VICTOR WILLIAM JIM,
Wet'suwet'en Interpreter,
Previously Affirmed:

EMMA MICHELL, a witness on behalf of the Plaintiffs, Previously Affirmed:

--- 9:30 A.M., MONDAY, 3RD NOVEMBER, 1986

--- OFF THE RECORD DISCUSSION

--- UPON COMMENCING AT 10. 30 A.M.

MR. GRANT : It is November 3rd, 1986.
Emma, this is a continuation of the evidence which you have been giving in the Delgam Uukw action, and you last gave evidence on August 26th, 27th and 28th of this year. You are under oath -- I am sorry -- you affirmed on August 26th and you are still affirmed to tell the truth on this Commission?
I would like ----
MR. O'BYRNE: Was there a yes?
THE INTERPRETER: Yes.
MR. GRANT: I would just like to ask you a few questions flowing out of the last day's evidence.

EXAMINATION IN CHIEF BY MR. GRANT (CONTINUED) :
Q Last time we were talking about Burns Lake Tom -- is he of the Laksilyu clan?
A Yes.
Q You also talked about Philip George; was Philip George the same, person who was also known as Felix George?
A Yes, that's his English name.
Q What Was his Wet'suwet'en name?
A Goohlaht.
Q Was he from Stoney Creek?
A Yes.
Q Was he Sylvester George's father?
A Yes.
Q We were talking about Sam Goosley territory last time, and does your son, Dan Michell, use that territory?
A Yes.
Q Does Alfred and Bill Mitchell also use that territory?
A Yes, and Victoria.
Q Are Alfred and Bill Mitchell your brother's children?
A Yes.

that territory after their father dies?
A Yes.
Q Are their children entitled to use that territory? By that I mean are Alfred and Bill Mitchell's children entitled to use that territory?

--- DISCUSSION IN WET'SUWET'EN

THE WITNESS: Yes.
MR. O'BYRNE: Mr. Grant, I thought I heard something from the Witness and there was a response from.the Translator; could we have that translated?
MR. GRANT: She asked a question to you?
THE INTERPRETER: No.
MR. GRANT : I thought it was her answer that was translated. Go off the record for a moment please.

--- OFF THE RECORD DISCUSSION

MR. GRANT: Back on the record. Just for the record, since there's a change in parties, it is myself for the Plaintiffs; counsel for the Defendant, Darrell O'Byrne; and Leonard Cohen, counsel for the Attorney-General of Canada. And there's a different Court Reporter but other than that there is the linquist, Antonia Mills, and Victor Jim, Who was the same Interpreter as last time. And Mike McDonald, the video operator.
I would like to ask you this question again, just to be clear.
Q Can Alfred and Bill Mitchell use the territory, that is Sam Goosley territory, after their father dies?
A Yes.
Q Is that in accordance with Wet'suwet'en laws?
A That's how our laws are.
Q In order for them to use the territory after their father dies, is it necessary for you to give your permission for them to use that territory?
A Yes.
Q Have you given your permission?
A Yes.
Q Now, I Would like to refer you to the mountains which are visible from outside this building and are in a northerly direction from us -- probably a northwesterly direction -- and the mountains I'm referring to are behind Blunt Mountain. It's the mountain referred to as Tsiintel. Have you been into the territory around Tsiintel Mountain?

Q Now, is Klotzwunii a lake that is at the bottom Of Tsiintel Mountain? (Question not translated)
A Yes.
Q Now, Whose territory is it around Klotswunii?
A Caspit.
Q He is a Wet'suwet'en chief?
A Yes.
Q What Clan is he in?
A Gilserhyu.
QWhose territory is it up on the mountain behind Klotzwunii, Tsiintel?
A Spookw Mountain.
Q Is Spookw a Gitskan or Wet'suwet'en chief?
A Gitksan chief,
Q Is that the Spookw that is from Gitanmaax? Or Hazelton?
A Yes, from Hazelton.
MR. GRANT: For the record, she said he was a Gitksan chief?
THE INTERPRETER: Yes.
THE WITNESS: Spookw is grandfather of Charley Austin's wife.

BY MR . GRANT :
Q Now, is it correct to say that Klotzwunii and Tsiintel is one part of the boundary between the Wet'suwet'en territories and the Gitksan territories?
A Yes.
Q Who did you go to Klotzwunii with?
A Went with my father.
Q What did your father do there?
A He was trapping.
Q What kinds of things did he trap there?
A (In English) Beaver, mink, marten.
Q What time Of year would you go up there with your father?
A First October.
Q How long would you stay up there? (Question not translated)
A (In English) Until Christmas.
Q Did Caspit give your father permission to use that territory? (Question not tranSlated)
A (In English) Caspit died long time ago. He was my grandfather.
Q That Was your father's father? (Question not translated)
A (In English) Yes.
Q Now, this practice of children using their father's territory, is there a Wet'suwet'en term for that particular type of access to Wet'suwet'en territory?
A Negedeldus.
Q What does that mean?
A When a person kills any kind of game and they prepare the meat over a fire, that is where you get the name negedeldus.

Q Does it have something to do with the use -- negedeldus, does it refer to who can use the meat that a person catches when their permission -- when their rights are what is called negedeldus?
A The meat is treated and the meat is used when there is a feast held.
Q How long do people have rights of negedeldus? In other words, after their fathers die do they then have to obtain permission from the person who succeeds their father before they can use that territory further?
A Yes. My father's father had given my father permission to hunt and trap on the territory because he was loved by everyone. He had paid for his father's headstone, which is still in Hagwilget, and Alfred Joseph knows all about this.
Q You are referring to Alfred Joseph who is Gisdaywa?
A Yes.
Q When you trapped or hunted the Klotzwunii area of Caspit, did you go UP as far as a place called DeeD Creek?
A My father probably did. I usually stayed home with my aunt. My father was the one that did most of the hunting and trapping. I usually stayed home with my father's second wife.
Q Whose territory was on the other side of Deep Creek?
A The people from Babine. His name was 'Tsuk' .
Q Is that the name of the chief or Babine people?
A Chief name. Was from the Laksamshu.
Q Did you ever go across the boundary at Deep Creek or did your father to your knowledge go across that boundary to trap on the other side?
A They never crossed the boundary. Never allowed to.
Q Could you tell us the names of some of the other creeks and landmarks within Caspit territory of Klotzwunii? Do you recall the names of any of the other creeks there?
A One place is called Takas slet, it's not a creek it's a slough.
(In English) Spring water.
The Wet'suwet'en name for the place is Tagwislayt, and that is a rock which is shaped like a bird and that is in my grandfather's territory.
Q Are there ----
A This side is called Hlayiitlii. Hlayiitlii is derived from two creeks joining together, and there are many beaver dams where they used to trap for beaver.
Q Are there any other place names in Caspit's territory that you can recall now?

A Tlo ootate tate, the first place we used to camp at, it's on a grassy field. And we came from here. On our way up to Tlo ootate tate, we passed a place called Steditstay which is in the mountain. And stedi is apparently still where it has been -- I forget who told me about it -- that is also a rock shaped like some kind of bird.
Q Stanley Morris is the present holder of the name Caspit, is that right?
A Yes.
Q And he is married to your daughter, Beatrice, is that right?
A Yes. Before that it was Jimmy Thomas who is now dead.
Q Did he hold the territory while your -- did he hold the territory after your grandfather?
A Yes.

--- OFF THE RECORD DISCUSSION

MR. GRANT: Just for the record, before the answer was translated, the video cut out part-way through Emma's giving her answer and she continued to give her answer and the translator recorded, that is he wrote down a notation of the answer, and has indicated that he would wait until the video machine was re-set up to give the answer.
Just for the record, the answer on the video was not the entire answer to the question by the witness and the Interpreter will now ----
MR. O'BYRNE: Perhaps, Mr. Grant, before you start could we get the Court Reporter to read back the question, just so we have some continuity?
THE REPORTER: Question: "Stanley Morris is the present holder of the name Caspit, is that right?"
Answer: "Yes. "
Question: "And he is married to your daughter, Beatrice, is that right?"
Answer: "Yes. Before that it was Jimmy Thomas who is now dead."
Question: "Did he hold the territory while your -- did he hold the territory after your grandfather?"
Answer: "Yes. "
MR. GRANT: Go ahead.
THE WITNESS: Kiiloosiiya, Sylvester Williams' grandfather, put Sylvester Williams' name on the territory and after that it was Jimmy Thomas. He did not trap there, he just held the name and now Stanley Morris holds the name and the territory but does not trap the territory.

BY MR. GRANT:
Q Now, Emma , is it correct that the Wet'suwet'en people who used Goosley Lake territory used to travel to Goosley Lake for part of the year and then travel back to Moricetown via Rose Lake and Decker Lake? (Question not translated)
A Yes.
Q Can you explain when the people would leave here to go to Goosley Lake? What time of the year and who would go and why they went to Goosley Lake?
A My grandmother, Wilat, my mother, my aunts, Sa on, Dennis' father, my uncle, Alfred Namox,. when he was a young boy. They would make the salmon here in the summer and then take it back to Sam Goosley.
Q What time Of the year would they travel down to Sam Goosley Lake?
A In the fall, around October.
Q When they got to Sam Goosley, how long did it take them to travel there from here?
A I don't know. They were on foot. I didn't travel with them so I wouldn't know how long it took them. Used to , pack a lot of things to prepare for the stay for the winter.
Q Did they stay at Sam Goosley all winter until the following spring?
A Yes, they probably did. They probably had winter homes around the lake.
Q What did they do at the lake?
A They would set nets for trout on the lake.
Q Did they do anything besides fishing for trout ,at the lake?
A They also hunted for groundhog.
THE INTERPRETER: Muskrat, pardon me.
THE WITNESS : Which is found on the lake.

BY MR . GRANT :
Q Did they trap in the area around the lake?
A Yes, they did. They hunted and trapped all the time especially in the winter.
Q Did they -- what time of year would they leave Goosley Lake to head back? What time of the year would they leave there?
A They would go through tsezultseki and from tsezultseki to Maxan Lake, and from Maxan Lake they would go to Decker Lake where they would set up camp at the creek that flows from Decker Lake. They would stay there for awhile to fish and the fish were smoked for their trip back home to Moricetown.

Q What time of the year would they start this journey from Goosley Lake to tsezulkseki and Decker Lake?
A When they leave Sam Goosley, this is around June. This was before the salmon started running here.
Q When would they arrive back at Moricetown?
A They would arrive back when the Saskatoon flowers would begin to bloom, and that is when you know there will be salmon in the canyon.
Q When they were at Sam Goosley was there a way they used to predict when they should leave there to start their journey back to Moricetown?

--- DISCUSSION IN WET'SUWET'EN

THE INTERPRETER: She is asking if we are going to include Bini.
MR. GRANT: Yes, if there was a way of telling when they came back?
THE INTERPRETER: She said that Bini. . . .
THE WITNESS: Bini was around many years ago and where he sat his footprints are still visible.

BY MR. GRANT:
Q You described earlier these footprints, I believe in the last day's evidence, the footprints of Bini and Goosley Lake, what would he use ----

BY MR. GRANT:
Q ---- them for?
A Bini would look at the sun, when it comes over a certain peak, that's when he knew it was time for our people to leave Sam Goosley for Moricetown because the salmon were running.
MR. GRANT: Mr. O'Byrne, you can object if you think I am leading because I think I have already covered this on the last evidence which you may recall but I am just going to lead on it and you can object if there is a problem.
Q Are these footprints located at the end of Sam Goosley Lake where the creek, I believe it is Buck Creek ----
MR. O'BYRNE: I object to that, Mr. Grant, because she never said that in the original evidence. All she said was that the footprints were near the lake. I think you should ask the location.
MR. GRANT: You're referring to the evidence on the last day?
MR. O'BYRNE: I am.
MR. GRANT: Okay.
Q You described that the footprints were near the lake,

are they near either end of the lake?
A The footprints are at the outlet of the lake near a small clearing in the field.
Q Is there a creek that flows from the outlet of the lake?
A Yes, yes, the footprints are above the lake, just above the lake near where our people live, and the area is now overgrown with brush.

--- DISCUSSION IN WET'SUWET'EN

THE WITNESS: Not too far from the footprints my uncle had a cabin, the cabin is still there.

BY MR. GRANT:
Q Have you seen photographs of the footprints that were taken in the last five years?
A Yes I did. Gloria took a picture of it. When she went there with Dan, they used a boat to get to the site.
Q You're referring to Gloria, your daughter?
A Yes,
Q And Dan, your son?
A Yes.
Q That is Dan Michell?
A Yes, and they used a small gas boat to get to the site.
Q Was those -- could you clearly see the footprints in those photographs?
A Yes. Gloria cleared the dead leaves that had fallen onto the footprints. After that she took the photographs.
Q From the picture could you tell whether the footprints -- let me ask you this. Have you seen the footprints yourself before, when you were younger?
A (In English) Oh, sure.
THE INTERPRETER: I have seen it.

