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DAVID, J.
Cross-Ex.
Mr. Milne

VICTOR WILLIAM JIM,
Wet'suwet'en interpreter,
Previously sworn.

JOHN DAVID, A Witness called
on behalf of the plaintiffs,
Previously Sworn, testifies
as follows:

--- UPON COMMENCING AT 10.00 a.m. , 21 April, 1986

MR. GRANT: Just for the record, I want to confirm that I have spoken with Mr. Milne and we've agreed that we're going to do our best efforts to complete this very extensive examination in the next two days and, if necessary, go over to the 29th April.

I want to set out for the record that since the last adjournment, which was on February 25th, Johnny -- the Witness has become ill on one occasion and I'm concerned as Counsel for the plaintiffs that if we extend this too much longer, it may mean that the Commission could not be completed.

I have advised Mr. Milne of that and he has indicated that he will endeavour to complete his Cross-Examination as much as possible over the next two days.

MR. MILNE: That's correct. I hope not to leave anything Out because of the Witness' health but certainly there is no desire on the part of the defendant to cause him any undue stress.

Again, for the record, this is the continuation of the Cross-Examination of Mr. David. The last time we were sitting was February 25th. The original examination commenced in September of 1985 so it has been some lengthy time.

Also for the record, all of the parties that were present during the Cross-Examination in February as well as during the previous examinations are present. The Witness is still sworn, as is the Interpreter.

Mr. David, do you understand that you are still under oath?

THE WITNESS: Yes.

MR. MILNE: Mr. Interpreter, you understand as well that you're under oath still?

THE INTERPRETER: Yes.

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CROSS-EXAMINATION BY MR. MILNE:

Q Mr. David, the last time I was here I was asking you questions or started to ask you questions about any wars the Wet'suwet'en people might have had with the Nutseni. I am going to leave that area for now and I am going to ask you some questions about the land which you owned in Perow area or Topley area?

A All right.

Q You said last time you got some land near Topley through pre-emption and that is where you did your farming. I have some documents from the Land Title Office in Prince Rupert I want to show you. I don't know if you will be able to make out the writing on it but I'll give it a try.

The first document is a copy of a certified copy of title no. 18962i, and it's dated March 8th, 1926 as date of registration. It certifies that John David is the owner of a piece of property known as Block A of Lot 30, 3327, Range 5, Coast District. Have you ever before seen that title from the Land Title Office?

THE INTERPRETER: He said he has seen this. He got a similar one when he got the land.

BY MR. MILNE:

Q That is a copy of the title to the land that you owned then?

A Yes.

MR. MILNE: Could I have that marked as the next exhibit?

EXHIBIT NO. 19 - Document entitled document, certified copy of title no. 189,62i, date of registration March 8, 1926.

BY MR. MILNE :

Q You also said last time we were hear that you got this land through pre-emption or Crown Grant; how did that come about?

THE INTERPRETER: He said he got it first through pre-emption. After three years on it then he got it through Crown Grant.

BY MR. MILNE:

Q I have another document that is order-in-Council, it's a minute of the Executive Council dated September 30, 1920, and that says that application was made for that property -- I'm paraphrasing -- and it is said that Johnny David is a reliable hard-working man and has eight head of horses and five head of cattle.

Could you just translate that portion of it to him?

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MR. GRANT: For the record that is dated 28th September, 1920,
the date of approval on the bottom.

BY MR. MILNE:

Q That's Correct?

A Yes.

Q It Says that you were the son of a former chief of a
Hagwilget tribe, that's correct?

A Yes.

Q And it Says that you were some time ago compelled to
abandon your tribal lodge ground and fishing site on the
south side of the South Bulkley Crossing?

THE INTERPRETER: Does that mean they were asked to leave that
area? I would like to be sure.

MR. MILNE: I don't know what it means. I was going to ask you
about that. Just ask him if he was forced to leave that
area.

THE INTERPRETER: Roy McDonald, he used to look after the
Fisheries throughout the whole area and talked to Johnny
about this and they got into a disagreement and they had
a little argument. Roy McDonald never came back again
to bother Johnny about this area.

BY MR. MILNE:

Q Did you have to give up anything to get this land?

MR. GRANT: I object. I think that is too general. I don't
understand. I think if you want to be a bit more
specific, that's fine. I don't understand that question
I can't answer it and I don't know how the witness can.

MR. MILNE: I think the question is pretty straightforward.

Q Were you compelled to abandon your tribal lodge ground
and fishing site on the south side of the Bulkley?

THE INTERPRETER: He said that the people didn't bother him
initially. It was after the coming of the white man
that he started being hassled and before there were no
white people there were many salmon in the area that you
are describing. It was the Dutch people who came in and
took all the land and all the horses and everything
else.

THE WITNESS: In the same area since there were many salmon
there a lot of the animals would come down to the river
to feast on the salmon. Like, the grizzly bear, bears.
There was this area where my father did a lot of his
fishing and he would prepare many salmon. This is two
or three years before 1901.

BY MR. MILNE:

Q Where is this South Bulkley Crossing?

THE INTERPRETER: I guess CN crossing?

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--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE WITNESS: It was the area where the McGuinnes had lived,
a foot trail went to Graveyard Lake.

BY MR. MILNE:

Q Did you give up fishing at the South Bulkley Crossing?

A We didn't quit fishing but that wasn't the only place
we fished. People fish the area from the North to South
Bulkley.

Q Did you fish in that area after you owned this land?

A Yes, we continued to fish. We dried the salmon, we
canned it, and then when the Dutch people came, they
blocked the rivers and very few salmon made it up to the
area you are describing.

Q This document that I have been reading from seems to
suggest ----

MR. GRANT: Before you go further, you could put it in as an
exhibit since you have referred to it.

MR. MILNE: I wasn't going to mark it as an exhibit. I will
perhaps, except for identification, it is only a photo-
copy and I imagine it will be proved at trial.

MR. GRANT: I am only asking that it be put in as an exhibit,
because you have been referring to it and so there is
an understanding of what you have been referring to. I
agree it can be an exhibit for identification.

MR. MILNE: Exhibit "A" for identification.

MR. GRANT: Go off the record for a moment.

--- OFF THE RECORD DISCUSSION

--- EXHIBIT "A" - For identification only -- Copy of Order-in-
Council No. 1727 dated September 30, 1920.

MR. MILNE: Back on the record.

Q The document which has been marked as Exhibit "A" for
identification is Order-in-Council No. 1727. This
document suggests that you got the land because you had
given up your tribal lodge ground and fishing ground on
the south side of the South Bulkley Crossing; that is
why I asked you if you had given up anything for the
land?

MR. GRANT: I object. That document doesn't say that. It sets
out a number of things and ----

MR. MILNE: I didn't say it says it, it suggests it. I am
about to point out to the witness, is it his under-
standing why he got the land.

MR. GRANT: I object. I don't think ----

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MR. MILNE: I can ask him whether or not he kept his tribal lodge ground and fishing ground on the south side of the South Bulkley Crossing and whether that had any, as far as he knows, influence upon whether he got a grant of Crown land. Let me phrase the question then.

Q This document SUGgests that you gave up some fishing grounds and something called tribal lodge ground in return for your land; what was your understanding of what happened?

MR. GRANT: I object, the document does not suggest that.

MR. MILNE: Your objection is noted.

MR. GRANT: Don't answer that question.

MR. MILNE: You can argue this at trial. You reserve the right to objection, at this point, there's no commissioner to rule on objections and if you want to reserve your objection to trial, that's fine, but I think the witness should answer the question.

MR. GRANT: You have my objection.

THE WITNESS: No, it didn't happen that way. We still continue to hold the lands that we had.

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE INTERPRETER: He said that is when they were making up their own words and that is what most people have been going by.

BY MR. MILNE:

Q The land that you owned was in Smogelgem's territory, is that correct?

MR. GRANT: Which land are you referring to?

MR. MILNE: Block A of 3327 Range 5, COast District.

THE WITNESS: Yes.

BY MR. MILNE:

Q You later Sold that land to the Hall's?

A Yes. It was after the hard times came and I sold it to Tom Hall.

Q And the Hall's Were White Settlers?

A Yes.

Q I have got another document here to show you. This one is a little bit harder to see because it's a photocopy of a microfiche. It is deed of land dated October 22nd, 1935 and it's a certified extract showing a transfer between Johnny David and James William Hall and Thomas Hall; can you tell me, Mr. David, if that is your signature on the bottom of the document?

THE INTERPRETER: He said he can't see too clear.

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BY MR. MILNE:

Q You sold your land ----

OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE INTERPRETER: He said I saw that paper as well. After I
sold the land.

BY MR. MILNE:

Q You Saw a paper like this at the time you sold the land?

THE INTERPRETER: That is what he said.

BY MR. MILNE:

Q How much money did you get for the land?

A I just about gave it away for nothing.

Q Was it for \$300?

A It might have been \$50, I don't know, I had forgotten.

Q You can't remember how much money you got?

A Yes, I've forgotten.

OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE INTERPRETER: He said when I gave that contract and signed,
that is when they gave me the money.

MR. MILNE: Have this marked as Exhibit 20.

EXHIBIT NO. 20 - Three-page document, photocopy of
microfiche, deed of land dated
October 22nd, 1935, certified extract
showing transfer between Johnny David
and James William Hall and Thomas Hall.

MR. MILNE: May we just go off the record for a minute?

--- OFF THE RECORD DISCUSSION

MR. MILNE: Go back on the record.

Q I have another document that is a Survey or map and it
says that it is in relation to Crown Grant No. 4346514.
There's a shaded area on the map which purports to be
Block A of Lot 3327.

I am going to show that to you, Mr. David, and ask
if you -- the Defendant says that is your land, that is
what you've got, are you able to recognize that as being
your land?

MR. GRANT: I would ask that the Interpreter could point out to
him the obvious labelled things. There appears to be a
river marked, the Bulkley River, and also GTPR, which

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Would appear to be Grand Trunk Pacific Railway. I would ask that that be put to him to assist him.

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE WITNESS: I can't see it too clearly but from the description you have given me it sounds like it is.

MR. MILNE: Because you say you can't see it that clearly I think we'll have it marked as an exhibit, Exhibit "B" for identification.

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE INTERPRETER: He says there is a Johnny Creek that runs through the middle of his land and he asked me if it was on that, and I told him it wasn't.

--- EXHIBIT "B" - FOR IDENTIFICATION ONLY - Copy of survey in relation to Crown Grant No. 4346514, purporting to be Block A of Lot 3327.

BY MR. MILNE:

Q Do you know how many acres you had on your land? The title which has been marked as an exhibit says you have 93.2 acres more or less; is that about how large your land was?

THE INTERPRETER: He said it was 160 acres.

BY MR. MILNE:

Q You say it was 160 acres?

THE INTERPRETER: He said it was 160 acres and I told him on the document it was 92.2 acres.

BY MR. MILNE:

Q Who told you there was 160 acres?

THE INTERPRETER: He said when I first got the land the people at the Land Office told me it was 160 acres.

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE INTERPRETER: Mr. Hart.

BY MR. MILNE:

Q Who Was Mr. Hart?

THE INTERPRETER: Mr. Hart was the person who did up all the documents for the land office and he was the one who told him he had 160 acres. Johnny said that he was the

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Person in charge of giving out the land.

BY MR. MILNE:

Q When you sold it to the Halls, did you sell them 160 acres?

A Yes.

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE INTERPRETER: He said that he sold them the area that was fenced off, the river property, and he still has the documents where he paid school and land tax.

BY MR. MILNE:

Q Do you remember -- actually, I can put it to you this way -- you got a grant in March 1926 and there was a sale of your land to the Halls in October, 1935, that's correct, is it?

A I think I first got the property around 1921, 1922, and I have got some old documents which I'll look for tonight.

Q Maybe you could show them to your lawyer before you show them to me?

A Yes.

Q You say you paid the school taxes and land taxes for each year that you owned it?

A Yes.

Q You have told me at various times that this land was either near Perow or near Topley; which community is it closer to?

A The area we are talking about is three miles west of Topley and there is a creek that was named after me that flows through the territory that we are talking about. The creek is named Johnny Creek.

Q Why did you buy the land or apply for the pre-emption?

A Since I was in the area for many years, they were giving out land through pre-emption and that is why I decided to apply for it.

Q Do you know if the Dutch settlers were also getting land through pre-emption?

A All the white people were getting land through pre-emption and the white people didn't want us Indians to get any land but I still went and applied for it.

Q Did you apply for the land because you were afraid that they were going to get all the land?

A The white people hated us and they didn't want us to get any land and that is one of the reasons why I applied

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for the land.

Q You said when Mr. Grant was asking you questions you raised milk cows and you sold some in Prince Rupert I think. Were you a farmer during the time that you owned that land?

A Even before I got the land I raised cows, and after I got the land I raised even more cows.

Q Did you buy feed and, if so, where did you buy it from?

A I grew my own feed, oats and everything else.

Q Did you sell your cows or did you use them for your own benefit?

A I sold some in Rupert and when the money came, that is what I used to buy food.

Q How did you get your cows to Rupert?

A Railroad.

Q Was there an agent there or somebody who sold them for you or did you sell them here and they were shipped there?

A I would send documents to Prince Rupert and when they come back they said they wanted me, that is when I send the cows to Rupert.

Q During the time that you owned this land, did you also go hunting and fishing in the Kilwoneetzen area or in any of your other territories?

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE WITNESS: Yes, in the summer.

