they also contain evidence recorded from contemporary Tsimshianic people whose knowledge often originates with the legal history of the *adawx*. Thus, traditional use studies can provide an indirect and sometimes a direct record of the *adawx*. Unfortunately, few practitioners of TLUS work are well versed in Tsimshianic law (Roth and Menzies are exceptions), so these studies can be unclear regarding the lines of transmission of evidence and its legal weight. They are valuable in demonstrating continuity of use, which is a component of legal claims to territory.

The evidence presented in Sections 2, 3, and 4 of this report consistently associate both the use and the ownership of the Study Area with the Nine Tribes. The preponderance of the sources (see Tables 1, 2, and 3) is heavily weighted to this pattern. Thus, it is reasonable to conclude from a superficial understanding of the evidence that the Study Area belonged to the Nine Tribes.

However, I argue here that we can move past a superficial understanding and approach an understanding that is correctly rooted in both history and Tsimshianic legal principles. Doing so requires an understanding of the differential value of evidence and sources, Tsimshianic legal evidence, Tsimshianic history, and an evaluation of outlier claims. The following sections explore these subjects.

5.1 Assessment of Sources

Not all data on this subject is created equal. I have argued (Section 1.8) that a legal test exists within Tsimshian law to ascertain ownership and other rights. While this is a legal issue, it is also an issue of relevance in evidence. The *adawx* are the legal record in Tsimshianic law. Rights emerge from history and from the presentation and witnessing of those rights to peers. Thus, sources that are *adawx* or are reports of *adawx* are the most legally robust in Tsimshianic law. *Adawx* were traditionally presented in public, a system of peer-review that ensured their accuracy. Note that Sterritt et al (1998) argue that consequent to the potlatch ban of 1880, Nisga'a house groups stopped attending feasts with their eastern neighbours. They argue that over the subsequent 75 years until after the ban was lifted in 1951, the Nisga'a claimed large sections of Gitxan territory because the Gitxan were no longer at their shared feasts to defend their rights. This is relevant since it both reveals a larger vulnerability to error after the potlatch ban and to a specific pattern of Nisga'a claims to their neighbours' territory during the late 19th century.

Similarly, events at ceremonial meetings or feasts are primary evidence of not only the presentation of *adawx*, but also the absence of relevant *adawx*. Thus, if a group relies on a claim that it does not make at an earlier legal event when it would have been appropriate to make the claim and present their *adawx* as evidence, this can be interpreted as evidence of absence. This is an exception to the principle that absence of evidence is not evidence of absence.

In the Tsimshianic legal system, not presenting your *adawx* when required to do so, is evidence that no such *adawx*, and thus legal claims that derive from them, exist. Beynon's notes (Section 2.2.1) of a meeting between Nisga'a and Nine Tribes chiefs in 1916 is notable for the presentation of the *adawx* claiming the Study Area by the Nine Tribes and the absence of such *adawx* by the Nisga'a. This indicates that the Study Area did not belong to the Nisga'a in 1916, and that the Nisga'a had no claims in Tsimshianic law to the Study Area.

The work of William Beynon represents a compilation of *adawx* from numerous Tsimshian and Nisga'a sources, which represent legal documents in Tsimshian law. The *adawx* compiled by Beynon are not likely a complete representation of all of the *adawx* in existence in Tsimshianic law at 1793 or even 1846, but they are notable for being internally consistent in the content of both history and its legal implications. Inconsistencies where they appear are generally associated with the post-contact era and seem to reflect new uses of *adawx* outside of traditional Tsimshianic legal contexts. An analysis of the question of ownership begins with an analysis of the *adawx*.

The key sources on this subject are the primary evidence, which derives largely from William Beynon (*adawx*) and Peter O'Reilly (claims made to the Indian Reserve Commission), and the original analyses. Derived analyses are largely derivative of original analyses and in several cases make obvious errors in understanding the primary evidence. I therefore do not consider derived analyses further in this report, except to note their errors.

5.2 Patterns in Time

The *adawx* are a record of history with legal implications. Tsimshian *adawx* are ordered against a chronological sequence that acts like a relative index of time. The major subdivisions of this index have been outlined in Martindale and Marsden (2003), Martindale (2006; 2009), and Martindale et al (2019) but none of these include all of the events referenced in the *adawx* that speak to the Study Area.

Likely, the chronological index was sufficiently familiar to Tsimshian people such that it was never summarized separately. Instead, we must reconstitute it from references in the *adawx*. Ideally, we can also place these events with reference to the western calendar, to allow for cross indexing to historical events. The challenge of finding time in the *adawx* is compounded by the Tsimshianic inheritance of names and the general stability of rights and title. This means that in every generation, people with the same names interact in similar landscapes, making distinctions between different individuals (and thus time) of the same names challenging. Table 4 summarizes the key events in Tsimshian history and the specific events with relevance to this analysis. I also note in Table 4 when other evidence exists to place the events in a different chronological position. The subsequent Table 5, which summarizes the claims, uses the chronological sequence developed in Table 4.

Table 4. Tsimshian Historical Sequence of Events from *Adawx* and Historic Sources.

Major Event	Sub Event	Dates	Source	Notes
Saltwater People		Late Pleistocene/Early Holocene	Marsden 1997, 2000; Martindale and Marsden 2011; Menzies 2016.	The earliest people live on the coast and are referred to as Lax'mon – saltwater people.
Early Arrivals	Movement through the Nass River.	Late Pleistocene/Early Holocene	Marsden 1997; Martindale and Marsden 2011.	This period is summarized as the earliest in Marsden (1997) and is a time of geological change and settlement dynamism as people arrive in unoccupied lands and begin establishing their territories. At the end of this era, all lands are owned and house groups are established.
First Stage Migrations: from the East	Conflict over resources causes people leave the Stikine; groups move west to the coast and south to the Skeena River. Arrival of interior groups among the Coast Tsimshian, including the name Ts'ibassa (Gitxaala) and Wesiiks (Ginakangiik).	Around 4500 years ago	Marsden 2000; Martindale and Marsden 2003; Martindale et al 2017a.	These events are recorded in Tlingit and Gitxan oral traditions. The Gitxan suite features the narratives of Temlaham. Conflict in the coastal groups is mostly between Wolf and Eagle clans. These events and the <i>adawx</i> that record them are discussed in detail in Marsden (2002). This phase differs from the earlier era because newcomers now find all territory is owned and must negotiate for space. This era includes the double feast at Red Bluff which defines tribal associations and house territories for the Coast Tsimshian including the mouth of the Nass River.
Second Stage Migrations: from the North	Arrival of Raven Clan northerners through Tsimshian territory, starting on the Dundas Islands. Kaga (Killerwhale) is the first to arrive	Around 3500 years ago	Marsden 2000; Martindale and Marsden 2003; Martindale et al 2017a.	This history and the <i>adawx</i> are discussed in detail in Marsden (2000, 2001).

Major Event	Sub Event	Dates	Source	Notes
	<p>on Dundas Island, followed by Wolf, Eagle and Raven Clan groups. Conflict is between newcomers and resident Tsimshian and between the Wolf/Eagle and Raven/Killerwhale newcomers.</p> <p>Formation of the Gitwilkseba by the House of Kaga after being forced to flee into Tsimshian interior territories from northern Wolf clan attackers.</p>			<p>The Gitwilkseba become the tenth Coast Tsimshian tribe.</p>
War with the Tlingit	<p>Northerners appear on Dundas Islands</p> <p>Conflict over land and resources erupts.</p> <p>Tlingits attack and the Coast Tsimshian retreat to the Skeena River.</p> <p>Coast Tsimshian form the Ten Tribes Alliance and counterattack (lead by the Chief Aksk) driving the Tlingit from their territory.</p>	Around 1300-1000 years ago	Marsden 2000; Martindale and Marsden 2003; Martindale et al 2017a.	<p>The early Haimas suite of narratives that result in the transfer of Tlingit land to the Nine Tribes likely fits here.</p> <p>This event has been dated to starting sometime between 1300 and 1000 years ago and lasting for between 45 and 200 years (Edinborough et al 2017).</p> <p>The counter attack resulted in the modern Alliance that 1) linked coastal and riverine house groups as tribes and 2) created a defensive parliamentary alliance that moved winter villages to Prince Rupert Harbour for defense.</p> <p>I would place the last stage of the Haimas narrative here: his rehabilitation by marshalling the Raven Warriors against Tlingit invaders.</p>
Salt and Freshwater Villages		After 1000 years ago.	Marsden 2000; Martindale and Marsden 2003; Martindale 2006; 2009.	This marker appears in some <i>adawx</i> and is likely a reference to the unification of coastal and riverine peoples consequent to the War with the Tlingit.
Recent Times	<p>The arrival of the name Ligeex from the Haisla/Bella Bella area.</p>	Around 500 years ago.		<p>This marker appears in some <i>adawx</i> as a reference to events prior to contact, and after the War with the Tlingit – likely toward the more recent side of this time period.</p> <p>MacDonald suggests that this event took place around 1750, but in my view it is more likely it was centuries earlier for three reasons: 1) there are numerous narratives of Ligeex that make no reference to post-contact events including several stories that are clearly well prior including Ligeex's failed effort to control the Skeena River</p>

Major Event	Sub Event	Dates	Source	Notes
Arrival of the "Whites"		1741-1793	Martindale 2003; Martindale et al 2019.	salmon fishery, and 2) the considerable rise in the status of Ligeex, which likely was generations in development.
	Early Explorers			The time period after the arrival of foreigners in Tsimshian territory is denoted in several ways: <ul style="list-style-type: none"> • After the arrival of "Whites" • Reference to post-contact imported goods such as guns.
	Maritime Fur Trade			Dates from at least 1793.
	Haimas and the Rise of the Raven Warriors			Sea otters decline in population by 1805-1810 due to overhunting. Shift to land based fur trade. This reference was recorded by Charles Barton (Marsden 1997:16) in the Barbeau-Beynon archive and remains a possibility for a late pre-contact or early contact date for the Haimas narrative sequence including the slaughter house feast at Kincolith, though this is debatable (see Section 5.4.1).
	Rise of Ligeex/Painting of the Ten Mile Point and Tyee pictographs.			The Gwinhuut Eagle Clan alliance seeks to control the interior-to-coast fur trade. It is a powerful entity when the HBC arrives in the 1820's.
	Arrival of HBC			I would place the pictographs from this era, though Marsden (1997) and Marsden and Galois (1995) suggest they date from before contact. Fort Nass (1831) and Fort Simpson (1834) were built following more than a decade of ship-based HBC trading.
	Move to Lax Kw'alaams			In the 1830's, the Nine Tribes begin moving to Lax Kw'alaams to control the HBC fort trade. Duncan arrives first in 1858.
Arrival of Missionaries			The creation of Kincolith appears to have placed Nisga'a people into Nine Tribes territory. The subsequent allocation of reserve lands adds to this.	
Mission Towns			Beynon is the recording secretary for this meeting held at Port Simpson in 1916.	
	The Meeting of the Nine Tribes and the Nisga'a Chiefs			

5.3 Key Legal Events for the Study Area in Tsimshian History

As discussed in Section 1.7 and 5.2, a subset of the events of Tsimshianic history recorded in the *adawx* (Table 4) have legal implications for ownership to and rights in the Study Area. These include feasts at which the ownership of the Study Area is proclaimed and defended. There are eight key events that are of relevance (see also Table 5):

- The coastal origin of all Tsimshianic peoples which traces ancestry to many locations along the coast, including the Study Area. This association is the earliest in the Study Area, likely dating to the early Holocene, perhaps as early as 9000 years ago. This appears to reference a time prior to the development of both Tsimshianic nations (such as the Nine Tribes and the Nisga'a) and territorial divisions. Only later events recorded in specific *adawx* appear to have legal weight in Tsimshianic law.
 - The Nisga'a invoke this as evidence of claim to the Study Area, but it is superseded by later developments.
- The foundation of the eulachon fishery by the ancestral chief Ts'oodo, who carved a path from Metlakatla to the Nass River for ancestors of the Nine Tribes to use for the eulachon fishery. This likely dates to the early Holocene, perhaps well over 7000 years ago. Although this *adawx* is not a legal claim to the Study Area, it does indicate that Nine Tribes people were using the Study Area from ancient times.
 - The mythical association of Ts'oodo with creating a passage to the Study Area, suggests that this is a reference to epi-glacial times. It also makes an early association between the Nine Tribes and the Study Area via a spiritual power – a key element of Tsimshianic legal principles (Section 1.7).
- A foundational double feast (human and spiritual beings) that claims the Study Area (and all of the Coast Tsimshian territory) for its constituent house groups, sometime before 3000 years ago. This is a key event (discussed in Marsden 2002) in which newcomers from the interior who travelled west along the Skeena River, were accommodated into the Nine Tribes. This feast invokes the spiritual beings of the landscape as a claim of ownership and established the socio-political alliance between house groups and tribes of Nine Tribes with their territories, including the Study Area. These *adawx* represent a legal claim in Tsimshianic law.
 - This is the first legal claim to the Study Area in the *adawx*. Note that it is a modification of existing claims by Nine Tribes house groups, so the Nine Tribes must have had an earlier ownership claim. These feasts establish places for newcomers into the Nine Tribes, thereby modifying ownership rules. Importantly, this is a legal matter that is internal to the Nine Tribes; there is no recorded role for the Nisga'a in this process.
- A key historical event, the slaughter of Nine Tribes chiefs by the Nine Tribes Chief Haimas at Kincolith, which gives the location its name (“place of scalps”), dating to the War with the Tlingits, over 1000 years ago. Though these *adawx* focus on the narrative of Haimas, it presents the ownership of the Study Area by the Nine Tribes in a legal context (the consequences of Haimas' actions).
 - As in the case of the double feast, this series of events and feasts involves matters other than the Nine Tribes' claim to the Study Area. The Nine Tribes

ownership of the Study Area is simply the legal context in which the events of Haimas play out. The consequence, however, is a historical record of Nine Tribes ownership.

- The consolidation of the Study Area under the Nine Tribes Chief Ligeex during the early decades of the fur trade, likely around the early 19th century. This event resulted in a pictograph at Ten Mile Point which is still visible today. This is another direct legal claim of ownership of the Study Area by the Nine Tribes.
 - This is the most recent demonstration of the Nine Tribes' claim to the Study Area, so it is not surprising that the Nine Tribes leaders invoke this *adawx* at their meeting with the Nisga'a chiefs in 1916 (see Section 2.2.1). As with all legal systems, ownership can change and the Nine Tribes leaders were making their most recent (and thus strongest) claim. Again, this is a feast that is internal to the Nine Tribes – there is no mention of Nisga'a involvement. It also created a visible marker on the land, the pictographs at Ten Mile Point – a marker that is still visible today (see Section 2.2.4).
- The founding of Kincolith mission in 1867. This is the first permanent Nisga'a settlement in the Study Area.
 - As discussed in Section 2.3.1, this is the first evidence of ownership claims by the Nisga'a – claims that are mediated through the missionaries at Kincolith. This is a claim that has no apparent grounding in Tsimshianic law.
- The allocation of reserve lands in 1881. This creates the concept of common reserve lands (“commonage”) between Kincolith and the Nine Tribes.
 - Although O'Reilly creates a compromise for shared ownership, the ownership of these lands has since consistently been incorrectly viewed as being owned by Kincolith, and thus the Nisga'a. This is both contrary to the original allocations (Section 2.3) and to Tsimshianic law as recorded in the *adawx*.
- A key meeting between Nisga'a and Nine Tribes chiefs in 1916, reported on by William Beynon, who acted as secretary. This meeting had legal implications in Tsimshianic law. Here, the Nine Tribes presented their oral tradition (*adawx*) detailing their ownership of the Study Area, including the narrative of Ligeex's pictograph. The Nisga'a, in contrast, provided no *adawx* nor testimony to specific claims, instead invoking the coastal origin of all Tsimshianic peoples and the claim of the house of Txalaxet (see below and Section 5.6.2).
 - As noted in Section 2.2.1, this meeting is an opportunity for the Nisga'a leadership to state their claim in Tsimshianic law. Their case for ownership does not match that of the Nine Tribes. See Section 6.

These events sort the legal claims into a clear pattern. Those of the Nine Tribes invoke the *adawx* and have ancestry reaching back over 3000 years and extending to the present. Those of the Nisga'a do not invoke the *adawx* and post-date 1850, and largely from after the creation of the Kincolith mission in 1867. This bifurcation alone signals that the Nine Tribes have the stronger claim in Tsimshianic law (but see Section 5.5 for further evaluation of the legal issues associated with these claims).

5.4 Points of Debate in the Chronology of Tsimshian History

Tsimshianic legal history depends upon an accurate assessment of the chronology of events. Table 4 presents my analysis of this chronology, which is largely consistent with other sources with the following exceptions.

5.4.1 The Time of Haimas and the Raven Warriors

Marsden (1997) and the Ministry report (2016) rely on the Barbeau-Beynon archive and argue that the Haimas narratives date to the early pre-contact era. I prefer to follow MacDonald (2012) and reference the Beynon Manuscript to argue that they date to the War with the Tlingit, thus before 1000 years ago.

There are four lines of reasoning to support this thesis:

- At the end of the narrative, Haimas leads his reconstituted Raven Warriors against the Tlingit as part of the war, an act that rehabilitates him somewhat and makes up for his past misdeeds. There is no obvious post-contact conflict between the Nine Tribes and the Tlingit in the contact era, so the more logical placement of these events is in the War with the Tlingit (Marsden 2000).
- The leading Nine Tribes chief of the era is Haimas' father Wiseks of the Ginakangiik, whose only peer is T'sibassa of the Gitxaala. Which Nine Tribes chief is the most powerful is a key variable in the ranking system within the Nine Tribes. If these events took place in the colonial era, then Ligeex would be noted as the most powerful chief, and there is no mention of Ligeex in Beynon's *adawx* of Haimas. According to Barbeau-Beynon as reported by the Ministry (2016) and Marsden (1997) Haimas chose not to invite Ligeex to the slaughter feast, thereby sparing his life. In the Beynon Manuscript version, it is his friend Gan-ganems-Haida, "Like a Haida Tree" who he does not invite, but who appears anyway and is killed by Haimas.
- There is no reference in any of these narratives to Ligeex, Europeans, trade in imported goods, fur trading, etc.; this suggests it occurred prior to the arrival of Ligeex's name to the Gispaklo'ots; MacDonald (2012) suggests Ligeex's name arrived around 1750, but I think it was several centuries earlier, as an estimate from the number of Ligeexs in the *adawx*.
- If Haimas had murdered many of the leading Nine Tribes chiefs in the post-contact era, there would be more records of this dramatic event and more historical consequence. This is a substantial number of high-ranking chiefs to lose, something that would both alienate the Gitsiis and fracture the Nine Tribes for a long time. However, there is no record of any consequence in the 19th century of such mass slaughter. However, if set in the War with the Tlingits, then it would be accommodated within the considerable realignments that took place after the war was won by the Nine Tribes.

The events of this Haimas (the first of this name) are dramatic and memorable. Barbeau seems to have been especially enamoured of these narratives. While they speak to a complex history of their own, they also clearly signal that much of the Study Area was Gitsiis territory.