BY MR.GRANT:
Q Are they in rock or soft ground, that is dirt I mean?
A (In English) Soft ground.
Q All around the footprints does anything grow, that is in the area around where the footprints are located? (Question not translated)
A The footprints does not -- nothing grows in there.

MR. GRANT: Nothing grows?
THE INTERPRETER: In the footprints.

--- DISCUSSION IN WET'SUWET'EN

THE WITNESS: And it is still like that today.

BY MR . GRANT :
Q What about footprints, that is outside the footprints but in the ground right beside them, does anything grow?

--- DISCUSSION IN WET'SUWET'EN

THE WITNESS: I don't think anything grows around the footprints. I'll ask my daughter for the pictures that she has of the footprints. I want to go back to see the footprints but I haven't had a chance to get out there. I played around the footprints many times when I was a small girl. I used to step into the footprints.

BY MR. GRANT:
Q Do you know the name -- you said that the footprints are near the outlet of Sam Goosley, do you know the name, if there is a name, for the creek that is at the outlet of Sam Goosley near those footprints?
A It's called Neldzii tezlii.
Q Do you know if there is a name that the white people call it?
A I don't know the English name for the creek. I know the English name for the lake is Sam Goosley.

--- DISCUSSION IN WET'SUWET'EN

THE WITNESS: The white people probably gave the name Sam Goosley Lake from all the geese and swan that rest in the lake. Now we don't see any geese or swans landing in the lake because they're afraid because there are so many white people around the lake. Some of them live by the lake during the summers. One time there was three campers camped by the lake and I was upset about this and I started talking to them the top of my lungs. I told them this is my land, what are you doing here. An old lady, about my age, came out and said that they were just camping there, they weren't hunting or trapping.

BY MR. GRANT:
Q Were these people white people or Wet'suwet'en or Gitksan?

A They were white people.
Q Do you recall approximately when that happened? How old were you, for example?
A It was about seven years ago. When my husband Tony was with me.
Q After they told you they were just camping and not hunting or trapping, did you agree to let them stay there?

--- (QUESTION NOT TRANSLATED)

THE WITNESS: (In English) Yes.

BY MR . GRANT:
Q Is there a mine near Sam Goosley Lake?
A Yes, there is a mine, tsezultseki, and it is called Equity Mine. The mine's been there for some time now. I don't know exactly when it started.
Q Is it within your territory around Sam Goosley Lake? In other words, is it in the Tsayu territory at Sam Goosley Lake?
A Yes.
Q Have you written to the people at the mine about your concern about the damage that the mine may be causing to your territory?
A Yes, I have sent two letters to them.
Q Have you been able to locate copies of your letters to them?
A The first letter the company wrote back said that they would hire my son and other relatives to work at the mine. Last winter I wrote them again. They answered me, they said that the company was broke, they were making no money at the mine and that's why they weren't helping us out.
MR. COHEN: Mr. Grant, before continuing, are these letters referred to on your List of Documents?
MR. GRANT: I don't know if they are or not. I don't think they are right now. The List of Documents is being upgraded, Mr. Cohen, on a regular basis.
I would like to ----

--- DISCUSSION IN WET'SUWET'EN

THE WITNESS: The last letter I wrote I have received no answer from the mine and they probably just threw it away.

BY MR. GRANT:
Q When did you write that last letter? (Not translated)
A (In English) About May of this year. No answer.

Q I am showing you a photocopy of a letter dated March 29, 1982 from Mr. Elmer Borneman, Employee Relations Superintendent, addressed to Emma Michell; is that a photocopy of the letter that you received? One of the letters that you received?
A Yes.

MR. GRANT: I would like to have that marked as an exhibit, please. I have provided copies of it to you. I believe it is Exhibit 2.

--- OFF THE RECORD DISCUSSION

MR. GRANT: Sorry, it is Exhibit 3.

--- OFF THE RECORD DISCUSSION

BY MR. GRANT:
Q I'm referring you to this exhibit. It appears that the concern that they're responding to from your letter is that concern of acid generation into the Goosley Lake system, basically the environmental concerns in Sam Goosley Lake.

In one of your letters to Equity Mines, did you express your concerns about the damage they were causing to the lake?
A Yes. I had sent them a letter regarding the concerns of contaminating the water. Told them that there will be no more fish in the lake, or beavers.
Q Now, have you in any of the other letters that you have written to Equity Mines complained about them setting UP the mine there without talking to you or the other people in your house?
A No.

My uncle had seen the minerals first. He tried to chip some to bring back but he couldn't chip any of it so he just came back and he tried to get his sons, John and Pat Namox, to go UP and check it out.

Now Pat blames himself for not listening to his dad, since his father was the first one to have discovered the minerals.
Q Was his father Alfred Namox?
(Question not translated)
A (In English) Yes.

BY MR. GRANT:
Q And Alfred Namox was within the Tsayu clan?
MR. O'BYRNE: Mr. Grant, that is leading horribly and I object.

BY MR. GRANT :
Q Was Alfred Namox in the Tsayu clan?
MR. COHEN: I object, that is leading.
MR. GRANT: That is not leading.
MR. COHEN: You can ask what clan he"aS a member of.
MR. GRANT: Your objection is noted.

Q What was the name Alfred Namox held?
A The Wet'suwet'en name was Namox.
Q Who is the present holder of that name?
A Lucy Holland. And Lucy Holland is pretty ill at this time and she's told Dan that Dan should take over the name. And Dan's name would be taken over by someone else.
Q Is that Dan Michell you're referring to?
A Yes, and Dan's name Wigetemskol will be taken by someone else.
Q Was there logging ever taking place at Goosley Lake?
A Yes, we heard it was Louis Wheaton.
THE INTERPRETER: Rather Bill Wheaton.

BY MR . GRANT :
Q Was he a white person?
A Bill Wheaton has roots to the Wet'suwet'en. Ellen Wheaton is Wet'suwet'en, she's from Tsayu. Married to a non-Indian. I think he's a Swede.
Q Was Bill Wheaton her son? (Question not translated)

A (In English) Oldest son.

It was the year 1967 that he logged the area. At that time I was in the hospital in Vancouver. And no one had asked us for permission to log.

BY MR. GRANT:
Q Did you know the logging was going on when you were in Vancouver?
A When I came back we heard that there was logging going on and we thought it was non-Indians logging, we didn't know it was them.
Q What did you do when you found out the logging was going on?
A We heard that Bill Wheaton had gone to jail. Ellen

Wheaton had said that it was their own territory. Bill went to jail for some time because he didn't pay the stumpage fees.

Q Under the Wet'suwet'en System would Bill Wheaton have been adopted into the Tsayu clan?
I should say rather, was Bill Wheaton adopted into the Tsayu clan?

A No Tsayu. He doesn't attend any feasts and the same is true for Ellen Wheaton. Ever since she married a non-Indian she hasn't been coming around to the feasts.

Q Regarding Equity Mines near Sam Goosley, has the presence of the mine had any effect on your family's use of the territory in terms of their trapping or their hunting?

A No. It seems all the animals have disappeared. My son, Dan, stayed up there recently for two weeks and all he seen was a cow moose with a calf, which he didn't shoot.

Q Was there more game in the Sam Goosley area before the mine was located there?

A No, it seems the animals have all disappeared, the mink, beaver, coyote, lynx. Seems all the animals have disappeared since the mine started operating and since Bill Wheaton logged the area.

Q Do you have a cabin at the Sam Goosley area for the Tsayu people?

A Yes, and my uncle before had two cabins there.

Q I'm going to ask you about tsezultseki, the territory used by Tommy Mitchell, your father; was there any damage suffered to him on that territory by the non-Indian people?

A Tsezultseki, there were many traps there, about four dozen, as well as the cabin which was used by my brother Tommy Mitchell as well as his son, Alfred Mitchell. There were many game there before Equity Mines went in, and the traps were destroyed by a forest fire.

Q Whose territory was this that your brother Tony Mitchell was trapping?

A It belonged to the Tsayu. That is right next to Maxan Lake.

Q Was there a fire on that area?

A Yes there was.

Q Do you know who or what caused that fire and when did that occur?

A It was probably started by non-Indians, And I don't know exactly when it was Russell Tiljoe worked there operating a camp, and since then his eyes have been bothering him and I can't recall exactly the date that it happened.

Q Did that fire Cause any damage to the area where your brother, Big Tommy Mitchell, was trapping?

A Yes, it was ruined by the fire.
Q Did he lose any traps in that fire? (Question not translated)
A Yes.
MR. GRANT: Maybe we'll -- it's almost noon now, I think what we should do is adjourn over until this afternoon. Off the record.
MR. COHEN: Before going off the record, Mr. Grant, I would like to state for the record: as I understand it, all objections are agreed to be reserved until the time that the evidence is tendered. That is, of course, because there is no-one here to rule on any objections that are taken.

With respect to the framing of questions or the nature of questions put and whether or not those questions are leading, I would just suggest that there is high duty on you to prevent or to not use such questions. I would ask you to use such caution in any continuation of this examination.
MR. GRANT: Okay. For the record this is, of courser the first, time you have been on this Commission, and the first time actually you have been in a Commission in which I have been involved on behalf of the Plaintiffs. If you have any objection to any question or any thing, the practice Mr. O'Byrne and I have developed, and Mr. Plant and Mr. Goldie, is that counsel will raise their objection and why it is. If I view your objection as valid, I will endeavour to reframe the question. If I consider that it is -- if I decide to raise the question as I have, that is what I do, What is important is that you do set out any of your objections on the record and we can deal with it and, as you say, reserve it for the final ruling at trial, if necessary.
MR. COHEN: No, I do not accept that. I understood that the practice was and is that any objections on the grounds of, for example, relevancy or materiality and the like would be reserved until time of trial. It is my intention to do that. With respect to ----
MR. GRANT: Your objections on this evidence, it is our position that those objections must be set out on the record. Mr. O'Byrne set out a position earlier on in this Commission, and it has been in all of the evidence, as to how the Province wishes to deal with objections, and he reached -- and we reached an accord with respect to that.

If there are objections of the Federal Government, it is our position we must be advised of those objections,

that people cannot lie in the weeds until trial and leave their objections until then generally. So if you have objections I would ask you to set them out and if there is a general area of objection, there may be some area of accord as there was with the province.

MR. COHEN: No.

MR. GRANT : We're not in a position here of holding off and not knowing what your objections are.

MR. COHEN: Mr. Grant, without there being anyone present to rule on an objection it is my view that if the evidence is to be tendered -- not tendered -- I should say continued now and at the time that the evidence is tendered when there is a judge to rule on an objection, that is when the objection will be taken.

MR. GRANT: No, any and all ----

MR. COHEN: And it is up to ----

MR. GRANT: Any and all objections should be set out now or categories of objections should be set out now and those Objections will be ruled On later.

As I said, Mr. O'Byrne and I have made an agreement with respect to category of objections that he was concerned about. That was set out at the beginning,

If the federal government wishes to do that, we will accept now the area of objections that have not been raised at this time. We will advise the court we have tendered evidence in good faith and no one has advised us that they have no tendered objections.

MR. COHEN: Mr. Grant, I will not interfere with the taking of evidence at this time and I will object at the time that there is someone to rule on whether the evidence is in fact admissible, relevant or material.

MR. GRANT: This is Commission evidence, this is not Discovery Evidence. This evidence is admissible at trial unless objected to by counsel, and it is our position that the Plaintiffs have the right to know what the objections of counsel to the evidence are.

Now, if there's objections to specific questions or categories of questions that, as I say, may be able to be set out on the record. We take great exception to either Defendants lying in the weeds and later creating their argument on objections without having advised us at the time of this evidence. You may take objection of the evidence of these elderly people, which may expedite things, we shouldn't be putting the whole body of their evidence before the court.

MR. COHEN: That will be determined at the time that the evidence is put before the Court.

MR. GRANT: The evidence is being put before the court right

now. That is what Commission is.

MR. O'BYRNE: Mr. Grant, I take Mr. Cohen's objection to leading questions and with regard to this I have not objected to leading questions. I will make my objection for the record, echoing Mr. Cohen for the Federal Government, I am objecting to the manner in which you have proceeded in terms of leading questions with this witness. I note this witness has a good command of the English language as you seem to be asking questions without the necessity of the translator putting them to the witness.

MR. GRANT: Certain occasions.

MR. O'BYRNE: In view of that, I think it would have been appropriate for you to avoid leading questions. It would slow down the Commission for Mr. Cohen and myself to object to each and every leading question.

MR. GRANT: As you know there are many areas which I was not aware in that you raised objection to them, that they were an area in dispute. For example, many of the questions where I have been leading have been questions that have been raised by way of interrogatory by the Province and I thought the position of the Province is to try to elicit -- I am trying to expedite eliciting some of that evidence.

Now, if there's objections to certain questions in leading, I am endeavouring not to lead. I will not ask you -- as you know, Mr. O'Byrne, you have not been in the frame of objecting to questions for format and if there is an area that you feel is an area of contention that you're concerned about me leading and you feel I am, state your objection for the record, the record will speak for itself. When you raise that objection I will reframe the question.