BY MR. MILNE:

Q Who looked after your farm while you were away hunting?

A My wife and my son.

Q Did you ever hire anybody to help run the farm?

A Yes, I had many relatives as well as some white people who helped clear the land.

Q Did you pay them for their help?

A Yes, they worked for money. It was during the hard time: and money was hard to come by.

Q You lived on your farm, I take it?

A Yes.

Q Did you clear the land?

A Yes.

Q Now, I am just a little bit confused as to the time when you went hunting rather than staying on your farm. The last time I think you said that you went hunting ----

MR. GRANT: Where are you referring to?

MR. MILNE: I can't find it in the transcript right now but

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maybe you can clarify that for me.

Q When did you leave your land to go hunting and when did you then return to your land?

MR. GRANT: Are you talking about in each year?

MR. MILNE: Generally speaking, each year.

Q I Want to know how much time you spent on your land and how much time you spent hunting and trapping in each year?

A While I was hunting and trapping I would be out for four five days and while I was away my wife would run the farm.

Q What time of the year was it when you went hunting and trapping?

A From 15 September to 1st May.

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE WITNESS: Before 1st May all the wild animals are bearing children and that is when we stop.

BY MR. MILNE:

Q Do you know if any other Wet'suwet'en during the summer in the 1920's bought land in territories which they had the right under Wet'suwet'en law to use?

MR. GRANT: I object. Don't answer that. I think it is clear from the documents you have introduced he hasn't bought land. There was pre-emption.

MR. MILNE: There is a distinction, I'm sorry. Maybe you could phrase the question to him: Any other Wet'suwet'en who pre-empted land in the territory that they're entitled to use by Wet'suwet'en law?

MR. GRANT: To his knowledge?

MR. MILNE: To his knowledge.

THE WITNESS: Matthew Sam. Thomas George. Bill Alex.

BY MR. MILNE:

Q Can you remember anybody else?

A Those are the only ones I remember.

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE WITNESS: Those three people got the land through pre-emption before I did.

BY MR. MILNE:

Q Are they still alive today?

A They're all dead. Mabel Sam is still living on the land

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his dad got through pre-emption.

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

BY MR. MILNE:

Q Do you know if they did the same thing that you did, the, farmed it and went hunting and came back to the farm again?

THE INTERPRETER: Before you asked the question he said that Mabel Sam may be here tomorrow and you can ask her, she would be the person to ask.

MR. MILNE: Again that is something your lawyer may want to discuss with her.

Q Do you know if these people, Matthew Sam, Thomas George and Bill Alex also had farms?

A Yes, they also did farm. They had horses and cattle. Thomas George's children had gone off to war. Times were tough. The children all came back from the war.

Q Were any of those three people a chief?

A Yes, they were all hereditary chiefs. Thomas George and, Matthew Sam, they were head men.

Q What Were their names, their Wet'suwet'en names?

A Matthew Sam was Gyologet. Thomas George had two names and the person who holds one of the names is Alfred Joseph who holds... .

Q Alfred Joseph is still alive?

THE INTERPRETER: Yes.

BY MR. MILNE:

Q And he is a plaintiff?

THE INTERPRETER: Yes.

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE INTERPRETER: Bill Alex didn't have a name.

MR. MILNE: He didn't have a name?

THE INTERPRETER: He didn't have a hereditary name.

BY MR. MILNE:

Q Is that unusual, that he didn't have a hereditary name?

A He hadn't yet received the chief's name when he died.

Q What house WOULD these three men be from?

OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE WITNESS: Thomas George came from Yahoneetz. He was big chief and his sons, Leonard George and Andy are still

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alive today.

BY MR. MILNE:

Q Is this house represented in this action as a plaintiff? A
Yes. The person who holds his name will be asked
questions.

Q As a witness or as a party?

MR. GRANT: I think if you want to clarify this matter and save
US a little time, I think if you ask him if this is the
same House of Gisdaywa you will probably get to the
answer you want. Gisdaywa is a named plaintiff and
represents a house.

BY MR. MILNE:

Q Is this the Same house that Gisdaywa is?

A Yes.

Q And What about the Other people?

A Matthew Sam Comes from the Grizzly House.

MR. MILNE: Maybe we can save more time, Mr. Grant, can you
point me in the right direction?

MR. GRANT: What he indicated, Matthew Sam was Gyologet, and if
you asked the question if Matthew Sam was in the same
house as the present Gyologet you may get your answer.

MR. MILNE: WOULD you ask that question please?

THE WITNESS: Gordon Hall is the present name. Gyologet.

BY MR. MILNE:

Q And Matthew Sam Was in the Same house as Gyologet?

THE INTERPRETER: Matthew Sam, he was Gyologet.

BY MR. MILNE:

Q And that is a plaintiff?

THE INTERPRETER: No.

BY MR. MILNE:

Q Gyologet, is that a house?

MR. GRANT: Maybe you can go off the record for a moment here.

--- OFF THE RECORD DISCUSSION

BY MR. MILNE:

Q In what house is Matthew Sam?

A He was three houses from the clan that he is from. I
think he is from the Grizzly House.

Q And the Indian name for Grizzly House is what?

A Kyas-ya.

MR. MILNE: Correct me if I am wrong, Mr. Grant, but I don't

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See. . . .

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE INTERPRETER: Balna or Bill Nye and George Naziel are from the Grizzly House.

--- OFF THE RECORD

BY MR. MILNE:

Q Who represents the Grizzly House?

MR. GRANT: George Naziel is a plaintiff, for the record.

MR. MILNE: George Naziel is a plaintiff?

MR. GRANT: For the record.

BY MR. MILNE:

Q And his Indian name is?

A Madeek.

Q And the house?

A Balna.

MR. GRANT: It's referred to as the House of Madeek.

MR. MILNE: In the Statement of Claim it's referred to as the House of Madeek? Oh, no. 40? But that's Gitksan.

MR. GRANT: It's Wet'suwet'en.

BY MR. MILNE:

Q Madeek is Wet'suwet'en?

THE INTERPRETER: Yes.

MR. GRANT: For the record, Madeek is referred to in paragraph 40 of the Statement of Claim and Madeek is, I believe it is George Naziel, referred to in the Writ of Summons. If you wish to clarify this, you may ask him and I am just doing this to shorten the time and keep you from being misled, if Woos, referred to in paragraph 41, is any relationship to the Grizzly House.

BY MR. MILNE:

Q What does Madeek mean in English?

MR. GRANT: You can ask the Interpreter that.

MR. MILNE: What does it mean, Mr. Interpreter?

MR. GRANT: Maybe you want to ask the witness?

THE INTERPRETER: I'll ask the witness.

THE WITNESS: I can't remember what the Wet'suwet'en or English name for Madeek is, I think it's a Gitksan name.

BY MR. MILNE:

Q Is the House Of Madeek and the House Of Kyas-ya, are

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they separate houses?

A The main house is Kyas-ya.

Q Are there still members of that house?

MR. GRANT: You mean alive?

THE WITNESS: Yes. George Naziel has the present name Madeek and before that it was his uncle.

BY MR. MILNE:

Q Is he from the House Of Kyas-ya?

A Yes.

Q So he has I take it then two names Or is the hereditary chief of two houses, Madeek and Kyas-ya?

A His house is Kyas-ya, and he had the house in Hagwilget which was called Kyas-ya.

Q Are members of the House of Kyas-ya also members of the House of Madeek?

A Yes, that is the name of the house and everyone comes from the house. It is the name of the house.

Q But is every member of the House of Kyas-ya also a member of the House of Madeek?

MR. GRANT: I think, I believe he has answered that question. He just answered that question.

MR. MILNE: I didn't understand the answer, maybe you could ask him to give it another go?

What I am concerned about obviously, Mr. Grant, if it appears there's a house, Kyas-ya, that is not a plaintiff and I want to explore that, and it may be that house is somehow tied into the House of Madeek, but that's not what the Statement of Claim says.

Mr. GRANT: Just for the record ----

MR. MILNE: What I am asking, whether or not the members of the House of Madeek are all members of the House of Kyas-ya or vice-versa?

MR. GRANT: And you have asked that question a number of times and he's answered it.

MR. MILNE: Is his answer yes or no, I'm not sure of that.

Would you put the question to him again so I can find out whether or not that is true?

THE WITNESS: Yes, there are other people in that house, such as Gisday-wa. In the feast hall Gisday-wa sits next to Madeek. There is another person that sits next to Madeek and they are all from one clan. One house. When we are at the feast hall there are three main hereditary chiefs from each house.

BY MR. MILNE:

Q Does the House of Kyas-ya have a territory?

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A Yes.

Q Is it the same territory as the House of Madeek?

A Yes, they all own territories. The territories they have are used for hunting and trapping.

Q Is that the same territory as held by the House of Madeek?

A Yes. They are all one company. All the people from the house help each other in their hunting and trapping, and the meat that they get is what they use at the feast hall.

Q I hate to ask this question again but is everyone or are the people who are members of the House of Kyas-ya also members of the House of Madeek?

MR. GRANT: I think he has answered that question. His answer was in the affirmative. He said yes about four or five questions back, the third time you asked him. Just after my last objection. You have got the answer, I don't think you have to ask again.

BY MR. MILNE:

Q Are there members Of the House Of Kyas-ya who are not members of the House of Madeek?

A Yes, that's how it is and people nowadays are getting all confused.

Q I can understand why.

MR. GRANT: Maybe he's referring to the questions.

MR. MILNE: That would be equally true.

Let me summarize then.

Q There are some people of the House of Kyas-ya who do not belong to the House of Madeek, correct?

THE INTERPRETER: That is what he said.

BY MR. MILNE:

Q Who Speaks for these people?

THE INTERPRETER: Which people?

BY MR. MILNE:

Q The people who are members of the House of Kyas-ya and not members of the House of Madeek?

A The people that don't belong to Madeek house but are from Kyas-ya speak for themselves. There are usually three main chiefs that speak for the house.

Q The people who speak for themselves do they also have territory?

A Yes.

Q Is that territory the same as the territory for these people who are members of the House of Madeek?

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THE INTERPRETER: You want to run that by me again?

MR. MILNE: Let me rephrase if I can.

Q There are Some people in the House of Kyas-ya who the witness says speak for themselves, and he also says that they have territory, is that territory that they have the same as the territory the other members of the;:House of Kyas-ya who are represented it seems or who are included in the House of Madeek?

MR. GRANT: What you're trying to ask is, are those person who are not in the House of Madeek but are in Kyas-ya, is their territory the same as Madeek's territory?

MR. MILNE: Yes, or, and is it the same as the territory as the other members of the House of Kyas-ya?

MR. GRANT: That's about, at least three questions.

MR. MILNE: Well ----

MR. GRANT: So I think you should. . . .

MR. MILNE: The trouble is, we have to label these people as being members of one house or the other, so we have got members of the House of Kyas-ya who are members of the House of Madeek, and we have people who apparently are not members of both houses but only of Kyas-ya, follow me so far?

Q For those who are members of the House of Kyas-ya but not Madeek and who speak for themselves, okay, is their territory the same -- is the same territory as those that speak for the House of Madeek?

MR. GRANT: Well, can you refer to that as Madeek's territory?

MR. MILNE: I don't know whether or not there is other territory. There may be other members of the House of Kyas-ya who don't speak for themselves, don't belong to the House of Madeek and belong to some other house.

THE INTERPRETER: Now I'm thoroughly confused.

MR. GRANT: Maybe we can go off the record for a moment.

MR. MILNE: That's fine.

OFF THE RECORD DISCUSSION

MR. MILNE: Let's roll.

Q Now, We've been discussing the House of Kyas-ya and it appears that members -- some members of the House of Kyas-ya are also members of the House of Madeek and are represented by -- oh, I forget the fellow's name -- who is the hereditary chief?

THE INTERPRETER: Madeek.

MR. MILNE: And the name for that person?

THE INTERPRETER: George Naziel.

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BY MR. MILNE:

Q Now, George Naziel does not represent the same people as the House of Kyas-ya, is that right?

MR. GRANT: I think it would be better if you said he doesn't speak for them.

MR. MILNE: Okay.

THE WITNESS: At the hall there are usually three main chiefs who speak for all the house members. For the Kyas-ya there is George. Naziel who holds Madeek; Alfred Joseph who holds Gisday-wa, and Roy Morris who holds Woos.

MR. MILNE: The second name was?

THE INTERPRETER: Alfred Joseph who holds Gisday-wa.

MR. MILNE: George holds what name?

THE INTERPRETER: Madeek.

MR. MILNE: And Roy Morris again?

THE INTERPRETER: Woos.

MR. GRANT: All three of those parties are plaintiffs.

MR. MILNE: Thank you.

THE WITNESS: These three main chiefs are similar in all the other clans.

THE INTERPRETER: You have three main chiefs in the other four clans, that's what he's saying.

BY MR. MILNE:

Q Then is it true that each Of these wet'suwet'en plaintiffs set out in the Statement of Claim ----

MR. GRANT: Are you referring to these three?

MR. MILNE: No, each of them, any of the Wet'suwet'en plaintiffs speak for other houses that aren't mentioned in the Statement of Claim?

MR. GRANT: I would like to go off the record for a moment. I am reserving the right to object but go off the record.

--- OFF THE RECORD DISCUSSION

MR. MILNE: Let's go back on the record.

Mr. Grant and I have had a discussion to the effect that the chiefs who are plaintiffs represent houses that two may in any event aren't disclosed in the Statement of Claim and rather than going through each and every one of the plaintiff chiefs I'll ask the witness to produce a list of the names of the houses for which the plaintiff chief has the right to speak?