Susan Marsden and the Nine Tribes chiefs produced a map of the entire territory in 1992. The section focused on the Study Area is shown here:

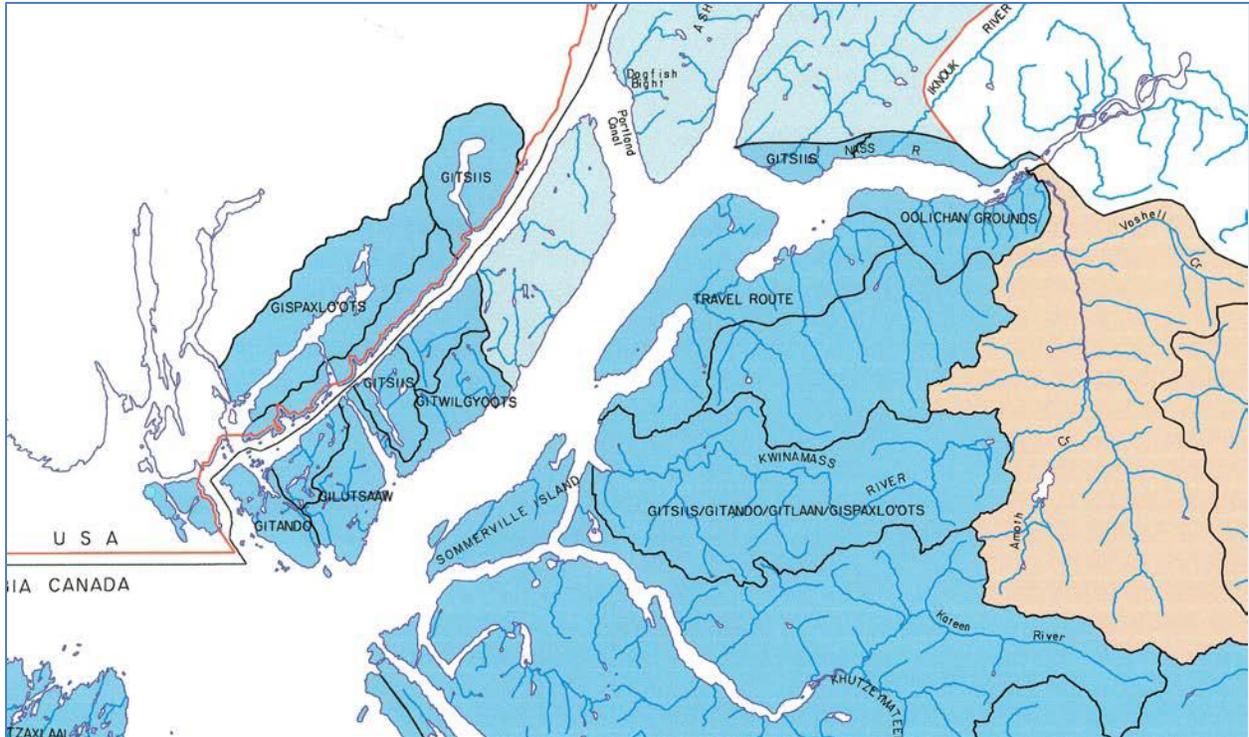


Figure 29. A map by Marsden showing the Nine Tribes territory as reported by chiefs in the 1990s.

This map shows that the Study Area to be largely Gitsiis territory, though the other eight tribes have territory nearby, at both the “Oolichan Grounds” and along the “Travel Route.” This map is a general overview of tribal lands, and therefore does not have specific house group territories defined. Within these, we would find places along the “Travel Route” that are regular camping locations for Nine Tribes house groups moving to the Nass eulachon fishery and back. Beynon defines some of these, discussed in Section 2.2.4.2. The locations of the Nine Tribes village locations are noted by Beynon in several maps (see Section 5.8).

As noted by Marsden (Martindale and Marsden 2011:90), all Nine Tribes had camps along the mainland coast between Metlakatla and the Nass River, including at Somerville Island and the Mylor Peninsula. The neck of the Mylor Peninsula was a portage route on this passage. This map shows, in summary form, the internal negotiations that occurred within the Nine Tribes that accommodated the movement of all Nine Tribes house groups to their territories on the Nass to exploit the eulachon fishery.

5.4.2 The Time of Ligeex and the Eagle Trading Alliance

Marsden and Galois (1995) date the Gwinhuut alliance and the conflicts between the Nisga’a and the Nine Tribes over the inland fur trade to before contact (though they note that it might have occurred after). Given the association of the Gwinhuut alliance with the interior to coast fur trade, which became ascendant after the extirpation of sea otters in the very early 19th century, I would place this suite of events after 1810.

As with the narratives of Haimas, it is easy to lose track of the relevant issues for this analysis when considering these complex events. The Gwinhuut alliance did cross cut nations, bringing together Eagle clan houses and chiefs from numerous tribes beyond the Nine Tribes

in a strategic response to the European demand for furs. However, it also confirms that the Nine Tribes exclusively owned and controlled the Study Area from prior to contact through to the mid 19th century.

5.4.3 The Duration of the Tenth Tribe

The Ministry report (2016) argues that the Gitwilkseba existed until just prior to contact, but I would place their demise centuries earlier. The Ministry report notes that in an HBC census of 1848, several Nine Tribes people note Gitwilkseba ancestry, but in fact this continued past the dissolution of the tribe. See Section 5.6.2.

5.4.4 Implication of Chronological Debates

These debates regarding the chronology of Tsimshian events have few implications for the issues of debate here. If the actions of Haimas and Ligeex, and the duration of the Gitwilkseba's existence date more differently than I argue, they do not impact the Nine Tribes claims to the Study Area since they all pre-date 1846. However, I present them as points of analysis and debate for comprehensiveness.

5.5 Tsimshianic Legal Evidence for the Study Area

In Tsimshianic law, rights and ownership of territory, then as now, is a legal concept that exists because it is a claim that is recognized by the community as having legitimacy. Tsimshianic law is a sophisticated system with ancient roots. It was capable of both defining territorial rights and resolving conflicts over such rights. Since the dates of interest in this analysis (1793 and 1846) predate the widespread imposition of non-Tsimshianic legal systems, any answer to this question lies within the Indigenous legal framework.

As exists in any historical and legal context, there is a range of data and the possibility for competing claims. The role of the legal system is to define relevant data and assess strength of claim. The Tsimshianic legal system still exists – it has not been extinguished. However, the content of scholarship about both general and specific issues has eroded somewhat. In addition, competing legal systems have appeared and imposed themselves on the territory, creating alternate lines of legal claim. This is a confusion that is resolvable, as I argued in Section 1.8, in three ways:

- 1) **When is a claim made?** Earlier claims create a lineage of ownership; most recent claims demonstrate current ownership. Continuity of claims demonstrate continuous ownership.
- 2) **To whom was the claim made and who was present to hear it?** There are only witnesses in Tsimshianic law, not arbiters, thus legal claims are more robust when made to an audience of peers. In Tsimshianic law, the strength of a claim increases when the appropriate peers act as witnesses, i.e., the people who are impacted by any variance in the nature of the claim.
- 3) **What Tsimshianic legal evidence is presented to support the claim?** Tsimshianic constructs of ownership and rights are defined by the *adawx*, and the history of rights that have been inherited. Thus, any claim is strengthened by reference to:
 - a. **The house group declaring the right.**
 - b. **The individual and tribal affiliation of the house group.**

- c. **The events of history and the ancestors involved in the events which define the right.** If it is a transfer of rights, the circumstance of the debt or obligation that results in the transfer is usually defined or noted. Since rights to transfer, there is usually a statement of continuity from the events that define the right to today.
- d. **The location is defined in terms of house group lineage.** Rights of territory are specific to locations defined by agreed-upon boundaries. Thus, there is a connection between places (and place-names), people (including spiritual beings), events (and time) and rights.

Table 5 lists the legal claims and their proximity to principles of Tsimshianic law, as sorted by the timeline established in Table 4. It reveals a consistent pattern: the Nine Tribes' claims exist from over 3000 years ago, continue to today, and conform to Tsimshianic principles of legal claim and recording. In contrast, Nisga'a claims largely post-date 1850, and especially 1867 (the founding of the mission at Kincolith), and base their claim on non-Tsimshianic law. As I have noted in Section 5.4, Tsimshianic law was the only law in operation in the study area prior to 1793 and the principal form of legal system before 1846.

Table 5. Tsimshianic Legal Evidence for the Study Area Sorted Chronologically.

Source	Date	Claim	Indigenous Legal Principle	Western Legal Principle	Nine Tribes	Nisga'a
Marsden 1997/Barbeau-Beynon manuscripts	Early Holocene	The Nine Tribes ancestor Ts'oodé carves a path to the eulachon fishing grounds at the Nass River using supernatural powers.	Connection to spiritual power or beings is a common association with legal claims in the <i>adawx</i> , especially for ancient and original claims.	Many western officials and scholars are unable to assess the merits of differing and competing claims. This report clarifies how Tsimshianic law operates in these circumstances.	This narrative defines the earliest use of the eulachon fishery as associated with the ancestors of the Nine Tribes and one house of the Nisga'a (Gitxatin); descendants of the latter still live at Kincolith	Descent from ancient events and spiritual powers is a prerequisite for many rights claims in the <i>adawx</i> , though it is usually not sufficient. Legal claim must also demonstrate continuity through time. In this case, the claim seems undeclared until after the establishment of the Kincolith mission town in 1867.
Marsden 1997/Barbeau-Beynon manuscripts	Early or Middle Holocene	Several Nine Tribes and Nisga'a Eagle houses trace their association with the Nass to early migrations through the area.	Original use of territory is often associated with later title claims, but it requires demonstration of continuity of this principle.		Nine Tribes groups consistently make this claim in appropriate contexts (feasts) with appropriate evidence (<i>adawx</i>).	The house of Txalaxet has this ancestry, a claim that recurs apparently via marriage during the Haimas narratives (before 1000 years ago) and again by descendants who move to the missionary town at Kincolith. These

Source	Date	Claim	Indigenous Legal Principle	Western Legal Principle	Nine Tribes	Nisga'a
Marsden 1997/Barbeau-Beynon manuscripts	During the migrations of the house groups from the interior, including the house of Wesiiiks, likely before 3000-3500 years ago.		The double feast (of Coast Tsimshian chiefs and spiritual beings) which sets the legal stage for house groups territories to accommodate the newcomers.		This even establishes that the area from the mouth of the Nass to the mouth of the Skeena and its coastlines and islands as belonging to the Coast Tsimshian. This is an important event in the development of the polity that would become the Nine Tribes.	are weaker claims than those of the Nine Tribes houses. See Section 5.6.2.
Beynon 1954: 15-19. Beynon MS 76, 105, 110	Prior to or during the War with the Tlingits ~ 1300-1000 BP	Haimas builds the slaughter feast house at Kincolith, kills Nine Tribes chiefs, location named "place of scalps" as a result.	Village occupation and naming rights area associated with title.		Haimas is a chief of the Gitsiis Tribe; Kincolith was his house's property from before this time to the arrival of the mission town in 1867.	
MacDonald and Cove 1987b #41, 42, 44 Cope 2012 Page 23-24 reference to Barbeau - Beynon files	During the Haimas cycle, i.e., likely before 1000 BP	The Nisga'a house of Txalaxet claims access to and use of the Kwinamass River area.	The areas was noted as a shared fishing station with Gitando (one of the Nine Tribes). Given the preponderance of Nine Tribes <i>adawx</i> to a define this entire area as belonging to Nine Tribes house groups and the inverse: the absence (but for this one case) of <i>adawx</i> defining any area west of Fishery Bay as belonging to Nisga'a house groups, this is likely a reference to a case of Nisga'a			This claim represents the only Nisga'a evidence of possible ownership to areas west of Fishery Bay using Tsimshianic legal principles. However, for the reasons set out in Section 5.4.3 appears to be a case of privilege rather than title.

Source	Date	Claim	Indigenous Legal Principle	Western Legal Principle	Nine Tribes	Nisga'a
Beynon MS 121 MacDonald and Cover 1987b #19, 39 Cope 2012: 25, 26		Villages in the Nass estuary	privileged access to Nine Tribes territory. Settlement is not always correlated with title, but it often is.		Several Aboriginal Research Division reports (including Cope 2012) make the case that this territory belonged to the Nine Tribes. Only the most recent report (2016) takes the opposing view. See Tables 1, 2, and 3.	
MacDonald and Cove 1987b #53 Cope 2012: 25, 26		Camps in the Nass Estuary	Use is not often correlated with title, but it often is.		Several Aboriginal Research division reports (including Cope 2012) make the case that this territory belonged to the Nine Tribes. Only the most recent report (2016) takes the opposing view.	
Marsden 1997	Late Precontact	Haimas	Marsden cites a document from Barbeau-Beynon that identifies Haimas as a contemporary of Ligeex and associates Ligeex with the slaughter house feast (he avoids it). The informant also states that the Raven Warriors were alive during the time of his grandparents, perhaps in the late 18 th century.		This is the only reference of Haimas and Ligeex being contemporaries. Ligeex is clearly alive in the post-contact era, but all the other evidence points to Haimas and the raven Warriors dating to the time of the War with the Tlingit. Either way, it is further evidence of Nine Tribes claims to the Study Area.	
Beynon MS 64, 120 MacDonald and Cove 1987b #17, 30, 35 Cope 2012: 26	Painting of Ligeex Pictograph at Ten Mile Point	Ligeex's image and the associated crests define control over the Nine Tribes areas of the Nass watershed as being controlled by the Gispaklo'ots. A similar pictograph was	The pictograph is both a statement of claim of influence and a reflection of an internal Nine Tribes negotiation.		The Nine Tribes are adjusting to colonial forces, but retaining their territory. Several Aboriginal Research division reports (including Cope 2012) make the case that this territory belonged to the Nine Tribes. Only the most recent report (2016) takes the opposing view.	

Source	Date	Claim	Indigenous Legal Principle	Western Legal Principle	Nine Tribes	Nisga'a
Ministry Report 2016: Volume 3 page 148-149.		<p>Painted at Tye on the Skeena River to a similar purpose. See Martindale (2003) for a discussion of the ascendancy of Ligeex during the land-based fur trade.</p> <p>The Otter logs.</p>	<p>The report writer notes that the Otter returned a Nine tribes chief as his village after traveling to the Nass Harbour. It makes the illogical conclusion that this village was 20 miles west rather than the more obvious conclusion that the village was at Fishery Bay.</p>			<p>Evidence of ownership and use of the Nass River estuary by six of the Nine Tribes.</p>
MacDonald and Cover 1987b #7, 49, 50, 53, 55, 56, 59, 60, 61		<p>Post-Contact Conflict at the Nass estuary. Gitlan village at Fishery Bay is fortified.</p>	<p>Trade alliances favour the Nine Tribes, limiting the Nisga'a to trading only with the Haida. Conflict escalated during the fur trade.</p>			
MacDonald and Cove 1987b #50, 60, 64		<p>Sparrow Hawk incident.</p>	<p>William Duncan alerts the British to conflict between the Nisga'a and the Nine Tribes which results in the arrival of the Sparrow Hawk gun ship.</p>			<p>Nisga'a are guests of Nine Tribes at their villages at the mouth of the Nass River.</p>
MacDonald and Cover 1987b #29, 62	After 1867	<p>Ligeex tries to reclaim the Nass from the Nisga'a at Kincolith but is found re-using a copper crest.</p>	<p>A competition of wealth can be leverage for a title claim. This one suggests that the territory</p>			
Cope 2012, page 27						

Source	Date	Claim	Indigenous Legal Principle	Western Legal Principle	Nine Tribes	Nisga'a
Cope 2012, Page 24	After 1870	The Nisga'a house of Txalaxet claims Hidden Inlet and areas on Pearse Island	was once Nine Tribes but had been taken over by the Nisga'a in the post-contact era.			This association is reported in Marsden 1997:8 as derived from some of the early migrations through the Nass River. The House of Txalaxet also has a connection to Ligeex's Gwinhuut Eagle clan alliance in the early 19 th century.
O'Reilly 1882	1881	Reserve allocation in the mouth of the Nass River defines Nisga'a reserves at Fishery Bay and east, Kincolith (a mission town), and "commonages" along the coast between them and on the opposite shore. This concept is repeated in this And other documents, but on Page 26 of this report, O'Reilly contradicts himself but stating these reserves were for the Nass River tribe.		Reserve allocation was focused on 1) finding land for mission towns, 2) providing access to western-focused economic activities (farming, logging, trading, canning), and 3) responding to Indigenous claims without reference to Tsimshianic law.		
Bolt 1992	1887	Bolt notes that the Nine Tribes made a request for continued access to the mouth of the Nass and argued that their land had		Mission influence in the allocation of reserve lands for Kincolith was considerable.		

Source	Date	Claim	Indigenous Legal Principle	Western Legal Principle	Nine Tribes	Nisga'a
Brock 2006	Late 19 th Century	been given to the "Anglican Natives under the Leadership of Ridley" from Kincolith. Settlement at IR 12			Arthur Wellington Clah settles at IR 12 to defend Nine Tribes title to the area and to the reserve in particular.	
O'Reilly 1898-1902	1898	The concept of common access and use of the commonage reserves in the mouth of the Nass is confirmed in this summary of the reserve commissions decision minutes.				
Beynon 1954:81-82	1916	Nine Tribes and Nisga'a Chiefs meet to discuss lands up to Nass river estuary.	Peers meeting to debate a legal issue present their claims via history.		Define house group territories along coast to Fishery Bay.	No presentation of historical claims.
Menzies 1997	20 th century	Continued use of the Study Area by Nisga'a and Nine Tribes people.			Use does not equate with title in Tsimshianic law, though it is a prerequisite. However, use of the area demonstrates a claim of some nature. In the Nine Tribes case, these are associated with a long history of title claims in the <i>adawx</i> .	Use does not equate with title in Tsimshianic law, though it is a prerequisite. However, use of the area demonstrates a claim of some nature. In the Nisga'a case, these are associated with a recent history of claims made after the establishment of the mission at Kincolith.

The key legal evidence from the primary evidence, as listed in Table 5, all point clearly to the ownership of the Study Area being held by the Nine Tribes from before 3000 years ago, through the 19th century, and into the present time. It is useful to consider each of the relevant historical moments in this legal context.

5.5.2 Earliest times

There are two lines of evidence from the earliest time period, when Tsimshian people were first on the land. This is likely from the early Holocene, over 7000 years ago and possibly as old as 9000 years ago. Our ability to date this time period archaeologically is limited by current data, so this is an estimate based on later events.

The narrative of Ts'oodé (discussed in Marsden 1997) indicates that Tsimshian people were living in and around Metlakatla Pass and began using the Nass River estuary for eulachon fishing and other activities. Ts'oodé created a path between these two places by throwing stones to carve passages between islands. The magical/spiritual associations of his actions and relate geological events is a common combination in the geologically active epi-glacial times. Dramatic changes were occurring on the landscape with the retreat of the massive continental ice sheets, changes that would have been notable within the lifetime of individuals (i.e. at a much more rapid pace than is normal for most geological processes). Ts'oodé's actions also signal both use of the Study Area by the ancestors of the Nine Tribes, and a form of ownership claim. Spiritual actions of this nature are key statements in Tsimshianic law of ownership of territory.