Mr. ,Cohen objected to what in my view was not a leading question and so I proceeded with it.

I would like you to warn me if you feel there are areas where I am leading where you are quite concerned. I have only been leading as a matter of commonality between counsel to expedite the taking of this extensive amount of evidence. I will exercise some caution.

MR. COHEN: Very well. We'll adjourn for the lunch break.

--- OFF THE RECORD DISCUSSION

--- RECESSED FOR LUNCH AT 12.05 P.M.

--- UPON RESUMING AT 2.00 p.m.

MR. GRANT: Go on the record. Before continuing with Emma's examination, I noted to counsel after the adjournment in the morning that in fact from my reference there is an Exhibit 3 which was tendered on August 27th, 1986 examination of Emma Michell, which is a photograph of two totem poles.

Therefore, the document, the March 29th, 1982 letter tendered this morning should properly be exhibit four. I would make that subject to this proviso. There has been a bit of a problem in the transcript and therefore none of us counsel have the last day, that is the August 28th transcript, and we will be receiving that tonight or tomorrow morning. So I would ask other counsel, and I myself will look at that and if for some reason there was another exhibit that Mr. O'Byrne or myself haven't noted, we can make a further amendment but it appears from my record it would be exhibit four.

MR. O'BYRNE: I certainly don't have any problems with that course of action.

MR. GRANT: Mr. COhen?

MR. COHEN: Not having been present at the earlier examination, I don't have any recollection of what the exhibits are and we will see what the later transcript reveals,

MR. O'BYRNE: Mr. Grant, I should point out I have in my notes a notation of Exhibit No. 4.

MR. GRANT: Which was?

MR, O'BYRNE: A picture of some buildings and a smokehouse and that, according to my records, is tendered some time approximately in the afternoon of the 27th August.

MR. GRANT: Possibly we should reserve and clarify that later.

MR. O'BYRNE: Perhaps change it to Exhibit "A" for now and refer to it as that and clarify it and put it on tomorrow?

MR. GRANT: Test

MR. O'BYRNE: The marked Exhibit 3 now becomes Exhibit "A",

MR. COHEN: That's agreed.

MR. GRANT: That's agreed by counsel?

MR. O'BYRNE: Agreed.

MR. COHEN: Mr. O'Byrne, "hat was the exhibit marked No. 4?

MR. O'BYRNE: It's a photograph in which there are some buildings which I'm led to believe include a smokehouse, Queen's smokehouse, next to Philip George's smokehouse.

MR. GRANT: The other matter, before continuing with Emma's questioning, is that this morning there were some positions taken with respect to objections.

NOW, my understanding of the arrangement made between myself and Mr. O'Byrne, on behalf of the Province,

is that objections will be made to questions where the Province takes objection, However, the major area of objection of the Province to date has been with respect to, I believe as Mr. O'Byrne framed it, historical fact or hearsay and relevance. He set out early on in the record in this case and in the case of Thomas Wright the framework of his objection, and that was recorded for the record for the balance of this Commission Evidence so that then the Province can be more site-specific at the time they argue that objection at trial,

The concern I have with the position espoused by Mr. Cohen this morning is quite simply that if there is an area of objection of the Federal Government, I agree that the ruling on that objection will occur at the time of trial. However, I don't agree that nothing can be said about the objection,or nothing should be said about the objection until trial The Plaintiffs' counsel's position is -- and my understanding from my discussion with Mr. Rush, this is a similar position to his -- is that the area of objection or the objection should be noted on the record at this Commission Evidence, If it is a broad area, the objection does not have to be taken to every question.

Now, the second area that was raised was with respect to leading questions. Mr. O'Byrne has not objected to leading questions, I have not consciously led this witness or other witnesses, There may be a time when some questions would fall into the category of leading questions and I've taken -- I have assumed that if those questions haven't been objected to, it's in an area where there's no objection to those questions

Both counsel have indicated to me this morning that they're concerned about that, and I will endeavour to minimize leading questions, But if I do raise a leading question, inadvertently or otherwise, in an area where I am just trying to move along into another area, and counsel's concerned about it, I would ask you to object at that point and I'll try to resolve it right now.

In any event, as a result of this, I spoke with Mr. Cohen after the adjournment this morning and I would ask the Federal Crown to put on the record what your position is with respect to objections, given you have had the noon hour to talk to Mr. O'Byrne and also consider your position, which is probably more important, and that we've talked again after lunch about it. Then we'll proceed with questioning of the witness.

MR. COHEN: Very well. Briefly, Mr. Grant, as I indicated to

of the Attorney General of Canada I will state that all objections are reserved to ,the time that the evidence will be tendered to the trial judge. Those objections will be based on various grounds be they that the evidence tendered is not relevant, not material or not admissible. The non-admissibility of the evidence will derive from different aspects of the matter. The primary concern, of course, is hearsay. There may be other concerns along the lines of best evidence rule and the like. I will say no more in that regard.

With respect to the question of your leading, I reiterate my earlier stated view that I would ask you to not lead the Witness generally. However, there very well may be areas that I would not object to your leading and if you intend or wish to lead the Witness, I would ask that you address the matter with counsel first. We can indicate our agreement and you can then proceed.

MR. GRANT: You're setting out with respect to the objection on admissibility a number of points. I must reiterate for the record the Plaintiffs' view with respect to that. We believe and we take the position that we are entitled now at the time this evidence is being taken to know if a component of the evidence is being objected to for specific purposes. Hearsay I think is general and I understand what you're saying with respect to hearsay, but when you're talking about things like best evidence rule and other possible arguments of non-admissibility, that's important. We differ on that point and you have to be apprised of that.

Regarding leading, as I said, I've already set Out my position on leading. I don't espouse to be the best counsel in the world and may lead incidentally but I would expect that if I do, if either Counsel for the Province or the Feds are concerned, that you will object and we can deal with it at that time.

Emma, we'll get back to you talking to you.

THE WITNESS: (In English) Very soon I asleep now!

MR. GRANT: Nothing like lawyers talking to help people to go to sleep.

EXAMINATION IN CHIEF BY MR. GRANT (continued)

Q Emma, in the last days of Commission Evidence you talked about Queen; was Queen related to Lame Arthur Michell? (Question not translated)

A Lame Arthur Michell's mother.

MR. GRANT: Again, Mr. O'Byrne, I believe I have already asked how that name was acquired and I am going to lead on

that, that is the name Queen. She gave that name on the evidence.

MR. O'BYRNE: I think it may already be in evidence but perhaps you could -- I take it you're going to suggest to the witness who had the name or how it came to be, is that what you had in mind?

MR. GRANT: Yes.

MR. O'BYRNE: I don't have any difficulty with that because I am already aware it has been discussed by this Witness.

MR. GRANT: I was going to lead from that into the next point, that's all.

Don't ask this question until Mr. Cohen or Mr. O'Byrne can interrupt.

Q What I wish to ask, who gave Queen the name Queen? (Question not translated)

A Bini.

Q It's clear there's no necessity to lead on this area. Now, where did Queen's family originally come from?

A Queen originally come from past Babine, this side of Takla Lake. Yikoo was the name of the place. Someone else has title to that territory now.

Q Is that a Wet'suwet'en territory , the area you're calling Yikoo?

A I don't know. All I know is that Queen's family originally came from there and moved to this area. And she did not have the name Queen before she came here. She was given that name when she moved here.

Q When you say they moved here, are you referring to the Wet'suwet'en -- are you referring to Moricetown? (Question not translated)

A Yes.

MR. GRANT: For the record, that is where we are having this Commission Evidence.

Q What clan was Queen in?

A Laksilyu.

Q I would like to ask you about the mother of Alec Tiljoe, whose name was Sa'on; do you remember an incident in which there was a killing involving Sa'on?

A Yes.

Q Was your mother present when that occurred?

A Yes, she was a young woman at the time.

Q Can you tell me or tell us what happened in that incident?

You should maybe translate that part of the answer and then let her continue.

A It was alleged that Satsan's brother killed people with his medicine powers. It was through his powers that he

Was shot.
Q How old was your mother when this happened?
A I don't know. I think she was a teenager.
Q Who Shot Satsan's brother?
A It was Mooseskin. Sa'on was walking down the road, he was carrying a gun. He ran into Mooseskin, who took the gun away .from him, and he was the one that shot Satsan's brother in the chest. After this happened, Mooseskin and Dyee McKenzie fled on foot.
Q Yes?
A After they had run away, the Gilserhyu start shooting at the Tsayu House. My grandmother and my mother, Sa'on and his wife, and Dennis' mother and uncle all hid in the hole by the house while they were shooting. And Dennis' mother's uncle came Out and tell the Gilserhyu that you have killed one of my nephews already, and told them if they kept shooting one of them would be killed and he didn't want this to happen.
Q Can you proceed? What happened after that?
A They came out of the hole, Tsayu and the Gilserhyu talked about it, talked about the incident, and Tsayu told the Gilserhyu that they would compensate the Gilserhyu for the killing, and the name that is given for the word compensation is taygeeyana lagx. And the Gilserhyu were trying to uphold Satsan's big name and trying to avenge Satsan' s brother's killing.
Q Then What happened?
A Tsayu and the Gilserhyu got together in July. That's when they used to all congregate at Hagwilget. After that Tsayu went back to their territory to begin the trapping for the feast that would be held later on that year.
Q Did the Tsayu hold a feast for the Gilserhyu?
A Yes, they did compensate them for the killing. They had a feast and a lot of things were given by the Tsayu to the GilserhYu for compensation. Satsan was given the most stuff
Q What kind Of things did they give?
A Some things that were given away at this feast were blankets. The aides from various animals, and something called a machine or one-cents, which was copper, which was gotten from the coast. And the chiefs would break the copper in half ----
THE INTERPRETER: She indicated about that size.
MR. GRANT: Indicating for the record about a foot to 18 inches
THE WITNESS: This was broken in half and shared with the other chiefs at the feast. My grandfather had one of these, I

have seen it myself and I don't know what happened to it, I believe it may have been lost in the house fire.

--- DISCUSSION IN WET'SUWET'EN

THE WITNESS: In this house fire my father had a trunk full of things that he used at the feast. Button blankets, head pieces, the apron, and some dog harnesses. These were all the materials he used that were lost in the house fire.

BY MR. GRANT:
Q Did they have more than one feast to compensate Satsan for that killing?
A Just once.
Q Now, how was Sa'on related to you?
A It is my mother's sister.
Q You said at the beginning of describing this incident that Satsan's brother had killed somebody with his medicine power; who had he killed with his medicine power that led Satsan to be angry?
A Dennis' father, who was my mother's brother, and it was alleged that he was the one that killed Dennis' father.
Q Who was the one that killed Dennis' father?
THE INTERPRETER: Satsan.
THE WITNESS: Satsan's brother.

BY MR. GRANT:
Q So Dennis' father Was alSO sa'on's brother, is that right?
(Question not translated)
A Yes.

--- OFF THE RECORD

BY MR. GRANT :
Q Now, Was Sa'on in the Tsayu clan?
A Yes.
Q This Was the Same Clan as the man Who Was killed by Satsan's medicine power?
A Yes. So was Mooseskin. Who was also Tsayu.
Q Satsan and his brother, were they in the Gilserhyu clan?
A Gilserhyu.
Q Did you -- you said that the man who was killed, I believe you said it was Dennis' father, who are you referring to when you refer to Dennis?
A It was Dennis' father who was killed by the medicine man.

--- DISCUSSION IN WET'SUWET'EN

THE WITNESS: That is why he was shot.

BY MR. GRANT :
Q What I am trying to get clear is when you refer to the man who was killed by the medicine man as being Dennis' father, who do you mean by Dennis?
A Dennis is Florence Hall's father, who is my mother's nephew.
Q Just to be clear, Dennis is Florence Hall's father, and the rest of your answer, Dennis is my mother's nephew?

(QUESTION NOT TRANSLATED)
A Yes.

BY MR. GRANT :
Q You described that the feast given by Tsayu they gave many gifts to Satsan, did you yourself ever know this man Satsan?

(QUESTION NOT TRANSLATED)

A Yes, I did see him. Yes, he was a very old man whose back was hunched from old age. He used to get around on a cane. I used to be afraid of him. And he lived right in Hagwilget.

--- DISCUSSION IN WET'SUWET'EN

THE WITNESS: My father had also lived in Hagwilget as well as Philip George.

BY MR. GRANT :
Q When you were small -- I'm sorry. How old were you when you knew Satsan?
A I may have been around seven years old.
Q Was anyone taking care of him when you remember him?
A It was my father who looked after him. He became good friends with my father.
Q Did Satsan, When you knew him, did he have -- how did he feel towards the Tsayu people? The Tsayu clan?
A He got along well with the Tsayu. My mother always used to cook for him, I remember that. My father used to bring food over to his house.