MR. GRANT: For the record, I don't wish to imply that the chiefs are speaking for houses which are other than the ones which are referred to in the Statement of Claim. What I endeavoured to explain to counsel for the

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defendant was that the chiefs -- the names of the houses -- that each house for which the Wet'suwet'en chief speaks has its own name, and the name of those particular houses is not set out in the Statement of Claim, but that those houses are the house of that particular chief as alluded to in the Statement of Claim.

I have noted your request and to the extent that this witness can provide that answer I will arrange -- we will provide that list. As I indicated while we were off the record if you produced a Demand for Particulars or interrogatories -- an additional question on interrogatories to each of the plaintiffs I would endeavour to produce the answer on all of them. I may be able to produce an answer for all of them from this witness, but I don't know that until I. . . .

MR. MILNE: Obviously something further will be followed up if he is unable to produce a complete list. To that extent, of course, I have no objection to you discussing the matter with him while he is under cross-examination and certainly won't object to that at trial.

Q I think We left Off, before We hit this tangent, dealing with other Wet'suwet'en who've got land through pre-emption and you mentioned three of them; do you recall any others?

MR. GRANT: He has answered that, he said no.

BY MR. MILNE:

Q Do you recall any Wet'suwet'en during that same time who purchased land rather than getting it through pre-emption?

MR. GRANT: What time are we referring to?

MR. MILNE: The 1920's.

THE WITNESS: No.

OFF THE RECORD DISCUSSION IN WET'SUWET'EN

BY MR. MILNE:

Q Did any of the Indian agents that you dealt with during that time or any of the white people prevent you from farming?

MR. GRANT: Where?

MR. MILNE: Anywhere.

THE WITNESS: No.

BY MR. MILNE:

Q You said that the white people hated you particularly you mentioned the Dutch, I think; were there fights

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Cross-Ex.

Mr. Milne

between you and the white people over the land, and I mean you personally or people that you knew?

A There was one incident in particular, the incident at Barrett Lake where the family of Lame Arthur Michell and George Naziel's father, Nazel, were kicked off the land because they fought with Charlie Barrett. When they had buried Lame Arthur Michell's father and had buried him in the winter, then he was dug up and moved to Hagwilget and buried properly there. After he was buried Lame Arthur Michell and Nazel were put in jail, that was over the clan at Barrett Lake and I took you there last summer, pictures were taken of the area that I am talking about.

Q When you say you took someone there I take it you took someone from Mr. Grant's side?

THE INTERPRETER: Yes.

MR. GRANT: Was he referring to the Interpreter?

THE INTERPRETER: To myself and other people.

BY MR. MILNE:

Q Do you remember any other problems that you had or that other people you knew had with white people?

A There was another incident at Two Mile, which is part of this village. Sylvester Williams' grandfather, whose name was Looseeya, he was speaking up against white people about the land, and ne was also put in jail and fined.

Q When WOULD that have been?

A I can't remember.

Q Around 1915?

A I can't remember, it could have been at that time.

MR. GRANT: I 'm sorry, what was the name of that second person?

MR. MILNE] Sylvester Williams' grandfather.

THE INTERPRETER: Looseeya.

----- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE WITNESS: The area behind Two Mile, a lot of our Indian people lived there and when the white people came they were moved off the land and the white people moved on. Pete Van Happy was the person who took all the land and sold it to other white people.

BY MR. MILNE:

Q What was he?

A He was the person who took the land and was paid by the government.

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Mr. Milne

Q Was he an Indian agent, do you know?

A No, white man.

Q Did he work for the government?

A He worked for the government. He told them to get the land and they would buy it off him.

Q Do you know if this was the provincial government or federal government?

A I don't know which government he worked for.

Q Do you know when this was? Was it during your lifetime? A Between 1904 and 1905.

Q Do you remember any other incidents like fights or something between white people and the Wet'suwet'en during the same period?

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE WITNESS: There was another person, Peter Michell, and there was Old Happy, who is the same person who chased him off the land around the Glentana area.

BY MR. MILNE:

Q Do you know what happened there? Can you tell me more about that incident?

A Before the white people came Peter Michell had been haying there many years and Old Happy had threatened Peter Michell if he does not get off the land he would report him to the law, and our people were afraid of the authority of the white people, and they had no respect for us, and when he was threatened Peter Michell left the land.

Q Other than the story that you have told us about Joseph Baptiste

THE INTERPRETER: John Baptiste.

BY MR. MILNE:

Q ---- John Baptiste, do you know of anyone who stayed on their land after they were threatened and told to get off?

Give the answer while the new tape is being put on.

Any objection?

MR. GRANT: No, no. I would like the answer recorded.

--- OFF THE RECORD

THE WITNESS: It was only John Baptiste who refused to leave the land when he was asked to leave. He cleared the land, built a house on it and he said no when he was

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asked to leave.

THE INTERPRETER: He can't remember anyone else.

BY MR. MILNE:

Q What did the wet'suwet'en do in circumstances when they were asked to leave? Was there any attempt by them to go before the men who spoke for the white man and ask them not to remove people from the land?

A At that time most white people didn't like Indians and when they spoke up against the land they were threatened to be taken to jail and they would leave, and the white people would take over the land, and it is still the same way today. The white people still don't like the Indians.

Q Other than Sylvester Williams' grandfather whom you mentioned, do you recall anybody else, any other Wet'suwet'en who spoke out against the white people taking their lands?

A I can't remember anyone else.

Q Was the taking of lands that Wet'suwet'en were living on discussed at feasts that you had?

THE INTERPRETER: You mean the lands that they were. . . .

BY MR. MILNE:

Q The lands that were being taken by anyone, this Van Happy fellow or whites generally, was that a problem that was discussed at the feasts to your knowledge?

A This problem was discussed at feasts, and the white people didn't have respect for the Indian people. They would threaten them, if they spoke up against people about the land, and our people were afraid of the white man's laws.

Q Do you remember any resolutions or actions that people at the feasts when they were discussing this decided they should do?

MR. GRANT: The problem was that it was discussed at feasts?

BY MR. MILNE:

Q And what was done as a result of the discussions at feasts?

A When it was discussed at the feast, these problems were brought up with the Indian agent but he just continued to let white people take the land and he never did anything for our people.

Q How many -- how long was the same Indian agent in this area? Was there somebody here that was here for a long time? How many Indian agents have you dealt with?

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Mr. Milne

MR. GRANT: When?

BY MR. MILNE:

Q In the early years up to 1930? Or that the Wet'suwet'en to your knowledge dealt with? Not necessarily personally, Mr. David, but what I am getting at is, how many different Indian agents are being dealt with here by the Wet'suwet'en?

MR. GRANT: I would object. I think that is a matter that is, probably a matter of historical record which is at least in the knowledge of the defendant.

MR. MILNE: True enough but maybe I should phrase it this way.

Q How many Indian agents do you remember the Wet'suwet'en had dealt with for the period say 1900 to 1930? You have already mentioned some of them.

MR. GRANT: Yes, answer that question but my objection still stands.

BY MR. MILNE:

Q You said the problem was brought up with the Indian agent; who was the Indian agent that that problem was brought up with, if you know?

A Mr. Loring. He was the one that took the Indian people off their lands and put them on the reserves.

Q So that -- was it discussed with any other Indian agents as well?

A The Indian agent would take the advice of the white people and that is how he went about moving Indian people around.

Q But did you discuss with the Indian agents other than Mr. Loring?

A He was the only Indian agent.

OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE WITNESS: After Mr. Loring there was Mr. Hanz(?) who took his place.

BY MR. MILNE:

Q There Was Some White people on your territory, you said that Mr. Hall and others were actually on Smogelgem's territory, and that there was a Mr. McGuinness, I think, as well in that territory, these are white men. There was an Izman in the Kilwoneetzen territory and a Gardner; did you have trouble with these people?

MR. GRANT: Izman, Gardner, McGuinness and?

MR. MILNE: Hall.

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Mr. Milne

THE INTERPRETER: Hall.

MR. GRANT: Personally or the Wet'suwet'en?

MR. MILNE: Personally.

THE WITNESS: No. McGuiness Stay on the land, didn't trap,
he didn't give me any trouble.

BY MR. MILNE:

Q You said a long time ago that David Dennis used to let
white people use the territory, the Kilwoneetzen
territory, I think you said that he leased it to white
People; tell me about that? What was their arrangement
if you know?

A David Dennis leased some lands to some white people for
so much a year. I don't know what the arrangements
were, I was just told about it.

Q Was this land that David Dennis had obtained through
pre-emption?

A It was just a small piece of land that he had grew up
on and that was the area that he leased to the white
people.

Q Is this area close to the Copper River Range?

A Yes. He was brought up on that land similar to the way
I was brought up on the land that I am talking about,
and this land was given to him by us after to work.

Q Do you know then if he ever got that land by pre-
emption?

A No.

Q Do you know if other Wet'suwet'en had agreements with
white people for the use of their land?

A Before, when there were very few laws, the Indian
people were not afraid of the white people. They would
take a stick after them and chase them off the land.
But once the white laws became stronger the Indian
people became afraid of the white man.

Q You said that before that white people had taken sticks and
chased people off the land ----

MR. GRANT: I think he said that the Indian people. I'm sorry,
I thought he said before the laws weren't that strong
that the Indian people threw the white people off.
Possibly the answer should be re-read.

MR. MILNE: May be. Would you re-read the answer to the last
question please?

THE REPORTER: Answer: "Before, when there were very few
laws, the Indian people were not afraid
of the white people. They would take a
stick after them and chase them off the

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Mr. Milne

land. But once the white laws became stronger the Indian people became afraid of the white man."

BY MR. MILNE:

Q Do you know of any names of people who used their sticks to chase white people off the land?

A I can't, I don't remember. I was quite young then.

Q Do you know if this has been when people were on your trap lines?

A Yes.

Q When you were on your trap lines did you meet white people there?

MR. GRANT: When?

THE WITNESS: I had got two young men, two white men on my territory, and I took them to the Indian agent's office and then they backed off.

BY MR. MILNE:

Q Who backed Off?

A The two white people.

Q Did you ever have any other trouble with white people on your trap line?

MR. GRANT: In what time period?

BY MR. MILNE:

Q Oh, well, basically I am going from the general to the specific, so at any time. You mentioned two people, did you have trouble with others?

A No.

Q Do you remember when it was that you had trouble with these two white men?

A I don't know exactly what year that was. These young white boys had, they knew me, they lived in the area and because of that they did not go into my territory again.

Q The territory that we are talking about is North Bulkley?

THE INTERPRETER: Yes.

THE WITNESS: No, Perow.

BY MR. MILNE:

Q What about the Other Indians in your territory, did you have trouble with them?

MR. GRANT: Who are you referring to, the Wet'suwet'en or any Indian groups?

MR. MILNE: Any Indian groups.

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DAVID, J.
Cross-Ex.
Mr. Milne

----- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE WITNESS: No. There are some who said that trap line is theirs, but it is not true. It was my father's trap line.

BY MR. MILNE:

Q Who are these people that say the trap line is theirs?

A When my father was alive not too many of his relatives or house members looked after him, and before he died he told me no matter what happens that you stay on the land and work it, and that is exactly what I am doing today.

Q Are there other people that say that that trap line is theirs?

A They're all dead now, no longer around.

Q Do their families still say that that trap line is theirs?

A No, they don't.

OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE WITNESS: Leonard George wants to get this trap line and I am saying no. I want you to hear this.

Right now, Peter David has got some papers with the game warden and he is looking after the trap line for me. If Leonard was talking about the trap line, tell him no, tell him to wait til all the business is done then we'll discuss it.

BY MR. MILNE:

Q Why does Leonard George want that trap line, do you know?

A Because he holds my dad's name and that is why he wants the trap line.

Q This is in the territory of Smogelgem?

A Yes.

Q You are the caretaker of the territories of Smogelgem?

A Yes, I'm looking after Smogelgem's territory as he asked me to do. I grew up on the territories as a young man. Now Peter David is looking after the trap line.

MR. MILNE: It's getting close to lunch time and I am wondering if Mr. David would like to continue on and then quit early in the afternoon, or would he rather take a break and come back later in the afternoon?

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Mr. Milne

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

MR. MILNE: Go off the record.

--- OFF THE RECORD DISCUSSION

--- ADJOURNED FOR LUNCH AT 12.20 P.M.

--- UPON RESUMING AT 2.10 P.M.

MR. MILNE: Let's go on the record.

BY MR. MILNE:

Q Mr. David, we are going to try and do some more this afternoon, so if you get tired or have trouble remembering about some of the things you want to talk about, let me know and we'll stop.
You stated earlier in the cross-examination you had been a surveyor but you couldn't remember whether you were working for a government or if you were for which level of government, federal or provincial; when you were paid was your cheque from a government, do you remember?

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE WITNESS: I worked for the railroad for 50 cents a day, and the roadmaster delivered the cheques to us.

BY MR. MILNE:

Q When you worked for the railroad were you surveying for the railroad?

A Yes, I did work with the survey crew.

Q But this was the railway survey crew and not the government survey crew?

A It was with the railroad.

Q Have you ever worked for the government?

MR. GRANT: Which government?

MR. MILNE: Any government.

MR. GRANT: I object to the question.

BY MR. MILNE:

Q Have you worked for the Government of the Province of British Columbia?