The second line of evidence is the coastal associations of all Tsimshianic peoples. The ancestors of all Tsimshianic people lived first on the coast and moved inland as de-glaciation opened up interior lands. Interior people's thus post-date the coastal occupations. However, coastal ancestry is not in and of itself evidence of ownership. Indeed, interior peoples, such as the Gitxan, Kitsumkalum, Kitselas and Nisga'a moved into newly exposed lands, claiming them, and leaving behind their coastal homes. Their relatives and neighbours who stayed behind on the coast, then maintained the ownership of the coastal lands. Thus, Nisga'a claims of ownership based on these early times are not valid in Tsimshianic law.

Note that the Nine Tribes have interior territories, but these became established later, as alliances were formed with Lower Skeena Valley people during the War with the Tlingit. In their earliest form, Nine Tribes ancestors were coastal people.

5.5.3 The Double Feast

Marsden (2002) discusses this event in considerable detail. Indeed, her analysis is one of the most complete discussions of a series of *adawx*, their legal context, their spiritual connections, and the geopolitical consequences that has ever been published. It is, in my professional experience, the most sophisticated analysis supported by primary evidence of Tsimshian history published. The key moment for this analysis is the double feast between humans (on the land at Red Bluff in the Study Area) and spiritual beings (under the water in the same place). This is a key legal event in the Study Area, and the defining legal claim to the entire Study Area by the Nine Tribes house groups.

It is the consequence of the arrival of new people into the coastal territory, families that trace their ancestry to the Stikine, via the village of Tmlaham. Tmlaham was destroyed by a landslide around 3500 years ago, and its residents dispersed. Some travelled down the

Skeena, settling among the Interior Tsimshian. Others continued to the coast and joined the Southern Tsimshian. Marsden's paper discusses those that joined the Nine Tribes. The arrival of these migrants causes internal discord among the resident Northern Tsimshian – and the double feast is the political and legal event which negotiates a peaceful settlement by giving the migrants places within tribal structures and territory within Nine Tribes lands and waters.

It is clear that the Nine Tribes own the Study Area at this time, and are resolving internal matters with this feast. The feast's spiritual parallel is a key legal concept. Spiritual beings reside on the land, and ownership is defined in part by acceptance of the human house group by the spiritual denizens of territory. Thus, the acceptance of the political/human solution by the spiritual beings who both act as witnesses to the human feast and resolve a similar negotiation among themselves is legally significant. Indeed, as Marsden points out, some of the spiritual beings were reluctant (mirroring human reluctance), but were recruited to the settlement of discord and the feast through negotiation.

The feasts represent all the Nine Tribes house groups and all the spiritual denizens of their collective territory – creating a remarkable historical event with considerable consequences in Tsimshianic law. Indeed, this event appears to be a foundational achievement in the creation of a national identity for the Nine Tribes.

5.5.4 Haimas

The Haimas narratives, which I date to the War with the Tlingit (see Marsden 2000), are another key legal event in the Study Area. The ownership of the Study Area changes slightly in these events, as the Gitsiis acquire the Khutzemateen from the Stikine in ransom for a princess kidnapped by Haimas. However, the narrative sequence is clear that the Study Area belongs to and is in regular, perhaps continual use, by the Nine Tribes. Haimas himself lives at his Gitsiis village at Kincolith. The name of Kincolith derives from the actions of Haimas in the murder of his fellow Nine Tribes chiefs. The slaughter feast at Kincolith is a clear demonstration of both regular occupancy and legal claim in Tsimshianic law to the Study Area. There are no Nisga'a mentioned in these events because they occur in areas situated outside of Nisga'a territory.

The Haimas narratives occur, in my opinion, during the War with the Tlingit. As Marsden (2000, 2001) argues, at the end of these events, the legal ownership of the territories is moderated by the creation of specific alliances within tribes of house groups from interior and coastal territories, and by the relocation of all Nine Tribes permanent villages to the Mekatlatla area (see Edinborough et al 2017; Martindale et al 2017a, 2017b for demonstration of this event and its timing). Again, the local and the regional evidence is clear: the Study Area at this time belonged to the Nine Tribes.

5.5.5 Ligeex

The narratives of Ligeex are the dominant geopolitical events of the late precontact and 19th centuries for the Tsimshian (see Marsden and Galois 1995; Martindale 2003). Ligeex (known as "Old Ligeex") is in ascendancy during the fur trade and develops a near-monopoly (through the Gwinhuut Eagle clan alliance) on interior-to-coast furs after the depopulation of sea otters around 1805. Ligeex's rise to power was both economic and military; he is known for attacking and burning 5 interior villages of tribes who violated the Gwinhuut trading prerogatives by bypassing the Nine Tribes and using Nisga'a intermediaries to trade with the Europeans.

These processes also have an internal dimension and his rise in power is challenged by his Nine Tribes peers (Martindale 2009). The key event here is the murder plot against him by

the other eight tribes, and his challenge to the other chiefs to compete with him in wealth. When they do not, he becomes the *de facto* paramount chief (Martindale 2003). In later work, (Martindale 2009; Martindale et al 2019), I argue that this is less of Ligeex taking over the Nine Tribe alliance and more of his election to a position of collective leadership because of his success in confronting colonial forces. We can see his rise as a collective negotiation that results in a more coherent and closely-knit alliance.

Ligeex signals this ascension by painting his image along with the major crests of all Nine Tribes at two locations: 1) the mouth of the Skeena (Tyee) and 2) Ten Mile Point (at the entrance to the Nass). Both can be interpreted as three things: 1) a demonstration of the power of Ligeex and the Gispaklo'ots, 2) the consolidation of the Nine Tribes as a political, economic, and military alliance, and 3) a declaration of ownership of the lands and waters of the Nine Tribes. Importantly, Ligeex's rise does not change ownership – he is not claiming he owns these lands, nor are they transferred to the Gispaklo'ots. Rather, these pictographs signal the consolidation of political power in the Nine Tribes, through Ligeex's leadership.

The feasts associated with these events, including the feasts of the pictograph at Ten Mile Point, are legal demonstrations of ownership. Importantly, none of them were contested by the Nisga'a at the time. Indeed, the Nisga'a were not involved because these were matters which occurred beyond their territory.

There are several events recorded in the *adawx* that involve Ligeex in the 19th century, several of which involve the Nisga'a. Some are similar and easily confused. As discussed in Section 2.2.5, there are 5 events from these *adawx* that establish the chronology of relevant historical events:

- The painting of the pictograph at Ten Mile Point (early 19th Century) reinforces Nine Tribes ownership of the Study Area. This is noted in MacDonald and Cove 1987b, Narratives 17, 30, 35.
- The conflict between Hlitux (Nisga'a) and Ligeex (Nine Tribes) which results in a gun battle at the Nisga'a village of Git'iks, east of the Study Area. I would place this about 1850, but it does not provide any evidence of a Nisga'a claim to the Study Area – rather it shows that the Nine Tribes were defending the Study Area with village fortifications and guns from a Nisga'a incursion. This is noted in MacDonald and Cove 1987b, Narratives 7, 50, 59, 64.
- A Nine Tribes feast with an accidental shooting. The dating is unclear beyond the post-contact date (guns), but it occurs in Fishery Bay and is internal to the Nine Tribes. This is noted in MacDonald and Cove 1987b, Narrative 49.
- A gun battle between Nine Tribes people and White traders, probably the *Sparrow Hawk* incident of 1862, but there may be more than one similar event after the establishment of Fort Simpson in 1834. Again, this is between Nine Tribes and Whites – and is more evidence of Nine Tribes defense of the Study Area. This is noted in MacDonald and Cove 1987b, Narratives 56, 60.
- Ligeex's use of a fake copper to challenge the Nisga'a at Kincolith. This occurs after the death of the first Paul Legaic, son of Old Ligeex, in 1868 (Murray 1985:105) or possibly in 1869. This is noted in MacDonald and Cove 1987b, Narrative 29.

5.5.6 Mission at Kincolith

The use and ownership of the Study Area were challenged by the creation of the Kincolith mission in 1867. The arrival of white missionaries who sought to create a new town in Nine Tribes territory (populated primarily by Nisga'a people) is a legal affront to the Nine Tribes that they challenged at the time and continue to challenge. This is the first evidence of any legal claim to the Study Area by the Nisga'a, and they do so using methods not derived from or recognized by Tsimshianic law.

As a result of settlement, certain lands were purported to be transferred from Nine Tribes ownership to Nisga'a using processes only recognized under colonial law. The Nine Tribes did not join the Kincolith mission, in part because Crosby's focus was on missionizing the Nisga'a, and because there was already a mission town for the Nine Tribes established at Metlakatla, founded by William Duncan in 1862.

5.5.7 Reserve Allocations

When the Indian Reserve Commissioner Peter O'Reilly arrives to allocate reserve lands, he does so with little understanding of Tsimshianic law. Rather, he is part of a state-building effort that valorizes both mission towns from Indigenous people and the development of an agricultural land base to support them. In this light, his granting of reserve lands in the Study Area to Kincolith (an entity that does not have any standing in Tsimshianic law) appears to be an act of colonial favouritism. His 1881 allocations purport to grant land to Kincolith (and ultimately the Nisga'a) that belonged to the Nine Tribes.

It is important to note that, even given his priorities, the Nine Tribes protestations were marginally successful. O'Reilly created a concept of common use for IR 10, 12, and 13 to accommodate Nine Tribes claims to the Study Area. Even though this concept seems to have become eroded over time, it signals an early and ongoing defence of their ownership claims to the Study Area by the Nine Tribes in the face of colonial encroachment.

5.5.8 Clah

The settlement of IR 12 by Arthur Wellington Clah, whose homesteads on the land, is another signal of Nine Tribes claims of ownership. Since O'Reilly preferred permanent settlement and farming, we can interpret Clah's act as an effort to conform to non-Tsimshianic legal rules about ownership. This action also signals how little traction Tsimshianic law had among non-Indigenous officials.

5.5.9 The 1916 Meeting

I have discussed the significance of this meeting in detail in Section 2.2.1, but it is important to note that, at the one opportunity the Nisga'a had to make their legal case in Tsimshianic law to the Nine Tribes to defend Nisga'a claims of ownership of the Study Area – they are largely silent. They do not invoke or reference any *adawx*, make no statement of house group title, feasts of note, acts of ownership, nor do they reference any spiritual claims to particular territory.

In contrast, the Nine Tribes do all of these things. From the perspective of Tsimshianic law, the only conclusion that may be arrived at from the evidence presented by the Nine Tribes at this meeting is that the Nisga'a have no claim to the Study Area. This, perhaps, explains their interest in using non-Tsimshianic legal avenues to assert their ownership over the Study Area. However, if the question is who, based on the evidence, owned the Study Area in 1793 and 1846, then the answer in Tsimshianic law is clear: the Nine Tribes.

5.5.10 20th Century.

Traditional use studies conducted with the Nine Tribes (such as Clarke 2013, Pacific Northwest LNG 2014) are inventories of use, settlement and claims of ownership of the Study Area by Nine Tribes citizens and house groups. While these analyses often themselves lack a clear understanding of the Tsimshianic legal system, they do capture the knowledge of leaders and scholars within the Nine Tribes who maintain oral records of their history and its legal implications. This avenue of knowledge is under-represented in the data I work with here. Instead, I rely on the work of people like Beynon to capture the voices of the leaders from the past. However, current leaders and Nine Tribes people curate this knowledge – evidence that also establishes that the Nine Tribes owned the Study Area in Tsimshianic law – and still own it.

Traditional use studies also indicate that the practices of fishing, hunting, plant harvesting, resource management, resource use, enjoyment, and settlement of the Study Area were integral to Nine Tribes people, and remain so today. The Study Area itself was of central importance to the Nine Tribes in part because of the key resources located there (such as eulachon) and in part because of its long history as part of Nine Tribes lands, waters, history, and culture.

5.6 Points of Debate in Tsimshianic Legal Evidence

Although the pattern in Section 5.5 and Table 5 is clear, it is not universal. In the 1916 meeting (Section 2.2.1) the Nisga'a raise two points which have legal standing in Tsimshianic law: their claim to a coastal origin and the claim of the House of Txalaxet to parts of the eastern side of the Kwinamass valley.

5.6.1 The “Ancient Times” Argument

When the Nisga'a chiefs stated in 1916 that, “We are also of coastal origin and, in many cases, had the same origin as the Tsimshian, and we feel that we are in our rights in claiming this property which you now dispute.” They were making reference to a real history, but one that has no legal grounds for ownership to the Study Area in Tsimshianic law. Marsden (1997) notes that all coastal peoples have houses that share the earliest origin narratives. At this early time, people were moving into recently deglaciated landscapes that were highly geologically dynamic.

Marsden argues that this common origin has no legal significance in Tsimshianic law, and I agree. In some cases early patterns show continuity up to today, but in other cases they were supplanted by later events. The Study Area fits into the latter, as illustrated by Table 5. Regardless of who claimed to own the Study Area in the early Holocene, the Nine Tribes established control over 3000 years ago, and maintained that control until the late 19th century.

5.6.2 The “House of Txalacet” Argument

At the 1916 meeting (Section 2.2.1), the Nisga'a chiefs also stated that, “even when Legyaerh painted the picture you refer to, we do not recognize it as giving him the right to proclaim his authority over what is ours. The Niskae were already living at Kne'emas, and there were salmon villages there. Gitiks presumably had his fishing village here, as did the Larhkibu (Wolf) who were at Welaegwel'aet, Where-echo or “Place-of-Echoes.” That is why we have the right to include this in our petition. It belongs to the Niskae.”

This is the same claim that is noted in the Ministry report (2016:166-167) based on the house of Txalaxet. It is the only Nisga'a claim to the Study Area that has any grounding in the *adawx*, thus it is the only context where Tsimshianic law can be applied to the evidence. It also appears to be the source of Barbeau's map which defines the Nisga'a-Nine Tribes boundary to lie at the Kwinamass River.

First, the claim made at the 1916 meeting is made in vague terms and is not supported by evidence of specific *adawx* or house groups. This suggests that there is no legal evidence or it is insubstantial. However, the report writer provides testimony from Frank Bolton of Kincolith:

"This house had as their exclusive territory the whole of the valley of Kwinamass River [Figure 88: 1]. This territory was known as *x'enmes* 'where red' and was the exclusive property of this house and the village of *txala'xet* was known as *gidzaxsen* marked **A** about three miles [up Kwinamass River]. Another village about one mile above was known as *atagald.zep* [or] 'out standing village, out standing in a prominent place so it would be most noticeable' marked **B** and they were all known among the [Nisga'a] people as *Gidzaxsen* group of people. At these places they hunted and fished and they got groundhog, beaver, bear, marten, and wolves and many other fur bearing animals. They also got from this territory their food supply of deer meat, and mountain goat meat. They also got berries and 'ax (fern roots) and crabapple. They also got from here salmon and they fished salmon here most of the time in front of villages **A & B** and the first fish caught was steelhead during the season of the month of the 'Spring Salmon' *txs'ciy'ε* (month of May), and during the month of the 'Green Leaves,' June and July, which was known as *txs'ciyens* 'month of/moon of leaves,' and then the humpback and dog salmon followed during the season of the salmon *txs'hcn* 'moon of salmon' and then the next salmon to come was the coho salmon during the moon of the groundhog *txs'gwisk* 'moon of groundhog.' There was no sockeye in this river. They used this territory and river exclusively From *x'enmes* [Kwinamass] *Txalaxet* made his permanent village at [Gitiks, on the Nass River near Greenville]."

The report also provides testimony from James Morrison (page 167), whose house and tribe are not listed:

The Haida . . . were on a war raid on the Tsimshyan, knowing that there were many of them at *knemaes* . . . during the season when they dried the salmon. *Knemaes* was the fishing station of the [Nisga'a] house of [*Txalaxet*] and the [Gitando] . . . who had intermarried together. The [Gitando] were privileged to go there and to dry their fish, but not to hunt. The household of [*Txalaxet*] and the [Gitando] were living together at *knemaes* at this time There was a great number of people now at the fishing station [when the Haida attacked, unsuccessfully]."

Each of these quotes indicates the concept of a usage right, but Bolton defines it as "exclusive" while Morrison qualifies it as a right obtained by marriage to the Gitando of the Nine Tribes. The report writer argues that the Gitlan married into Txalaxet's lineage and thus acquired privilege, but this is not certain from the quote. Indeed, the more logical explanation is the reverse. The report notes that Bolton identifies Txalaxet as part of the Laxskiiik (Eagle) division of Gitiks that owned the north side of Kwinamass, and that the south side was owned by a division of the extinct Gitwilkseba Tribe (the dissolved Tenth Tribe). He notes that his children inherited the claim to the southern side of the Kwinamass via the house group 'nis'yust. The Kwinamass was originally Tlingit but was acquired by the Nine Tribes during the time of Haimas, i.e., over 1000 years ago.

The Gitwilkseba formed during the War with the Tlingit but dissolved as a tribe some time afterwards. The Gitwilkseba were given territory from the other tribes, who then reacquired it

when the Gitwilkseba collapsed. It appears that the Kwinamass valley was one of these lands that went from the Tlingit to the Nine Tribes to the Gitwilkseba (Tenth Tribe) and back to the Nine Tribes. Upon dissolution, in Tsimshianic law, all rights to ownership would have reverted to the remaining Nine Tribes. It also appears that the Nisga'a house of Txalaxet married into (and/or vice versa) during the period when the Gitwilkseba owned the Kwinamass.

The writer of the Ministry's 2016 report reasons that this tribe existed until 1846 because people identified with it in a census conducted by the HBC at Port Simpson. However, I consider it unlikely that the Gitwilkseba were a tribe in the 19th century, though it is true that many Tsimshian people (from the Nine Tribes and Nisga'a) likely have Gitwilkseba ancestry. As Marsden (2000) has shown, the Gitwilkseba began as northern migrants to Tsimshian territory, originally from the Stikine, but fleeing strife along the northern coast. They moved into Tsimshian territory about 3000 years ago and formed alliances, but were followed by their northern enemies, who continued the conflict. This conflict became the War with the Tlingit, which is resolved through the formation of a political alliance of Ten Tribes (who become the Northern Tsimshian).

Upon the resolution of the war (which involved Haimas), the Northern Tsimshian forged an alliance to defend their territory from further invasion. Those with northern ancestry become the Gitwilkseba. However, their territory was scattered and, since it was gifted to them by the other tribes, insufficiently productive, and the tribe was forced to disband. The lands were returned to their original owners (the Nine Tribes), the alliance was reduced in number, and the Gitwilkseba house groups were absorbed into other tribes. Importantly, these events were resolved long before contact and did not change the ownership of the Study Area from Nine Tribes house groups, as recorded in the *adawx*.

However, a Nisga'a Gitkateen claim to the Kwinamass River though the Gitwilkseba is not legitimate in Tsimshianic law, since the Gitwilkseba's territories were transferred back to their original (Nine Tribes) owners when they dissolved. If the lands had been transferred to the Nisga'a, then two questions would arise: 1) why the *adawx* that detail this are not available, and 2) why they were not presented at feasts or at the 1916 meeting (see Section 2.2.1).