Q After the feast where Satsan was paid by the Tsayu did the Gilserhyu people and the Tsayu clan still -- was that final Settlement of this killing or was there further disputes between Gilserhyu and Tsayu over this killing?
A No, they quit arguing with each other.
Q Under Wet'suwet'en law if Satsan's brother had not been killed could the Tsayu have demanded compensation from the Gilserhyu for the death of Dennis' father?
Do you want the question read back?
A At that time there were many Oonustoten people who got along well with the Tsayu, and it was through their insistence that the Tsayu put up the feast to compensate.
MR. O'BYRNE: Excuse me, Mr. Grant, I didn't get one word the translator said, could I have it read back, perhaps? There is one word I missed.
MR. GRANT: Yes . The answer you want?
MR. O'BYRNE: Yes.
THE REPORTER: Answer: "At that time there were many Oonustoten people who got along well with the Tsayu and it was through their insistence that the Tsayu put up the feast to compensate."

MR. O'BYRNE: Thank you.

BY MR . GRANT :
Q If Mooseskin had not killed satsan's brother under Wet'suwet'en law WOUld the Tsayu haVe been entitled to compensation for the death caused by Satsan's brother?
A Yes. They should have and none of the other Tsayus spoke up against this except for Sa'on and that is why this happened.
Q On the last day you described the death of your brother, Jimmy Michell . What clan was Jimmy Michell?
A Tsayu.
Q You also described the people who you believe killed him, what clan were they in?
A Dan Joseph was Laksamshu, and he may have been killed for money. Arthur Seymour and his brother, Joe Seymour, were Laksilyu.
Q What Clan was Donald Gray in?
A He was Laksamshu. He was originally from Skeena Crossing.
Q After the feast which was the settlement, was there another feast put on by the Tsayu where your mother received a name?
A It was during the feast for Satsan that my mother got the chief's name.
Q What name Was that?

A Gwasoks.
Q What does that name mean?
A I don't know. It's s Gitksan.
Q Did your mother's sister get a name?
(Question not translated)
A It's Sa'on. Received the name probably at the same time.

MR. GRANT: Okay.

--- DISCUSSION IN WET'SUWET'EN

THE WITNESS: She was acting out her crest. She walked in with the beehive, and he said because I am quck-tempered like the bees, that's why I shot someone.

THE INTERPRETER: This is what she said when she walked into the feast house.

BY MR. GRANT:
Q At the time of the shooting of Satsan's brother, did Sa'on hold that name Sa'on?
A Sa'on got the name the same time my mother got her name. And their grandmother was Wilat. Wilat had two brothers. They both died, and one of them was called Kelxkoohx.
Q I just wanted to be clear, was wilat your mother's mother ---- (Question not translated)
A (In English) Yes.
Q ---- or your mother's grandmother?
A Mother's mother.

--- DISCUSSION IN WET'SUWET'EN

MR. GRANT: What?
THE INTERPRETER: And Dennis' bayp was my mother's brother.

BY MR. GRANT:
Q Do you know why Satsan's brother used his medicine power to kill your mother's brother?
A He was jealous. Maybe because of a woman.

MR. O'BYRNE: Excuse me?

THE INTERPRETER: He was jealous, maybe because of a woman.

BY MR . GRANT :
Q Is it -- did the Wet'suwet'en in the past use -- did the Wet'suwet'en in the past recognize that using spiritual power to injure somebody or cause them to die was one way of punishing a person for trespassing on a territory?
A Yes, that's what they say.
MR. GRANT: Thank you.

--- DISCUSSION IN WET'SUWET'EN

THE WITNESS: And they used their powers quite a bit. They were like devils. There's no Christianity at that time and that is how they used to kill each other.
MR. GRANT: We are going to go off the record for a few moments and change the tape.

--- SHORT RECESS

MR. GRANT: Okay, go back on the record. I'm sorry, Madam Reporter, could you just read the last question and answer back?
THE REPORTER: Question: "Did the Wet'suwet'en in the past recognize that using spiritual power to injure somebody or cause them to die was one way of punishing a person for trespassing on a territory?"
Answer: "Yes, that's what they say."
Question: "Thank you."
Answer: "And they used their powers quite a bit. They were like devils. There's no Christianity at that time, and that is how they used to kill each other."

BY MR . GRANT :
Q Now, Emma, you yourself now have trouble with your legs, is that right?
A Yes.
Q Do you know why you began to have leg problems?
A My socks were put in with the dead body in the casket.
Q Who did that?
A Dan Joseph and Joe Seymour. I found this out through an old blind lady who was a medicine doctor.
Q Was she Gitksan or Wet'suwet'en?
A Gitksan.
Q Did you go to her about your legs? The problems you were having with your legs?
A Yes.

Q Do you remember her name?

(QUESTION NOT TRANSLATED)

A No. We didn't get her name. She was very powerful and I had -- they had taken me to her on three occasions.

BY MR. GRANT :
Q Who had taken you to her?
A Helen and Beatrice. And Gloria. All my children were With me. They were there when she looked at me.
This old lady would put on the robe which was made OUt of otter hide. She also would put on claws from the grizzly bear. She would put that around her neck as well as her head. She was blind, very powerful. She had a big rattle which she rattled above my body as she went around me. She would lay me down on her bed. She also had a big feather which was made from eagle which she would lay on my chest.

--- DISCUSSION IN WET'SUWET'EN

THE WITNESS: She told me that she couldn't help me because the socks had been in the casket for a long time and the two people that had done this now are now both dead. Basil's son-in-law, Claude, had done the same thing, told me exactly the same thing, my legs are weak because of the socks being put in the casket.

BY MR . GRANT :
Q When did you go to see this lady? How long ago was that?
A I can't remember exactly when I had went to see her, and the revival church had chased her to Kitwanga because they foUnd out she was using her Indian powers. And I was going to go back and see her but I heard that she had died.
Q I appreciate that it's hard to remember exactly when but I am trying to get an approximate period, Emma. Was this after your children -- was Beatrice an adult? When you went to see this lady was Beatrice then married and had children or was that before she was married?

(QUESTION NOT TRANSLATED)

A When she had children.

Q Do you know why Joe Seymour would have put your socks in the casket of the dead person?
A They did it because I argued with him at one time about killing my brother, and that's why he had done that.
Q That's Jimmy Michell that you're referring to? The killing of Jimmy Michell that you described on the last day, is that right?
A Yes.
Q I WOUld like to ask you about the acquisition of new crests by the Wet'suwet'en; do the Wet'suwet'en chiefs take on new crests to represent particular events?
A I don't know what they did in the old days but the crests first arrived here when Kweese had gone to war in Kitimat.
Q Have the Wet'suwet'en taken on new crests since the white man has come into the territory?
A No.
Q Let me ask you, do you know of a crest of any of the clans that has a train as a crest?
A No. I just remember when the train used to turn around , in Moricetown. The train used to come from Rupert.
MR. COHEN: From Rupert?
THE INTERPRETER: Yes.
THE WITNESS: My father had gotten the contract, with another person, to clear the right-of-way from Telkwa Canyon to Beamont. From Beamont to Evelyn Lame Arthur Michell had gotten the contract for clearing the right-of-way for the railroad. My husband was a young man at that time and he helped his own father and his brother Basil.

BY MR. GRANT :
Q Did your father -- your father held the name Samaxsam, I believe you have already told us that, that his name was Samaxsam?
A Yes, and before he held the name Axdiiniiye. That's the name that's s presently held by Charlie Austin's son-in-law, who is non-Indian.
Q Now, when your mother died was your father given another name, which was a widower's name?
A No, he wasn't given a widow's name, he was given a chief's name. He was given Samaxsam. That name is currently held by Tiljoe who had held the name previously and he got his name. He was Sa'on's husband, who was my uncle.
MR. GRANT: Maybe we could go off the record for just a moment.

--- OFF THE RECORD DISCUSSION

MR. GRANT: Back on the record. For the record I had asked for a break to determine how the witness is feeling, and after a brief discussion with the Interpreter and the witness all counsel agree that we should adjourn over until tomorrow morning. We didn't actually set a time but we'll sort that out off the record. We'll sort that Out in a discussion off the record.

--- OFF THE RECORD DISCUSSION

PROCEEDINGS ADJOURNED AT 3.50 P.M. TO BE RESUMED 9. 30 A.M. , TUESDAY, 4 NOVEMBER, 1986

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

A. VERONICA DUFFY (MS)
(formerly Harper)
B.C.S.R.A. #263
AVD/jg-Nov. 10/86 Official Court Reporter

VICTOR WILLIAM JIM,
Wet'suwet'en Interpreter,
Previously Affirmed:

EMMA MICHELL, a witness on behalf of the Plaintiffs, Previously Affirmed:

--- UPON COMMENCING AT 9. 30 A.M. , TUESDAY, 4 NOVEMBER, 1986

--- OFF THE RECORD DISCUSSION

MR. GRANT : Go on the record. This is a continuation of the Commission Evidence of Emma Michell which was adjourned yesterday afternoon. The same parties are represented here through the same counsel as were here yesterday.

MR. COHEN: Mr. Grant, before you start, just to put on the record a short conversation that took place earlier this morning. Your attention was drawn to Rule 40, Sub-Rule 28 with respect to the matters we were discussing yesterday as to the objections to any of the evidence now being taken. Rule 40(28) reads:

> "At trial a party may object to the admissibility of any question and answer in a transcript, video tape or film given in evidence although no objection thereto was taken at the examination."

In light of that rule, I will maintain my position as stated yesterday that it's not necessary to put each and every objection to the evidence at this time.

MR. GRANT: Well, I maintain the position I took yesterday and I think you set out your grounds for objection yesterday in any event.

MR. COHEN: In a general sort of way.

MR. GRANT: We can't expect ----

MR. COHEN: In that category or types of objections were not meant to be exhaustive, there may be others that come to light.

MR. GRANT: With respect to the applicability of that rule, that rule was drawn to my attention by Mr. O'Byrne this morning before we went on the record, and I have no comment on it. I'm neither going to agree or disagree with your interpretation of the rule not having had an opportunity to consider the implications of that rule and it's interpretation by the Courts. In any event, we'll continue with the Commission.

EXAMINATION IN CHIEF BY MR. GRANT (CONTINUED) :

Q Emma , yesterday you described your father trapping on the Klotzwinii territory of Caspit; was that an example of what you described as negedeldus?
A Yes.
Q When your father used that Caspit territory did he use the animals that he trapped for himself and his family?
A Yes, and the grandfather as well.
Q When you say "and the grandfather" was that Caspit you were referring to? (Question not translated)
A He stayed in the Village of Hagwilget as he was getting on in years.
Q Was that Caspit?
A Yes. He remarried and stayed with his second wife.
Q Did your father use the animals and other things they got on Caspit's territory in feasts?
A That's why they do that.
Q Were those USed in the feasts Of caspit? Of Caspit's clan?
A Yes.
Q Were they also used in the feasts of your father's clan, that is Laksilyu?
A Yes.
Q At the time your father used Caspit's territory did he have Caspit's permission to use it?
A Yes, and Caspit always let him.
Q Did he continue to use it after Caspit died?
A Yes.
Q Did he contribute to Caspit's funeral feast?
A Yes, my father paid the majority of the expenses since my father's relatives did not have much money.
Q Who became the new Caspit when your grandfather died?
A Sylvester's grandfather name Loosiya.
Q That is Sylvester ----
A His name was One-Eyed William.
Q Is that Sylvester Williams' grandfather? (Question not translated)
A Yes. He was the one that brought Sylvester up.
Q Did the new Caspit, One-Eyed William, give your father permission to use the Caspit territOry?
A Yes.
Q Did he give that permission at your father's funeral feast or headstone feast? Your grandfather's, I'm sorry.
A No, my son -- (In English) My brother -- my brother paid the expenses for the headstone. They helped my father.

MR. GRANT: Could you repeat the question I asked before that

THE REPORTER: Question: "Did he give that permission at your father's funeral feast or headstone feast? Your grandfather's, I'm sorry."

MR. GRANT: Because I made a mistake I will restate the question.

Q Did he give -- did One-Eyed William give your father permission to use Caspit's territory at your grandfather's funeral feast?

A Yes, and Caspit's relatives also told people that my brothers could also use the territory.

Q Now, with respect to your father's rights or the permission given to your father to use Caspit's territory after your grandfather died, is that also known as negedeldus?

For the record, the Interpreter looked at me quizzically so I'll restate the question.

Is the right of your father to use Caspit's territory after his father died also known as negedeldus?

A Yes.

Q You described that Caspit's family also allowed your brothers to use Caspit's territory; after your father died did your brothers' right of access to Caspit's territory end?

A They did not go there. They broke the word of Caspit's relatives.

Q Your brothers did not go on Caspit's territory, is that the answer?

A No, instead they went to Sam Goosley and then the Telkwa River area.

Q And the Sam Goosley area is the Tsayu area that they were -- that they had rights to through their own clan?

A Yes, their own territory.

MR. GRANT: Just one point. I am just trying to -- when I led in the last question or so, it's an area I believe has been covered but if you are concerned about it, either counsel, please let me know. I am not trying consciously to lead except to get to the point I want to make.

I would like to ask you questions about the laws of the Wet'suwet'en.

MR. COHEN: Just for the record, Mr. Grant, are you qualifying this witness with any particular knowledge or expertise in the laws of the Wet'suwet'en, or is this general knowledge?