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Mr. Milne

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE WITNESS: I don't know which government it was but I did work for them when I surveyed. Jack Milligan is the person who looked after the survey. He was the person who worked for the government.

BY MR. MILNE:

Q What I am WOndering, if you actually worked for Jack Milligan or you worked for the government? Were you a public servant at any time? If he knows what that is, fine, if he doesn't I'll explain it.

MR. GRANT: Which of those questions -- you have asked him three. You asked him if he worked for Jack Milligan, or if he worked for the government, or if he was a public servant.

MR. MILNE: Yes.

MR. GRANT: I think you should ask him one at a time.

MR. MILNE: It seems to me he has the ability to answer the question.

MR. GRANT: He may have the ability to answer all three, I don't know, I just think you should ask him one at a time.

BY MR . MILNE :

Q Did you work for the government?

A Yes, I did, with the government survey.

Q Did your pay cheque come from the government?

A We start in the spring and work til late fall.

Q Have you ever voted in any federal or provincial election?

A Yes I do.

Q In both Of those, federal and provincial or just one?

A Yes, both. The Only time I go there is when my name is written down and I'm asked to go.

Q Have you voted as a regular thing?

A Yes, whenever my name is on the voters' list I vote.

Q Have you ever served in the military of Canada?

MR. GRANT: I object. There is this whole area of questions that I object to, this particular area, on the basis of relevance.

MR. MILNE: You raised the objection once before when I asked the same sort of questions about the work record of Mr. David. It is relevant to Section 55 of the Statement of Claim. I understand your objection as being the same as the one you made at that time. My reply is basically the Statement of Claim alleges certain things

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DAVID, J.

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Mr. Milne

Were done by the Wet'suwet'en, and this man is Wet'suwet'en, and we are just asking about the sorts of things he might have done as well. I certainly note your objection on the reservation for trial.

Q Have you ever served in the Canadian military or in the militia of the Province of British Columbia?

A I haven't but during the last war I was just ready to go and the war ended. In 1914.

Q I want to talk with you again about your territories and, in particular, I'm interested in how you describe where your territory may be; are you able to draw a map of your territory?

MR. GRANT: Which one are you referring to?

BY MR. MILNE:

Q The Kilwoneetz territory or any of them, for that matter. Can you draw a map of any of your territories?

MR. GRANT: Just a moment. I am going to object to how the question is framed up. It may take a bit longer but if you want to ask him about each of them, that's fine, but when you say any of your territories I think that question is so vague and general that he may interpret that you're talking about what you talked about this morning, when you were talking about some land he bought or something. I would like you to be specific as to which territory you're asking about.

MR. MILNE: Sure, it will take longer but. . .

Q Can you draw a map of the Kilwoneetz territory? Do you have the ability to do that?

A No, I can't, but I know where the territory is.

Q Can you tell me what landmarks constitute the border of the Kilwoneetz territory?

A There are names for everything in the territory, creeks and so forth have names and that is what we use.

Q What kind Of Shape is the Kilwoneetz territory? Is it long and narrow or round?

----- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE WITNESS: The Kilwoneetz area is between two mountain peaks, it's in a valley. MacDonnel Lake, let's say this area, MacDonnel Lake is in this area and there is a creek that runs through, and that is used as the boundary, and the area this side of the creek is Kilwoneetz area.

BY MR. MILNE:

Q What is the name Of that Creek?

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DAVID, J.
Cross-Ex.
Mr. Milne

A The creek doesn't have a name. Big John from Andymole owns the territory above the Kilwoneetz area.

Q What are the names of the two mountain peaks?

A The Hudson Bay Mountain and Dennis Mountain. It is between two mountains where the Kilwoneetz area is.

Q And the area above you belongs to Big John?

A Yes. Sandstone Mountain and the creek, that creek there comes from MacDonnel Lake. They meet. The area past there belongs to Thomas Danes, who is Gitksan.

Q Is Big John Gitksan?

A Yes, he was Gitksan. He was from the village that used to be near he was chief over there.

Q Do the territories of Big John and the other fellow you mentioned, do they touch each other?

A Yes, they're side by side.

Q And both those territories touch the Kilwoneetz territory?

A Yes, south. West of the two territories.

Q If I Could ----

A Now, Lead Canyon to Seven Sisters, that belongs to Malahan, also Gitksan, and that's as far as I know the territory.

Q What about the Other end Of your territory, where is the boundary for it?

A There's an area known as Four Mile Hill. There's the creek that runs near there and that is the boundary.

Q Does that creek have a name?

A No name for the creek. Past the boundary the area belongs to Big Seymour, their names are used to name the lakes that are in the area, such as Seymour Lake. Dennis Lake.

Q Big Seymour was Wet'suwet'en?

A Yes.

Q What house is he from?

---- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE WITNESS: Big Seymour was Gitdumden, and he was from Hagwilget, and his chief's name was Gyologet.

BY MR. MILNE:

Q Other than Big Seymour's territory, was there any other territory touching yours on what I'll call the lower end of it?

A The Telkwa River lake area and the Howson Lake area all belong to Kilwoneetz, and the last mountain belonged to the grandfather of Mabel Sam.

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DAVID, J.
Cross-Ex.
Mr. Milne

Q What is the name of that mountain?

A Laganzo and there was lots of other names for the mountains. Near the mountain I just told you about.

Q Is there a white man's name for that mountain?

A I don't know what the English name for it is. And the English names are derived from the first white people who settled in the area. Neldildat, that was the original name for Howson Lake. Neldzildat is the Wet'suwet'en name for Howson Lake. Howson Lake was named for Mr. Howson who had a big house.

Q Howson Lake is in the Kilwoneetz area?

A Yes.

--- OFF THE RECORD

BY MR. MILNE:

Q I want to be sure I know where the Kilwoneetz territory is, so I just want to summarize that it's between --

it's the valley between two mountain peaks of Hudson Bay Mountain and Dennis Mountain, and one end of it is marked by the creek that has no name but comes out of the Sandstone Mountain area. . . .

MR. GRANT: I just think that. . . .

MR. MILNE: . . . and that the other end of it is a creek that comes from the Four Mile Hill area?

Q Have I correctly described your territory?

MR. GRANT: I object because we have just spent almost half an hour in which the witness has described in detail the boundaries of the territory and I think they speak for themselves, and for you to summarize in one sentence and ask him if you have correctly described it, I think it is an unfair question.

MR. MILNE: Come on, Mr. Grant. Surely I can ask him, he's described numerous canyons, creeks and hills, surely he can generally say whether that area accurately represents his territories.

MR. GRANT: I think his evidence speaks for itself ----

MR. MILNE: I am asking him to ----

MR. GRANT: You have taken part of his evidence out and the only correct answer he can give you is to restate all his evidence, and I object because I think the question is unfair.

MR. MILNE: If you can produce a map for me that I can put to this witness and ask him whether or not that's his territory, I would appreciate it, otherwise what we are dealing with are descriptions of his territory and I want to be clear in my own mind and I want it to be

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DAVID, J.

Cross-Ex.

Mr. Milne

Clear for the record as to what the territory's bounded by.

MR. GRANT: He has given that evidence in detail on direct, and he has given it again to you on Cross. It's not fair to have him summarize in one sentence what he has spent 25 minutes giving to you. I object.

MR. MILNE: Your objection's noted and I would like ----

MR. GRANT: I instruct the witness not to answer.

BY MR. MILNE:

Q I would like to have you summarize the area by the boundaries, does that accurately set out the boundaries of the area?

MR. GRANT: I instruct the witness not to answer the question.

BY MR. MILNE:

Q Mr. David, have you seen a map of this area? A map of your territory?

A There is a map of the area, David Dennis has it, and it is a map of 1902 but they are unable to locate it. On this map it has all the names of the lakes and the creeks and the mountains.

Q Who made the map?

A I don't know who made the map but on the map it had 1902 written on it.

Q Did you see that map?

A Yes I did.

Q Was it a general topographical or government map or was it a particular map made by the Wet'suwet'en?

MR. GRANT: He said he doesn't know who made the map.

MR. MILNE: I'm asking whether or not the map he saw was a government map.

MR. GRANT: He's answered you. He said he doesn't know who made the map.

BY MR. MILNE:

Q Describe the map to me please?

A The map is coloured red and on the map it had all the roads. If it was here in front of me I would show you the old territory. I don't know what they've done with the map.

Q When you were a surveyor for the government you saw maps, lots of maps, right?

A Yes, I did see many maps. This map I'm talking about had all the lakes, Francis Lake, Owen Lake, Big Ootsa Lake. I don't know what they have done with the map.

Q When you were a surveyor, you saw government maps, is

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Cross-Ex.
Mr. Milne

that right?

MR. GRANT: He answered that, he said yes I did see many maps.

MR. MILNE: He said he saw many maps but I want to particularize it, a government map.

MR. GRANT: I'm sorry.

THE WITNESS: Yes I did.

BY MR. MILNE:

Q Did this map look like one of those?

A Yes, it was probably government map. On the map it had the roads and all the foot trails and everything else on it.

Q When you looked at that map was there any drawing on it outlining your territory or was it simply a map of the area?

A It was a map of the whole territory, even had the foot trails that went through the Hudson Bay Mountain. If it was here I could give you more information.

Q When was the last time you saw the map?

A It wasn't too long ago. I used the map when I spoke at a feast at the hall and I gave it back to David, and then I don't know what they did with it.

Q Was that speech you gave at the feast within the last year?

A (In English) Three years ago. Three or four years ago.

THE INTERPRETER: About three or four years ago.

BY MR. MILNE:

Q Was this a very old map?

A Yes it was an old map, 1902.

Q Is David Dennis a plaintiff?

MR. GRANT: Do you want me to answer that?

MR. MILNE: Yes, please.

MR. GRANT: No, he 's not a named plaintiff.

BY MR. MILNE:

Q You described one of the landmarks on your territory as being Dennis Mountain; who had the territory on the other side of Dennis Mountain?

THE INTERPRETER: You're talking on this side of Dennis Mountain, Hudson Bay Mountain here and Dennis Mountain here?

MR. MILNE: Yes.

THE WITNESS: It was all Kilwoneetz territory, Mabel Sam.

BY MR. MILNE:

Q Mabel Sam had the Telkwa River territory? That is

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DAVID, J.
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Kela's territory?

A Yes.

Q Who had the next territory?

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN.

THE WITNESS: Thomas Holland. Julian Holland.

MR. GRANT: Can you describe the answer as he has given it?

THE INTERPRETER: I forgot the first name he gave me.

--- OFF THE RECORD

THE INTERPRETER: There's Dennis Mountain and this area belongs to Kela, and the area next to Kela belonged to Old Dennis first and then Thomas Holland and then Julian Holland.

BY MR. MILNE:

Q Is there a landmark that you can tell me about between Kela's territory and Holland's territory? Is there a mountain or something between them?

A Howson Lake was one of the boundaries and three miles from Howson Lake, that area belongs to Mooseskin Johnny.

Q Which direction?

THE INTERPRETER: This direction. . . . (indicating)

MR. MILNE: So going across?

THE INTERPRETER: Going from Dennis Mountain, Kela, the three people he mentioned, Howson Lake and three miles from there begins Mooseskin Johnny's territory.

BY MR. MILNE:

Q Then is there a landmark between Kela's territory and Holland's territory?

MR. GRANT: He said that was Howson Lake.

BY MR. MILNE:

Q So Kela, Howson Lake, Holland, Mooseskin Johnny?

THE INTERPRETER: Yes.

BY MR. MILNE:

Q Holland's Wet'suwet'en?

A Yes. They were Wet'suwet'en and the territory was passed on because people died and and new people taking on names.

Q House? Their house?

A Kilwoneetz.

Q Mooseskin Johnny Wet'suwet'en?

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A Yes.

Q Kilwoneetz house?

A He came from the same house as my grandfathers, which is Tsayu.

Q Kela's territory, what is the boundary up here. . . .
(indicating)?

A Where the Telkwa River starts is the boundary of Kela's. Q
The headwaters of the Telkwa?

THE INTERPRETER: The headwaters of the Telkwa River.

BY MR. MILNE:

Q Is Kela's territory in the Telkwa Valley then?

A Yes, the mountain peak runs this way and the area this side of the mountain peak belongs to Mooseskin Johnny and the area this side belongs to Kela.

MR. GRANT: How is Johnny doing?

THE INTERPRETER: His mind starts to get mixed up sometimes.

MR. GRANT: Is that how he is feeling now?

THE INTERPRETER: He's saying that when he is thinking a lot his mind begins to wander because he is weak, and he said that he is tired now.

MR. MILNE: All right. Could you tell him that we'll continue tomorrow.

THE INTERPRETER: He said that's fine.

MR. MILNE: Time?

THE INTERPRETER: Same time as this morning.

MR. GRANT: Nine-thirty.

MR. MILNE: Mr. Grant, you will try to get that list of the houses for me?

MR. GRANT: I won't be able to do it by tomorrow. Go off the record.

--- OFF THE RECORD DISCUSSION

--- PROCEEDINGS ADJOURNED AT 2.55 P.M.

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

VH/jg-Apr. 25/86 Veronica Harper (Ms)
Official Court Reporter
B.C.S.R.A. #263

TRANSCRIPT CONTINUES ON NEXT PAGE 7-75

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DAVID, J.
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VICTOR WILLIAM JIM,
Wet'suwet'en interpreter,
Previously Sworn.