Given the weight of evidence in the *adawx*, the more legitimate claim to the Kwinamass valley lies with the Nine Tribes rather than the Nisga'a. Minimally, even if the Nisga'a claim were accepted as being legitimate, it would define ownership and/or rights to only part of the eastern side of the Kwinamass valley, and not to the rest of the Study Area.

5.7 Legal Evidence from Non-Tsimshianic Systems

Although non-Tsimshian legal principles were not relevant prior to 1793 and minimally present prior to 1846, it is nonetheless useful to list these as part of my analysis as they indicate the pattern illustrated in Table 5: that Nisga'a claims are largely based on factors which relate to non-Tsimshianic law and post-date 1850.

Indian Reserve Commissioner Peter O'Reilly's reports provide a record of Indigenous claims to the Study Area. Specifically, O'Reilly was motivated to find a suitable economic base for the recently established Kincolith mission by providing it with nearby arable land for farming. The Study Area is proximal to Kincolith, but distant from the Nine Tribes urban centres of Port Simpson (Lax Kw'alaams) and Metlakatla, giving it a stronger claim to the area (in O'Reilly's view).

At the same time, Nine Tribes leaders made their case to O'Reilly that the Study Area was their ancestral lands and waters and he purported to accommodate them by creating the concept of "commonage": a shared access to the reserves in the Study Area. I know of no other examples of this concept in reserve allocations. O'Reilly bifurcated reserve lands in several cases, granting the land to Kincolith and the waterfront and fishing rights to shared usage for, particularly, the Nine Tribes.

The concept of commonage faded quickly, and by the early 20th century, Kincolith was trying to impose access and usage taxes on Nine Tribes people making use of these reserves. As I have noted elsewhere in this report, Nine Tribes leader Arthur Wellington Clah went so far as to move to and build a homestead on IR 12, in order to claim Nine Tribes land using O'Reilly's criteria of farming.

The work of Peter O'Reilly represents decisions made by a non-Indigenous official with considerable power over Indigenous rights and in ignorance of Tsimshianic law. Thus, his collection of information likely includes the voices of many Indigenous people seeking recognition for rights. At the same time, O'Reilly's documents present a compilation of data that was skewed by access to him and by contemporary forces.

Most significant for this report is the criticism that he arrived in Tsimshian territory in the fall, when many traditional leaders were away fishing for salmon. O'Reilly seemed to have little knowledge of Tsimshian social or cultural conventions. In addition, he was clearly motivated by the idea of nation-building, something that aligned him with the efforts of missionaries (Section 2.3) and with the effort to recruit Indigenous people toward farming and industry. Thus, his data are:

- Not representative of traditional knowledge.
- Not assessed through the application of Tsimshianic legal principles.
- Responses in part to contemporary interests of the Kincolith mission and its missionaries seeking more land for the new community.

Despite these limitations, O'Reilly's approach in recognizing "commonages" nonetheless consistently recognizes Nine Tribes claims to the Study Area.

The founding of the mission at Kincolith and the subsequent allocation of reserve lands to the new kind of Indigenous community appear to be the basis of the Nisga'a claims to the Study Area in 1867, as indicated by their request for more arable land from the Reserve Commission in 1881. It appears that both the modern treaty allocations of land and the current debate about ownership of the Study Area derive from these non-Tsimshian legal decisions. Though they may have legal consequence today, they have no grounding in or relevance to Tsimshianic law.

5.8 Maps by Beynon and Barbeau

Map data from Beynon and Barbeau are listed in Table 6, and clearly show that the territory west of Fishery Bay is consistently shown as being inhabited by the Nine Tribes. As I have noted elsewhere in this report, while use and settlement is not in itself evidence of a legal claim to title, use and settlement of territory are common correlates. The Ministry report (2016:184) claims that Beynon's maps are incompatible. I disagree. As shown in Table 6, this is not the case.

Table 6. Maps by Beynon and Barbeau.

Map Source	Nine Tribes Places in the Study Area	Other Places in the Study Area.
Beynon MS 76	This map shows the locations of places relevant to the Haimas story cycle and located Nine Tribes villages and camps from Metlakatla to the mouth of the Nass River, including Somerville Island.	
Beynon MS 110	<p>Another map detailing the Haimas locations. This has additional information from the Study Area including at the mouth of the Nass where the following villages are located from the east to west:</p> <p>South Bank:</p> <ul style="list-style-type: none"> • Gitixin (sp?) (Nisga'a) • Gidzaxlal (Nine Tribes) • Gin'adoiks (Nine Tribes) • Gilndaix (sp?) • Lax Katada (i.e., IR 12) (Nine Tribes) <p>North Bank:</p> <ul style="list-style-type: none"> • Gitwilg'ots (Nine Tribes) • Gispaxlo'ots (Nine Tribes) • Git'ando (Nine Tribes) • Gitsi's (Nine Tribes) • Gitxa'la • Ginaxangik (Nine Tribes) • Kincolith 	Git'xin and Gixtaala are listed on this map in the mouth of the Nass River
Beynon 121	<p>This map lists the Nine Tribes villages at the mouth of the Nass River:</p> <p>South Bank:</p> <ul style="list-style-type: none"> • Gitando (Nine Tribes) • Gispaxlo'ots (Nine Tribes) • Ten Mile Point <p>North Bank</p> <ul style="list-style-type: none"> • Greenville • Fishery Bay Nisga'a Village • Gitlan (Nine Tribes) • Ginaxangik (Nine Tribes) • Gitwilgyo'ots (Nine Tribes) • Gin'adoiks (Nine Tribes) • Giludzau (Nine Tribes) • Gitsi's (Nine Tribes) • Kitkatla • Gitga'ata • Kincolith 	Nisga'a villages are listed at Fishery Bay and east. Gitxaala and Gitga'ata villages are listed in the mouth of the Nass area.
Beynon 1954	A map of place names and house territories associated with the Nine Tribes that appears to be associated with this manuscript. I do not have the key, but if the pattern is to illustrate Northern	

Map Source	Nine Tribes Places in the Study Area	Other Places in the Study Area.
Beynon 1954	Tsimshian places (and no others are shown) then it includes sites east to Fishery Bay.	
A Beynon map from MacDonald and MacDonald 2012	The inverse map shows migrations into the Northern Tsimshian, listing sites from their neighbours. In this map, if the pattern is true, the Nisga'a site extends down the Nass River only to Git'iks, east of the constriction east of Fishery Bay.	
A Beynon map from MacDonald and MacDonald 2012	A map of the area from Beynon: South Bank:	
	<ul style="list-style-type: none"> • Lath Qnigidau (sp?) • Gitiks • Lath aete 	
	North Bank:	
	<ul style="list-style-type: none"> • Greenville • Lath Tawdzep/ Fishery Bay • KwalOgupel • Wames maeskhilawp 	
A Beynon map from MacDonald and MacDonald 2012	Another map from Beynon listing the reserves and the villages. The version in this report is unclear, but the place names can be mostly discerned. The majority west of Fishery Bay are Nine Tribes:	
	South Bank	
	<ul style="list-style-type: none"> • ?? • Gitwilgo'ts • Gilodz?? • Gitzaklalth (sp?) • ?? • ?? • ?? 	
	North Bank	
	<ul style="list-style-type: none"> • Greenville • Gatla'n • Gitwilgo'ts • Gitx'ata • Ginakangi'k • Gina'd'oiks • Gitando' • Gitsi's • Gitsi's • Laxse'oala (Tlingit) • Gitwilgo'ts • Gitga'ata • Gitzaxle'l (sp?) • Gitaganits (Tlingit) 	

Map Source	Nine Tribes Places in the Study Area	Other Places in the Study Area.
A Beynon map in Ministry 2016:155	A Beynon map showing Nine Tribes camping locations between Metlakatla and the mouth of the Nass.	
A Barbeau map in Ministry 2016:157		A Barbeau map showing the Nisga'a-Nine Tribes boundary at the eastern end of Somerville Island.
A Barbeau map in Ministry 2016: 165		A Barbeau map listing "Kincolith Hunting Grounds"
A Barbeau map in Ministry 2016: 166		A Barbeau map showing Nisga'a claims to the Mylor Peninsula and the Kwinamass Valley.
A Beynon map in Ministry 2016: 180	<p>A Beynon map showing villages in the mouth of the Nass River:</p> <p>South Bank:</p> <ul style="list-style-type: none"> • Lax-ambal (the Laxgibu village under Nagu'en) • Lax'angida • Git'iks <p>North Bank</p> <ul style="list-style-type: none"> • Greenville • Fishery Bay • Fishery Bay fort (Do'-dzap) and look out belonging to the Gitsiis. • Giwol-ksaw-be <p>K'egabel (Red Bluff) Tsimshian oolichan ground.</p>	<p>The Nisga'a villages are all east of Fishery Bay</p> <p>Note that this map is incorrectly labelled as "Nisga'a Villages on the Nass." While Nisga'a villages are located on the map, so are Nine Tribes territories, in and east of Fishery Bay</p>

The maps from Beynon are consistent with his records and notes on the *adawx*: the Nine Tribes have a permanent presence on the land in the Study Area, especially at the mouth of the Nass River. It is important to remember, as noted in Section 1.7, that occupation and residence do not necessarily equate to title in Tsimshian law, but since Beynon makes this case in the *adawx* and in his 1954 analysis, his maps add weight to the conclusion that the Study Area is owned by the Nine Tribes.

Barbeau's maps are the only ones that indicate the Study Area was owned by the Nisga'a. Although I cannot explain this difference, I note that while Barbeau worked with Beynon, and it was Beynon who collected the *adawx* and, as represented by documents and analysis available to me, had the more complete understanding of Tsimshian history and territory. Barbeau's records in MacDonald and Cove (1987b) indicate that he was not always attentive to the source of the information or the relevant metadata necessary for legal purposes. All his narratives in this volume were collected in Kincolith. I find Beynon a consistent source on this subject, and would need to consider Barbeau's work to better assess the quality of his collected data.

I can also note that Barbeau seems motivated by an enthusiasm for the grand narratives of Tsimshian history, such as the tale of Haimas. He seems less interested in Tsimshianic legal principles. Beynon, in contrast, was acutely aware of the legal implications of the *adawx* he was recording. His explanation of historical patterns exists as emendations and end notes to the *adawx* told to him by Tsimshianic leaders whose families owned them. Beynon's interest in preserving the voice of these leaders suggests to me that he is less likely to misinterpret legal history as a result.

6. Conclusion: My Opinion

Logic is often strongest when the inferential and deductive distance to be crossed is short, i.e., when the patterns in the evidence do not require much interpretation and thus based on the fewest assumptions. This principle is sometimes referred to as Occam's Razor.

If a correct understanding of chronology in the *adawx* and of the operation of Tsimshianic law is employed then, in my professional opinion, the evidence aligns clearly: Tsimshianic law, of which both the Nisga'a and the Nine Tribes were participants, recognized that the Nine Tribes owned the Study Area for thousands of years, a claim that went uncontested by the Nisga'a prior to contact, at 1793, and at 1846.

Nisga'a claims to the area only appear after the establishment of the Kincolith mission town, and are only pursued through colonial legal avenues. In all but one case (the claims of the house of Txalaxet) they are also made using evidence outside of traditional Tsimshianic legal sources (*adawx*). The Nisga'a claim to the Study Area appears to be a late post-contact phenomenon that was incorrectly given credence by colonial officials, a pattern that began with Peter O'Reilly and continues to the most recent report produced by the Ministry in 2016. I note that the Gitxan accuse the Nisga'a of a similar post-contact claim to their territory in the east (Sterritt et al 1998).

I can find no evidence that the principles of territorial contiguity were different in the Study Area than elsewhere in the Tsimshianic world, and no evidence for the existence of territorial isolates. Thus, of the three possible options I have defined in section 1.8 above, I conclude that there must have been a boundary between the lands and waters of the house groups of the Nine Tribes and those of the Nisga'a. All the evidence points to this boundary being situated at the eastern end of Fishery Bay; lands and waters to the west belonged to the houses of the Nine Tribes exclusively.

I temper my conclusion with the knowledge that I do not have all the primary evidence. Specifically, I lack the Barbeau-Beynon manuscripts. However, I am confident that the sample of data I have examined for this report is representative of history for two reasons: 1) it is unambiguous in assigning the Study Area to the Nine Tribes. If there were evidence of a valid Nisga'a claim, it is likely that it would be present in the many hundreds of *adawx* that I have access to both directly and via the original analyses, and 2) I do have two documents (Marsden 1997 and the Ministry Report of 2016) whose authors did have access to these documents, and made detailed reference to them. If the Nisga'a have a claim to the Study Area that is legitimate in Tsimshianic law, it would very likely appear in one or both of these reports.

As I note in Tables 1, 2, and 3, all other relevant evidence designates the Study Area as being owned by the Nine Tribes. One of the most telling events in this matter is the meeting of Nisga'a and Nine Tribes chiefs in 1916. Here, without a non-Indigenous audience, the Nisga'a make no claim and marshal no evidence, while the Nine Tribes present detailed evidence that conforms to Tsimshianic legal principles. This meeting is a traditional legal proceeding, one that shows Tsimshianic law is on the side of the Nine Tribes. In contrast, the Nisga'a make their claims to the Study Area to non-Indigenous officials with resort to colonial legal principles. The evidence for this conclusion is considerable and includes:

- Detailed *adawx* that define the tribal and house group use, occupation, and ownership of the Study Area as belonging to the Nine Tribes.
- Histories of *adawx* that identify four key moments in the history of this claim:
 - The origin of the eulachon fishery by way of Ts'oodé's actions.
 - The establishment of Coast Tsimshian ownership of the Study Area and its spiritual denizens at the double feast at Red Bluff.
 - The confirmation of the ownership of this area in the War with the Tlingit and the Haimas story cycle.
 - The demonstration of this ancient title in the consolidation of Ligeex in the early post contact era as demonstrated by the pictograph at Ten Mile Point.
- Consistent invocation of these rights and their associated *adawx* owned by specific house groups to Indigenous and non-Indigenous audiences. Tsimshianic law proceeds by witnessing of claims, usually at feasts. The only feasts that are recorded for the Study Area have Nine Tribes houses claiming these lands and waters.
- On this point, the 1916 meeting of Nisga'a and Tsimshian chiefs is again relevant. Here, only Indigenous people met to discuss this issue. According to Beynon, the Nine Tribes chiefs presented the *adawx* of their house groups signalling rights to the Study Area. In response, the Nisga'a chiefs said nothing. In Tsimshianic law, this is a witnessed event with legal significance and consequences in which ownership of the Study Area is recognized as belonging to the Nine Tribes. It is not surprising, given the absence of *adawx* invoked by Nisga'a chiefs at this meeting, that their legal claim to the Study Area has been consistently pursued only through non-Tsimshianic contexts, to non-Indigenous colonial officials and courts.

The preponderance of evidence is so consistent towards the Nine Tribes claims that there is only one source I am aware of that unequivocally identifies the Study Area as Nisga'a: the Ministry report of 2016. As I note above (see Section 5.3) this report misunderstands the chronology of events in the *adawx*, the nature and operation of the Tsimshianic legal system (Section 5.5), and makes numerous and easily demonstrated illogical conclusions, including the misstatement that Beynon's work is inconsistent on this subject (see Section 5.8). While this report makes some attempt effort at data compilation from primary sources, and thus is an improvement on the Ministry's previous reports from 2007 and 2009 (see Martindale and Marsden 2011) several key flaws nonetheless remain:

- It lacks an understanding of Tsimshianic legal system. With this, as applied here, it is clear that the Nine Tribes have a claim through Tsimshianic law, while the Nisga'a only make claims to the Study Area through colonial law and after 1867.
- It lacks an understanding of chronology in the *adawx*. With this, as developed here, it is clear that the Nine Tribes have an ancient and consistent claim to the Study Area, while the Nisga'a have only made claims after 1881 that is subsequent to the establishment of the mission town at Kincolith.
- It lacks an understanding of the different quality of evidence from different sources and present inexplicable preference for some derived sources over other original analyses and primary evidence. The report does not provide any logic for why it chooses to favour Mitchell and Donald (2001) and the maps of Barbeau over the original analyses

of Cope (2012), Marsden (1997) and MacDonald (2012) and over the primary evidence of Beynon. This seems to be a case of teleological reasoning (assuming a conclusion).

- It ignores consistent patterns in evidence arguing incorrectly that Beynon is ambivalent on ownership of the Study Area (he is not) or that his maps are ambiguous on this front (they are not). The claim that Beynon's maps are inconsistent is easily refuted (Table 6). Beynon is an internally consistent source because he is largely a scribe of the *adawx* of Tsimshianic leaders, thus Beynon is consistent because the *adawx* are consistent. Similarly, the inverse would be true, thus any example of errors in Beynon's work have significant implications. The errors the report suggests exist do not exist.
- It misrepresents data from the logs of the *Otter* to argue that the Nine Tribes were not occupying the mouth of the Nass in 1810.
- Internal inconsistencies between data it presents and conclusions it arrives at. Notably, it ignores evidence of Nine Tribes claims to the Study Area even as it purports to summarize the evidence of these claims.
- It misunderstands the history of the house of Txalaxet and does not indicate the likelihood that this house's claims are either an affinal right of privilege via the Gitlaan or derived from the now-extinct Gitwilkseba Tribe, or both.
 - We cannot ignore this evidence, but it is both far in the minority as the only Nisga'a claim to lands and waters of the Study Area that invokes Tsimshianic legal evidence. It is of complex provenance and thus not unambiguous in its validity. Even if it is valid, it is dwarfed by the evidence that the Study Area belonged to the houses of the Nine Tribes.

While other kinds of evidence are of lesser value in determining title in Tsimshianic law, it is notable that the derived sources exclusively associate the Study Area with the Nine Tribes and many of these with exclusive rights held by the Nine Tribes. In addition, patterns of 20th century use consistently locate both use of and claim to the Study Area by people of the Nine Tribes. Studies of contemporary traditional use, practices, and knowledge (Clarke 2013; Menzies 1997; Pacific Northwest LNG 2014; Roth 1997), continue to both 1) invoke Tsimshianic legal principles and 2) reveal continuous use of the Study Area by Nine Tribes people up to today.

Above, I proposed that, based on Tsimshianic legal principles, there were three possibilities for assessing claims of ownership of the Study Area:

1. **It was owned by House Groups from tribes belonging to either Nisga'a or Nine Tribes, or with a boundary line somewhere within, in which the territory up to the boundary was Nisga'a to the northeast and Nine Tribes to the southwest.** This pattern would follow the principle of contiguity discussed above. If this is the case, then the task becomes defining the boundary.
2. **Parts of the area were owned as isolates within the territory of another nation.** This would be unusual and contrary to the pattern of contiguous territory discussed above, but is possible. If this is the case, then the task becomes defining the larger territorial boundary between the Nisga'a and the Nine Tribes and the boundaries of any isolates within one or the other. Presumably, this pattern would confer the regional

ownership of the area to one nation and the isolates around the mouth of the Nass to the other.