MR. GRANT: This is personal knowledge and to the extent that she is a member of the Wet'suwet'en society it is her knowledge of her rules of the society under which she

lives, but I will introduce it.
MR. COHEN: Perhaps you could explore it a little bit to see what she does and does not know.
MR. GRANT: Yes.
Q Emma, the other lawyer for the Province(sic) has just raised a question of you giving your opinions on some areas I would like to ask you some questions about. To the best of your knowledge, are there certain things that you were taught that the Wet'suwet'en were allowed to do?
A Yes, and they know all the territories.
Q Who taught you -- who taught you the rules by which the Wet'suwet'en lived?

--- DISCUSSION IN WET'SUWET'EN

THE INTERPRETER: She is asking me if you are talking abOut me and talking about laws.
MR. O'BYRNE: Perhaps you could give us the exact translation, Mr. Interpreter, what was said?
MR. GRANT: What did she ask you?
THE INTERPRETER: She asked me "Is it me?"
MR. GRANT: She asked -- her words were "Is it me"?
THE INTERPRETER: She asked me if it is me you're talking about.
MR. GRANT: You, The Interpreter, she's talking about?
MR. O'BYRNE: I'm sorry, I'm totally confused.
MR. GRANT: Her words were ----
MR. COHEN : Could we use names?
MR. GRANT: She said, the translation, "Is it me you're talking about"?
MR. COHEN: "Is it me, Emma"?
THE INTERPRETER: Yes .
MR. GRANT: And you said yes? The Interpreter said yes?
THE INTERPRETER: Yes .
MR. GRANT: Can you read back the question before this long circular event?

---THE REPORTER READ BACK THE QUESTION

MR. GRANT: That's okay. Ask Emma that question again.

--- DISCUSSION IN WET'SUWET'EN

THE INTERPRETER: She asked me again whether we are talking about here and now, and I asked her -- then I told her that they're asking about how you learned about the Wet'suwet'en laws from way back. She answered "Learned from my father, my mother and also my father and mother-in-law".

BY MR . GRANT :
Q Did your grandparents teach you any of those laws?
A I didn't see my grandmother, she died before I was born. Just my mother had seen my grandmother.
Q When you were young did you attend feasts of the Wet'suwet'en?
A Yes.
Q Did the Chiefs at those feasts explain what was happening at these feasts when you were young?
A Yes.
Q Were you taught why certain things were done at the feasts?
A Yes.
Q When you received your name Liiloo, were you taught certain things that you had to do with respect to that name?
A Yes.
MR. GRANT : Just for the record, I said "Liiloo", but it should have been "Liiloos" but the spelling ----
MR. O'BYRNE: Is that a mispronunication or a different person?
MR. GRANT: What I said was wrong pronunciation. The name I was referring to was Liiloos and I think that is what was used ----
MR. O'BYRNE: So the Interpreter didn't use the word you used, he used another one?
MR. GRANT: He pronounced it correctly.
MR. O'BYRNE: Thank you.

BY MR . GRANT :
Q When you were growing up were yoU taught about those among the Wet'suwet'en you could marry , those you could not marry?
A No, they didn't talk to me about that except for my father.
Q Is it fair to say Emma now that you are one of the main elders -- I should say one of the senior people, older people in the Tsayu clan of the Wet'suwet'en?
A It seems that way.
THE INTERPRETER: She's asking me if there is anybody older than me.

BY MR . GRANT :
Q Do you advise other people in the Tsayu clan about what they should do when the Tsayu put on a feast?
A Yes.
Q Do you help to organize feasts of the Tsayu people today?

A Yes.
Q You've described in the last few -- in the last day in this Commission things about who has the right to use different territories; whO taught you those things about the rights to use the different territories?
A I was told that by my uncle whom I travelled with through the territories, and he told us to live the life the way I told you.
MR. O'BYRNE: I'm sorry, I didn't get the last couple of words, "told us to live the life"?
THE INTERPRETER: "The way I told you".
MR. O'BYRNE: Thank you.

--- DISCUSSION IN WET'SUWET'EN

THE WITNESS : Also told me that my three children should be with you in the territory and today just Sara Tait is still with us in our territory and his two sons, John Namox and Pat Namox, are in the Laksilyu territory.
MR. O'BYRNE: It appears from observing the witness she appears to be rather fatigued today. I wonder if that's been canvassed with her?
MR. GRANT: Do you want to go off the record for a moment?

--- OFF THE RECORD DISCUSSION

--- SHORT RECESS

MR. GRANT: Before we continue with the question, there was one other housekeeping matter and that is we do not have the transcript of all past three days and the March 29th, 1982 letter which was numbered as Exhibit 3 yesterday, and then as Exhibit "A" yesterday, it can be agreed between counsel that this letter from Elmer Borneman to Mrs. Emma Michell dated March 29th, 1982 can be marked as Exhibit 5 on the Commission Evidence of Emma Michell and copies of that have been provided to both Mr. Cohen and Mr. O'Byrne.

--- EXHIBIT NO. 5 - Photocopy of letter dated March 29, 1982 from Mr. Elmer Borneman, Equity Silver Mines Limited, addressed to Emma Michell

BY MR. GRANT:
Q Now, Emma, you have already described earlier in evidence that you are in the Tsayu clan, which is the clan of your mother; are all Wet'suwet'en in their mother's clan?

A Yes.
Q Are all Wet'suwet'en in their mother's house?
A Yes.
Q And you have described you have rights to use the territory of your mother's house and your mother's clan; do all Wet'suwet'en have rights to use their territories of their mother's house and their mother's clan?
A Yes.
Q When you pass on or when you die will the rights to your territory go to your children?
A Yes.
Q You have given evidence that you married a person who was not in the Tsayu clan, is it wrong according to the Wet'suwet'en laws to marry someone in your same clan?
A No.
Q I'm going to rephrase the question. Can a Wet'suwet'en marry a person in his own clan?
A No.
MR. GRANT: Just for the record I rephrased it because I think the first question where I said is it wrong was somehow, it was misunderstood in the translation. I'm just raising that and if counsel has any comment or objection, they can raise it with me.

--- DISCUSSION IN WET'SUWET'EN

THE WITNESS: Laksamshu and Tsayu have been marrying each other. An example is Annie Tiljoe and Boit, and the pictures are on the wall in this building.

BY MR. GRANT :
Q Is Laksamshu a different Clan from the Tsayu?
A That's a little different than Tsayu.
THE INTERPRETER: Different clan rather.

--- DISCUSSION IN WET'SUWET'EN

THE WITNESS: And their crests. The Laksamshu crest is owl, and the Tsayu crests are the beaver, the eagle and mountain goat.
MR. GRANT: Go off the record for a moment please.

--- OFF THE RECORD DISCUSSION

MR. GRANT: Just went off the record because the Reporter indicated she had missed who Annie Tiljoe had married. The last answer, the person was Boit, and the witness

Could you read back the last answers before we went off the record please?

THE REPORTER: Question: "Is Laksamshu a different clan from the Tsayu?"
The Witness : "That's a little different than Tsayu."
The Interpreter: "Different clan rather".
The witness : "And their crests. The Laksamshu crest is owl, and the Tsayu crests are the beaver, the eagle and mountain goat."

BY MR. GRANT:
Q You described how, I believe it was One-Eyed William, took Caspit's name when your grandfather died; did Caspit's territory pass on to One-Eyed William when he took that name?
A They did not go there often except for old Caspit himself.

--- DISCUSSION IN WET'SUWET'EN

THE WITNESS: And Sylvester as a small boy used to go with him.
MR. GRANT: Could you repeat the question so it could be re-asked?
THE REPORTER: Question: "You described how, I believe it was One-Eyed William, took Caspit's name when your grandfather died; did Caspit's territory pass on to One-Eyed William when he took that name?"
THE WITNESS: . Yes.

BY MR. GRANT :
Q When a new Wet'suwet'en Chief takes over the name of a chief who has died, does the territory always pass with the name?
A Yes.
Q Before your husband Tommy died did you and your children use his territory?
A We haven't been back to the territory for two years. My son-in-law, Joseph, usually goes up there and when he gets beaver he would give it to us.
Q What is Joseph's full name?
THE INTERPRETER: Joseph Joseph.
THE WITNESS: Winnie's husband.

DY MR . GRANT :
Q What Clan is Joseph Joseph in?
A Gitdumden.

Would have rights to use his territory?
A Yes.
Q Who announced it? (Question not translated)
A While he was alive he had written it down. I wrote his words down and he brought it to the game office himself.
Q Who Were the people who have the rights to use your husband's territory now?
A Stanley Nikal.
MR. GRANT: Just ask the witness to wait for a moment.

--- OFF THE RECORD DISCUSSION

BY MR . GRANT :
Q Before you were trying to answer the question about the rights to your husband's territory after his death. Can you continue as to who else had the rights to your husband's territory after his death?
A It was Stanley, and Sara Tait's grandson, who also took his name, Skokumwasas, and one of Mabel Sam's children.
Q Are all those people in your husband's house?
A Yes.
Q Can a Wet'suwet'en person use the territory belonging to another clan without the owner's permission? By owner, I am referring to the chief who holds that territory.
A They only use it with permission.
Q If they didn't seek permission or get permission before using the territory what was the penalty under the Wet'suwet'en law?
A In the past they used to kill each other for it, but not these days.
Q Before killing a person for trespassing in the past would the person be given a warning?
A I don't think so. They would be killed on the spot.

--- DISCUSSION IN WET'SUWET'EN

THE WITNESS: That doesn't happen any more now because everybody loves each other.

BY MR. GRANT:
Q If the person was killed for trespassing would the clan have to compensate or have a settlement feast with the victim's house?
A No, they did not do that to people who trespassed.
Q Do you recall an incident involving Ta'tlas and a Nutseni person and, if so, can you tell us about it?

Q Who tOld you about Ta'tlas?
A My father-in-law.
Q Can you tell us the history of Ta'tlas?
A This side of Boulder Creek there was an area where the bears would frequent and that area Ta'tlas used to set a snare for the bears. The Nutseni had come from a long way but had set a snare before Ta'tlas came along. Ta'tlas walked up to him and he pretended to invite him for a meal and joke around with him. He gave him some salmon and ate with him. Ta'tlas got up, pretended to walk around and continued joking with him. He broke off some red willow and made a noose which he put around his neck and choked him to death. Before he died the Nutseni said "iiya Nutseni doo yen gunlii" and from that Ta'tlas had made a song, which means "Nutseni, what is hurting you?". That song is still being used at the feasts today. The area now being used for a farm and if Ta'tlas was probably alive he would do the same thing.
Q Which house -- first Of all, Was Ta'tlas Wet'suwet'en?
A Yes.
Q What house and What Clan Was Ta'tlas in?
A Laksilyu. Tsekalgowiten.
THE INTERPRETER] Tsekalgowiten name of the house.

--- DISCUSSION IN WET'SUWET'EN

THE WITNESS: That is the house of your mother-in-law, Madeline.

BY MR . GRANT :
Q Is that Madeline Alfred?
A Yes.
Q Who is the Chief Of that house?
A The chief of that house is Wah Tah Keght and Dzeeh.
MR. GRANT: I'm sorry, for the record, when I asked that question the witness was still answering the previous question.
Q Is the area where this incident took place, is that Wet'suwet'en territory or Nutseni territory?
A Wet'suwet'en territory.
Q Did the Wet'suwet'en have a Settlement feast with the Nutseni after this Nutseni was killed?
A No.
Q Is it -- after this incident occurred with Ta'tlas and the Nutseni what did Ta'tlas do with the Nutseni's body?
A I don't know. He may have buried him.
Q Did the Wet'suwet'en tell the Nutseni What had happened?

A I don't know.
Q Did this incident happen in the time -- in your father-in-law's lifetime or before he was born? (Question not translated)
A He was not born yet, this happened a long long time ago and people just told about it.
Q Did it happen before the white man came?
A It happened long before there was any white people. In the area where the bears used to frequent there was a trail that led to the east and that is where my husband and I used to do our trapping. We also used to have a line going up towards the mountain, and that has all been logged off now.
MR. COHEN: It's all been?
THE INTERPRETER: "Logged off".

BY MR. GRANT:
Q Under the Wet'suwet'en practice or tradition do the Wet'suwet'en generally raise their children on their father's territory?
A Yes.
Q Did this happen to you?
A Yes.
Q After you were married did you move to your husband's territory? (Question not translated)
A Yes.
Q Is that the practice of the Wet'suwet'en?
A Yes.
Q Were your father and your husband in the same clan?
A Yes, Laksilyu.
Q Were you encouraged to marry into your father's clan?
A Yes.
Q Is that a common practice for persons to marry into their father's clan?
A Yes.
Q Have any of your children married into your husband's clan?
A Helen is married to Laksilyu, and it is her husband that has now rights to the Telkwa territory.
Q That is Helen?
A Nikal.
Q Are any of your ----
A (In English) And Mary, Mary Jim.
THE INTERPRETER: Mary Jim is also married to Laksilyu. A person from Kwanbay gax house.