JOHN DAVID, A Witness called
on behalf of the plaintiffs,
Previously Sworn, testifies
as follows:

--- UPON COMMENCING AT 9.30 A.M. , 22 April, 1986

MR. MILNE: This is the continuation of the cross-examination of Johnny David. The Witness and the Interpreter are still sworn, and the same parties are present that have been present on previous occasions.

Just before getting into the cross-examination, I have a comment about some of the proceedings that were taken yesterday. Mr. Grant, yesterday you instructed the Witness not to answer a question on territory and, as these proceedings are akin to proceedings at trial, at trial you certainly have no right to instruct a Witness not to answer, I am going to ask you to reconsider your position on that.

I take the position the proper procedure is to object and then reserve the right before the introduction of this evidence at trial to make submissions to the Trial Judge on its admissibility. I intend to have the question read back to the Witness at the end of the day and if you maintain your instruction to the Witness rather than maintaining the right to object, as I have described, then I will have to adjourn my cross-examination to seek instructions. The instructions I would seek from my principals would be to see if there is some way in which the witness' evidence on the matter of territory would be struck out in its entirety at trial. Or, alternatively, seek instructions to possibly bring a motion before a Justice in Chambers before a ruling on the procedure.

There's two reasons I'm waiting until the end of the day to do this. Obviously I want to give you an opportunity to consider your position and, secondly, I don't want to inconvenience the Reporter or the video man, who have travelled from Vancouver.

MR. GRANT: I Want to be Clear right now on the record. The only reason I instructed the Witness not to answer the

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question is because he's a 96-year-old man, he's speaking through an Interpreter and, as I stated to you yesterday when you asked that question, the question was a question that was difficult if not impossible to answer as it was framed.

I have no objection, if it is the question I recall I have no objection to you asking questions about that area. It was the wording of the question, that is how you framed up the question which confused me and I was certain would confuse the witness. That's the only problem I had.

If you wish to deal with that area I am not going to be objecting. I didn't object to the area. I do not want the Witness -- I do not want this elderly Witness to be put in a situation where he is asked questions which are not comprehensible to me, as counsel who understands English, and to be put in a situation whatever he answers probably won't be too helpful to either side. That would be the sole basis for that.

I thought I had made it clear to you if you framed up the question in any of many different alternatives, I didn't object to the question.

Before considering it I want to know exactly the question you want to frame up. If you frame up that question in a different way I am not going to be objecting.

MR. MILNE: I think the question was recorded previously and I will have it read back, as I say, at the end of the day and then you can consider your position on it, primarily in response to instructing the Witness not to answer the questions.

MR. GRANT: You have my position on the record.

CROSS-EXAMINATION BY MR. MILNE (CONTINUED)

Q Now, Mr. David, I want to ask you some questions about the territory of Smogelgem. Are you authorized to speak concerning that territory at the feasts?

A Yes.

Q In your Direct Examination you mentioned a few of the landmarks of that territory but, as I reviewed the transcript, I think you mentioned only two of them, that being China Nose Mountain and Wilson Lake; are there other landmarks on the borders of that territory that you can tell me about?

THE INTERPRETER: That is what he said, Wilson Creek.

MR. MILNE: Wilson Creek, not Wilson Lake?

THE INTERPRETER: You said Wilson Creek, didn't you?

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DAVID, J.
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Mr. Milne

MR. MILNE: I said Wilson Lake.
THE INTERPRETER: Oh.

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE WITNESS: Tahdzingakwah, that is just Nakot.

BY MR. MILNE:

Q What is that?

A TahdZingakwah is a creek.

Q Is there an English name for that?

A It's a creek that flows from Summit Lake.

THE INTERPRETER: And he thinks it's called Summit Creek.

BY MR. MILNE:

Q Is that the boundary of Smogelgem's territory?

A Yes.

Q Are there other creeks or lakes that are also on the
boundary?

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE WITNESS: McGilligan Lake. From McGilligan Lake, goes
up to China Nose Mountain. In north direction.

MR. GRANT: Just to clarify something, he referred to a creek
there from Summit Lake, did he give a Wet'suwet'en name
for that? I believe he did.

MR. MILNE: Yes.

MR. GRANT: What was that name?

MR. MILNE: Ms. Mills has given me a piece of paper with the
name on it for the record.

MR. GRANT: Tahdzingakwah.

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE WITNESS: The boundary for the trap line, when they first
did it, they did not do the creek boundary. They put
the boundary too far down.

BY MR. MILNE:

Q Who did?

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE INTERPRETER: Andrew Bavin, somebody like that, worked for
Fish and Wildlife.

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--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE WITNESS: I showed him the boundaries but he still set the boundaries incorrectly. I am talking now on the old traditional boundary, not the trap line boundary.

BY MR. MILNE:

Q That's What I Want to hear, about the traditional boundary. Are there any other landmarks on the boundary that you can tell me about, other than the ones you have mentioned?

A From China Nose to the height of land is used for boundary.

Q I don't Understand What you mean by height of land; is there something, a ridge or something coming from China Nose?

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE WITNESS: Yindayelgutz.

BY MR. MILNE:

Q What does that refer to?

A It's a flat field. On the flat field there's a land that's kind of a hill and that's the corner for Smogelgem's territory.

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE INTERPRETER: He said it is very difficult.

MR. MILNE: What is difficult? To describe it?

THE INTERPRETER: For him to describe.

THE WITNESS: Gaos taway bunee yis, and the white people call it Whiskers Mountain.

THE INTERPRETER: The Wet'suwet'en name for that is Gaos taway bunee yis, and that is just directly behind here.

BY MR. MILNE:

Q Is China Nose Mountain east Of Burns Lake Or West Of Burns Lake or some other direction?

A West of Burns Lake.

Q Is it on the south side of the territory?

MR. GRANT: Smogelgem's territory?

MR. MILNE: Smogelgem's territory.

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

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THE WITNESS: Yes, from China Nose.

THE INTERPRETER: He said it is north of China Nose,
Smogelgem' s territory.

BY MR. MILNE:

Q Is SUMmit Creek the east Or West boundary of the
territory?

A Western boundary.

Q Is the line from McGilligan Lake up China Nose Mountain
on the east side?

MR. GRANT: Just a minute, I didn't understand the question.

MR. MILNE: He said that McGilligan up to China Nose Mountain
was one of the boundaries.

MR. GRANT: Yes.

MR. MILNE: I am just wondering whether that is on the east
side of the territory?

MR. GRANT: Okay.

THE INTERPRETER: McGilligan Lake?

BY MR. MILNE:

Q McGilligan Lake, up to China Nose Mountain, is that on
the east side of the territory or is that the boundary
of the territory?

THE INTERPRETER: The line between McGilligan and China Nose,
you're asking if that is east or west boundary?

MR. MILNE: Yes.

THE WITNESS: East side.

--- OFF THE RECORD DISCUSSION

MR. GRANT: For the record, Ms. Mills was just asking to clarify
a word for her assistance to the Court Reporter.
Whether that was the correct name.

BY MR. MILNE:

Q What is the north boundary?

A North of China Nose, the boundary.

Q Is there a landmark north Of China Nose?

MR. GRANT: Could I suggest something? I think I know what
you're seeking. When you say north he's going to north
of China Nose but if you want to say, is there a point
where it turns from east to west at China Nose, that is
where does it stop. I think that might assist you in
where you're going and clarify it for the witness.

MR. MILNE: Let's try this.

Q Where does the north boundary stop?

A Yindayelgutz. It's in a flat area and there's a

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mountain there, Yindayelgutz.

THE INTERPRETER: And he is describing, it's up like this.

BY MR. MILNE:

Q Is that what he was describing before, when he said
flat field with the hill?

A Yes.

THE INTERPRETER: And he is describing from China Nose to the
north, and then west goes back this way to Wilson Lake,
that is what he was describing here.

BY MR. MILNE:

Q Wilson Lake is also a corner marker of the territory?

A The line goes a little past the lake and the creek, and
that's where the boundary is. Summit Lake isn't within
the territory.

MR. MILNE: He gave a name for a mountain, does he -- I forget
what the Indian name was, it's the last one that he
gave. I believe it's this one... (indicating).

THE INTERPRETER: Gaos taway bunee yis, Whiskers Mountain.

MR. MILNE: That is the name that he gave, the white name is
Whiskers?

THE INTERPRETER: Whiskers Mountain.

MR. MILNE: All right.

Q Who holds the territory that touches the east boundary
of Smogelgem's territory?

A Casbeen from Babine side holds that territory. They
don't cross over each other's side.

Q Casbeen Wet'suwet'en?

THE INTERPRETER: He's from Babine. Old Fort.

BY MR. MILNE:

Q Who holds the territory that touches the north boundary
of Smogelgem's territory?

A North side is Casbeen.

Q That's what I thought. Who holds the territory touch-
ing ----

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE INTERPRETER: He is saying that Casbeen is Old Fort Indian.
From Babine.

BY MR. MILNE:

Q Who holds the territory then touching the east side of
Smogelgem's territory?

THE INTERPRETER: He is asking what Mabel Sam's name was.

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DAVID, J.

Cross-Ex.

Mr. Milne

MR. GRANT: The name was given in the record that Mabel Sam's name was Kela.

THE WITNESS: Kela?

THE INTERPRETER: He said the east side is Kela's territory.

BY MR. MILNE:

Q And the name of Kela's territory?

A Alxkat, or the English, Graveyard Lake.

MR. GRANT: What's the word?

THE INTERPRETER: Alxkat.

MR. MILNE: For the record, Mr. Grant, Kela is a plaintiff?

MR. GRANT: Kela is not a named plaintiff, no.

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE WITNESS: At Graveyard Lake two of Kela's grandfathers are buried there. That is the name she is holding now.

MR. MILNE: I think that was gone into in the Direct Examination, in that area.

Q Who holds the territory touching the west boundary of Smogelgem's territory?

A The corner of Smogelgem's territory, the territory belonged to Tyee Lake David, and Old Patrick, who didn't have a chief's name. Old Patrick is Kela's grandfather.

--- OFF THE RECORD

BY MR. MILNE:

Q Are there other people's territory also touching the western boundary of Smogelgem's territory?

A No. That's all.

Q Who holds the territory that touches the south boundary of Smogelgem's territory?

A Lame Arthur Michell. And his three brothers. Lame Arthur Michell and his three brothers. They were one company.

THE INTERPRETER: He said that's it, everybody surrounding the territory. Everything squared up.

MR. MILNE: Thank you.

Q Is Lame Arthur Michell Wet'suwet'en?

A Wet'suwet'en from Moricetown. His sons are the same. All his sons are still alive.

Q I take it that Tyee Lake David and Old Patrick are also Wet'suwet'en?

A Yes, they're Wet'suwet'en.

Q Is the word Alkut -- A-L-K-U-T -- and the word that has been used, Alxkat, was the territory called Graveyard

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DAVID, J.
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Lake or is that Alxkat?

Maybe just go off the record for a minute while I refer to some other transcripts.

--- OFF THE RECORD DISCUSSION

MR. GRANT: Just for the record. We have not located it but apparently in Volume IV, the transcript of December 19 and 20, there was a reference to Kela's territory and to this location around Graveyard Lake, which is known as Alxkat. There is a spelling given to it that seems different to that but counsel agree that what Mr. David is referring to now is the same.

MR. MILNE: I agree.

MR. GRANT: When we can determine it at our next sitting, we'll just correct it for the record and give both spellings. Do we have both spellings?

MR. MILNE: We have both spellings now on the record.

MR. GRANT: Those two spellings are with reference to the same name and the same place, and Mr. Milne agrees.

MR. MILNE: That's correct.

Q Mr. David, you mentioned in your Direct Examination that you had consulted with Richard Overstall concerning boundaries of your territory ----

MR. GRANT: Which territory?

MR. MILNE: Smogelgem's territory, I'm sorry.

Q First Of all, do you remember consulting with Mr. Overstall about Smogelgem's territory?

THE INTERPRETER: He asked me, white man?

MR. MILNE: White man.

THE INTERPRETER: He can't remember who he is.

THE WITNESS: I grew up as a small boy on the territory. I know the territory and that is what I am telling you now.

MR. MILNE: Mr. Grant, I previously mentioned that because a map was referred to in the Direct Examination I was going to be asking for production of that map.

MR. GRANT: Do you have a reference to that?

MR. MILNE: In the Direct Examination?

MR. GRANT: Yes.

MR. MILNE: It is on Volume IV, page 44, question 29.

The defendant's position is that the map is part of another judicial proceeding and if it was privileged it's lost its privilege as a result and we're requesting production of that now.

MR. GRANT: I was going to actually mention it when you started on the definition of the territory. I don't object to

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DAVID, J.

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Mr. Milne

Production of that maD. It is a matter of obtaining the requisite order to release that exhibit from the court, and I'll endeavour to do so.

MR. MILNE: Thank you.

MR. GRANT: Whether the map was duplicated in its present form or not, I don't know, but I have no problem obtaining it since Mr. David referred to it.

Just for the record I must say I have made some efforts to obtain the map. I thought there was a copy that I could have obtained more easily since the adjournment of this case in February but I have been so far unsuccessful.

BY MR. MILNE:

Q Yesterday you said that you had to chase some people off your territory, two young men I think you said, and we were at that time talking of the Kilwoneetz territory; did you have any trouble with white people on Smogelgem's territory?

A No, it was just those two young white men. No other white person gave me a hard time in Smogelgem's territory.

Q In your Direct Examination you said that after you married you were entitled to use the Nanika territory; are you authorized to speak at the feast concerning that territory?

MR. GRANT: Today or when he was married?