3. **There are both issues of title and privilege operating in the region.** In this pattern, the region would be owned by one nation, and the rights of privilege access would have been conferred to the other. In this case we would expect to find evidence of use and residence in the area, but not conferring title rights as a result. Here the task becomes to define who owned the area in question, and who may have had rights there only by privilege.

I find no evidence for Option 2 in any data, and there are no examples of isolates that I am aware of in any of the Tsimshianic territorial patterns. Thus, Option 2 is very unlikely. Unfortunately, colonial isolates were created by the Reserve Commission whose officers did not understand the nature or content of Indigenous territorial ownership, and seemed entirely unaware of the principles (or possibly even the existence) of Tsimshianic law.

Option 3 is possible, but I have found no evidence of any rights of privilege discussed in any of the primary data between the Nine Tribes and the Nisga'a in the Study Area, with one exception. Beynon makes no mention of this except in one instance, that of the Nisga'a house of Txalaxet which appeared to have privilege access rights to the Kwinamass valley through the Gitlaan tribe. I argue (Section 5.6.2) that these disappeared with the Gitwilkseba (Section 5.4.3).

Since there is no evidence, other than settlement locations, of the Gitxaala, Tlingit, or Haida presence in the Study Area, it is probable that these outsider communities did have rights as guests to the area, specifically for trade during the eulachon fishery. None of these communities have *adawx* that detail their legal claim and its history to the Study Area that I am aware of. Ts'bassa of the Gitxaala is recorded as claiming access (see Mitchell and Donald 2001), but it is not clear that this is anything other than a right of privilege. In contrast, Nine Tribes have a consistent, detailed, clear, and repeated claim to the Study Area that has existed for thousands of years. The Nine Tribes' claim is the one that meets the standards of proof applicable under Tsimshianic law, as discussed in Section 5.5.

The most likely model for this issue thus is Option 1: that a boundary line exists between the Nine Tribes and the Nisga'a in the Study Area, with exclusive rights to either held only on each side. Based on the work of Barbeau and Mitchell and Donald, the 2016 Ministry report locates this boundary in the Kwinamass valley. I find the reasoning and sources cited in support of this conclusion weak, lacking detail and without much support in the relevant historical evidence. In contrast, as discussed above, Nine Tribes house groups have an ancient claim that is 1) detailed and connects territory to events in history extending back thousands of years, 2) recorded in all the other primary sources that I have access to, and 3) a conclusion agreed to by most other original analyses and derived sources. For these reasons, in my professional opinion, the Nine Tribes have the only valid claim to ownership of the Study Area in Tsimshianic law, when assessed at 1793, 1846, and today.

Beynon, the principal researcher on this subject, is similarly unanimous on this point: the Study Area belonged to the Nine Tribes, and the relevant boundary was located at the eastern side of Fishery Bay. The 2016 Ministry report misunderstands his analyses and ignores much of his data. I cannot reconcile Barbeau's differing view on this, but it is clear that his analyses is the source for the conclusions of the Ministry's 2016 report and for derived analyses such as Halpin and Seguin (1990) and Mitchell and Donald (2001). Beynon's compilation of data and the quality of his analysis is demonstrably superior to that of Barbeau. Barbeau (along

with Boas and Garfield) themselves relied on Beynon's insight and data for their analyses. Beynon's evidence is also far clearer and more comprehensive than Barbeau's. Both produce maps, but Beynon's (unlike Barbeau's) are connected to detailed and numerous *adawx*. Thus, he must be considered the superior source.

Colonial processes have ignored and interfered with the operation of Tsimshianic law in the Study Area, and purported to award rights and titles based in those colonial processes to the Nisga'a that contradict with Tsimshianic legal principles and contravene Tsimshianic use and ownership patterns that have existed since well before contact. These are likely derived from the missionary and state interests in supporting the mission town of Kincolith, and the subsequent reluctance to acknowledge and correct these colonial errors.

It is clear from this review of much of the key evidence that the scholarship points consistently in one direction: the Study Area was recognized as being the exclusive territory of the Nine Tribes within Tsimshianic law for thousands of years and remains so today. The Nisga'a claim to the Study Area is entirely made through colonial legal avenues, and dates exclusively to after 1867.

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8. Appendix 1: Terms of Reference for Expert Report

1.0 SCOPE OF THE ASSIGNMENT

Metlakatla and Lax Kw'alaams request that you prepare a Report summarizing the available evidence and offering your expert opinion on the issues set out in the "Matters to Consider" below.

Please focus your analysis on the Coast Tsimshian's connection to the lands, waters, and foreshore in the environs of Portland Inlet, Nasoga Gulf, Mylor Peninsula, and the mouth of the Nass River at or near Kincolith, Greenville, and Arrondale (the "**Study Area**").

In this regard, the Study Area has been defined in the context of a proposed sale and transfer of 22,000 ha near the Nasoga Gulf, specifically the lands, foreshore, and submerged lands which lie on and in close proximity to the Mylor Peninsula. Accordingly, please focus on this geographic scope to the extent possible. However, where relevant, and time permitting, please also include in your analysis any evidence about Coast Tsimshian territory, practices, customs or traditions exercised outside of the Study Area.

Please canvass as fully as possible Coast Tsimshian oral history, traditional use and occupation studies, as well as documentary history (such as accounts from early explorers and settlers, historical maps, census records, etc.), archeological, anthropological, historical, and ethnographic sources. You should consider available evidence regarding Coast Tsimshian's perspective on all matters in relation to your Report, including Coast Tsimshian laws and practices related to the "Matters to Consider".

In summarizing available evidence and formulating your opinions please ensure that you specifically address the state of affairs at the date of first contact (at or about 1793), the date of Crown sovereignty assertion (at or about 1846), and the current time (2019), in addition to any culturally/historically relevant time periods that may apply specifically to the Coast Tsimshian and/or the Study Area.

2.0 MATTERS TO CONSIDER

2.1 **Coast Tsimshian historically and today**

You will document information, if it exists, which might demonstrate or raise a reasonable inference as to whether the Coast Tsimshian were a distinct Indigenous group at contact and the assertion of sovereignty, and the relationship of Metlakatla and Lax Kw'alaams to this historic group and its territory.

Such information might include evidence regarding: origin stories; legends or stories relating to mythological/spiritual relationships to the Study Area; language; genealogy; socio-political structure (e.g., land tenure system, laws); place names; archeological or other evidence regarding length of historical presence in the Study Area; the nature of Coast Tsimshian patterns of harvesting and occupation; oral history and documented accounts of first contact; oral history and historical evidence regarding the Coast Tsimshian at the assertion of sovereignty; the relationship of Coast Tsimshian to any other Indigenous cultural, social, or other grouping at that time; and modern Coast Tsimshian population, communities and governance.

2.2 Use and occupation

Please review existing documentary or recorded oral history, archaeological, anthropological, historical, ethnographic and other relevant sources with a view to providing your findings, opinions, and conclusions in relation to the following questions:

1. Did Coast Tsimshian regularly use and occupy lands and waters in the Study Area as of, and prior to, the assertion of sovereignty? If so, please describe, with specific reference to the relevant factual basis:
 - (a) the location, nature, intensity, and frequency of Coast Tsimshian use of lands and waters in the Study Area as of, and prior to, the assertion of sovereignty, and
 - (b) whether, and if so how, Coast Tsimshian communicated to third parties that it used the lands and waters in the Study Area for its own purposes as of, and prior to, the assertion of sovereignty.

Regular use could include, for example, permanent or semi-permanent village or camp sites, territorial markings, agriculture-related activities, burial grounds, cycles or patterns of residential moves and associated resource harvesting and/or mining activities, routes (and modes) employed to travel via lands and waterways, any other use of lands or waters for fishing, hunting, trapping, or otherwise exploiting resources, and internal legal orders relating to governance and decision-making over resource management and/or stewardship in the Study Area.

2. Did Coast Tsimshian interact with third parties in relation to the lands and waters identified in 1(a) as of, and prior to, the assertion of sovereignty? If so, please describe, with specific reference to the relevant factual basis, whether Coast Tsimshian had the intention and capacity to exclude third parties from the Study Area as of, and prior to, the assertion of sovereignty.
 - Examples of such exclusion(s) and/or capacity to exclude could include:
 - instances where third parties were actually excluded or expelled from lands and waters in the Study Area;

- acts of military defense (e.g. documented battles, defensive installations, etc.);
- cultural markings (including, without limitation, culturally-modified trees, cairns or other man-made landmarks, and/or pictographs)
- where access by third parties may have been allowed, whether rules or protocols would have applied to such access (i.e. were others only allowed to access the lands or waters with Coast Tsimshian's permission according to Coast Tsimshian or other laws or protocols); and
- examples of requests by third parties to access the Study Area that were granted or refused by the Coast Tsimshian.

In providing your answer in this section, please reference any relevant surrounding factual context relating to the Study Area, including the characteristics of Coast Tsimshian, the nature of and/or actions taken by other groups in the Study Area, and the characteristics of the lands and waters in the Study Area.

3. Do the Coast Tsimshian still use the lands and waters identified in 1(a)? If so, please describe, with specific reference to that context and the relevant factual basis, whether and to what extent the following exist in the Study Area:
 - the location of modern Coast Tsimshian communities;
 - the location of modern Coast Tsimshian harvesting or other traditional activities;
 - modern Coast Tsimshian governance, resource management, and/or stewardship activities; and
 - travel via traditional routes and modes;

2.3 Coast Tsimshian harvesting, governance, stewardship, and cultural practices

Please review existing documentary and recorded oral history, archaeological, anthropological, historical, ethnographic and other relevant sources with a view to providing your findings, opinions, and conclusions as to:

1. whether and to what extent Coast Tsimshian carried out the following practices in the Study Area as of, and prior to, contact with Europeans:
 - (a) Harvesting and processing of fish, shellfish, animals, birds, plants (including medicinal plants), and any other marine resources. In each instance,

identify and, with reference to the relevant factual basis, explain whether such harvesting was for subsistence, trade, and/or ceremonial purposes;

- (b) Regulation, management, stewardship, and/or decision-making by Coast Tsimshian over specific matters or resources, in relation to members of Coast Tsimshian and/or third parties; and
 - (c) Any other important cultural practices;
2. The extent to which the practices described in a) were important or integral elements of Coast Tsimshian's culture before, at, and after first contact with Europeans (in the sense that each practice contributed to Coast Tsimshian's overall distinctiveness as a culture, and made them who they were);
 3. The extent to which such practices continue today and if so, whether and to what extent they occur in a different manner, form, and/or with different method(s); and
 4. To the extent such practices do not continue, the probable reason(s) for same.

This section, while separate from section 2.2, may recast, reference and draw upon your findings, opinions, and conclusions in section 2.2, to the extent it is relevant and appropriate to do so.

3.0 Conclusions

Please explain and document your conclusions in a structure that corresponds to the above questions and issues.

Please also provide a comprehensive list of sources cited to accompany your Report.

9. Appendix 2: Martindale C.V.

THE UNIVERSITY OF BRITISH COLUMBIA

Curriculum Vitae for Faculty Members

Date: April 2019

1. **SURNAME:** Martindale **FIRST NAME:** Andrew **Initials:**
MIDDLE NAME: Roger
2. **DEPARTMENT/SCHOOL:** Anthropology
3. **FACULTY:** Arts
4. **PRESENT RANK:** Associate Professor **SINCE:** 2011
5. **POST-SECONDARY EDUCATION**

University or Institution	Degree	Subject Area	Dates
University of Toronto	Ph.D.	Anthropology	1999
Trent University	M.A.	Anthropology	1994
University of Toronto	B.A.	Anthropology/ Microbiology	1991

Title of Dissertation and Name of Supervisor

1999: Ph.D. Dissertation:

The River of Mist: Cultural Change in the Tsimshian Past. Supervised by Gary Coupland, Professor, Department of Anthropology, University of Toronto.

6. EMPLOYMENT RECORD

(a) At UBC

Rank or Title	Dates
Associate Professor	July 2011
Assistant Professor	July 2005

(b) Prior to tenure-track appointment at UBC

University, Company or Organization	Rank or Title	Dates
Department of Anthropology, McMaster University, Hamilton, ON	Assistant Professor (non Tenure-track)	September 2000 to June 2005
Department of Anthropology, McMaster University, Hamilton, ON	Post-doctoral Fellow and Sessional Lecturer	September 1998 to August 2000
Department of Anthropology, University of Toronto	Teaching Assistant	September 1994 to July 1998

University, Company or Organization	Rank or Title	Dates
Department of Anthropology, University of Toronto, Northwest Coast Household Archaeology Project (Dr. G. Coupland, Director)	Researcher	September 1994 to July 1998
NC Press Limited, Toronto, ON	Managing Director and Senior Editor	May 1993 to August 1994
Department of Anthropology, Trent University	Teaching Assistant	September 1991 to April 1993

(c) ***Date of granting of tenure at U.B.C.: July 1, 2011.***



(d) ***Concurrent positions:***

2016- 2017	Director, UBC's Laboratory of Archaeology.
2014 onward	Director, Canadian Archaeological Radiocarbon Database, UBC and CMC.
2012 onward	Faculty Associate, Peter Wall Institute for Advanced Studies, UBC
2012-2013	Early Career Scholar, Peter Wall Institute for Advanced Studies, UBC
2005-2015	Adjunct Associate Professor, McMaster University

7. LEAVES OF ABSENCE

University, Company or Organization at which Leave was taken	Type of Leave	Dates
UBC	Parental	Jan 4/09 - March 30/09
UBC	Research	Jan 1/12 – July 1/12
UBC	Medical (50%)	Jan 01/18- December 31/18
UBC	Research	Jan01/19-July 1/19

8. TEACHING

(a) ***Areas of special interest and accomplishments***

The areas of my teaching focus include Northwest Coast archaeology; archaeology and indigenous oral records; theories of political economy and its material expression; origins and institutionalization of socio-economic and political inequality; culture-contact and colonialism; theories of agency and structuration; archaeology and warfare; early and mid-Holocene settlement of the Pacific Coast. I have developed and run Archaeological Lab Night, a networking facility for students, faculty and guests to collaborate on research projects. With Sue Rowley (UBC) and Leona Sparrow (Musqueam), I have developed the Musqueam-UBC Field School Project, a platform for Musqueam-UBC rapport that facilitates the department's archaeological field class and is a platform for other joint project, such as graduate research. In 2008 we

received a \$70,000 Teaching and Learning Education Fund (UBC) grant to purchase ground penetrating radar equipment to assist the Musqueam in locating unmarked graves. In 2014 I became the Director of the Canadian Archaeological Radiocarbon Database, the leading national repository for archaeology.

(b) Courses Taught at UBC (Last 5 years)

Regular Courses

Session	Course Number	Hours/Week	Class Size	Hours Taught
W2017	ARCL 406 (3)	3	11	39
	ARCL 203 (3)	3	25	39
W2016	ANTH 300 (3)	3	50	39
	ARCL 305 (3)	3	22	39
	ARCL 406(3)	3	8	39
W2015	ANTH 300 (3)	3	50	39
	ARCL 305 (3)	3	22	39
	ARCL 430(3)	3	20	39
W2014	ANTH 300 (3)	3	50	39
	ARCL 305 (3)	3	13	39
	ANTH 506 (3)	1.5	10	39
	ANTH 406 (3)	3	12	39
W2013	ANTH 300 (3)	3	35	39
	ANTH 305 (3)	3	35	39
	ANTH 506 (3)	1.5	16	39
W2012	ANTH 300 (3)	3	35	39
	ANTH 305 (3)	3	35	39
	ANTH 506 (3)	1.5	7	39
W2011	ANTH 103 (3)	3	175	39
	ANTH 300 (3)	3	35	39
W2010	ANTH 103 (3)	3	150	39
	ANTH 406 (3)	3	12	39
S2010	ANTH 306 (6)	35	12	210*
W2009	ANTH 406 (3)	3	24	39
	ANTH 103 (3)	3	150	39
S2009	ANTH 306 (6)	35	14	210*
S2008	ANTH 306 (6)	35	15	210*
W2007	ANTH 420A (3)	3	20	39
	ANTH 103 (3)	3	185	39
	ANTH 300 (3)	3	45	39
S2007	ANTH 306 (6)	35	17	210*
W2006	ANTH 500 (3)	3	20	39
S2006	ANTH 306 (6)	35	14	210*

Session	Course Number	Hours/Week	Class Size	Hours Taught
				* 6 week field course

Directed Reading and Undergraduate Honours Courses

Session	Course Number	Hours/Week	Class Size	Hours Taught Thesis Title
W2017-18	Anth 545	3	3	Tsimshian Archaeology
S2016	Anth 433	3	1	39 / NWC Archaeology: Artifact Taxonomies
S2016	Anth 433	3	1	39 / NWC Archaeology: Zooarchaeological methods and results.
W2014	Anth 433	3	1	39 / NWC Marine Coastal Geomorphology
W2014	Anth 449A (6) Mariko Adams	3	1	39 / NWC Zooarchaeology via Augering
W2010	Anth 545	3	2	39 / GPR Analysis
S2009	Anth 545	3	1	39 / NWC Archaeology
W2007	Anth 433	3	4	39 / NWC Archaeology
	Anth 449A (6): Bryn Letham	3	1	Using Percussion Coring to Explore the Developmental Sequence of a Large Northern Northwest Coast Shell Midden
W2006	Anth 545A	3	1	39 / Archaeological Methods
	Anth 545B	3	5	39 / Material and Identity
	Anth 433	3	4	39 / NWC Archaeology
W2005	Anth 545A	3	2	3 / NWC Archaeology

(c) Graduate Student Supervised or Co-Supervised

Student Name	Program Type	Year Start	Year Finish	Principal Supervisor	Committee
Raini Bevilacqua	MA	2017		Martindale	Miller
Eric Simons	PhD	2017		Martindale	Wylie, Miller
Eric Guiry	PostDoc	2016	2018	Martindale	
Thomas Brown	PhD	2016		Martindale	
Timothy Allen	MA	2016	2018	Pokotylo/ Martindale	
Jonathan Duelks	MA	2016		Martindale	

Student Name	Program Type	Year		Principal Supervisor	Committee
		Start	Finish		
Tatiana Nomokonova	PostDoc	2012	2014	Martindale	
Bryn Letham	PhD	2012	2017	Martindale	Ames, Zichun
Chris Arnett	PhD	2010	2016	Martindale	Miller, Blake
Iain McKechnie	PhD	2008	2013	Martindale/ Blake	Miller
Naomi Smethurst	MA	2009	2014	Menzies	Martindale
Kyla Hynes	MA	2008	2011	Martindale	Rowley
Steve Daniel	MA	2008	2015	Martindale	Rowley
Marina La Salle	MA	2006	2008	Martindale	Rowley
Angela Ruggles	MA	2006	2008	Martindale	Wyndham

(d) Graduate Student Committees

Student Name	Program Type	Year		Principal Supervisor	Co-Supervisor(s)
		Start	Finish		
Eric Guiry	PhD	2013	2016	Richards	
Ale Diaz	PhD	2010		Richards	
Mindi Ogden	MA	2011	2014	Rowley	
Jason Woolman	PhD	2016	Withdrawn	Rowley	
Peter Merchant	PhD	2012		Blake	
Sacha Wilke	MA	2009	2013	Blake	
Kisha Supernant	PhD	2005	2011	Blake	
Natalie Brewster (McMaster)	PhD	2005		Cannon	
Tamar Scoggin	PhD	2008	2014	Barker	
Peter Merchant	MA	2009	2012	Blake	
Lisa Dojack	MA	2009	2012	Blake	
Josi Mata	MA	2007		Blake	
Christine Cluney (McMaster)	MA	2005	2007	Cannon	
Paul Ewonus (McMaster)	MA	2005	2007	Cannon	
Emily Dean	MA	2005	2009	Pokotylo	

(e) Visiting Professor (indicate university/organization and dates)

(f) Other

- Founder and coordinator, Archaeological Lab Nights, a weekly drop-in for faculty and students to conduct lab-based research.