BY MR. GRANT:
Q Have any of your other children married Laksilyu?

A One's married to a Negro. Lois. Oh yes, Pauline had also married Laksilyu. Thomas Nazel. She's now dead. And Dan is married to Gilserhyu. Winnie married to Gitdumden. I have eight girls and one boy. Three boys had died before. I also brought up Jimmy, who was my grandson.
Q Are you finished?
A Yes.
Q Under Wet'suwet'en law were you entitled to use your father's territory -- I'm sorry -- cancel that question before you interpret it.
Are you entitled to use your husband's father's territory?
A Yes.
Q In order to use that territory did you have to obtain your husband's father's permission?
A Yes, he gives us permission.

--- DISCUSSION IN WET'SUWET'EN

THE WITNESS: We also had traps in Driftwood Canyon. The territory had belonged to Lame Michell. That territory is now taken by the white people.

BY MR . GRANT :
Q How are you related to Lame Michell?
A Daughter-in-law. I married his son. Lame Michell and his wife were both from the same clan and married. Lame Michell was from here and his wife was from Maxan Lake.
Q Was his wife Wet'suwet'en or ---- (Question not translated)
A Wet'suwet'en. They were both Wet'suwet'en.
Q Was there any penalty or criticism of Lame Michell and his wife because they married into the same clan?
A No.
Q I WOUld like to ask you about the Walcott area, just the other side of Smithers; was that area given by one clan to another for compensation at any time? Or part of that area?
A The Laksamshu were given the territory by Queen's husband. It is a small area between Walcott and Barrett. It's by the Laksilyu territory.
Q Why were the Laksamshu given that territory?
A I don't know.
Q Was Queen's husband in another clan? (Question not translated)
A He was Laksamshu. He originally came from Skeena Crossing.

Q I'm Sorry, did another -- what other clan gave that territory to Laksamshu?
A Laksilyu, from Queen.
MR. GRANT : Go off the record for a moment please.

--- OFF THE RECORD DISCUSSION

MR. GRANT: Go on the record.
Q Earlier you mentioned Boit or Peter Michell, who was Annie Tiljoe's husband, was he in the Laksamshu clan? (Question not translated)
A Yes, Laksamshu.
Q Was Annie Tiljoe his second wife? (Question not translated)
A Yes.
Q Who Was his first wife?
A Her name was Dzeeh, who is the mother of Diiltsaye, who was nice lady, and she was Peter Basil's mother.
Q I Want to be clear on your -- I may misunderstand your answer. Was she Peter Basil's mother?
A Yes.
Q Was Boit Or Peter Michell and Annie Tiljoe the parents of Margaret Williams? (Question not translated)
A Yes, she's their child.
Q Did Margaret have any brothers and sisters? By Peter and Annie?
A Yes, she did have three brothers, Thomas Patrick, Thomas and Donald are all dead and just Patrick Mitchell is left, and Margaret presently holds title to the Walcott territory.
Q Why is she holding the Walcott territory?
A Because her father had said so.
Q Her father, Peter Michell?
A Yes.
Q Is this through negedeldus or for some other reason?
A Yes, negedeldus. And it is registered with the game warden.
Q Just a second. I would like to show you a letter and ask if you recognize the person who signed that letter at the bottom? It is dated October 22nd, 1984.
MR. O'BYRNE: I take it it's a signature you're after?
THE INTERPRETER: She is asking me this signature?
MR. GRANT: Yes.
THE WITNESS: I wrote this letter.
MR. GRANT: I would ask that that be marked as Exhibit 6, please.
MR. O'BYRNE: Perhaps we could have it identified a little greater?

MR. GRANT: Tell her just to wait a minute.
MR. O'BYRNE: Perhaps it might be identified a little better, Mr. Grant, who is the addressee, the addressor, and the signature?
MR. GRANT: For the record it's an October 22nd, 1984 letter addressed to Neil J. Sterritt from Tommy Michell.
MR. O'BYRNE: If I understood it right, the witness said that she wrote this letter?
MR. GRANT: Yes.
THE INTERPRETER: Yes.
MR. O'BYRNE : I take it then it is not in her handwriting?
MR. GRANT: I am going to ask her once we mark it. That will be Exhibit 6.

EXHIBIT NO. 6 - Photocopy of handwritten letter dated October 22nd, 1984 addressed to Neil J. Sterritt from Tommy Michell

MR. GRANT: Go off the record.

--- OFF THE RECORD DISCUSSION

MR. GRANT : Go back on the record.
Q Now, Emma, you said that you wrote this letter, can you tell us who you wrote it for and what the letter, which is marked as Exhibit 6, was about? Take your time and look at the letter.
A I wrote this letter because we wanted to build a trapping cabin at Jonas Creek and the government requested some money before we do and my son, Dan, told me not to pay and this is why I sent the letter.
Q Now ----
A And I received another letter which I gave to you which you should show the people here.
MR. COHEN: Yes, I think that is appropriate.
MR. O'BYRNE: The Province agrees with that position.

--- DISCUSSION IN WET'SUWET'EN

THE WITNESS: THey keep requesting this every year.

BY MR. GRANT:
Q This letter is addressed to Neil Sterritt, Why did you write -- did you send the letter to him and, if so, why?
A I did send the letter because they had advised my son not to pay.

THE WITNESS: This is our own territory and why should we have to pay, is the advice we got from these people.

BY MR . GRANT :
Q From Which people? (Question not translated)
A The Gitksan people. This is why we keep Neil Sterritt informed.
Q You're referring to Neil Sterritt, the President of the Tribal Council? The Gitksan/Wet'suwet'en Tribal Council?
A Yes.
MR. GRANT: Go off the record for a moment, please.

--- OFF THE RECORD DISCUSSION

MR. GRANT: Go back on the record.
Q You referred to the fact that there Was a Second letter which I had -- which you had given to me -- was this a. letter from the Tribal Council or was it a letter from the government?
A The letter was given to you ----
THE INTERPRETER: Referring to me.
MR. GRANT: Referring to the Interpreter.
MR. COHEN: Victor Jim.
THE WITNESS: And that's the one I gave you yesterday.

BY MR. GRANT :
Q Who Was that letter from?
A I haven't looked at it.
Q Okay.
A My daughter Gloria had looked at it and it's apparently from the government office in Smithers. She told me to give it to you and that's why I gave it to you yesterday
Q In Exhibit 6 you refer to something that I sent -- your last sentence is: "I send it to you now thank you"; do you remember what was enclosed, if anything, with the letter that you wrote to Neil Sterritt?
A I didn't send anything along with the letter.
Q Exhibit 6 Says: "From Tommy Michell"; who was the Tommy Michell referred to there?
A My Tommy Michell. He has the territory at Jonas. Telkwa River.
Q That Was your husband Tommy Michell? (Question not translated)
A Yes.
Q In the Wet'suwet'en SOciety are there certain rules with how you are supposed to treat animals when you catch or

A We treat all animals with respect. We use everything.
Q You use every part of the animal?
A Yes.
Q Can you describe in more detail what you mean when you say "We treat all animals with respect"? Give us some examples of what the Wet'suwet'en do?
A All the meat was smoked for feasts. The cariboo. Now the same for deer and moose. All the meat was used at a feast. Today there's no more moose because the white people have destroyed our territory. You hardly see People pass around moose meat or other game. Now they just pass out bread and macaroni.
Q When you say was passed out, are you referring to passing it out at the feast?
A Yes. Now just bread and macaroni is passed around to people, hardly any meat.
Q Are there laws regarding how you treat the salmon?
A The salmon is smoked, salted and now canned. It's not right to play around with salmon. Crazy kids that now gaff in the canyon throw back the pink salmon and Fisheries have been talking about this in Vancouver and have threatened to shut down the fishing in the canyon.
Q Under Wet'suwet'en law do the Wet'suwet'en chiefs have the authority to close down the fishery at the canyon?
A The people continue to fish until September when the salmon quit running. They fish all summer, they don't close it down.
Q You have talked about some of the young people throwing the fish back in the canyon and you said that you threatened to close the fishery at the canyon down; do the Wet'suwet'en chiefs have the authority under Wet'suwet'en law to deny persons access to the fishing sites in the Moricetown canyon?

--- DISCUSSION IN WET'SUWET'EN

THE WITNESS: Yes.
MR. GRANT: She started to say something else.
MR. O'BYRNE: Mr. Grant, just for the record, the witness had a long explanation and the Interpreter replied with one word, which was "yes".
MR. GRANT: The Interpreter was saying the question and the witness appeared while the Interpreter was still talking to interject and to give some answer, then the Interpreter completed the question and the witness answered one word, "Yes", which the Interpreter translated.
Do you recall the interjection she interjected to you?

THE INTERPRETER: No.
MR. GRANT : Go off the record for a moment.

--- OFF THE RECORD DISCUSSION

MR. GRANT: Go back on the record.
THE INTERPRETER: That's s when she interjected, she said the pink salmon have spoiled.
MR. GRANT: That was the concern you had about that interjection, Mr. O'Byrne?
MR. O'BYRNE: Yes.

BY MR. GRANT :
Q Emma, Can you explain to us today why the Wet'suwet'en chiefs have decided to sue the Government of British Columbia in this case?
Go off the record for a moment.

--- OFF THE RECORD DISCUSSION

MR. GRANT: We just broke because just as the Interpreter was getting ready to translate the answer the video went off, so we are back on the record and waiting for the answer.
THE WITNESS: The white people are going too far. They are destroying all the Indian land on our territories. Our Indian people are unable to trap and sell their furs. The young people have no money and are out of work. There aren't too many of our people and yet the white people are going too far. They have destroyed our forests. They make money off it and our people don't get anything in return. I would like our people to be better respected and taken .better care of.

BY MR . GRANT :
Q Did the Chiefs and the people in your house discuss this court case against the Province?
A We haven't spoken much about it because our elders have all died off. The only people that we have in our clan is our chief, Dan, and yourself, and I think I am one of the few that has given this information.
MR. GRANT: Would you read back from the first part of not this answer but the answer that started right after the video break?
THE REPORTER: Answer: "The white people are going too far. They are destroying all the Indian land on our territories."

MR. GRANT: That's fine.

Q You say the white people are destroying the land of our Indian territories, can you refer to some examples of that destruction?

A Sam Goosley is one example. The whole area has been logged off and the white people have also started up a big mine in the territory, and we get no help from the white people.

The Telkwa River is another example. Just last Sunday one of my daughters took a trip up there and came back and saw nothing but machinery, bulldozers hauling wood out of there, and now there's very few trees left.

Q If she wishes to go on?

A The people who own the territories, where are they going to hunt and trap? There's no hunting or trapping areas left, they've all been logged off. When you go out hunting for moose there's machinery and trucks on the road and they're afraid to go up there. That's all.

Q Do you know if anything the white people have done has affected the water at Sam Goosley?

A They just destroyed Sam Goosley Lake. I was concerned to send them the letter and I hope they do something.

Q Emma, if the Wet'suwet'en chiefs win this court case against the Province, can you tell us what you would like to see changed in how your territory is managed and controlled?

A I would like to see my grandchildren who have the rights to the territory look after the territories, Laksilyu and Gilserhyu and all the other clans.

Q What about the lands that are now being farmed by the non-Indian people? The non-Wet'suwet'en on the territories?

A If we were strong we would probably kick them off the land but it is the government who have let these people onto the land and these people who are on the land pay taxes to the government.

Q If you win the court case how do you see -- how would you like to see your grandchildren relate with the people who are -- the non-Wet'suwet'en people who are living on your land?

A I don't know how they would relate to each other.

Q Emma, in these days that you have given evidence in front of the cameras is the information you have provided about your clan and the other clan, does that information belong to the Wet'suwet'en chiefs?

A Yes, because I am one of them.

Q Have you given that evidence solely for the purpose of this court case to explain to the judge about the

Wet'suwet'en people and the Wet'suwet'en system?
A Yes.

MR. GRANT : Thank you, Emma.

I just want to make a comment on the record. There was a reference this morning to a letter which apparently the witness gave to Victor Jim, the Interpreter. I haven't seen that letter and I may wish to -- I do wish to review it and unless there is a claim of privilege, even if it is not relevant, I have no problem disclosing it to counsel after I have reviewed it, and I may have a question of the witness with respect to that. Subject to that, I've completed the direct examination of Mrs. Michell.

For the record I understand that Mr. O'Byrne for the provincial defendant is prepared on the basis of I would adjourn by noon today -- and it is now 12.25 -- to commence cross-examination tomorrow. I have not -- I do not want it to be taken that the fact that we are going to adjourn until tomorrow morning is an agreement by the Plaintiffs that we should not proceed this afternoon.

I would just like to set out that our position is that although Mr. Cohen for the Federal Government was not present on August 26th through 28th and therefore had some difficulty until he received the transcript that, of course, Mr. O'Byrne and myself were both present at that time. We had agreed shortly after that adjournment that we would set down for three days on the basis of one and a half days for each counsel.