BY MR. MILNE:

Q First let's deal with when you were married?

A I did sometimes speak on the territory when I first married but the head man for that area was Francis Lake John and his brother, Louie. I am going to tell you about it.

THE INTERPRETER: Francis Lake John had told Johnny, since you married my sister's daughter.

THE WITNESS: Jimmy Thomas, who was Non-Status, was like a white man, therefore could not talk about the territory so Francis Lake John asked me to speak on the territory. I looked after the territory through speaking for them.

THE INTERPRETER: He is asking me who is Caspit. He said all this time the territory belonged to Jimmy Thomas and now he couldn't remember who it was and he asked me who held Caspit. I told him it was Stanley Morris and now the territory's in Stanley Morris' name.

He is asking me if Stanley Morris is Caspit and I

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told him yes.

BY MR. MILNE:

Q Are you entitled now to speak about that territory at a feast?

A Just after I first got married when I spoke on the territory because Francis Lake John asked me to, but now these people have learned their territory and I have no business in that territory therefore I don't speak about the territory.

Q Is Stanley Morris Wet'suwet'en?

A Yes, he is Wet'suwet'en. He is John's sister's grandson. Stanley Morris.

Q I'm concerned about these names and maybe it's because I am not hearing properly -- Casbeen?

THE INTERPRETER: Caspit.

MR. MILNE: I thought it was the person whose territory is north of Smogelgem's, who is Casbeen?

--- OFF THE RECORD DISCUSSION

MR. MILNE: Stanley Morris and Caspit are not named plaintiffs?

MR. GRANT: No.

BY MR. MILNE:

Q Because you're not authorized to speak of this territory now at the feast I am not going to ask you to describe the boundaries but, could you, if I did?

THE INTERPRETER: He said I could.

MR. GRANT: I appreciate Mr. Milne's efforts to bring us into a level of trying to get this Commission completed.

BY MR. MILNE:

Q I want to go back and ask you some more questions about the Kilwoneetzen territory. I looked through the transcripts to find out what people or houses made up the Kilwoneetz but I was unable to find out; can you tell me what people or houses the phrase Kilwoneetz refers to?

MR. GRANT: Given the efforts you made yesterday about the fact that there may be two different names I think you should that you're asking two questions at once and you may get double answers or you may get answers in alternate forms.

I think if you want to know the names of the houses, I think that's what you should ask; if you want the

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DAVID, J.

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Mr. Milne

names of the chiefs, you should ask and if you want to ask both, that's fine but I don't think you should do it both at the same time.

BY MR. MILNE:

Q What are the houses that COMpose Kilwoneetz?

THE INTERPRETER: He asked me if we are talking about the feast house and I told him yes. He said they're called Kilwoneetz house and we all use it together.

BY MR. MILNE:

Q When you say we, to whom are you referring?

A The people in my clan.

Q That is?

THE INTERPRETER: Laxsilyu.

MR. MILNE: Laxsilyu clan.

THE WITNESS: You will see at the hall the way the people are seated. They're seated according to the clan, they're all as one company. They're all in the house during the feast.

BY MR. MILNE:

Q So What houses within the Laxsilyu clan compose the Kilwoneetz house?

A No. Separate. It's only when they come into the feast hall they come in as one company.

Q Well, you have got me a bit confused, Mr. David.

MR. GRANT] Maybe we can go off the record if you want?

MR. MILNE: Please.

--- OFF THE RECORD DISCUSSION

BY MR. MILNE :

Q It has now been explained to me there are, as I understand it, three houses within the Laxsilyu clan; would you please give me the names of those three houses just so I can get it straight?

Ginehklaiya, Kwan beah ya weten, Tse kal kai ya weten. And Peter Alfred's wife is from Tse kal kai ya weten, within the house. When there is a feast they are named as such and are given materials accordingly.

Q Do all three of those houses that you have just named have the right to the Kilwoneetz territory?

A The people from Laxsilyu, their spouses are able to use the territory. That was how it was done in the past and things are getting a little mixed up today and I'm finding it difficult to talk about this.

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DAVID, J.
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Mr. Milne

MR. MILNE: Ask him if he's getting tired?

THE INTERPRETER: He's not getting tired, it's just trying to sort everything out he's finding difficult.

BY MR. MILNE:

Q I want you to make sure if you don't understand what I am asking that you let me know and I'll do my best to try and ask questions that are understandable.

The next territory I want to talk about is the one that you referred to as the Telkwa River territory or Kela's territory. Yesterday I believe that we had the one boundary of it as the Dennis Mountain area, the south boundary; is that right?

--- OFF THE RECORD DISCUSSION

THE WITNESS: Yes, it is and there's a small lake, Blue Lake it's called, that belongs to the Coast Indians.

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE WITNESS: Two hundred years ago there was a lake, Blue Lake, in the area, in this direction there. Kitselas Indians' territory.

BY MR. MILNE:

Q Does that touch Kela's territory?

A Yes, it's connected.

Q On the SOUTH side?

A West side.

Q Is that above the headwaters Of the Telkwa?

THE INTERPRETER: The Telkwa River?

MR. MILNE: Yes.

THE WITNESS: Tsa moot'tsa is the mountain that has the Tsimshiam name. Tsimshiam Indian name and we call that by the same name. It's a long time ago.

MR. GRANT: What was the name of the mountain that he gave?

THE INTERPRETER: Tsa moot'tsa.

--- OFF THE RECORD

BY MR. MILNE:

Q That's the West boundary?

A Yes.

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

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DAVID, J.
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Mr. Milne

THE WITNESS: Deh' kleye yis is the Wet'suwet'en name for
Tsa moot'tsa.

BY MR. MILNE:

Q Is there an English name for it?

A I think they call it Blue Lake Mountain. It's a mine
there.

THE INTERPRETER: He said there's a lot of silver there. He
was there for two years and then war broke out and
everything just shut down.

BY MR. MILNE:

Q I think you told me yesterday that the north boundary of
Kela's territory was a lake known as Howson Lake; is
that correct?

A Yes, Howson Lake. The area next to Howson Lake belongs
to Mooseskin Johnny.

Q But yesterday we didn't talk about what the east
boundary of Kela's territory may be; can you name some
landmarks on the east boundary of Kela's territory?

A The east boundary is identified by a creek that comes
from Howson Lake.

Q Do you know the name of the creek?

THE INTERPRETER: He knows the names of all the creeks and
rivers but having a difficult time remembering it.

MR. MILNE: If he remembers it he can tell me at any time.

MR. GRANT: During the Commission.

MR. MILNE: During the Commission.

Q Does that creek ----

THE INTERPRETER: He's just ----

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

MR. GRANT: If it is hard for him to remember I don't think
he has to.

THE INTERPRETER: I think that is what he is trying.

MR. GRANT: I don't think he has to strain himself out.

THE INTERPRETER: He's having problems remembering names.

MR. MILNE: Ask him if he would like to take a short break?

THE INTERPRETER: He says, no, I want to get done today. He
says after lunch I am going to Smithers, but I'll make
a quick trip and I'll be back in one hour and we can
start again at two o'clock.

MR. MILNE: That's fine.

Q Does this creek that comes from Howson Lake flow into
the Telkwa River?

A Yes.

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Cross-Ex.
Mr. Milne

Q Does the territory of Maxlaxlex -- let me change that around a bit here -- the east boundary of the territory of Maxlaxlex, in other words the Copper River area, touches Gyologet's territory?

MR. GRANT: That's not a question.

BY MR. MILNE:

Q Is that correct?

MR. GRANT: You're referring to the Kilwoneetz territory?

MR. MILNE: Yes.

THE WITNESS: Yes it does. The ski jump. The territories are side by side. Big Seymour owned it before Gyogolet did.

BY MR. MILNE:

Q Is there a lake called Guksam Lake that is on the border?

A No. Guksam Lake belongs to the people from Skeena Crossing. The Indians from Skeena Crossing.

MR. GRANT: There's a plaintiff, a named plaintiff Guksam, for the record.

BY MR. MILNE:

Q What landmark touches the boundary of Gyogolet and Copper River area, the Kilwoneetz territory?

A There's a creek near Four Mile Hill that's the boundary between Gyogolet and the Kilwoneetz territory.

THE INTERPRETER: He's asking me what the heart-shaped building is near Toboggan Lake. He is talking about Adam's Igloo.

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE INTERPRETER: He is saying that Gyogolet's territory goes from Tatlow Station to reach to -- between two mountains near Adam's Igloo and the area east of Toboggan Lake belongs to Wah Tah Keght.

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE WITNESS: Near Tatlow Station there's a creek, Seymour Creek, that uses this boundary. That's it.

BY MR. MILNE:

Q The Creek that Comes from Four Mile Hill flows into the Bulkley, is that right?

A Yes. Then east Of there the territory belongs to

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Woos .

Q Who owns the territory that touches the south boundary of the Kilwoneetzen?

THE INTERPRETER: He's saying that Kela and then, that's across the creek and in this direction, that area belongs to Woos.

BY MR. MILNE:

Q I'm not Sure if I have got my map up the right way here but I think I'll leave that for now, except to ask, does Kela own the territory on both sides, the north and south sides?

THE INTERPRETER: Of?

MR. GRANT: Of?

MR. MILNE: Of the, well, this Kilwoneetzen territory.

THE INTERPRETER: You're asking if it runs north and south?

MR. MILNE: No, I am asking if she has territory on -- if there is ----

MR. GRANT: Two separate territories?

MR. MILNE: Two separate territories, one on the north side and one on the south side?

THE INTERPRETER: He's saying it is in between the two mountain ranges and the creek runs in the middle, and it's just one territory, not two.

MR. GRANT: That is which territory? Kela's?

THE INTERPRETER: Kela.

BY MR. MILNE:

Q Kela's territory is next to -- touches Dennis Mountain?

THE INTERPRETER: He's saying Dennis Mountain is here and there is another mountain range here, and Kela's territory is in between the two mountains.

BY MR. MILNE:

Q On this side Of Dennis Mountain is the Copper River?

THE INTERPRETER: You're asking for this?

MR. MILNE: Yes.

THE WITNESS: Yes.

BY MR. MILNE:

Q Who OWns the territory on the other side of Copper River further south?

A Gitksan.

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE WITNESS: Seven Sisters, that area belongs to Malahan, who

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is Gitksan, and the area south of MacDonnell Lake belongs to the Kitselas Indians.

MR. MILNE: Okay.

THE INTERPRETER: He gets up and don't feel right about it.

BY MR. MILNE:

Q Do your best, Mr. David. I think you are doing wonderfully well.

A I am telling you about the areas that I know what I am telling you, I am not making up.

MR. MILNE: For the record yesterday he referred to a map of David Dennis -- that David Dennis had, a 1902 map, and apparently it is not in this witness' control and he says not in David Dennis' control either.

MR. GRANT: What does he say about that? I think he said that he returned it to David Dennis, if I recall rightly?

MR. MILNE: He did, and it couldn't be found.

MR. GRANT: I see.

MR. MILNE: That map seems to me to be a fairly important item and I would ask if it does come into the control of any ' of the plaintiffs that it be produced, and perhaps it would be noted on your list of documents as something if it was in the control of the plaintiffs, may not now be in their control. Or possession.

THE INTERPRETER: Can I say something?

MR. GRANT: No.

MR. MILNE: Do you have something to say about the map?

MR. GRANT: I don't want the Interpreter to say anything to you about the map. We'll speak about it and maybe I'll say something later. I have noted your request.

MR. MILNE: In any event, if it shows up I would like it.

MR. GRANT: No offence.

BY MR. MILNE:

Q I want to talk now about the territory to the far east, the Wet'suwet'en territory that borders and touches the Nutseni territory ----

MR. GRANT: Go off the record for a moment please.

--- OFF THE RECORD DISCUSSION

--- SHORT RECESS

BY MR. MILNE:

Q You told your lawyer, Mr. Grant, some time ago about the border of the Wet'suwet'en territory and the Nutseni territory, and you said that Sebola Mountain

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Mr. Milne

Was one-half Nutseni and one-half Wet'suwet'en. I am now going to ask you more questions about that border.
THE INTERPRETER: He's asking me where Sebola Mountain is.

BY MR. MILNE:

Q It runs along Ootsa Lake; do you remember that now?

A Yes.

Q You also talked about Caspit who was Wet'suwet'en and held territory near Morice Lake?

MR. GRANT: That isn't a question.

MR. MILNE: Just tell him.

Q And you talked about Chief Louie who was in the Cheslatta area?

THE INTERPRETER: He's saying that Chief Louie was from Cheslatta and he was a big chief there.

BY MR. MILNE:

Q And I believe you said that Chief Louie and Caspit had some problems but that they discussed them and everything worked out all right?

MR. GRANT: Could you refer me to what reference you have from his evidence before you ask that question?

MR. MILNE: It is in Volume V, starting at page 23 and in particular on the bottom of page 25.

MR. GRANT: Well, yes, that is what I recall. I think you're referring to the answer line 39, Volume V, page 252

MR. MILNE: Yes.

MR. GRANT: I just don't want the Witness to be misled. I have no objection to you asking about this but I think you should put to him the answer that he gave about Chief Louie and Caspit, which on the one part suggests there was problems but the other part of the same answer suggests there was no problem.

MR. MILNE: That's right, that's why I'm asking him about it.

MR. GRANT: I ask anyway that, could it be put to the Witness so he understands what you're referring to?

MR. MILNE: Okay.

MR. GRANT: I would like the Interpreter to read the answer to him.

MR. MILNE: I can't remember my last question that was interrupted, can you read that back?

THE REPORTER: Question: "And I believe you said that Chief Louie and Caspit had some problems but they discussed them and everything worked out all right?"

MR. MILNE: Translate this then to him in Volume V of the Commission evidence transcript at page 25. There was

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an answer given by this witness and that answer is noted as number 39.

MR. GRANT: Line 39.

MR. MILNE: Line 39.

Q At that time, Mr. David, you said -- after having said that he was a Nutseni chief whose territory bordered on the Wet'suwet'en territory, you said:

"Yes, he was and on several occasions he just about had a few problems but, since they knew each other, they would talk it over and there were no problems."

Do you remember giving that answer?

A Yes, that's right.

Q I Would like to have you tell me about what you know about the few problems?

A It was just about the land.

Q About the boundary between the two lands?

A The problem probably arose from one person crossing the boundary of another person's and when that happened, they usually talked about it and that was the end of the problem.

MR. MILNE: Does he know if there was any feasts held to settle the problem?

THE INTERPRETER: This particular problem?

MR. MILNE: This particular problem.

MR. GRANT: About the one person passing over the boundary of another?

BY MR. MILNE:

Q What I Want to know, Whether Or not there Were any feasts held at this time to his knowledge between the Wet'suwet'en and the Nutseni concerning that boundary?

MR. GRANT: I just think you have to give him a time frame.

MR. MILNE: Well, within his knowledge, does he know whether or not feasts were held between the Nutseni and Wet'suwet'en getting together and settling a problem over the boundary?

MR. GRANT: Okay, I'll ----

MR. MILNE: That's pretty ----

MR. GRANT: He's answered the question about the person crossing over the boundary. I think you should be clear what you're asking about that. That is what his last answer was, or are you jumping into an area ----

MR. MILNE: Let's deal with that first.

Q First of all, does he know the people involved and,

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Secondly, was there a feast held to settle that dispute?

A Yes, I know them.

Q Was there a feast held to settle that problem?

A No, they didn't. They talked it over amongst themselves and the problem was settled.

Q Has there to your knowledge ever been a feast between the Nutseni and the Wet'suwet'en to settle the problem with that boundary?

MR. GRANT: Caspit and Chief Louie.

BY MR. MILNE:

Q The boundary between Nutseni and the Wet'suwet'en?

A They sometimes did hold a feast to discuss the boundary when the problem was spoken to or spoken about but the thing was settled and that was that.

Q Does he know any details of those feasts? When the last one might have been held?

A I haven't seen one personally. I've been told about it and they did probably sometimes hold feasts to straighten boundary problems.

Q Can you tell me what you were told about it?

A They would invite each other to a feast and gifts would be distributed, and the person who crossed over a boundary would be spoken to by the chiefs and, after that happened, the problem was solved and it never occurred again.

Q In February, when I was asking you questions about the border between the Wet'suwet'en and the Nutseni ----

MR. GRANT: What page?

MR. MILNE: At page 35.

Q You gave an answer:

"When the Nutseni say their boundary goes from Houston east, that is not so, they will not take that land. From Burns Lake to Skin Dyee's territory, that is the boundary of the Wet'suwet'en people."

Ask him if he remembers saying that?

A Yes. And this area does not belong to the Nutseni, it belongs to Skin Dyee, who is a man from Hagwilget.

Q You know that the Nutseni say that that territory does belong to them?

MR. GRANT: I don't know if that is true.

MR. MILNE: That is what I am asking him, if that is true.

MR. GRANT: You're asking him if he knows that's what they're saying. I don't know if he knows that's what they're

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Saying. If you're asking him, is that what they're saying, I have no objection.

MR. MILNE: Well, he has already said that the Nutseni say their boundary goes from Houston east, and that is not so. I don't see what your objection is.

MR. GRANT: I don't know what the Nutseni say. I think if you want to suggest to him what they say, that's fine.

BY MR. MILNE:

Q It's true that the Nutseni Say part of that territory is theirs, correct?

A It seems they have been talking that way. The people gathered and talked about it not too long ago and since that happened we haven't heard from them. We don't know what they'll say.

Q All this leads me to believe that the border between the Nutseni and the Wet'suwet'en from the Nutseni point of view is unsettled; would you agree with that?

MR. GRANT: Objection. I don't think he knows. I don't think he can know what the Nutseni perception of that is.

BY MR. MILNE:

Q Well, Mr. David, there's still a dispute over that border, isn't there?

MR. GRANT: Between whom?

BY MR. MILNE:

Q Nutseni and Wet'suwet'en?

A There's, they're not arguing over the territory. I have told you already where the lands of the Wet'suwet'en are. You have got it on paper and that is what I told you and that is it.

Q But there has been feasts in the past about that border?

MR. GRANT: Object. He has already answered the question.

BY MR. MILNE:

Q It is true there have been feasts in the past and it is true recently there have been discussions over that border?

MR. GRANT: My objection stands. You can ask the question but I am recording my objection to repetition and reiteration of the answers he has already given to you.

MR. MILNE: This man is under Cross-Examination and I would like you to translate those questions.

MR. GRANT: Just for the record, my objection is even under Cross-Examination you do not have unlimited latitude to repeat the same questions over and over again.

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MR. MILNE: Wait until you hear my questions. I am asking them one at a time, as you so often ask me to do.

Put the question to him please?

THE INTERPRETER: May I have the first question read back please?

THE REPORTER: Question: "But there's been feasts in the past about that border?"

Question: "It is true there have been feasts in the past and it is true recently there have been discussions over that border?"

MR. GRANT: Which one do you want him to answer?

MR. MILNE: Both of them.

THE WITNESS: Yes, there were feasts and whenever a person who did not like what was happening, this was the person who would do the dancing at the feast, and he was the person who gave money away at the feast.

BY MR. MILNE:

Q But if you agree that there have been feasts in the past concerning that boundary and in fact there have been discussions recently, how can you say there's no dispute over that boundary?

THE INTERPRETER: He's asking me if it's the discussions you're talking about? Discussions between Nutseni and the Wet'suwet'en?

BY MR. MILNE:

Q Maybe we have a different opinion of what a dispute and discussion is but the question is: Is that boundary between the Nutseni and the Wet'suwet'en still being discussed between the two of them?

A Yes, they're discussing the boundary and I'll give you the analogy of two houses where this person here does not have any food and this person does, so this person who has no food goes to the person that does. He gives him food and then he walks back to his territory and after that they go out hunting together and everything is resolved.

Q Do you know if the Wet'suwet'en have had feasts concerning their boundaries with -- where's my map -- what you called earlier the Coast Indians on the west?

A Our people did feast with the Coast Indians and at the feast each clan had three head chiefs --

THE INTERPRETER: -- and he was pointing in the directions --

THE WITNESS: -- one of the high chiefs would speak for their

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Clan and he would get his directions from the other two head chiefs. Today same thing is happening. You see Roy Morris getting up and speaking. He is not speaking for himself. He gets his words from the other two head chiefs and those are the words that he uses when he speaks at the potlatches.

Q Do you know if these feasts have been about the border between the Coast Indians and the Wet'suwet'en?

MR. GRANT: That's the feast with the Coast Indians?

MR. MILNE: Yes.

THE WITNESS: No, it is not about boundary, it's just your regular feast and they don't give each other any trouble.

BY MR. MILNE:

Q Do you know if feasts have been held between the Wet'suwet'en and Nishga concerning the boundary between the Nishga concerning the boundary between the Nishga territory and Wet'suwet'en territory?

A No, they haven't. The only feast that they've held together is your regular feast when there's dancing. There are some people who have been telling the histories of our people. Some of them have been making it up but I haven't, the things I'm telling you about I have heard them, I have lived it, and that is the information I am giving you.

Q Who are these people who are making up the history?

A It's people who are telling legends, I have heard them. They've got it all wrong. These are the people that I am talking about.

Q Are these Wet'suwet'en people or white people?

A Both Indians and non-Indians.

Q Do you know if any feasts have been held between the Wet'suwet'en and the Talhtans concerning border disputes?

A No, they haven't. Only if somebody crosses into somebody else's boundary.

Q Do you know if that has happened?

A This probably happened before I was born. I have just been told about it. But I have been told that they would discuss it amongst themselves and their problems would be solved and there were no more problems.

Q without a feast?

A No, They would talk it over amongst themselves.

Q In the old days did the Wet'suwet'en have warriors?

A There were many people who fought amongst themselves.

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

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THE INTERPRETER: He said there were disputes between the Indian people and non-Indian people, and I can tell you about it but I'm getting tired.

BY MR. MILNE:

Q Would you like to take a break for lunch and then to come back after lunch to talk about that?

THE INTERPRETER: He is asking me what time it is. He is asking if you guys are going for lunch.

MR. GRANT: We'll go for lunch if he wants to. We can go off the record at this stage, I think.

MR. MILNE: If he would rather continue straight through?

MR. GRANT: Maybe we should have this chat off the record?

MR. MILNE: Off the record.

--- OFF THE RECORD DISCUSSION

--- RECESSED FOR LUNCH AT 12.00 O'CLOCK

--- UPON RESUMING AT 2.10 P.M.

CROSS-EXAMINATION BY MR. MILNE, (CONTINUED)

Q Before We broke for lunch I Was going to start asking you some questions about any disputes or wars that he Wet'suwet'en might have had with other Indian people; do you know or have you heard of any wars between the Wet'suwet'en and Nutseni?

THE INTERPRETER: When they war, I told him that is what you're asking. He asked me, war between here and the Nutseni.

MR. MILNE: That is what I would like to know.

THE WITNESS: I'm finding it difficult but I'll still try.

MR. GRANT: Sorry?

THE INTERPRETER: He's finding it difficult but he will still try.

MR. GRANT: Can you ask him if he is just tired or would he rather not go on this afternoon, or is it the topic, the questions that he is finding difficult?

THE INTERPRETER: He's finding it difficult to talk about the topic.

MR. MILNE: About the topic?

THE INTERPRETER: Yes.

MR. GRANT: Possibly you should rephrase your question. Maybe he had a problem with some of your questions.

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BY MR. MILNE:

Q Did the Wet'suwet'en have a War with the Nutseni?

THE INTERPRETER: He said there were many stories told about the wars and I don't know which versions are correct, and that is why I am reluctant to talk about it.

BY MR. MILNE:

Q I appreciate your candidness and I appreciate what you tell me about there may be more than one version of it but I would like to hear one of the versions?

I also appreciate that this may have been something that was settled long ago and that there might have been a determination or decision not to talk about it any more, but I would still like to hear about the war with the Nutseni?

A I remember one incident, the Indians from Fraser Lake had a war during the summer. Some time in August, during the bear season. It was warm. And they came on foot from the east, from Fraser Lake. There is one gentleman who knew the people from this area and he started out with the war party.

One of the ladies from here was getting water down by the river and there's an eddy there, where driftwood was floating around, and she was looking at the driftwood very carefully to see if there were any signs of people. Canyon and Trout Creek, there's an eddy there....

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE WITNESS: And she saw wood floating around in the eddy. The man that had relatives in this area, old Nutseni, saw nothing. He would throw the burnt embers from the logs into the fire as well as twist leaves into little piles, and he would throw them in the river. The lady who was down in the canyon saw the burnt embers from the logs floating in the eddy as well as the twisted leaves or grass, and that was an indication to her that there was a war party approaching.

On the hillside close to the canyon our people had dug a trench about a foot wide, and the lady came up and told them about the burnt embers as well as the twisted leaves and all the war party got ready. The Wet'suwet'en were called bax nee. All the warriors got into trenches. Their bows and arrows ready. They were protecting the hillside here and down in the canyon.

In about one or two hours the Nutseni came.

THE INTERPRETER: He is asking me what we call the elders of

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the war party and he thinks they call them sergeants.

THE WITNESS: There was a young man named the llee jai, who was the sergeant of the warriors. The llee jai was the boss or the sergeant of the Nutseni war party, and one of the ladies from here hollered out "Don't kill him".

They fought until they ran out of arrows, and the Nutseni left but our people shot one of the Nutsenis through the leg and he couldn't run away so he crawled up the creek and one of our elders found him and put some Indian medicine on him and told him he wasn't going to kill him.

He healed him and let him go, and the old man that found the Nutseni, fed him and gave him medicine, and when he got better they let him go back to his territory

This was about 300 years ago. None of the Wet'suwet'en were hurt. The only casualty was that man that got shot through the leg. That is how the story was told to me.

BY MR. MILNE:

Q Do you know the reason for the attack?

A I don't know what they fought about.

Q Do you know of any other times when the Nutseni have attacked the Wet'suwet'en?

A Yes, people from here did war with the Nutseni after that. It was during the winter and the people left here on snowshoes. Our people went through the woods, they didn't take the main roads because they were being watched, and when they got to Fraser Lake there was a village there.

The Nutsenis would pour water on the rooves of their houses so the arrows would not go through the roof. It was like a shield.

There was no one outside, everybody was inside the houses, or lodges because it was too cold and five at a time they would sneak into the lodges and hit the Nutseni up with sticks. I don't know how many of them were killed but that's how the story goes, as I've been told. In the morning our people came back this way.

Q How many Wet'suwet'en warriors were involved, do you know?

A I don't know.

Q Do you know of any other ----

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

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THE INTERPRETER: He just repeated again, "I don't know how many there were".

BY MR. MILNE:

Q Do you know any other stories of when there was a war between the Nutseni and the Wet'suwet'en?

THE INTERPRETER: He said that's all. That's as far back as they've told me, and that's as much as I know.

BY MR. MILNE:

Q Were the Wet'suwet'en ever attacked by the Nishga?

A No.

Q Were the Wet'suwet'en ever attacked by the Coast Indians?

A Just in the very early days. There's stories told about the wars and there are too many different versions and I am not willing to talk about it at this time.

Q Do those wars involve the Tsimshiam?

THE INTERPRETER: That is what he said. That is what he said, the Tsimshiam.

BY MR. MILNE:

Q Did the Wet'suwet'en have Wars with the Kitwancool?

A No.

Q with the Tahltans?

THE INTERPRETER: I was telling him those were the people from the Telegraph Creek area.

THE WITNESS: No. I heard some stories but I am not too sure about them. I am not willing to talk about things that I personally don't know about.

BY MR. MILNE:

Q Did the wet'suwet'en and the Gitksan ever fight?

A No, they didn't. They considered each other friends and therefore they didn't war with each other.

Q You described to us in response to questions from Mr. Grant, an incident with the Nass people, the Nishga, and where a gravestone was knocked over and, as a result, someone was killed; do you remember telling us that incident?

A Yes I do.

Q Were there any other of those incidents with the Nutseni as opposed to a war?

A No.

THE INTERPRETER: He was just going to start telling that story again, I told him that you already heard it.

MR. MILNE: Yes, that is already on the record.

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Mr. Milne

THE WITNESS: The people from Hagwilget who were Wet'suwet'en were very good warriors. They were smart, therefore not too many other groups wanted to war with them.

BY MR. MILNE:

Q During any of those stories of war that you know, in considering those stories, what was the reason if any for the war or wars?

A No, I don't. I just know that they warred but I don't know what they were warring about.

Q The Statement Of Claim in this action, in paragraph 55(g) says that you protected -- the Wet'suwet'en people protected the boundaries of the territory; how did the Wet'suwet'en protect the boundaries of the territory?

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE INTERPRETER: He said he didn't hear of any actual wars regarding boundaries but when there was a dispute the people would talk it over and that's how your problems were resolved. Again he said that he's finding it difficult to talk on this.

BY MR. MILNE:

Q I take it you find it difficult to talk about it because you don't want to talk about disputes that have already been settled, is that right?

A Yes.

Q While I appreciate your position, the defendant has asked me to come and ask questions and some of them are difficult for you to answer and, as much as possible, I would ask you to answer those questions.

MR. GRANT: I think for the record the Witness is doing his best. He's described two major incidents with the Nutseni. I think he is doing his best but he has indicated he's having trouble. I don't think there's any suggestion he's doing anything but the best he can.

MR. MILNE: I didn't intend that by my statement. I wasn't intimating that he wasn't doing his best but in spite of the fact it might be difficult for him to talk about it, those are the questions that he has to answer.

MR. GRANT: If he can.

MR. MILNE: If he can.

Can you translate the gist of our exchange?

THE INTERPRETER: He said I've told you as much as I know and I've tried to answer the questions you're asking me to the best of my ability.

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BY MR. MILNE:

Q How did the Wet'suwet'en protect the boundaries of the territory from the missionaries?

MR. GRANT: Just a second.

MR. MILNE: If in fact they did.

MR. GRANT: I don't understand that question. Are you suggest- ing the missionaries made war on the Wet'suwet'en?

MR. MILNE: No. First ask if he feels the missionaries were a threat to the Wet'suwet'en?

MR. GRANT: I think you can ask that question.

THE WITNESS: They were not afraid of the missionaries. They basically did what they were told by the missionaries.

BY MR. MILNE:

Q Why did the Wet'suwet'en do what they were told by the missionaries?

A These people believed in prayers and they did not want to do anything contrary to the beliefs of the church and, therefore, they did not say anything against the church.

Q How did the Wet'suwet'en protect the boundaries of their territory as against white settlers?

A The white settlers would threaten the Indian people with their laws and, if the Indian people did go against the white people, they were usually taken before the law and thrown in jail.

Q Did the Wet'suwet'en take any steps to protect themselves or to protect the boundaries of their territories from the white people?

MR. GRANT: Again I think the question is confusing as you framed it up. I think you should lead up to it if you want to know what the white people did with respect to the boundaries. You are being very specific.

I can understand your question if you are talking about territories or something else. If you are talking about boundaries I suggest you lead up to it.

MR. MILNE: The boundaries of the territories.

MR. GRANT: I don't know if he has said whether the white people have threatened the boundaries of the territory. Your question implies that is his evidence and I don't think it is.

MR. MILNE: Well ----

MR. GRANT: It may be implied. I think if you want to lead to it, fine.

BY MR. MILNE:

Q Have the Wet'suwet'en boundaries of the territory been

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threatened by the white people?

A The white people had no respect for the Indian people.
They came and just took the land and just literally
threw them off.

THE INTERPRETER: And he indicated by picking up pen and throw-
ing it on the table.

BY MR. MILNE:

Q Threw them Off What?

A They kicked them off their lands, their trap lines. The
area I showed you near Barrett Lake, areas like that,
people were thrown off their lands.

Q Did the Wet'suwet'en take action to protect themselves
against that?

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE INTERPRETER: He said that the people, the white people
had no respect for the Indian people. The Indian people
would chase them off their land, they would go and get
their law and they would throw our people in jail.
Right now, pointing at you, he is saying that it is just
like you, you don't care about Indian people.

BY MR. MILNE:

Q How did the Indian people chase whites off the land?

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE WITNESS: They would ask them to leave and when they leave
they come back with their white law and our people would
be thrown in jail.

BY MR. MILNE:

Q You have told us one incident of when you found somebody
on your trap lines in the Kilwoneetzen territory and you
asked them to leave, and you took them to the Indian
agent; do you remember any other incidents of when you
asked white people to leave your land?

A Yes I do. I neglected to tell you there was an Indian
named Pat Brown who had to go home by railroad. He had
no money. In order to get home he sold the trap line
for \$15 to some white people. That's what he used to
go home by rail.

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

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DAVID, J.
Cross-Ex.
Mr. Milne

THE WITNESS: There was two young men told me right away when I got back to North Bulkley. When they told me about it, I took the two young men as well as Pat Brown into the Indian agent's office and told Pat Brown to give him the money back to the two young men, which he did and there were no more problems after that.

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE WITNESS: Then there were no other problems regarding the trap line after that. There is other people who would like to trap on my territory, if I say no they respect that and that's as far as it goes.

BY MR. MILNE:

Q What about all the White Settlers that Came into your territory, either in the North Bulkley or Kilwoneetzen area; did you ask them to leave?

A He told us and there were laws here and we respected that, and we didn't chase them off.

Q So what do you think, Mr. David, do the white settlers have a right to be where they are now?

MR. GRANT: I object to the question.

MR. MILNE: I thought you might.

MR. GRANT: The answer is probably as useless as the question. That is the very issue in the least in the litigation.

MR. MILNE: That is why I asked the question.

MR. GRANT: It's a question of law.

MR. MILNE: The plaintiffs are continuing to own and exercise jurisdiction to the present time, according to the Statement of Claim, and I am just wondering, this man is Wet'suwet'en and I think he has a right to say what really he is seeking, in his own words.

MR. GRANT: That is not what you asked. It is a question of law you asked. He may be a remarkable witness but. . . .

BY MR. MILNE:

Q What relief are you seeking as a Wet'suwet'en, Mr. David?

MR. GRANT: With respect to what?

MR. MILNE: With respect to this claim?

MR. GRANT: Well, I think you should put -- I think the Statement of Claim can be put to him so he can look at it.

MR. MILNE: I want him to explain in his own words what he is seeking.

Q Let me ask you this question, Mr. David: As a chief,

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DAVID, J.

Cross-Ex.

Mr. Milne

Were you consulted about this land claim before the action was commenced?

MR. GRANT: That's subject to solicitor/client privilege.

BY MR. MILNE:

Q Did you discuss it with other chiefs, not with your lawyer, but did you discuss it with other chiefs?

That's not privileged.

MR. GRANT: No, that is not privileged. The first one is. Go ahead and ask him.

BY MR. MILNE:

Q Before this action was commenced as the Chief did you consult with other chiefs about starting this action?

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE INTERPRETER: There was a little exchange we had before, and he was asking me whether it was about the old days and I told him it was about now.

THE WITNESS: Now, before this court case was launched the chiefs and the elected chiefs got together and they did talk about it, and now our people are getting more educated and they're saying no to a lot of things.

BY MR. MILNE:

Q When the elected Chiefs talked about it, did they decide "what they wanted?"

MR. GRANT: When the elected chiefs talked about it?

MR. MILNE: That is what he said, the elected ----

MR. GRANT: He said he talked with the chiefs and the elected chiefs.

BY MR. MILNE:

Q When the Chiefs and the elected Chiefs got together and talked about it, what did they decide they wanted?

MR. GRANT: Referring to the Wet'suwet'en?

MR. MILNE: I am trying to confine all of this to the Wet'suwet'en.

--- OFF THE RECORD DISCUSSION IN WET'SUWET'EN

THE INTERPRETER: He said the people of this village will get together and make their -- make their words into one, and that's what they will go by.

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DAVID, J.

Cross-Ex.

Mr. Milne

BY MR. MILNE:

Q Maybe you didn't understand my question because I don't think that answers it. When the chiefs and elected chiefs got together to discuss their land and what the white people had done to their land, what was decided as to what the Wet'suwet'en wanted from the white people

MR. GRANT: Could you read that question back to me?

THE REPORTER: Question: "Maybe you didn't understand my question because I don't think that answers it. When the chiefs and elected chiefs got together to discuss their land and what the white people had done to their land, what was decided as to what the Wet'suwet'en wanted from the white people?"

MR. GRANT: That's a different question to what you asked earlier and it covers a much wider ambit.

MR. MILNE: Let's see what ----

MR. GRANT: We have three minutes on the tape.

MR. MILNE: There's lots of tapes. Let's see what the Witness has to answer.

MR. GRANT: I am just saying that question -- I would like you to give the Witness a time frame you're talking about before you intend tying it to the discussion of this litigation.

MR. MILNE: I still intend on tying it to the discussion of this litigation. The whole thing is in the context of this litigation. I wouldn't be here but for this litigation.

MR. GRANT: The last time you asked, when they met to discuss this case, and now you're saying when they met to discuss the land, what was being done on the land, and that's much broader.

MR. MILNE: What was discussed, being done to the land and this case. In relation to this case.

MR. GRANT: And you're referring when they decided to take the case and discuss it in that manner.

MR. MILNE: Yes. Now, maybe we could have a tape change. Maybe give him the question and let him think about it while the tape is being changed.

MR. GRANT: Off the record.

THE INTERPRETER: Off the record?

MR. GRANT: You can ask him the question.

MR. MILNE: Yes.

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Mr. Milne

--- OFF THE RECORD DISCUSSION

MR. MILNE: On the record now.

THE WITNESS: You can see throughout our territory all the stumps and the white people have pocketed millions and millions of dollars. All the money that has been taken off our territory, we want that back and we want our territory back to the way they were. Once . we get back the money we would like to go back to our old Indian laws, to make life better for our people. The other hereditary chiefs as well as the other leaders are thinking about some way and it is with their words and my words that I am giving you today. It's the generation that will follow me that will use these resources. I will not be able to use it. I am ready to go. That's all.

MR. MILNE: All right. Those are my questions for today. Mr. Grant has to catch an aeroplane so I think we'll call it a day at this point.

There is only one issue, as to your instructions, Mr. Grant, not to answer the question on the territory and I don't know if you have considered your position yet as to what you may take, either instructing the Witness to answer that or objecting to that and retaining your right to objection at trial as to the admissibility of the evidence. What is your position?

--- OFF THE RECORD

MR. MILNE: Back on the record. For the record I'll have the Reporter read back the question that is in dispute.

THE REPORTER: Question: "I want to be sure I know where the Kilwoneetzen territory is, so I just want to summarize that it's between -- it's the valley between two mountain peaks of Hudson Bay Mountain and Dennis Mountain, and one end of it is marked by a creek that has no name but is -- comes out of the Sandstone Mountain area...."

Mr. Grant: "I just think that...."

Question: "...and at the other end of it is a creek that comes from the Four Mile Hill area? Have I correctly described your territory?"

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DAVID, J.
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Mr. Milne

MR. MILNE: That is the question that is in issue.

MR. GRANT: I objected yesterday to the question, My objection -- and I objected this morning to the question -- I requested that you rephrase the question so that it would be fair to the Witness. You have taken the position you don't have to rephrase it to be fair to the Witness. My objection is maintained.

However, in the circumstances of the Commission I believe the question can be put to the Witness but I also want translated to the Witness that the question is unfair and if it does not accurately set out -- your question does not accurately summarize or summarize the boundaries or it is difficult for him to answer, he should tell you that.

MR. MILNE: That's fine with me. Thank you, Mr. Grant. Let's continue on with this on Monday.

MR. GRANT: Do you want him to answer that question or not?

MR. MILNE: He can answer it on Monday.

THE INTERPRETER: That's it?

MR. MILNE: That's it. Go off the record.

--- OFF THE RECORD DISCUSSION

--- PROCEEDINGS ADJOURNED AT 3.15 P.M.

--- TO BE RESUMED MONDAY, 29 APRIL, 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.

VH/jg-Apr. 25/86 Veronica Harper (Ms)
 Official Court Reporter
 B.C.S.R.A. #263