- Bi-annual presentations at Musqueam 101 from 2007-2010, UBC's outreach program to the Musqueam First Nation. Presentations focus on ANTH 306 (field school) results and proposed research (see below).
 - Developed NWC archaeological wiki (currently being reposted in WordPress).
 - Founder, Laboratory of Archaeology's Archive of Analytical Templates.
 - Founder, Laboratory of Archaeology's Digital BC Flora Image Archive.
- 2011 Guest Lecture, Anthropology 517—Legal Issues in Archaeology. Instructor: Michael Blake.
- 2010, 2011 *Archaeology*. Presentation to Museum of Anthropology Volunteers.
- 2011 Guest Lecture, Anthropology 300—NW Coast Archaeology, Dept. of Archaeology, SFU. Instructor: Dana Lepofksy. March.
- 2006 *Current Archaeological Research in Tsimshian Territory*. Public Presentation, Museum of Northern BC. July.
- 2006 Guest Lecture, Anthropology 300—NW Coast Archaeology, Dept. of Archaeology, SFU. Instructor: Dana Lepofksy. November.
- 2006 Guest Lecture, Anthropology 534—Graduate Seminar in Public Archaeology. Instructor: Julie Hollowell. November.
- 2006 Guest Lecture, Anthropology 200—Archaeology of the New World, Dept. of Anthropology, Portland State University. Instructor: Kenneth Ames. October.

9. SCHOLARLY AND PROFESSIONAL ACTIVITIES

(a) *Areas of special interest and accomplishments*

- (i) North American archaeology (Northwest Coast British Columbia, settlement patterns, economics, social organizations).
- (ii) Archaeology and indigenous oral records.
- (iii) Colonialism and culture contact (European-Indigenous interaction, historical archaeology, political economy)
- (iv) Theories and causal explanations of culture change including dialectical materialism, agency-structure modeling, identity construction and its expression in material patterns.

The over-arching focus of my research has and continues to be a more accurate historical understanding of the archaeological past. While this has focused on the northwest coast and on Tsimshian territory specifically, this work has methodological and interpretive significance beyond this area. This research ambition has lead me in 2 methodological directions and along an increasingly anthropological and philosophical theoretical trajectory. In the former, I have 1) sought ways to evaluate the links between archaeological data and indigenous oral records and 2) developed

new methods for increasing the empirical capacities and quantifiability of archaeological methods. In the latter, if have built from a base in dialectical materialism toward a social theory of materiality; increasingly I am using the work of philosopher Paul Ricouer to help chart the manner in which we collectively form history from memory.

(b) Research or equivalent grants (indicate under COMP whether grants were obtained competitively (C) or non-competitively (NC))

(i) Large Research Grants

Granting Agency	Subject	COMP	\$ Total	Years	Principal Investigator(s)	Co-Investigator(s)
SSHRC	Cartographies if Deep Time: Explaining Tsimshian History through Archaeological, Environmental, and Oral Records	C.	\$392,542	2018-22	Andrew Martindale	Kisha Supernant, Eric Guiry, Susna Marsden, Ken Ames, Bryn Letham
UBC VPRI	Research Facility Support Grant	C.	\$50,000	2017-18	Andrew Martindale	Patricia Ormerod
UBC VPRI	Indigenous/Science Research Cluster Grant	C.	\$100,000	2018	Andrew Martindale, Jessica Metcalfe, Rhy McMillan, Eric Simons, Dominique Weis, Alison Wylie	
UBC Faculty of Arts, Deans Innovation Fund Award	ANTH 406: Musqueam Archaeology	C.	\$15,000	2013	Andrew Martindale	Sue Rowley, Leona Sparrow
NSF	Settlement pattern dynamics and the evolution of social complexity on the northern Northwest Coast	C.	\$179,671	2012-2014	Kenneth Ames, Andrew Martindale	Kevan Edinborough

Granting Agency	Subject	COMP	\$ Total	Years	Principal Investigator(s)	Co-Investigator(s)
SSHRC	The Development of a Hunter-Fisher-Gatherer Polity: The archaeology and history of the Tsimshian village complex at Prince Rupert Harbour	C.	\$200,150	2011-2014	Andrew Martindale	Kenneth M. Ames, David Archer, Aubrey Cannon, Susan Marsden
Martha Piper Fund (UBC)	Valuing the Human Dimension of Fisheries	C.	\$25,000	2010	Tony Pitcher	Mimi Lam, Andrew Martindale, Ronald Trosper, Rashid Sumaila
SSHRC	Laxyuup Gitxaala: Gitxaala territory through an archaeological and anthropological lens	C.	\$164,000	2010-2013	Charles Menzies	Caroline Butler, Andrew Martindale, Michael Richards,
TLEF (UBC)	Searching for Ancestors: Adding a GPR (Ground Penetrating Radar) Module to the Musqueam-UBC Archaeological Field School Project.	C.	\$70,000	2008-2009	Andrew Martindale	Sue Rowley, Leona Sparrow, Hector Williams, Steve Daniel
Hampton (UBC)	Collecting Ts'msyen Adawx (Oral Traditions) to Examine the History of their Transmission.	C.	\$18,340	2007-2009	Andrew Martindale	
SSHRC Research Grant Regular Grant	Dmsayt 'nmoomdm: Facing poverty and homelessness through customary Ts'msyen practices.	C.	\$211,175	2006-2008	Charles Menzies	Caroline Butler, Felice Wyndham, Andrew Martindale

Granting Agency	Subject	COMP	\$ Total	Years	Principal Investigator(s)	Co-Investigator(s)
SSHRC Research Grant Regular Grant	Isotopic and trace element determination of seasonal shellfish gathering and resource management strategies on the northwest coast.	C.	\$85,139	2006-2008	Darren Gröcke	Aubrey Cannon, Andrew Martindale
SSHRC Research Grant Regular Grant	Comparing Tsimshian Archaeology and Oral Records.	C.	\$230,000	2005-2008	Andrew Martindale	
McMaster Learning and Technology Resource Centre	Construction of Undergraduate Student Research Web-based Database	C.	\$15,000	2003	Andrew Martindale	
SSHRC Research Grant Regular Grant New Scholar	Origins of Tsimshian Social Complexity.	C.	\$70,000	2000-2002	Andrew Martindale	
BC Heritage Trust Research Grant	Interior Settlement Patterns of the Tsimshian.	C.	\$15,000	1997	Andrew Martindale	

(ii) Small Research Grants

Granting Agency	Subject	COMP	\$ Total	Years	Principal Investigator	Co-Investigator(s)
Peter Wall Institute for Advanced Studies Workshop Grant	Geological and Archaeological Explorations along the Pacific Margin of North America	C.	\$6000	2017	Andrew Martindale, Rhy McMillan, Dominique Weis	
Faculty of Arts International Conference Travel Grant	Canadian Archaeological Radiocarbon Database	C.	\$2000	2015	Andrew Martindale	

Granting Agency	Subject	COMP	\$ Total	Years	Principal Investigator	Co-Investigator(s)
	Canadian Archaeological Radiocarbon Database	C.	\$3500	2015	Andrew Martindale	
UBC, Arts Undergraduate Research Award	NWC Settlement History/CARD	C.	\$4200	2015	Andrew Martindale	
	Web-based Spatial Data Management and Dissemination Platform	C.	\$2000	2015	Andrew Martindale	
Golder Associates	Canadian Archaeological Radiocarbon Database	N.	2500	2015	Andrew Martindale	
UBC, Faculty of Arts ISIT Grant	Development of Web-based Databases for student research	C.	\$4600	2005-2006	Andrew Martindale	
UBC, Office of External Affairs	Publication of the Musqueam-UBC Archaeological Teaching Kit	N.	\$2,250	2009	Andrew Martindale	
UBC, Arts Undergraduate Research Award	Analysis of Musqueam Archaeology Archival Data	C.	\$8580	2008	Andrew Martindale	Steve Daniel, Lisa Johannesen, Laura Rock
UBC, Faculty of Arts ISIT Grant	Development of Web-based Databases for student research	C.	\$4600	2005-2006	Andrew Martindale	
McMaster Experiential Education Initiative	Update to Undergraduate Student Research Web-based Database	C.	\$1250	2004	Andrew Martindale	

Granting Agency	Subject	COMP	\$ Total	Years	Principal Investigator	Co-Investigator(s)
McMaster Undergraduate Student Research Award	Spatial Database of the Interior Tsimshian	C.	\$5000	2004	Brian Pritchard	Andrew Martindale
McMaster Undergraduate Student Research Award	Materials Analysis of the Post-Contact Tsimshian	C.	\$5000	2002	Irena Jurakic	Andrew Martindale
McMaster Centre for Leadership in Learning	Multimedia in Undergraduate Course Development	C.	\$870	2002	Andrew Martindale	
McMaster Centre for Leadership in Learning	Laboratory Teaching Component to Undergraduate Course	C.	\$930	2002	Andrew Martindale	
Museum of Northern BC Research Grant	Radiocarbon Dating of Interior Tsimshian Sites	N.	\$1500	2001	Andrew Martindale	
University of Toronto Alumni Research Travel Grant	Doctoral Research	C.	\$1200	1997	Andrew Martindale	

(c) **Research or equivalent contracts (indicate under COMP whether grants were obtained competitively (C) or non-competitively (NC)).**

Granting Agency	Subject	COMP	\$ Total	Years	Principal Investigator	Co-Investigator(s)
Metlakatla Indian Band	New World Port Expansion	N.	\$1,000	2008	Andrew Martindale	

(d) Invited Presentations:

- 2018 Framing Archaeological Knowledge in Academic and Legal Contexts. Invited presentation at the Musqueam Indian Band's Archaeological Training Program. Musqueam.
- 2017 Stories of the Ghost People: European-Indigenous Contact on the Northwest Coast of North America. Invited paper at *Power, Political Economy and Historical Landscapes of the Modern World: Interdisciplinary Perspectives*. The Ferdinand Braudel Center for the Study of Economies, Historical Systems, and Civilizations, Binghamton University.
- 2017 *Archaeology, Oral Records, and the Law*. University of Victoria Department of Anthropology Colloquia Series.
- 2017 UBC Faculty of Arts Pecha Kucha for President Ono.
- 2017 Archaeology, Oral Records, Databases and Heritage Management. Metlakatla Heritage Conference. Prince Rupert. BC.
- 2016 *An Unintended Global Project: The transformation of the Canadian Archaeological Radiocarbon Database (CARD)*. Pixilating: A Digital Humanities Mixer, UBC.
- 2015 *The Impossible Endeavour: Methodological Issues in Pacific Northwest Coast Archaeology*. "From Stone to Screen" Instructional Skills Workshop, Classics, Near Eastern and Religious Studies, UBC.
- 2015 *Territory and the Field: Research Strategies for Recognizing Indigenous Lands*. Department of Geography Colloquium Series, UBC.
- 2014 *A Line in Time: archaeological evidence of Tsimshian narratives of the "War with the Tlingit."* Simon Fraser Department of Archaeology Graduate Seminar Series, October 2.
- 2014 *The Vulnerability of Archaeological Logic in Aboriginal Rights and Titles Cases in Canada: theoretical and empirical implications*. Vancouver Island University Department of Anthropology, Archaeological Society of British Columbia, Vancouver Island University Anthropology Student Club. March.
- 2013 *The Vulnerability of Archaeological Logic in Aboriginal Rights and Titles Cases in Canada*. Wall Hour Talk. Peter Wall Institute for Advanced Studies, Department of Anthropology Colloquia Series, UBC. October.
- 2011 *Archaeology taken to court: unraveling the epistemology of cultural tradition in the context of aboriginal title cases*. Department of Anthropology, University of Victoria Colloquium Series. February.
- 2007 (with Wayne Point) *Musqueam-UBC Archaeological Field School Project: 1967-2007*. Archaeological Society of British Columbia. October.
- 2006 *Archaeological uncertainty about causality in agency and structure: Translation between anthropological and Tsimshian worlds*. Paper presented at the Anthropology Colloquium Series, Simon Fraser University. November
- 2006 *Inter-disciplinarity vs. Multi-disciplinarity in the Archaeology of the Dundas Islands*. Paper presented at the Anthropology Colloquium Series, Portland State University. October.

1994 *Formative Developments in Northern Chile*. Paper presented at the Glendon Public Lecture Series in Archaeology, York University, Toronto. March

(e) Other Presentations

- 2017 Andrew Martindale, TJ Brown, R. Johnson, Konrad Gajewski, Michelle Chaput, Pierre Vermeersch and Carley Crann). Building a Global 14C Database. IN "Frison Institute Symposium: The Future of "Big Data" in Archaeology. Symposium organized by E. Robinson, R. Kelly, and N. Naudinot. Society for American Archaeology Annual Meeting, Vancouver
- 2017 (Susan Marsden and Andrew Martindale). The Challenges and Benefits of Comparing Archaeological and Oral Records. IN "Tsimshian Archaeology: 50 years of Research and 10,000 Years of History." Symposium organized by A. Martindale, B. Letham, and R. Mahli. Society for American Archaeology Annual Meeting, Vancouver.
- 2017 (Kenneth M. Ames and Andrew Martindale). An Archaeological Test of a Settlement Pattern Shift Recorded in Tsimshian Oral Records. IN "Tsimshian Archaeology: 50 years of Research and 10,000 Years of History." Symposium organized by A. Martindale, B. Letham, and R. Mahli. Society for American Archaeology Annual Meeting, Vancouver.
- 2017 (Thomas Brown, Kevan Edinborough, Andrew Martindale and Kenneth M. Ames). A Radiocarbon Test for Significant Demographic Events in Written and Oral History. IN "Tsimshian Archaeology: 50 years of Research and 10,000 Years of History." Symposium organized by A. Martindale, B. Letham, and R. Mahli. Society for American Archaeology Annual Meeting, Vancouver.
- 2017 (Bryn Letham, Andrew Martindale, Kisha Supernant and Kenneth M. Ames). A Tale of Two Villages: Exploring the Role of Villages with Massive Shell Accumulations as Anthropogenic Coastline Modifications in Prince Rupert Harbour. IN "Tsimshian Archaeology: 50 years of Research and 10,000 Years of History." Symposium organized by A. Martindale, B. Letham, and R. Mahli. Society for American Archaeology Annual Meeting, Vancouver.
- 2017 (Andrew Martindale, TJ Brown, R. Johnson). Protocols and Problems in Building a Global 14C Database. UBC Archaeology Day 2017.
- 2016 The Politics of Art and the Art of Politics: The Story of Ligeex and the Tyee and Red Bluff Pictographs. Nlaka'pamux Rock Art Conference. Organized by C. Arnett.
- 2016 (Bryn Letham, Andrew Martindale, Kenneth M Ames). An Archaeological Survey of Mid-Holocene Paleaoshorelines around Prince Rupert Harbour, British Columbia. Canadian Archaeological Association 49th Annual Meeting, Whitehorse.
- 2016 (Andrew Martindale, Bryn Letham, Kenneth M. Ames, Kevan Edinborough, Sarah Wilson). Midden Accumulation Rates in Prince Rupert Harbour: New Applications for Percussion Coring. Terraforming and Monumentality in Hunter-Gatherer-Fisher Landscapes (Chairs: Colin Grier and Margo Schwadron). Society for American Archaeology Annual Meeting, Orlando.

- 2016 (Kenneth M. Ames, Kisha Supernant, Andrew Martindale, Susan Marsden, Bryn Letham, Corey Cookson). A Hunter-Gatherer-Fisher Urban Landscape in Prince Harbour, British Columbia? Terraforming and Monumentality in Hunter-Gatherer-Fisher Landscapes (Chairs: Colin Grier and Margo Schwadron). Society for American Archaeology Annual Meeting, Orlando.
- 2016 (Andrew Martindale, Mark Guerin, Patricia Ormerod, Jacob Jones, Leona Sparrow). *Uncovering the Collected and Archived Power of Archaeology*. Society for Applied Anthropology 76th Annual Meeting, Vancouver.
- 2016 (Jillian Harris, Alex Maas, Kirsti Bowie, Steve Daniel, Andrew Martindale). *Finding the Missing: Combining Indigenous Knowledge, Archival Research, and Archaeology at the Kuper Island Indian Residential School*. Society for Applied Anthropology 76th Annual Meeting, Vancouver.
- 2015 (Kenneth Ames, Andrew Martindale, Kevan Edinborough, Kisha Supernant and Bryn Letham). Dating Pacific Period Settlement Pattern Dynamics in the Prince Rupert Harbour Region of Northern British Columbia. Society for American Archaeology 80th Annual Meeting. San Francisco.
- 2015 (Emily Shepard, Kisha Supernant, Kenneth M. Ames and Andrew Martindale). Changing House Forms on the Northwest Coast of North America. Society for American Archaeology 80th Annual Meeting. San Francisco.
- 2015 (Andrew Martindale, Matthew Betts, Michael Blake, Nicholas Jakobsen and Ryan Wallace). The Revival of the Canadian Archaeological Radiocarbon Database (CARD). Society for American Archaeology 80th Annual Meeting. San Francisco.
- 2015 *A Line in Time: archaeological evidence of Tsimshian narratives of the "War with the Tlingit."* Musqueam 101.
- 2014 *A Line in Time: archaeological evidence of Tsimshian narratives of the "War with the Tlingit."* Portland State University Guest Lecture.
- 2014 *Cans of Worms: Explanation in Tsimshian Archaeology*. In the session, "Advancing Theory and Interpretation in a 21st Century Pacific Northwest Archaeology. Society for American Archaeology 79th Annual Meeting. Austin.
- 2014 (Bryn Letham, Andrew Martindale, Kenneth Ames and Kisha Supernant). *Kitandach (GbTo-34) Revisited: Using Percussion Coring to Explore a Large Shell-Bearing Site in the Prince Rupert Harbour, British Columbia, Canada*. In the poster session, "Alaska and the Northwest Coast. Society for American Archaeology 79th Annual Meeting. Austin.
- 2014 (Andrew Martindale and Patricia Ormerod) Research and Outreach at UBC's Laboratory of Archaeology in 2014. British Columbia Archaeology Forum, Nanaimo.
- 2013 *Quantification of Village Patterns in Tsimshian Territory*. In *The Coast is Clear: Papers in honour of Kenneth M. Ames*. Society for American Archaeology 78th Annual Meeting. Honolulu.
- 2013 *Serious Consequences: The Vulnerability of Archaeological Logics in Aboriginal Rights and Titles Cases*. In *Community-Oriented Archaeology*. Canadian Archaeological Association 46th Annual Meeting. Whistler.