Last week there was Commission of Fred Johnson which was not completed and through agreement with my co-counsel it was tentatively set we would start from this afternoon until tomorrow night with the completion of Fred Johnson's evidence. Yesterday morning we were all advised that Mr. Johnson was hospitalized, and Mr. O'Byrne then made the proposal to start tomorrow morning.

I just want to set out for the record that I've canvassed this with the witness and I'm available and the witness is available this afternoon. I also want to confirm before the August 26th commencement there was another commencement proposed for Emma Michell's Commission and she was hospitalized in the summer.

I also understand from Mr. O'Byrne's confirmation this morning he anticipates one and a half to two days and that, of course, was before he saw my completion. In any event, we will not complete tomorrow. Apparently both counsel for the Defendants are available the week of 19th November, possibly starting on the 19th but

Starting in any event on the 20th November. We are available, the Plaintiffs are available to complete -- to continue this afternoon and tomorrow, and complete next week if necessary.

All counsel, as of last night, got the last transcript and, as of yesterday morning, got the first two days of Emma Michell's Commission Evidence.

I am only raising this in the pessimistic possibility, if the witness has medical problems between now and November 20th, as the court order sets out, and is not able to continue then, as the court order sets out, it is the Plaintiffs' position that we will be applying to tender her evidence in any event.

I only want to say that the requests for the adjournment this afternoon has basically been the request on my understanding of the Defendants and particu- in that case on behalf of Mr. O'Byrne. I believe I will take the proposal of the November dates as by agreement basically at the request for the counsel for both Defendants. The Plaintiffs are very concerned with an elderly witness, such as Mrs. Michell, we complete as expeditiously as possible.

I am not putting this on the record in an effort to endeavour to discredit Mr. O'Byrne but I want it to be clear on the record about the Plaintiffs' availability and, in particular in this case, this witness' availability, together with The Interpreter, myself and the word person.

MR. O'BYRNE: Mr. Grant, I want an opportunity to respond to that on the record.

MR. GRANT: Sure.

MR. O'BYRNE: The Commission Evidence in regard to Emma Michell has been adjourned once due to her health. On the second occasion, as my notes have it, we commenced August 26th, 27th and 28th. I was not provided with transcripts I advised your office, via your article student, on the 23rd October by telephone that unless and until I had those transcripts in my possession and had a chance to review them, I was unprepared, unable and unwilling to proceed with the Cross-Examination given that not only did I not have transcripts, I did not have the precis of the witness statements.

You and I have on a previous Commission Evidence agreed that the precis as was set out was not required given the fact I had informal advice from yourself, and because it appeared the last precis had absolutely nothing to do with the evidence the witness gave anyway.

Notwithstanding that, the transcripts were not

provided to me until Monday morning, November 3rd, when I arrived for this Commission. I did not receive the third volume until last evening, being the evening of Monday, November 3rd, and they're uncertified copies.

I am now in the position of seeking instructions and you were well advised of the fact that I would not be prepared to commence Cross-Examination and, in fact, it was scheduled that we would deal with Fred Johnson. In fact, your co-counsel, Mr. Rush, agreed to this arrangement and it is only through my courtesy and the fact that Mr. Johnson has taken ill that I do not wish to see the time go to waste, with all the people assembled, that I'm even condescending to commence the Cross-Examination. All I am asking for is an afternoon's adjournment in order to prepare for it.

I must put on the record my strong opposition to your comments in regard to same.

MR. GRANT: The only point with respect to that, with respect to the transcripts, I want to note for the record that it has been at the cost of the Plaintiffs, that we arranged for a special Reporter to sit in for Linda Manilowski on two days of jury trials last week. So on myarrangements, immediately after receiving your October 23rd call, to try to endeavour to free-up the Reporter to was here on August 26th to 28th, to get those transcripts to you.

As I say, it's only and, with respect, I agree that both counsel would be entitled under the terms of the Order to a three week adjournment for the evidence that's been led yesterday and this morning. I don't disagree with that.

It's with respect to the other evidence, I am just setting out on the record, in case there are medical problems in the future but I appreciate that you are starting it tomorrow, and we'll adjourn until then.

MR. COHEN: I would just add that the date that we return to complete the Cross-Examination has not yet been decided and we can speak to that when we close tomorrow afternoon That would be my proposal.

MR. GRANT: My understanding is that that date has been set aside. It's been scheduled for November 20th and 21st with the possibility, if Mr. O'Byrne is freed-up, that it would start on November 19th.

MR. O'BYRNE: Again, that has to be confirmed with my principals but I anticipate my instructions will be to go with that. That is why I arranged it tentatively.

MR. GRANT: Okay.

MR. O'BYRNE: That is why I have other arrangements to make this afternoon.
MR. GRANT: Okay.
MR. O'BYRNE: Are we then concluded?
MR. GRANT : We are adjourned over until tomorrow morning.

--- OFF THE RECORD DISCUSSION

--- PROCEEDINGS ADJOURNED AT 12.35 p.m.
TO BE RESUMED AT 9.30 a.m. , WEDNESDAY, 5 NOVEMBER, 1986

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

A. VerOnica Duffy (Ms)
(formerly Harper)
Official Court Reporter
AVD: jg-Nov.14/86 B.C.S.R.A. #263

EMMA MICHELL, a Witness on
behalf of the Plaintiff,
Duly Affirmed

VICTOR WILLIAM, We'suwet'en
Interpreter, previously Affirmed

--- UPON COMMENCING at 9.30 a.m., WEDNESDAY, 5 November, 1986

--- OFF THE RECORD DISCUSSION

MR. GRANT: Let's go on the record then. This is the continuation of Commission Evidence that is I believe now into its sixth day and was adjourned over for Cross-Examination this morning.

I spoke briefly with Mr. O'Byrne, who is commencing the Cross-Examination as there were two matters that I would like to raise, one that I alluded to yesterday referring to some letters, and the other matter was one I overlooked and I'll raise that question.

EXAMINATION IN CHIEF BY MR. GRANT (contd.)

Q Firstly, Emma, yesterday you referred to a letter that you gave to victor Jim, the Interpreter, the day before and I took it, went off the record and I thought you were referring to another letter. I am referring to that letter now, the one which I showed to you off the record. It's dated October 30, 1984, it's from Neil Sterritt, on the Gitksan-We'suwet'en Tribal Council letterhead, to the Minister of Finance of the province of British columbia. A copy of that letter went to Tommy Michell and attached to that letter appears to be what is a tax statement.

Did you receive a copy of the letter and the attached tax statement from Mr. Sterritt:

THE INTERPRETER: I told her to have a good look at it to see if she recognized it.

MR. COHEN: I'll take the opportunity, Mr. Grant ----

MR. GRaNT: JUSt a minute.

THE INTERPRETER: She's asking what the content of the letter is.

MR. O'BYRNE: Perhaps Mr. Translator could just translate the content of the letter to her.

MR. GRANT: I was just going to ask if you had any objection to him reading the contents of the letter to her?

MR. COHEN: NO objection.

MR. O'BYRNE: I don't have any.

--- INTERPRETER TRANSLATED LETTER TO WITNESS

MR. GRANT: And refer her to the attachment as well.
THE WITNESS: Mr. Sterritt had advised my son Dan not to pay the taxes, and we're not.

BY MR. GRANT:
Q Did you receive a copy of this letter?

--- DISCUSSION IN WE'SUWET'EN

THE INTERPRETER: She's getting all confused about the dates.
THE WITNESS: My husband did receive one.
MR. GRANT: Could I ask that that be marked as Exhibit 7, two page letter dated November 30, 1984 from Mr. Sterritt to the Minister of Finance, together with the attachment which appears to be a tax notice ----
MR. COHEN: I'll take this opportunity to confirm for the record ----
MR. GRANT: JUSt one moment -- dated October 5th, 1984.
MR. COHEN: ---- to confirm for the record that you earlier advised that this document has not been listed on your List of Documents?
MR. GRANT: That's correct, it's not on the List of Documents. I anticipate -- Mr. cohen, of course you nave raised this on a number of documents -- but any document referred to in this commission which are not on the List of Documents will be put on the updated List of Documents of the Plaintiffs.

MR. O'BYRNE: Which might be available when?
MR. GRANT: I can't tell you that now. If there is some urgency on behalf of the Defendants maybe we can arrange to have a very short List of Documents referred to this Commission available very quickly. Exhibit No. 7.

--- EXHIBIT NO. 7 - Letter dated November 30th, 1984 on the letterhead of the Gitksan We'suwet'en Tribal Council addressed to the Minister of Finance, Province of British columbia, together with attachment, tax notice.

--- OFF THE RECORD DISCUSSION

MR. GRANT: On the record.
Q Yesterday I referred to Exhibit 6 and this was the letter that you wrote to Mr. Sterritt on October 22, 1984. Did you include in your letter to Mr. Sterritt, which is marked Exhibit 6, a copy of the attachment to Exhibit 7, that is the tax notice:
A Yes.
Q Now, I would like to show you another document entitled "Notice of Overdue property Tax" -- just one moment. It refers to a closing balance as of October 15th, 1986 and it is with respect to a trapline site near Jonas Creek, southwest of Telkwa; did you receive that document from the Minister of Finance?
A Yes.
MR. GRANT: I would like that marked as Exhibit 8 please.

--- EXHIBIT NO. 8 - Document entitled "Notice of Overdue Property Tax", October 15, 1986, trapline near Jonas Creek, southwest of Telkwa.

THE INTERPRETER: She said don't they know that my husband has died.

BY MR. GRANT:
Q Is this document the one that you referred to yesterday that you had given to Victor Jim two days ago?
A Yes.
Q Did your husband -- do you know what the "L" stands for on Exhibit 8 in your husband's name?
A Little Tommy. My brother was referred to as Big Tommy.
Q Have you or has anyone on your husband's behalf paid the taxes referred to in Exhibit 6, the attachment to Exhibit 6 and Exhibit 8?
A No, I don't think so.
MR. GRANT: Now, for the record, I have provided copies of Exhibits 6, 7 and 8 to both counsel who are present. JUSt for the record, the back of Exhibit 8 has the standard form which is entitled "Application for Homeowner Grant". I didn't photocopy the back of it but as it can be noted on Exhibit 8 it is unmarked and it is a form, and both counsel have looked at it. If they wish a copy of the reverse they can let me know but I take it both of them are not concerned about that?
MR. COHEN: That's correct.
MR. GRANT: The other matter was with respect to Exhibit 6. I

believe it was Mr. O'Byrne asked where the original of Exhibit 6 was. Were you concerned -- I wonder if you were concerned with the production of the original of Exhibit 6?

MR. O'BYRNE: I am concerned where the original is of Exhibit 6. It appears to be -- it's addressed to Neil J. Sterritt, who I take it to be the same Neil J. Sterritt who swore an Affidavit in this matter just recently. If he has the original, I think it should be produced. I am prepared to work with the photocopy at this time subject to the right to seek production of the original.

MR. GRANT: That's fine.

Q Emma, one other matter that I didn't ask you about. Do the We'suwet'en people have particular songs that relate to the names of the Chiefs and their crests?

A Yes, they all have songs.

Q Do you know any of the songs that relate to the Tsayu people?

A I do know the songs but my throat is sore.

Q Are you Unable to sing a song today because of your throat:

THE INTERPRETER: She iS asking if you have a drum.

MR. GRANT: Unfortunately, we don't have a drum here today. (Not translated.)

THE WITNESS: (In English) I've gOt a drum in my home but I didn't bring my drum with me.

MR. COHEN: Repeat what she said please?

MR. GRANT: GO ahead.

THE INTERPRETER: "I have a drum at home, you didn't tell me so I didn't bring it."

MR. GRANT: Can we just go off the record for a moment.

--- OFF THE RECORD DISCUSSION

MR. GRANT: Go on the record.

Q Emma, given that your throat is sore, I have discussed this with the other two lawyers for canada and for the province and we have come to an agreement that we will postpone you singing a song until either this afternoon, if you are feeling better, or a few weeks from now when we reconvene, and then we'll arrange for you to have the drum or whatever you need to do that at that time.

A I'll try it this afternoon.

Q We want it to be when you're feeling better.

A I might lose my voice that is why I'm a little afraid

of trying to sing the song.

MR. GRANT: We'll do it when your throat is a little better.

Subject to that last, which we have come to an agreement on, that concludes my Examination. Maybe we can go off the record for the moment so people can juggle papers, locations etc.

--- OFF THE RECORD DISCUSSION

MR. O'BYRNE: Back on the record. JUSt before we start, just to clarify something Mr. Grant said yesterday in regard to the fact that the Plaintiffs' Counsel and the Witness were prepared to proceed and that it was myself, acting on behalf of the Attorney General for the province of British columbia, who was unprepared and I wish to clarify for the record some of the history in regard to this matter.

The Commission was originally set up and established to proceed the 17th June, 1986 by letter dated June 12th from Mr. Grant to myself. This was confirmed, that it was to start the 17th day of June, 1986 at 2.00 p.m. as Mr. Grant had a continuation of a trial and wished to finish it before starting on that date.

On the 16th of June I received a communication from Mr. Grant advising me that he wished to cancel the commission that was to start on that date as he was required in regard to an Injunction Application in Vancouver. The matter was re-scheduled to commence July 2nd in Moricetown.

On July 2nd I attended at 10.00 a.m. for the commission Evidence to start. I was advised by Mr. Grant that the Witness, Emma Michell, was quote, "going to be late as she was shopping in Smithers", close quote. After approximately one hour of waiting I was next advised by Mr. Grant that the witness was, quote: "Ill but would be available to commence the commission Evidence the morning of Thursday, July 3rd", close quote.

I prepared to attend and received a telephone conversation from Mr. Grant in the early morning hours of July 3rd and was advised that the Witness was ill and it would have to be adjourned again.

I wish to clarify that for the record in order to set out the adjournments in this matter that were not at the behest of the Provincial Crown and were not involved with the Witness' state of health.

MR. GRANT: I jUSt wish to clarify two points out of that. One, with respect to the July 2nd, the initial information I provided to counsel was based on the information I received. I had just been meeting with the Witness a few days before July 2nd and initially was unaware that the problem was a health problem. What happened on July 2nd and 3rd, she was hospitalized and since the comments I made yesterday I wish to advise both counsel I have learned that the Witness was hospitalized again two weeks ago. I jUSt want to clarify that on the record.

The comment about she was shopping at Smithers, I don't deny that I made it, as my learned friend has obviously reviewed the record, but I do say that that was the instruction I received. Those instructions were in error and as soon as I learned she was ill, I informed my friend. Of Course, both myself and Mr. O'Byrne were intending fully to go ahead on with the July 2nd and 3rd matter.

With respect to the Injunction Application, my only comment with respect to that, that application was brought on ex-parte by the First Defendant, the province of British columbia, on Friday, July -- the Friday before June 16th; and I was only apprised of that matter late on the Saturday, and it was an ex parte application without any notice to my clients. It was something certainly within the knowledge of the First Defendant although it may not have been, of course, in the knowledge of Mr. O'Byrne.

MR. O'BYRNE: NOW, perhaps again for the record, Mr. Translator, I wish to perhaps clarify something. Please be advised that I do not intend to be using We'suwet'en at all in my questioning and, therefore, if the Witness replies to you or to my questions in We'suwet'en, I would ask to have the words translated to English in all regards. If there is or there are examples or times when there is no English equivalent for the We'suwet'en, I would ask you to advise me of that, and I would ask you to provide me with the appropriate spelling for t*e word and, further, I would be asking you to clarify the word in relation to its meaning in English or its definition as such.

MR. GRANT: The only comment on that is with respect to the spelling and that is we have a person here who is Writing the words down as they are said. I would ask, Mr. O'Byrne, you allow the word person, Miss Tonia Mills, who has been here on all the Commissions of the

We'suwet'en, to be allowed to either communicate with the Interpreter if there is a spelling problem, or to provide you with the spelling which is the way we have dealt with all the transcripts.

The Interpreter has a major task in translating and when you ask him to take on the additional task of spelling the words, I would submit that is probably a little bit unreasonable. If you do insist on that, I would ask that he and Tonia Mills could consult with respect to the spelling, if that is necessary.

MR. O'BYRNE: I certainly have no objection to the Translator conferring or getting the appropriate spellings from anybody.

CROSS-EXAMINATION BY MR. O'BYRNE

Q Now, Mrs. Michell, what is the name of your House:

THE INTERPRETER: She is asking if you are talking about our House.

BY MR. O'BYRNE:

Q I am talking about the House that you belong to.

A Wilat's House.

MR. COHEN: Spelling?

BY MR. O'BYRNE:

Q Are you aware of the spelling of that?

THE INTERPRETER: W-I-L-A-T.

BY MR. O'BYRNE:

Q Who is the Chief of your House?

A Wilat is the head Chief of our House.

Q IS there a Wilat today?

A Yes, there is. Margaret Williams.

Q IS Margaret Williams related to you?

A Yes, she is. She is Sa'on's grandchild.

Q Could we have a spelling of that?

THE INTERPRETER: S-A-O-N.

THE WITNESS: She's Annie Tiljoe's child.

BY MR. O'BYRNE:

Q Does that make her your grandchild?

A (Inaudible)

Q Does Margaret Williams speak on your behalf in regard to this lawsuit?

A Yes, she will, if she is healthy.

Q Is she not healthy?

A She's not healthy. She just recently had an operation.

Q If she is unhealthy and unable to speak for you in this lawsuit, then who speaks for you:
A I don't know who will speak for us. We don't have too many elders in our House.
Q If Margaret Williams is unhealthy and cannot speak for you, will you have to appoint somebody else to speak for you?
A We may have to do that, Dan and yourself ----
THE INTERPRETER: -- referring to me --
THE WITNESS: ---- we'll consider that. I myself am not well, I'm sick most of the time.

BY MR. O'BYRNE:
Q Would you then appoint Dan Michell, your son, or Victor Jim, the Translator, to speak on behalf of you in this lawsuit:
A Yes.
MR. O'BYRNE: Perhaps we could just go off the record for a moment.

--- OFF THE RECORD DISCUSSION

MR. GRANT: JUSt for the record, in the break the Reporter read back all of the Cross-Examination thus far, which I believe was 12 questions.
MR. O'BYRNE: I believe it was 14, and that was at my request.
MR. GRANT: Yes.
MR. O'BYRNE: In any event, in view of the questions which have been asked and the problem raised in regard to the fact that the Translator, Mr. Victor Jim, it appears he could be appointed to speak of behalf of this Witness, for the time being I am asking to have this adjourned until this afternoon at 2.00 p.m, in order that I may review my position and seek instructions.
MR. GRANT: For the record I want to say, during the break both Mr. Cohen and Mr. O'Byrne, who apparently have not received copies from their principals copies of the latest Amended Writ of Summons and Statement of Claim which were amended pursuant to the Order of Mr. Justice Locke and I believe it was 22nd October, both of which nave been filed and have been served on both Defendants. In any event the relevant aspect of that Writ and Statement of Claim is that there are additions of new Plaintiffs and Plaintiffs representing them. I would just like to say that I advised Goohlaht, under the present Writ, is now representing Samooh; that Smogelgem is representing Tsaibaysa and another person

-- the spelling I don't have -- Gitseati and what is relevent to this matter Dan Michell, who is Namox, who is named in the Writ as Namox, is representing the House of Namox. I have advised them that Dan Michell's correct name which was in error on the Writ, and I just learned of it since the Amendment, is Wigetemskol and I anticipate there will be an amendment. So it will be Wigetemskol, also known as Dan Michell, acting on his own behalf and on behalf of all the members of the House of Namox.

Furthermore, I indicated it is the position of the plaintiffs that that last-named Plaintiff will be representing the House to which Emma Michell belongs and that under the present Amended Statement of Claim that representation is covered.

I also advised the Plaintiffs(sic) that in those circumstances, in light of that amendment, which I did not on Direct put to Mrs. Michell -- it was an amendment which is only a few weeks old and has not been put to her on Cross-Examination thus far -- that I did not believe there was any question that victor Jim, the Interpreter, would be a named Plaintiff. I also informed off the record that I did not anticipate even at this point that victor Jim will be a Witness at the trial, particularly in light of the fact that he has been the Interpreter.

I understand the positon of Mr. O'Byrne basically at this stage, if one can describe it, it's not a question of any particular error with the actual translation but he is concerned about the appearance of a person that is very proximate to the Witness. I think the record speaks for itself but it was earlier described that victor Jim on the Cross-Examination was a member of this House I believe on Direct Examination in August.

Having said that, I have also advised -- I've also endeavoured to arrange for an alternate translator for this afternoon. That is apparently impossible on this short notice but, without agreeing in any way that victor Jim should not be the Translator in the completion of this, I have advised both counsel that if they request it we will make every effort to have an alternate translator on the next day which we have agreed to have this proceed, which is within the range November 20 to the 24th. I say within the range because there is another Commission going ahead at one time and this Commission at another time so it will

either be November 20th or November 24th. Having said that on the record ----

MR. O'BYRNE: I can now adjourn my Cross-Examination until two o'clock.

--- ADJOURNED AT 11.35 a.m.

--- UPON RESUMING AT 2.30 p.m.

MR. O'BYRNE: Mr. Grant, the adjournment having been taken, I have now had an opportunity to seek instructions in regard to this matter. My instructions are that we are to adjourn my Cross-Examination to allow for another Translator to take over from Mr. Victor Jim given the evidence that has come out this morning of the possibility that Mr. Victor Jim, our Translator, may have a direct interest or at least some of the same interest as the Witness being examined. So I do not intend proceeding with my Cross-Examination at this time with this Interpreter.

I understand it is not feasible nor practical to obtain a Translator to continue this afternoon so I will be seeking to adjourn to another date and perhaps we can go off the record to confirm what the other date will be.

MR. GRANT: Before you do, I want to say, firstly, it was made clear in the Direct Examination in early August of this Witness that victor Jim was a member of the House and the Clan to which this Witness belongs.

Secondly, I take the position that not only has there been no complaint up to this point about victor Jim's translation, in fact other counsel for the province have commended him in terms of his translation on earlier commission Evidences. The Plaintiffs take the position that there is no necessity to change translators.

Having said that, as I said this morning, in order to expedite matters and rather than having a contested court application about the Translator issue thereby causing further delays, we shall endeavour to *ave another Translator here at the next day. It's my understanding that the Translator that we shall have available is a man by the name of George Holland.

MR. COHEN: George?

MR. GRANT: Holland, who has taken a course sponsored by the vancouver Community College for court interpretation.

He is able to translate from We'suwet'en into English and English to We'suwet'en.

I jUSt want to be clear on the record the Plaintiffs take the position that this adjournment is unnecessary and the change of Translator is unnecessary. We are adjourning this as a matter of commonality, as a matter of cooperation, to make an Interpreter available at the next available date.

I do agree with your comment that we cannot have another Interpreter available for this afternoon. Mr. Jim is available and the Witness is available to continue.

MR. O'BYRNE: JUSt as a follow-up, Mr. Grant, the Order does provide the Interpreter shall be agreeable to both parties and, relying on that Order, we are putting you on notice the Interpreter is not now suitable to us.

In any event perhaps we can adjourn, unless Mr. Cohen has something to say about this on behalf of the Federal Court?

MR. COHEN: Well, with respect to the adjournment being categorized as being at the instigation of the Defendants, I reiterate my comments from this morning, Mr. Grant that ----

MR. GRANT: The provincial Defendant.

MR. COHEN: ---- had a summary of the evidence to be given by the Witness being tendered, it is likely that the difficulties now faced could have been flagged, as it were, or brought to the attention of counsel at an earlier time and suitable arrangements could have been made far in advance. I need say no more except to say that it is not clear that the fault or cause for the adjournment now being taken is entirely with the First Defendant.

MR. GRANT: It's interesting the Second Defendant is coming to the aid of the first Defendant.

MR. COHEN: I'm not going to the aid of the First Defendant. I am recording the position we are taking about this. I have made an earlier reference to the delivery of summary evidence and pointing out why summaries are important to us.

MR. GRANT: It is quite gratuitous for you to make that remark and I just want to be clear on the record. You were not present during the earlier Examination of Mrs. Michell therefore, as you indicated yesterday, you can't comment on the evidence she gave. I have described the evidence she gave and I believe the

record speaks for itself. It'S a matter between the Plaintiffs and the First Defendant. That's why I say when you make these comments to defend the First Defendant, I think that Her Majesty the Queen In The Right of the Province of British columbia through able counsel is quite capable of defending itself.

MR. COHEN: With respect to gratuitous remarks, I am not commenting on what you just said. Rather than prolong this exercise, I suggest we now turn our minds to the Setting of the date on which this examination will continue.

MR. O'BYRNE: To that purpose I intend to go off the record.

MR. GRANT: I agree.

--- OFF THE RECORD DISCUSSION

MR. GRANT: Go back on the record then.

MR. O'BYRNE: It has been agreed between Counsel that this commission Evidence will be adjourned to 20 November, 1986 at 9.30 a.m. subject to the matte[commencing on the 19th November, which is subject to my availability as discussed Between counsel, and all parties have been advised that it may be possible for us to commence a day earlier. I understand that is agreeable with Madam Reporter in regard to that. Accordingly I intend to adjourn.

MR. GRANT: The intent of all Counsel, I understand, is to endeavour in that period of time, November 19, 20 and 21, to complete the Cross-Examination of Emma Michell and, if necessary, any Re-Examination? That is our objective?

MR. COHEN: That's correct.

MR. GRANT: I would assume at this time we'll be able to do that within that time frame.

MR. O'BYRNE: Go off the record.

MR. GRANT: Adjourned.

--- PROCEEDINGS ADJOURNED AT 2.40 D.m.
TO BE RESUMED 3.30 a.m. 20 November, 1986

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

A. Veronica Duffy (Ms)
(formerly Harper)
AVD:lre-NOV.16/86 B.C.S.R.A. #263