- 2013 *Archaeology in Aboriginal Rights and Titles Cases in Canada: an evaluation of R. v Lax Kw'alaams and its antecedents.* Musqueam 1010, UBC.
- 2013 (Corey Cookson, Kisha Supernant, Andrew Martindale) *An Analysis of Site Selection Behaviors and Landscape Use in the Prince Rupert Harbor Area.* Society for American Archaeology 78th Annual Meeting. Honolulu.
- 2012 (with Kisha Supernant). *Beyond Coloured Pencils: GIS Applications in Holocene Archaeology on the Northwest Coast.* UBC GIS Users Group Lecture.
- 2010 (Mimi E. Lam, T.J. Pitcher, D. Harris, A. Martindale, E. Pakhomov, I. Perry, and R.L. Trosper). *Reconstructing the Salish Sea: Linking Historical Ecology and Future Policy with Local Communities.* Paper presented in the invited symposium, "Revolutionary Ecology: Multidisciplinary and Multimedia Approaches to Cooling the Planet" at the 95th Ecological Society of America Annual Meeting, Pittsburgh, August 2010.
- 2010 (Nadine Hallmann, Bernd R. Schone, Meghan Burchell, Kazushige Tanabe, G.V. Irvine, Aubrey Cannon, T. Miyaji, and Andrew Martindale). *Reconstruction of North Pacific Holocene climate using marine bivalves from shell midden deposits.* Poster presented at the 2nd International Sclerochronology Conference, Mainz, German, July 2010.
- 2010 (Meghan Burchell, Nadine Hallmann, Bernd R. Schone, Andrew Martindale, and Aubrey Cannon, and Henry P. Schwarcz). *Methods and Implications for Improving Seasonality Estimates at Shell Midden Sites: A Case Study from British Columbia using High-resolution Isotope Sclerochronology.* Paper presented at the Canadian Archaeological Association 43rd annual conference. Calgary.
- 2010 (Steve Daniel and Andrew Martindale). *Old and New Contexts for Application of Ground Penetrating Radar in Archaeology - UBC Anthropology.* Paper presented at 2010 UBC Archaeology Day, Vancouver.
- 2010 (Steve Daniel and Andrew Martindale) *Kwantlen Ancestral (Re)Connections: Ground Penetrating Radar for Kwantlen First Nation.* Paper presented at 8th Annual 2010 Kwantlen Anthropology Conference, Surrey.
- 2008 (Andrew Martindale and Bryn Letham) *Subsurface Mapping of Shell Midden Components through Percussion Coring: Examples from the Dundas Islands.* In the Invited Symposium, Current and Future Directions in Shell Midden Research. Society for American Archaeology Annual Conference, Vancouver. March.
- 2008 (Andrew Martindale and Bryn Letham) *Regional Settlement and Culture History of the Dundas Islands.* In the Working Group, Pacific North Coastal Archaeology: A discussion of new Holocene data. Society for American Archaeology Annual Conference, Vancouver. March.
- 2007 *Archaeological Discoveries in Tsimshian Worlds.* Invited paper presented at the Department of Anthropology, UBC Colloquium series and the Forest and Oceans for the Future lecture series. February.
- 2007 *Relict Shorelines and Archaeological Prospection on the Continental Hinge of North Coastal British Columbia.* Duncan McLaren (University of Victoria), Quentin Mackie (University of Victoria), Daryl Fedje (Parks Canada), Andrew Martindale

(University of British Columbia), and David Archer (NWCC). Society for American Archaeology. 2007, Austin. March.

- 2006 *Fragmented Reflections of Identity: Expedient Glass Tools from a Post-Contact Tsimshian Village*. Northwest Anthropological Conference (Seattle) in the Symposium Northwest Native Cultural Persistence and Change in the Post-Contact Period: Insights from Archaeological and Material Culture Studies. April.
- 2005 *Continual Contact in the Middle Period of the Northern Northwest Coast*. Paper presented at the CAA Conference in the Symposium, "Cedar, Salmon and Slaves: Local Perspectives on Long-term Cultural Change on the Northwest Coast. May.
- 2004 *Defining Colonial "Entanglements" in the Historical Archaeology of the Northern Tsimshian*. Paper presented at the OAS/ESAF Conference in the Symposium in honour of Marti Latta. Pat Reed, Organizer. November.
- 2004 *Material Dynamics among the Post-contact Tsimshian*. Paper presented at the SAA Conference in Montreal in *Indigenous Communities and Households in the Wake of European Contact and Colonization*. March.
- 2003 *The Changing Role of European Objects in Tsimshian Communities*. Paper presented at the Canadian Archaeological Association conference, Hamilton, Ontario in the symposium, *The Historical Archaeology of Indigenous Peoples*. May
- 2002 *Oral Records and Archaeological Landscapes in the Post-contact Era*. Invited paper presented at the Ontario Archaeological Society, Hamilton Chapter. April.
- 2002 *Implications of the Supreme Court's Delgamuukw Decision for Understanding Canadian History*. Paper presented at the McMaster Anthropology Society Symposium. February.
- 2002 *Methodological Issues in the Use of Oral Records in Archaeology: Locating Settlement Patterns in Myth*. Invited paper presented at the Canadian Archaeological Association Annual Conference, Ottawa, Ontario. May.
- 2002 *Oral Records and Archaeological Landscapes in the Post-contact Era*. Invited paper presented at the Ontario Archaeological Society, Hamilton Chapter. April.
- 2002 *The History of an Aesthetic of Frugality in the Post-Contact Era*. Invited paper presented at the Annual Meeting of the Archaeological Institute of America, Ontario Chapter, Brock University. February.
- 2001 *Tsimshian-European Interaction in the Proto-contact Period: Archaeological Evidence of Resistance to Acculturation* Paper presented at the Canadian Archaeological Association Annual Conference, Banff, Alberta. May.
- 2000 *The Origins of Tsimshian Settlement Patterns*. Paper presented at *Households and Communities on the Northwest Coast: Recent Research Results*. Session held at the Canadian Archaeological Association conference, Ottawa, Ontario. May.
- 2000 *Defining the Proto-contact Period: Tsimshian-European Interaction in the 19th Century*. Invited paper Presented at the Annual Meeting of the Archaeological Institute of America, Ontario Chapter, McMaster University. May.

- 1999 *Archaeological Stories of the Past*. Paper presented at *Indigenous Oral Traditions and Anthropology: Parallel Visions of Culture*. Session and Panel Discussion held at the CASCA conference, Quebec City. May.
- 1999 *The Tsimshian Household: Shifting Foundations Through the Contact Period*. Paper presented at the Society of American Archaeologists conference, Chicago, in the Symposium: *North Pacific Coast Household Production*. March.
- 1999 *Archaeology and Indigenous History*. Paper presented at the McMaster University Connie O'Shaughnessy Symposium, *Partners in Time: Anthropological Representations of Indigenous History*, Hamilton, Ontario. March.
- 1999 *Tsimshian History and Prehistory: Archaeological Data and Indigenous Oral Traditions*. Paper presented at the McMaster University Colloquium Series. November.
- 1998 *Comparing Archaeology, Ethnography, and Oral Traditions in Coast Tsimshian Settlement Patterns*. Paper presented at the Canadian Archaeological Association conference, Victoria, B.C. May.
- 1998 *Considering Complexity: Coast Tsimshian Developments through the Contact Period*. Paper presented at the Canadian Archaeological Association conference, Victoria, B.C., in the Symposium: *Ethnohistory and Archaeology on the Northwest Coast: Papers in Honour of Donald H. Mitchell*. May.
- 1997 *The Story of Ligeex: A Tsimshian Paramount Chief in the Archaeological Record*. Paper presented at the American Anthropological Association conference, Washington D.C. November.
- 1997 *Archaeological Stories of the Tsimshian: Change in the Context of Contact*. Paper presented at the Chacmool Conference, Calgary, Alberta. November.
- 1997 (Coupland, Gary, and Andrew R. Martindale). *Changing House and Household Form during the Late Prehistoric Period on the Northern Northwest Coast*. Paper presented at the Canadian Archaeological Society conference, Saskatoon, Saskatchewan. March.
- 1996 (Coupland, Gary, and Andrew R. Martindale). *Hunter-Gatherer Complexity on the Northwest Coast in Comparative Perspective*. Paper presented at the Society for American Archaeology conference, New Orleans, LA. March.
- 1996 (Coupland, Gary, Susan Marsden, and Andrew R. Martindale). *Does Tsimshian Resource Abundance Explain Local Group Rank?* Paper presented at the Canadian Archaeological Association conference, Halifax, Nova Scotia. May.
- 1992 *A Late Formative Bath: Domestic Hydraulic Architecture in Northern Chile*. Paper Presented at the 11th Annual Northeastern Conference of Andean Archaeology and Ethnohistory, Ithaca, New York. March.

(f) Other

(g) Conference Participation (Organizer, Keynote Speaker, etc.)

- 2017 UBC Archaeology Day, organizer.
- 2016 (Andrew Martindale, Bryn Letham, Ripan Mahli). Chair for the Symposium, "Tsimshian Archaeology: 50 years of Research and 10,000 Years of History." Society for American Archaeology Annual Meeting, Vancouver.
- 2016 Session Organizer and Chair. Indigenous Archaeology in British Columbia. Society for Applied Anthropology 76th Annual Meeting, Vancouver.
- 2015 Discussant. Archaeology as History: Material Narratives of Identity, Events, and Conflicts in the Pacific Northwest. BC Studies Conference. Kwantlen Polytechnical University.
- 2015 Session Organizer and Co-Chair (with David Wright, Jangsuk Kim and Colin Grier). Issues in Building Radiocarbon Chronologies. Society for American Archaeology 80th Annual Meeting. San Fransisco.
- 2013 Session Organizer and Co-Chair (with Colin Grier). The Coast is Clear: Papers in Honour of Kenneth M. Ames. Society for American Archaeology 78th Annual Meeting. Honolulu.
- 2013 Session Organizer and Co-Chair (with Natasha Lyons). Community-Oriented Archaeology. Canadian Archaeological Association 46th Annual Meeting. Whistler.
- 2013 UBC Archaeology Day, co-organizer with Lisa Cooper.
- 2012 UBC Archaeology Day, co-organizer with Lisa Cooper.
- 2011 UBC Archaeology Day, co-organizer with Lisa Cooper.
- 2009 Discussant. The Sea Before Us: Reconstructing the Strait of Georgia. Peter Wall Institute for Interdisciplinary Studies. Tony Pitcher, Organizer and Chair. May.
- 2009 Discussant: Gitxaala Nation and Their Neighbours: Contemporary Ethnography of the NWC. Canadian Anthropological Society - American Ethnological Association Conference, Vancouver, BC. Charles Menzies, Organizer and Chair. May.
- 2008 Discussant: The Nature of Cultural Landscapes in Archaeological Interpretation. For the Symposium, Beyond the Household: Physical and Cultural Landscapes in the Archaeology of the Northwest Coast" Symposium at the 61st Annual Northwest Anthropological Conference, Victoria, BC. Kisha Supernant, Organizer and Chair. May
- 2008 Discussant for the Invited Symposium, "Hybridization and Colonization: Cross-Cultural Perspectives." Society for American Archaeology, Vancouver, BC. Lisa Cooper, Organizer and Chair. March.
- 2008 Organizer. Working Group, "Pacific North Coastal Archaeology: A discussion of new Holocene data." Society for American Archaeology, Vancouver, March.
- 2008 UBC Archaeology Day, co-organizer with Lisa Cooper.
- 2007 UBC Archaeology Day, co-organizer with Thomas Hidake.
- 2006 UBC Archaeology Day, co-organizer with Mark Collard.

- 2006 Canadian Archaeological Association Conference (Toronto) in the Symposium Regional Perspectives and Methodologies in NW Coast Archaeology. A. Martindale, Chair.
- 2005 Roundtable workshop on Oral Records in Archaeology. A. Martindale, Chair.
- 2004 Indigenous Communities and Households in the Wake of European Contact and Colonization, A. Graesch, J. Bernard, and A. Martindale, Organizers.
- 2003 Canadian Archaeological Association conference, Hamilton, Ontario. Symposium, The Historical Archaeology of Indigenous Peoples, A. Martindale, Organizer.
- 2003 Program Co-ordinator (with Kathryn Denning), Canadian Archaeological Association conference, Hamilton, Ontario.
- 2001 Canadian Archaeological Association Annual Conference, Banff, Alberta. Symposium: Recent Research from British Columbia, A. Martindale, chair.
- 2000 Households and Communities on the Northwest Coast: Recent Research Results. Session held at the Canadian Archaeological Association conference, Ottawa, Ontario. Organized by A. Martindale and G. Coupland.
- 1999 Indigenous Oral Traditions and Anthropology: Parallel Visions of Culture. Session and Panel Discussion held at the CASCA conference, Quebec City. Organized by A. Martindale and R. B. Lee.

1. SERVICE TO THE UNIVERSITY

(a) *Memberships on committees, including offices held and dates Department of Anthropology*

- 2017 Chair, Archaeology Science Job Search, Anthropology
- 2015 PhD UBC Exam Chair (Heather McGregor, Curriculum Studies).
- 2013 Member, Anthropology Head Search Committee.
- 2013 PhD UBC Exam Chair (Su-Chen Chang, Art History).
- 2012-2015 Chair, Anthropology Undergraduate Studies Committee.
- 2010-2011 Member, Anthropology Undergraduate Studies Committee.
- 2009-2010 Chair, Special Events and Anniversary Committee.
- 2008 Member, Anthropology Head Search Committee.
- 2005-09 Member, Laboratory of Archaeology.
- 2006-09 Member, Computing Committee.
- 2008-09 Member, Anthropology Undergraduate Studies Committee.
- 2005-06 Member, Equity Committee.

(b) Other service, including dates

2017	Examiner, UBC Anthropology, Comprehensive Exam (J. Sacharuk)
2015	Examiner, PhD Anthropology, Comprehensive Exam (C. Cooper)
2015	Examiner, PhD Anthropology, Comprehensive Exam (N. Waber)
2013	Examiner, PhD Anthropology, Comprehensive Exam (B. Fitzpatrick)
2012	Examiner, PhD Anthropology, Comprehensive Exam (A. Diaz)
2012	Reader, MA Anthropology (L. Masur)
2011	Reader, MA Anthropology (K. Jessome)
2011	Examiner, PhD Anthropology, Comprehensive Exam (S. Komarinsky)
2011	Examiner, PhD Anthropology, Comprehensive Exam (D.N. Green)
2010	Examiner, PhD Anthropology, Comprehensive Exam (A. Loranger-Saindon)
2007	Examiner, PhD Anthropology. Comprehensive Exam (R. Donkersloot).
2006	Reader, MA, Anthropology (D. Fong).
2005	Reader, MA, Anthropology (J. Morin).

10. SERVICE TO THE COMMUNITY

(a) Memberships on scholarly societies, including offices held and dates

(b) Memberships on other societies, including offices held and dates

2010-2017	Board Member, Newsletter and Webpage Editor. SwaziKids.org (African Development NGO).
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(c) Memberships on scholarly committees, including offices held and dates

2016 -17	Local Arrangements Chair, Society for American Archaeology Annual Conference, Vancouver
2007-08	Member, SAA 2008 Program Committee.
2007-08	Member, SAA 2008 Local Arrangements Committee.
2002-03	Program Co-ordinator (with Kathryn Denning), Canadian Archaeological Association conference, Hamilton, Ontario.

(d) Memberships on other committees, including offices held and dates

(e) Editorships (list journal and dates)

2000-2003	Newsletter Editor, Canadian Archaeological Association.
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(f) Reviewer (journal, agency, etc., including dates)

Grants

2017	Social Sciences and Humanities Research Council of Canada Partnership Grants.
2017	National Science Foundation (US): research grant
2015	Kleanza Scholarship Research Awards Committee
2015	Kleanza Language Revitalization Awards Committee
2015	UBC Aboriginal Graduate Fellowships: graduate fellowships
2014	Peter Wall Institute for Advanced Scholarship: International Visiting Scholars
2014	UBC Aboriginal Graduate Fellowships: graduate fellowships
2013	National Science Foundation (US): post-doctoral fellowship
2013	Peter Wall Institute for Advanced Scholarship: exploratory workshop
2013	Social Sciences and Humanities Research Council: research grant
2012	National Science Foundation (US): research grant
2009	National Science Foundation (US): post-doctoral fellowship
2007	Social Sciences and Humanities Research Council: research grant
2006	National Science Foundation (US): research grant
2005	National Science Foundation (US): post-doctoral fellowships

Manuscripts

2014	The Archaeology of Entanglement, University of Arizona Press. Edited by Lindsay Der & Francesca Fernandini.
2014	A Tale of Three Villages: Indigenous-Colonial Interactions in Western Alaska, 1740-1950. University of Arizona Press. Liam Frink.
2013	Subsistence and Identity in Native Alaska, 1740-1950. University of Arizona Press. Liam Frink.
2012	Critical Community Archaeology: Practicing with the Inuvialuit of the Canadian Western Arctic. University of Arizona Press. Natasha Lyons.
2010	Qwu?gwes Final Report, Washington State Department of Archaeology and Historic Preservation. Dale Croes.
2009	Kwaday Dan Ts'inchi Book, Royal British Columbia Museum. Al Mackie.

Journal Articles

2018	Journal of Island and Coastal Archaeology	1
2018	Canadian Journal of Archaeology	2
2018	Journal of Anthropological Archaeology	1
2017	Journal of Social Archaeology	1
2017	Recherches Amérindiennes au Québec	1
2017	BC Studies	1
2016	Canadian Journal of Archaeology	1
2016	Journal of Social Archaeology	1
2013	Journal of Archaeological Method and Theory	1
2013	Historical Archaeology	1
2012	Journal of Social Archaeology	2
2011	Journal of Anthropological Archaeology	1
2010	Journal of Social Archaeology	1
2009	Cambridge Journal of Archaeology	1
2008	Journal of Social Archaeology	1

2008	BC Studies	1
2008	Journal of Archaeological Science	1
2007	Journal of Archaeological Science	1
2007	Canadian Journal of Archaeology	1
2006	Canadian Journal of Archaeology	1
2005	Canadian Journal of Archaeology	1
2005	The Northern Review	1

(g) External examiner (indicate universities and dates)

Promotion and Tenure:

2018	University of Washington, Department of Anthropology (Gonzales)
2012	Washington State University, Department of Anthropology (Grier)

Theses and Dissertations:

2018	University of Victoria, Department of Anthropology (Abbott, MA)
2017	Simon Fraser University, Department of Archaeology (Crowell, MA)
2016	University of British Columbia, Okanagan (van Roggen, PhD)

(h) Other service to the community

2009-2015	Volunteer consultant to the Truth and Reconciliation Commission of Canada regarding the location of unmarked children's graves.
2010	Volunteer researcher for the Kwantlen Indian Band to identify burials in mounds using ground penetrating radar.
2008-2010	Volunteer researcher for the Musqueam and Kwantlen Indian Bands on investigations to locate unmarked burials using ground penetrating radar.

(i) Media Interviews

2013	Early Career Scholar Profile in <i>Currents, Newsletter of the Peter Wall Institute for Advanced Studies</i> .
2010	ArtsWorks. Archaeological Lab Night.
2008	UBC Reports. Using Ground Penetrating Radar to Locate Ancestral First Nations Burials.
2007	UBC ArtsBeat: Musqueam-UBC Archaeological Field School Project.
2006	Two media interviews – Dundas Island Project, Prince Rupert Television and Daily News.
2005	UBC ArtsBeat: Dundas Island Project SSHRC grant profile.

11. AWARDS AND DISTINCTIONS

(a) *Awards for Teaching (indicate name of award, awarding organizations, date)*

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|------|---|
| 2004 | Undergraduate Student Research Award, McMaster University (\$5000) with Brian Pritchard. Funding to hire an outstanding undergraduate as a research assistant for lab and fieldwork. |
| 2002 | Undergraduate Student Research Award, McMaster University (\$5000) with Irena Jurakic. Funding to hire an outstanding undergraduate as a research assistant for lab and fieldwork. |
| 1999 | University of Toronto Senior Doctoral Teaching Associate. (\$10,000). Awarded to 20 outstanding graduate students each year to teach a senior undergraduate course of their own design. (Declined due to acceptance of SSHRC Post-Doctoral Fellowship). |

(b) *Awards for Scholarship (indicate name of award, awarding organizations, date)*

(i) *Graduate:*

- | | |
|-----------|---|
| 1999-2001 | Social Sciences and Humanities Research Council of Canada Post-Doctoral Fellowship. |
| 1995-1998 | Social Sciences and Humanities Research Council of Canada Doctoral Fellowship. |
| 1994 | University of Toronto Open Fellowship. |

THE UNIVERSITY OF BRITISH COLUMBIA
Publications Record

Date: April 2019

SURNAME: Martindale

FIRST NAME: Andrew

Initials:

MIDDLE NAME: Roger

1. REFEREED PUBLICATIONS

(a) Books (edited)

(b) Journals (n=32, lead/sole author=17)

Menzies, Charles R., and **Andrew Martindale**

2019 "I Was Surprised": The UBC School and Hearsay —A
Reply to David Henige. *Journal of Northwest Anthropology*. 53(1):78-107.

Patton, A. Katherine, **Andrew Martindale**, Trevor J. Orchard, Sage Vanier, and Gary
Coupland

2019 Finding Eulachon: The Use and Cultural Importance of *Thaleichthys pacificus*
on the Northern Northwest Coast of North America. *Journal of Archaeological
Science*.

Martindale, Andrew, Gordon T. Cook, Iain McKechnie, Kevan Edinborough, Ian Hutchinson,
Morley Eldridge, Kisha Supernant, and Kenneth M. Ames

2018 Estimates of Marine Reservoir Effects (MRE) in Archaeological Chronologies:
Comparing Three ΔR Calculations for Evaluating Marine Influenced
Radiocarbon Dates in Prince Rupert Harbour, British Columbia, Canada.
American Antiquity. 83(4), 659-680. doi:10.1017/aaq.2018.47

Martindale, Andrew

2018 The Future of History in Archaeology. *Canadian Journal of Archaeology*.
42(1):177-187.

Letham, Bryn, **Andrew Martindale**, Nicholas Waber, Kenneth M. Ames

2018 Archaeological Survey of Dynamic Coastal Landscapes and Paleoshorelines:
Locating Early Holocene Sites in the Prince Rupert Harbour Area, British
Columbia, Canada. *Journal of Field Archaeology*. 43:3, 181-
199, DOI: [10.1080/00934690.2018.1441575](https://doi.org/10.1080/00934690.2018.1441575)

Edinborough, Kevan, Marko Porčić, **Andrew Martindale**, T. J. Brown, Kisha Supernant, and
Kenneth M. Ames.

2017 A Radiocarbon Test for Demographic Events in Written and Oral History.
Proceedings of the National Academy of Sciences.
114 (47) 12436-12441; DOI: <https://doi.org/10.1073/pnas.1713012114>

- Letham, Bryn, **Andrew Martindale**, Kisha Supernant, Thomas J. Brown, Jerry S. Cybulski, Kenneth M. Ames
 2017 Assessing the Scale and Pace of Large Shell-Bearing Site Occupation in the Prince Rupert Harbour Area, British Columbia. *Journal of Island and Coastal Archaeology*. DOI: [10.1080/15564894.2017.1387621](https://doi.org/10.1080/15564894.2017.1387621)
- Martindale, Andrew**, Susan Marsden, Katherine Patton, Angela Ruggles, Bryn Letham, Kisha Supernant, David Archer, Duncan McLaren, and Kenneth M Ames.
 2017 The Role of Small Villages in Northern Tsimshian Territory from Oral and Archaeological Records. *Journal of Social Archaeology*. 17(3):285-325.
- Martindale, Andrew**, Bryn Letham, Kisha Supernant, TJ Brown, Jonathan Duelks, and Kenneth M. Ames
 2017 Monumentality and Urbanism in Northern Tsimshian Archaeology. *Hunter Gatherer Research*. 3.1: 133-163. <https://doi.org/10.3828/hgr.2017.8>
- Edinburgh, Kevan, **Andrew Martindale**, Gordon T. Cook, Kisha Supernant, Kenneth M. Ames.
 2016 A Marine Reservoir Effect ΔR Value for Kitandach, in Prince Rupert Harbour, British Columbia. *Radiocarbon*. July 2016:1-7.
- Letham, Bryn, **Andrew Martindale**, Rebecca MacDonald, Eric Guiry, Jacob Jones, and Kenneth M. Ames.
 2016 Post-Glacial Relative Sea Level History of Prince Rupert Harbour, British Columbia, Canada. *Quaternary Science Reviews*. 153C:156-191.
- Martindale, Andrew**, Natasha Lyons, George Nicholas, Bill Angelbeck, Sean P. Connaughton, Colin Grier, James Herbert, Mike Leon, Yvonne Marshall, Angela Piccini, David M. Schaepe, Kisha Supernant, Gary Warrick
 2016 Archaeology as Partnerships in Practice: A Reply to La Salle and Hutchings. *Canadian Journal of Archaeology*. 40(1):191-204.
- Martindale, Andrew** and Irena Jurakic
 2015 Glass Tools in Archaeology: Material and Technological Change. *Oxford Handbooks Online*.
- Chaput, Michelle A., Björn Kriesche, Matthew Betts, **Andrew Martindale**, Rafal Kulik, Volker Schmidt and Konrad Gajewski
 2015 Distribution of Prehistoric North Americans: Spatio-Temporal Distribution of Prehistoric Human Populations in North America. *PNAS* 112(39):12127-12132
- Letham, Bryn, **Andrew Martindale**, Duncan McLaren, Thomas Brown, Kenneth M. Ames, David J.W. Archer, and Susan Marsden
 2015 Holocene Settlement History of the Dundas Islands Archipelago, Northern British Columbia. *BC Studies*. 187:51-85.
- Martindale, Andrew** and George Nicholas
 2014 Archaeology as Federated Knowledge. *Canadian Journal of Archaeology*. 38(2):434-465.

- Martindale, Andrew** and Natasha Lyons (editors)
2014 Community-Oriented Archaeology. Special Section of the *Canadian Journal of Archaeology*.
- Martindale, Andrew** and Natasha Lyons
2014 Community-Oriented Archaeology. *Canadian Journal of Archaeology*. 38(2):425-433.
- Ames, Kenneth M., and **Andrew Martindale**
2014 Rope Bridges and Cables: A Synthesis of Prince Rupert Harbour Archaeology. *Canadian Journal of Archaeology*. 38(1):140-178.
- Pitcher, Tony, Mimi Lam, Cameron Ainsworth, **Andrew Martindale**, Katrina Nakamura, Ian Perry, and Trevor Ward
2013 Improvements to the 'Rapfish' rapid evaluation technique for fisheries: integrating ecological and human dimensions. *Journal of Fish Biology*. 83(4):865-89.
- Burchell, Meghan, Nadine Hallmand, **Andrew Martindale**, Aubrey Cannon and Bernd R. Schöne
2013 Seasonality and Intensity of Shellfish Harvesting on the North Coast of British Columbia. *Journal of Island and Coastal Archaeology*. 8:152-169.
- Hallmand, Nadine, Meghan Burchell, Natalie Brewster, **Andrew Martindale**, and Bernd R. Schöne
2013 Holocene climate and seasonality of shell collection at the Dundas Islands Group, northern British Columbia, Canada - A bivalve sclerochronological Approach. *Paleo* 3. doi:10.1016/j.palaeo.2011.12.019
- McLaren, Duncan, **Andrew Martindale**, Quentin Mackie, Daryl Fedje
2011 "Holocene Sea Level Changes on the Northern Coast: implications for human settlement." *Canadian Journal of Archaeology*. 35(1):86-116.
- Martindale, Andrew**, Bryn Letham, Duncan McLaren, David Archer, Meghan Burchell, Bernd R Schöne
2009 "Mapping of Subsurface Shell Midden Components through Percussion Coring: Examples from the Dundas Islands". *Journal of Archaeological Science*. 36:1565-1575.
- Martindale, Andrew** and Kisha Supernant
2009 "Quantifying the defensiveness of defended sites on the Northwest Coast of North America." *Journal of Anthropological Archaeology*. 28(2):191-204.
- Martindale, Andrew**
2009 "Entanglement and tinkering: Structural history in the archaeology of the Northern Tsimshian." *Journal of Social Archaeology*. 2009(9): 59-91.

Martindale, Andrew

2006 "Methodological Issues in the Use of Tsimshian Oral Traditions (Adawx) in Archaeology." *Canadian Journal of Archaeology*. Volume 30(2):158-192.

Martindale, Andrew and Irena Jurakic

2006 "Identifying Expedient Glass Tools in a Post-Contact Tsimshian Village." *Journal of Archaeological Science*. Volume 33(3):414-427.

Martindale, Andrew and Irena Jurakic

2004 "Northern Tsimshian Plant Resource Use in the Late Pre-contact to Post-contact Era." *Canadian Journal of Archaeology*. 28(2):254-280.

Martindale, Andrew and Susan Marsden

2003 "Defining the Middle Period (3500 BP to 1500 BP) in Tsimshian History through a Comparison of Archaeological and Oral Records." *BC Studies*. 138:13-50.

Martindale, Andrew

1999 "Maritime Adaptations on the Northwest Coast." *Revista de Arqueologia Americana*. 10:1-42.

Graffam, Gray and **Andrew Martindale**

1996 "The Archaeology of Spatial Order: An Examination of the Guatacondo Valley, Northern Chile." *Journal of the Julian Steward Anthropology Society: Current Research in Andean Antiquity*. Volume 23(1&2):229-267.

(c) Chapters in Edited Books (refereed) (n=13, lead/sole author=10)

Martindale, Andrew, George MacDonald, Sage Vanier

2019 Bending but Unbroken: The Nine Tribes of the Northern Tsimshian through the Colonial Era. IN *Power, Political Economy, and Historical Landscapes of the Modern World: Interdisciplinary Perspectives*, Chris DeCorse, ed. Binghamton: SUNY Press.

Martindale, Andrew, Sara Shneiderman and Mark Turin

2018 Time, Oral Tradition and Technology. IN *Memory* Phillipe Tortell, Margot Young, and Mark Turin, eds. Peter Wall Institute for Advanced Studies, Vancouver.

Martindale, Andrew and Thomas J. Brown

2018 The Challenges of Creating a Global Radiocarbon Date Archive for Archaeologists. IN *Metodos Cronometricos en Historia y Arqueologica*. Juan A. Barceló and Berta Morell, eds. Madrid: Dextra Editorial

Harris, Jillian, Alex Maass, and **Andrew Martindale**.

2017 Practicing Reconciliation. IN *Reflections of Canada: Illuminating our Biggest Opportunities and Challenges at 150 Years*. Phillipe Tortell, Margot Young, and Peter Nemetz, eds. pp.12-17. Peter Wall Institute for Advanced Studies, Vancouver.

Martindale, Andrew

2014 "Archaeology Taken to Court: Unraveling the Epistemology of Cultural Tradition in the Context of Aboriginal Title Cases" In *Rethinking Colonial Pasts through Archaeology*. Neal Ferris, Rodney Harrison, Michael Wilcox, eds. pp 397-442. Oxford University Press.

Martindale, Andrew

2013 "Thresholds of Meaning: Voice, Time, and Epistemology: the Archaeological Consideration of NW Coast Art". In *Native Art of the Northwest Coast*. Charlotte Townsend-Gault, Jennifer Kramer, and Ki-ke-in, eds. pp. 92-127. Vancouver: University of British Columbia Press.

Brewster, Natalie and **Andrew Martindale**

2011 An Archaeological History of Fish Use in the Holocene from the Dundas Island Group, British Columbia. In *Archaeology of the North Pacific Fisheries*, Madonna Moss and Aubrey Cannon, eds. pp 247-264. University of Alaska Press.

Martindale, Andrew and Bryn Letham

2011 "Causalities and Models within the Archaeological Construction of Political Order on the Northwest Coast of North America." In *The Archaeology of Politics: the Materiality of Political Practice and Action in the Past*. Peter G. Johansen and Andrew M. Bauer, eds. pp. 323-353. Newcastle: Cambridge Scholars Press.

Martindale, Andrew

2006 "Tsimshian Houses and Households through the Contact Period." In *Household Archaeology on the Northwest Coast*. E. Sobel, A. Trieu Gahr, K. M. Ames, eds. pp.140-158. Ann Arbor: International Monographs in Prehistory.

Martindale, Andrew

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2. NON-REFEREED PUBLICATIONS

(a) Books

(b) Journals

Martindale, Andrew

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2016 Welcome to Vancouver: A Place of Contestation about the Past. *SAA Archaeological Record*. 16(4):12-13.

Martindale, Andrew

2009 What Adoptive Families Should Know about Race: It's a Social *Fact*, but a Biological Fiction. *Focus on Adoption Magazine*.

(c) Book Chapters

(d) Encyclopedia Chapters

Martindale, Andrew

2001 Late Traditions on the Northwest Coast. *Encyclopedia of Prehistory*. Volume 2: Arctic and Subarctic. pp.87-110. P. Peregrine ed. Plenum Press.

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(f) Book Reviews

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2017 Review of "The Archaeology of Coffman Cove: 5500 Years of Settlement in the Heart of Southeast Alaska." By Madonna Moss, Justin M. Hays, Peter M. Bowers and Douglas Reger. *Alaska Journal of Anthropology* 15 (1&2): 162-163.

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- 2006 Review of “*Archaeology and Colonialism: Cultural Contact from 5000BC to Present*” by Chris Gosden. Cambridge University Press, United Kingdom (2004) and “*The Archaeology of Contact in Settler Societies*.” Cambridge University Press. Edited by Tim Murray. Cambridge University Press, United Kingdom (2004). *Canadian Journal of Archaeology*. 30(1):131-136.

3. BOOKS

4. OTHER WORKS (NON-REFEREED TECHNICAL REPORTS TO GOVERNMENTS AND AGENCIES)

Teaching Materials:

- Martindale, Andrew, Terry Point, Marny Point, Sanya Pleshakov, Larissa Grant, Leona Sparrow, and Susan Rowley
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Academic Reports:

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- 2015a A Summary and Analysis of Specific Errors in Lovesik’s (2007) Expert Witness Report Prepared for The British Columbia Department of Justice and Submitted as Evidence in *R. v Lax Kw’alaams*. Unpublished report.
- 2015b An Overview of Tsimshian Legal Principles and Practices from Published Sources. Unpublished report.

Martindale, Andrew and George MacDonald

- 2013 Response to Letter of August 20, 2013 from Kitsumkalum Indian Band to Jack Smith, Canadian Environmental Assessment Agency. Report prepared for the Lax Kw’alaams Indian Band.

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- 2011 *Analysis of territorial claims made in “Lax Kw’alaams: Review of Historical and Ethnographic Sources” and “Metlakatla: Review of Historical and Ethnographic Sources” documents prepared by the Aboriginal Research Division of the British Columbia Ministry of Attorney General Legal Services Branch*. Report prepared for the Lax Kw’alaams and Metlakatla Indian Bands.

- Martindale, Andrew (80%), Bryn Letham, Natalie Brewster, and Angela Ruggles
2010 *Final Report of the Dundas Island Project Permit No. 2005-159*. Unpublished report on File with the British Columbia Ministry of Small Business, Tourism, and Culture, Archaeology Branch. 318 pages.
- Martindale, Andrew
2010 2009 Musqueam-UBC Field School - ANTH 306 Final Report submitted to the Musqueam Indian Band and UBC Laboratory of Archaeology. 220 pages.
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2009 2008 Musqueam-UBC Field School - ANTH 306 Final Report submitted to the Musqueam Indian Band and UBC Laboratory of Archaeology. 115 pages.
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2008 GPR Results from the Kwantlen Cemeteries. Final Report submitted to the Kwantlen First Nation and UBC Laboratory of Archaeology. 97 pages.
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- Steve Daniel, Lisa Johannesen, Laura Rock, and Andrew Martindale (20%)
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- Martindale, Andrew, (60%) Meghan Burchell, Erin Steckenrieter
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- Martindale, Andrew
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Websites:

- 2015 Canadian Archaeological Radiocarbon Database. A spatialized online database.
- 2009 Analytical Methods in Archaeology. A slowly-accumulating suite of instructional guides and template calculators to accomplish basic archaeological tasks. <http://www.anth.ubc.ca/index.php?id=3331>
- 2007 Dundas Island Project webpage. A list of papers, posters, presentations, and reports for team members and the Tsimshian community on the research progress of the project. <http://www.anth.ubc.ca/about-us/people/anthropology-faculty/andrew-martindale/dundas-island-project.html>
- 2003 *Archaeological Data from the Fonger Site, A Post-Contact Era Neutral Village.* A. Martindale, ed. On-line database. <http://www.ltrc.mcmaster.ca/anthro3k03>. To accommodate the concerns of the Six Nations community, the site is access-limited (Username: anthro3k03; Password: mlh37g).

10. Appendix 3: Certificate of Expert Duty

CERTIFICATE OF EXPERT’S DUTY – DR. ANDREW MARTINDALE

I, Dr. Andrew Martindale, of Nanaimo, British Columbia, Canada, have been engaged to provide Metlakatla First Nation and Lax Kw’alaams First Nation with evidence in connection with the Province of British Columbia’s decision(s) relating to the proposed sale and transfer of 22,000 ha of upland located at the Nasoga Gulf, including land commonly referred to as the Mylor Peninsula, by the Province to the Nisga’a Nation in fee simple, and to enter into a long term lease respecting the foreshore and submerged lands at Nasoga Gulf.

In providing evidence in relation to the above-noted matter, I acknowledge that it is my duty to provide my evidence as follows:

- 1. to provide evidence that is fair, objective, and non-partisan;
- 2. to provide evidence that is related to matters within my area of expertise; and
- 3. to provide such additional assistance as the decision-maker(s) may reasonably require to determine a matter in issue.

I also acknowledge that my duty is to assist the parties to coming to a resolution, not to act as an advocate for any particular party. This duty prevails over any obligation I may owe any other party, including the party or parties on whose behalf I have been engaged.

Date: April 18, 2019

Signature:

