June 9, 1987
Smithers, B.C.

THE REGISTRAR: Order in Court. In the Supreme Court of British Columbia, this 9th day of June, 1987. Delgam uukw and others and Her Majesty the Queen.

THE COURT: Are you ready to proceed with the -- the question of the group of government records, I guess, for want of a better expression?

MR. GOLDIE: Yes, my lord.

THE COURT: All right. Mr. Goldie, do you want to start, please?

MR. GOLDIE: Your lordship may recall that the object of the motion made by the defendants with respect to what we call the alienations document was stated by me with reference to the motion book of documents.

THE COURT: Yes. There's a blue-coloured book, isn't there?

MR. GOLDIE: Yes.

THE COURT: Madam registrar, I think I dug it out. It must have been left on the desk there. I have a copy of it that I will get.

MR. GOLDIE: We have an extra copy.

THE COURT: It's right on my desk.

THE REGISTRAR: I'll get it.

MR. GOLDIE: The -- I made reference to it in the transcript on the opening day, and perhaps I can refer to the transcript, my lord. It's Volume 1 page 40. And starting at line 35, I was quoting from Exhibit B in the -- I should say attachment or Exhibit A, the material, which was a memorandum addressed to counsel for the plaintiff and the Attorney General of Canada dated April 13th, 1987. Now, quoting from that memorandum, we said:

> "We have two goals:
>
> 1. To prove in a compendious fashion:
>
> a) The extent of alienations of provincial lands and resources;
>
> b) the location of areas subject to land and resource use regulation;
>
> c) the delineation of administrative boundaries of certain government activities; and
>
> d) other miscellaneous matters;
>
> within the area claimed by the plaintiffs;
>
> 2. To illustrate these matters in a format

> which will demonstrate their interrelationship and be convenient for use at trial."

And I said that:

> "Achievement of these objectives has required the development and preparation of a variety of materials."

And I went on to say in response to a question from your lordship that while the source materials were government documents, the area of judgment that was involved and which gave rise to the application was the translation of those source documents onto maps for the most part, a visual depiction of the material. Otherwise, we were confronted with a great mass of material.

Now, the -- the first document or classification that I wish to deal with is the trap line and the -- the map itself has been marked for -- to a limited extent as Exhibit 24A and the -- a number has been reserved for the supporting documentation, 24B. Does your lordship have the -- the --

THE COURT: Registered trap lines?

MR. GOLDIE: Yes.

THE COURT: Yes.

MR. GOLDIE: All right. Now, let me -- that is referred to and I'll just give your lordship the reference in the transcript. That is just referred to in Volume 1 page 50, line 44 to page 53, line 12. I can show by reference to the evidence that Mrs. Johnson gave yesterday how this material has been built up. In the -- she identified by reference to Stanley Wilson's map a number and an area on Exhibit 24A. Now, if your lordship would take the documents, supporting documentation, and turn to -- under Tab C, there is first a letter dated December 22nd, 1986 from an official of the provincial government, which simply describes the documentation system used by the department with respect to trap lines. And he says by -- by way of explanation that the file -- and I'm reading Item B on page 1 of his letter. The file numbered system is based upon the assigned trap line number. The example he gives is 0604T034. The first four digits refer to our wildlife management units. The T refers to trap line and the last three digits

refer to the number of that trap line within that management unit. The nature of the alienation of all trap lines is by a licence and then examples are given. Trap line boundaries are shown on 1 to 126,000 scale maps and the appropriate map reference number is given after the trapper's address. Now, those maps, which are documents kept in the ordinary course of the provincial government's business, is the foundation for that large map.

Skipping over to the third page, which is the page numbered 5 at the top of the document, the registered trap lines, and there are several pages of them, are all in the Smithers area. The highlighted ones and those which have numbers in the margin are those which fall within the claims area.

Now, just taking Mrs. Johnson's trap line as an example, if I go over to page 25 -- 24, at the bottom of -- the very last entry at the bottom of that page is 0630T021 and the name Stanley Wilson and address, and over the page your lordship will find a series of entries which are all in relation to that trap line and which provide the names that Mrs. Johnson identified as members of her family and members of the trap line registration.

THE COURT: Are they everybody down to -- down to the end of the number --

MR. GOLDIE: Donald Tait is the last name shown there and Alfred Latz is shown as deceased, and I think Mrs. Johnson told us yesterday that Donald Tait, if my memory serves me correctly, is also deceased now. But what this is is a provincial record of a trap line registration, and those are the names of the registered -- names of the owners of the registered line as shown in the provincial records. Now --

THE COURT: What are the numbers at the end of the line, like at the top of that page 25, 103 P/E?

MR. GOLDIE: Those are map references.

THE COURT: Map references. Oh, yes.

MR. GOLDIE: Now, she mentioned -- or I mentioned to her two other lines and if your lordship would go down the page to Item 204 number 0630--

THE COURT: On page 25?

MR. GOLDIE: On page 25.

THE COURT: Yes.

MR. GOLDIE: It's -- it's the second-to-last highlighted --

THE COURT: Yes.

MR. GOLDIE: I referred her to that line, and your lordship will

see that that, so far as the provincial records is concerned, is vacant at this time. And that was the line that I directed her attention to with respect to Charles Johnson.

One other reference. Your lordship may recall that I asked her about trap lines on her territory near Kispiox Village, and I referred to Roy Wilson and Alvin -- or Norman Weget. Now, the -- the reference to Roy Wilson, my lord, you'll find under the numbers 0630T007, and that is on page 24. And it is item 187 and the registered -- or the owner of the registered line is Norman Weget and his address is Box 19, Kispiox.

THE COURT: You said 007?

MR. GOLDIE: That's the last three numbers. The beginning numbers are 0630. This is on page 24. And it's -- they run --

THE COURT: Yes. I see that. It's just that further up the page I find one in the name of Snyder, Donald E., also 007, but I guess it's got a different prefix.

MR. GOLDIE: Oh, it has. It has. The succeeding numbers are repeated, but the prefix changes.

THE COURT: Yes. All right. Thank you. Yes. I find that. I see that one.

MR. GOLDIE: So one has to have the complete reference in order to track the owner down. So the reference that I gave Mrs. Johnson is 0630T007, Norman Weget, and by reference to the Exhibit 24A, one can find that location and find it -- its relationship to the Kispiox Village territory of Mrs. Johnson.

THE COURT: How would you go about finding the -- what would the reference be to -- you'd have to go to the file under that number to find the map to -- that would describe it.

MR. GOLDIE: That is correct. But on the -- on Exhibit 24A, one can find the -- oh, yes. The 0630T007 is identified on this map in precisely the same way as the departmental maps, but, of course, reduced in scale with the outline of the -- of the boundary, and one can follow that completely around. And then the next one to which I was going to refer was 0630T004, and that's Mr. Roy Wilson's. He's the owner of that trap line. And this line by reference to the features shown on the map, namely the Kispiox Reserve and Glen Vowell Reserve, can be identified in relation to Mrs. Johnson's territory.

Now, I return to what was said in the preface to

these supporting documents, and it is a letter dated March the 31st, 1987. It's the second page in on the document.

THE COURT: On Tab C?

MR. GOLDIE: No. At the very beginning, my lord. And this is the certification of the land administrator who certifies that the following documents, one, the list of registered trap lines, and that's what we've been looking at --

THE COURT: Where are you, Mr. Goldie?

MR. GOLDIE: It's the second page in from the very beginning.

THE COURT: I'm sorry. I made a mistake. I started with Tab A.

MR. GOLDIE: It's a letter addressed to me.

THE COURT: Yes.

MR. GOLDIE: And he certifies that the following documents -- number one is the list of registered trap lines, and that's what we have been looking at under Tab C, and I won't go through the rest because, in part, they relate -- they are illustrative. And Items two, three and four are trapper information forms from the Prince George district, so we don't have a list of those. We just have the actual registration forms. But he certifies that these documents as contained in this book are true copies of records made in documents kept in the ordinary course of business of the Ministry of Environment and Parks.

And I think I have one other illustration to give to your lordship from this book, and that is under Tab D as in dog at page 35. There is the application for registration of a trap line and that is in form exactly similar to that which was marked on Mrs. Johnson's examination on the application of Stanley Wilson.

My lord, I don't propose taking any further time and in my submission, the -- the trap line map which is marked to the limited extent as Exhibit 24A should be admitted in its entirety and the document entitled "Map 2, Registered Trap Lines Supporting Documentation" for which number 24B has been reserved should be admitted as an Exhibit 24B. I will go on with other documents and then have a submission to make with respect to them all.

THE COURT: All right.

MR. GOLDIE: The next map to which I wish to make reference is what I call the public rights of way. It is Map 1. And I made reference to it -- 3. I beg your pardon, 3. I made reference to it in transcript Volume 1 page

44. And I went through that at some length and I don't propose repeating it at the present time. It enables one to determine where rights of way granted under the Land Act are -- exist in the province, together with -- with what are known as UREP's. The colour code in the map indicates the -- the -- what are given in greater detail in the supporting documentation and the particular reference that is available in this material and which I didn't refer to at the opening is the B.C. Hydro right of way which runs through Mrs. Johnson's territory. Does your lordship have the two volumes? One is marked "Supplement To Map 3, Copies of Forest and Land Files" and the other is marked "Map 3, Areas Designated For Use, Recreation and Enjoyment of the Public UREP, the Rights of Way and Licences of Occupation".

THE COURT: I have a large book that is titled not the way you described it, but the same words in a different sequence.

MR. GOLDIE: Well, that's the supplement to Map 3.

THE COURT: Yes. I had supplement to Map 3.

MR. GOLDIE: And there should be a smaller volume which is simply --

THE COURT: Yes. I have that, yes.

MR. GOLDIE: Now, what one can do is -- to follow through from the map, one can determine that there is a right of way through her territory, and it is numbered, and this one obtains from the map is 0230744, and that number appears under Tab A -- I'm sorry -- Tab B2.

THE COURT: Yes.

MR. GOLDIE: And it happens to be the very first entry. And it gives a document number and then N.T.S. is a reference to a map number in the National Topographic Series, a plan number, if any, plan two, surveyed area, and then the area subject to the right of way. That number having been selected as within her territory from the map, then one can go to page 18, which is under Tab C2, and this is a listing --

THE COURT: How do you know from looking at page 5 that you should go to page 18?

MR. GOLDIE: Because under Tab 2 is a listing of all of the rights of way. And it is identified, but one can identify it from that.

THE COURT: All right.

MR. GOLDIE: And the very first entry on that page is the number to which one is being referred, and that tells us that it is a British Columbia Hydro and Power Authority

easement. That happens to be the one that falls within Mrs. Johnson's territory.
THE COURT: Sixty hectares?
MR. GOLDIE: The area's only .27 hectares. Is that your lordship's question?
THE COURT: Yes. I see it says "Area hectares survey, .60".
MR. GOLDIE: No. That's the second line.
THE COURT: That's the second line. You're quite right. Yes. I see that. Yes. Thank you. All right.
MR. GOLDIE: Now --
THE COURT: What does U.C.L. U.F.S. mean?
MR. GOLDIE: Well, U.C.L. is unsurveyed Crown lands and U.F.S. is unsurveyed other than Crown lands, and I think this easement would fall partly within one of the reserves.
THE COURT: I see. Thank you.
MR. GOLDIE: The only purpose of the supplement, which is this thick volume, was to provide the Court with an example of the file that relates to each of these entries. And there are three examples. One is of the category the use and recreation of the public. That's number one. The second is licence of occupation and the third is a right of way. Now, the right of way which was selected as an example, of course, was not that of Mrs. Johnson at the time and all it does is provide your lordship with a sense of the file that exists with respect to that particular right of way. The same certification with respect to that map in relation to the identification of these three categories with respect to the underlying documentation exists as with respect to the trap line. And I won't say anything further on that. I will be asking that the map be marked as Exhibit 25A, the supporting documentation as 25B, and the supplement as 25C when I have completed the references that I wish to make this morning.

Now, another category that I wish to take up with Mrs. Johnson is mineral tenures. This provides a little greater difficulty, as I said in my opening, or in my submission on May the 11th. There are something in excess of 4,000 forms of mineral tenures in the claims area today. That is, that are in existence today. There are many, many claims which have been recorded and which have lapsed, Crown grants which have reverted to the Crown as a result of nonpayment of taxes and so on. But what we have endeavoured to do is to provide a record of all of the mineral tenures, coal, placer and minerals as they existed on

October 24th -- October, 1984. There is no large map. It would be impossible to plot on that -- on the scale of map that we have shown so far the -- all of the mineral tenures. So what has been done is that the -- the brown -- large brown book which is entitled "Maps 14 to 16, Mineral, Coal and Placer Tenure" contains photographic copies of the departmental maps. Now, I have asked Mr. MacKenzie to hand up to your lordship some three volumes of supporting documentation.

THE COURT: Two sets of three, I believe.

MR. GOLDIE: Yes. One is to be submitted as an exhibit.

MR. RUSH: Perhaps I can use that one while you're doing that.

THE COURT: Yes. Give them to Mr. Rush, please, Madam Registrar.

MR. GOLDIE: I'm sorry. Mr. MacKenzie tells me there is not a duplication.

THE REGISTRAR: Appears to be Map 14 and Map 15.

MR. GOLDIE: Yes. I have an extra copy of -- no, I don't. We just have -- I'm sorry. I don't have an extra one here. The -- if your lordship could look at Map 14 Volume 1 and the fourth page in is a page that has headed "British Columbia Standard System of Mapping, National Topographic System" and the Gitksan Wet'suwet'en claim area is used by Energy, Mine and Petroleum Resources. The squares which are tinted green are squares in which they are recorded mineral tenures as of October 24, 1984.

THE COURT: You mean the whole square is tentured or there are tentured areas within each square?

MR. GOLDIE: There are tenured areas within the square. This is simply a finder's aid. If one wishes to determine whether, for instance, there is a mineral tenure existing in Mrs. Johnson's territory, one can dismiss her northern territory because there is no tinting there. But in the southern territory, one would be referred to the Map 93M5E and 5W because that would fall within her territory. Now, by reference to Tab A, one finds under Item B maps with tenure present and claim area. Large block signified by shape, smaller blocks illustrated by cell. The item numbers on the left hand we can ignore. The N.T.S. map number is the one that we follow, and on page 3 we find M93M5E, M5935W and it is Items 53 and 54. They are Items 53 and 54.

THE COURT: I'm sorry?

MR. GOLDIE: Page -- does your lordship --

THE COURT: Yes. Page 3.

MR. GOLDIE: We have been led -- we are led by the identification on the large scale to 93M5E and 93M5W, which are references to the maps, and they are Items 53 and 54. That, in turn, leads us to the brown book, which is the map itself, and under the Tab 93M, we turn over until we get to 93M5E and 5W. Now, at this point, my lord, there has to be a use of the topographic features on the map, and it is on the map sheet which is M93M5W which has the -- which has the quarters E, F, D and C. If your lordship would look at the bottom half, there are certain names which have been discussed at some length during the course of Mrs. Johnson's evidence. There is Hazelton Peak.
THE COURT: Just a moment. When you're looking -- are you looking at D and C?
MR. GOLDIE: Yes, I am.
THE COURT: Someone has conveniently put all these maps in this book upside down. That's not deliberate, I gather?
MR. GOLDIE: Not so far.
THE COURT: All right. Now, we're looking at what? Hazelton. Yes. I found Hazelton Peak in Map C.
MR. GOLDIE: That's been identified as within Mrs. Johnson's territory. And on the right-hand side, your lordship will see a square, MO6072(3). Now, that is a recorded mineral claim by the name of Mo.
THE COURT: Yes.
MR. GOLDIE: Now, to find out a little more about that, one goes to Volume 2 of the supporting documentation, and there the tabs are again by reference to the maps. And I might say that these are maps which are maintained in the ordinary course of business by the Department of Mines and are available to the public throughout the province and the government agent's offices. The -- under the Tab 93M of Volume 2, if one goes through this sufficiently and comes to page 344, one will find the departmental printout with respect to mineral claim 6072. Now, that tells us, my lord -- it gives us the number of the claim, the date issued and when it was located. And then over --
THE COURT: Does that mean February?
MR. GOLDIE: 1984 it was located.
THE COURT: Is FE --
MR. GOLDIE: I think it's just --
THE COURT: FE doesn't mean anything there?
MR. GOLDIE: I think that's February.
THE COURT: FE is February. That's February, F-e-b, and I guess the other one is 09, is it? All right.

MR. GOLDIE: And the -- under the working interest heading, there is a name or the abbreviation of a name, H-O-L-D -- I think it's a B. If one goes to the volume of supporting documentation, which is headed "Supplement to Map 14, Holders of Free Miner's Certificates in the Province of British Columbia", Item D, one finds arranged in alphabetical order the names of all the holders of free miner's certificates, and it's still the law in British Columbia, as it has been for many years, that the reported owner of a mineral claim must hold a free miner's certificate.

Now, the -- the page 151, the second entry from the bottom begins with the code word HOLD B and then follows the name Bruce Holden, H-o-l-d-e-n, and the date to which his free miner's certificate is valid, and that will tell us the name of the -- of the recorded owner of the free miner's -- I'm sorry -- of the mineral claim 6072 known as -- with the name recorded under the name Mo, M-o. Now --

THE COURT: Did you arrive at that location on page 151 merely by the alphabetical reference to HOLD B?

MR. GOLDIE: Yes. And these are all departmental printouts. This information is essentially available to the public because the very maps that are in this book are, as I've said, available at every government agent's office and anybody who is interested in knowing what mineral claims are currently registered in any part of the -- this area would simply go to one of these maps and a part of that MO claim would be shown.

THE COURT: What am I to gather from this? That Mr. Holden's free miner's licence expired in December 31st, '86?

MR. GOLDIE: That this is -- this is a printout which was prepared prior to the current one.

THE COURT: Yes. This is printed as of December 11th, '86, so he may or may not have renewed his free miner's licence.

MR. GOLDIE: If he didn't review his free miner's licence --

THE COURT: His claim expires.

MR. GOLDIE: Yes.

THE COURT: How am I to know he did or he didn't?

MR. GOLDIE: There's nothing before your lordship that would assist in that.

THE COURT: All right.

MR. GOLDIE: Your lordship will bear in mind that we -- what we wished to do was to determine what was in existence in October, 1984, and this particular mineral claim

was -- was located in February of '84.

Now, I -- I've endeavoured to trace through the documentation which would lead us to the conclusion that there was a mineral claim on Mrs. Johnson's Kispiox Village territory in October of 1984 and to indicate to your lordship that these are all documents which are created in the ordinary course. When I say "all", there are some obvious exceptions to that. One of them is the green tinted finder's aid in the beginning of the volumes.

THE COURT: And the maps themselves.

MR. GOLDIE: Well, the maps themselves are simply photographs of -- of departmental maps.

THE COURT: Well, I'm sorry. The notations on the maps.

MR. GOLDIE: Yes. No. The locations on the maps are those which are in the government records today. We do not have a large scale map.

THE COURT: I'm sorry. Of?

MR. GOLDIE: Of the mineral tenures.

THE COURT: Of the mineral claims. Yes. Thank you.

MR. GOLDIE: So, in effect -- or not in effect. But with only minor exception, all of the documents tendered with respect to mineral tenures are in fact the original documents. And, now, that same procedure is applicable to the coal tenures and to the placer tenures, the coal tenures supporting documentation being found in two volumes headed "Map 15, Placer Tenure" in one volume headed "Map 16" and the maps for coal, placer and minerals are all in the brown-covered document and I will be asking for the appropriate marking in that regard.

Now, the other -- or the next one to which I wish to make reference, because there is -- it affects Mrs. Johnson's territory, are water rights. And tedious as it may be, we have to go through a considerable means of getting at all of the registered water rights in the claims area. And we start with a map which your lordship will recognize has the outline of the claims area boundary, and it is divided into water districts and precincts. This is the way the water branch operates. The large map is again a means of getting down to the source documents. By examining the large map, one determines that there are water licences granted in Mrs. Johnson's southern territory, and they are identified by means of a blue square. That directs us to one of the volumes of water rights maps, and again I emphasize that in this case, the scale of

the maps that are being used is such that we cannot depict on the -- the small scale map the -- all of the water rights. So what we have done is we have bound all of the water branches maps by precinct and district and the blue -- the blue takes us to a binder marked "Water Rights Map Scale 1 to 20,000". The -- I should have said that the points of diversion -- and your lordship will appreciate what that -- the significance of that is in terms of water licence -- are in fact represented by dots on the large scale map. Having found dots within the area that appears to include Mrs. Johnson's territory, and that area being identified as the blue index, we go to the water rights map scale 1 to 20,000 and, once again, everything is -- is by map and by pursuing this through to 93M -- now, I don't know whether your lordship can -- the map number is --

THE COURT: Yes. I have 93M.

MR. GOLDIE: Now, if you go through to 93M022. Does your lordship have 93M022?

THE COURT: Yes.

MR. GOLDIE: Up at the top of the map, there is Alipakh Creek. Assuming for a moment that that is the southern boundary of Mrs. Johnson's territory, there are two conditional licences noted there.

THE COURT: Where is north on this map?

MR. GOLDIE: At the top.

THE COURT: North is at the top, yes.

MR. GOLDIE: And in the middle of the map under the heading "I.R. Number 2".

THE COURT: Yes.

MR. GOLDIE: Sika dook.

THE COURT: Yes.

MR. GOLDIE: There is noted two conditional licences.

THE COURT: Yes. Now, the system that is utilized by the water branch is to identify the points of diversion by reference to the stream name. And before I follow that through, I want to ask your lordship to turn over the page to two maps further in, 93M032.

THE COURT: Yes.

MR. GOLDIE: And in the middle of the page is Dale Creek, which we understand to be the northern boundary of Mrs. Johnson's territory.

THE COURT: Looks like Date Creek, Dale or Date.

MR. GOLDIE: This is shown as Dale and there is a Date Creek elsewhere.

THE COURT: All right.

THE COURT: I found Date, but I haven't found Dale.
MR. GOLDIE: I'm now speaking of the one that feeds into Kispiox River, and your lordship will see there a point of diversion.
THE COURT: I'm sorry. I haven't found the creek yet.
MR. GOLDIE: It's -- if one refers right to the middle of the map, there's the Kispiox Village --
THE COURT: Yes.
MR. GOLDIE: -- to the left.
THE COURT: Oh, yes. I have it. Thank you.
MR. GOLDIE: It's identified by J.
THE COURT: Yes.
MR. GOLDIE: And then at the bottom of the map, there is another point of diversion in lot 697 marked D with a right of way leading into the Glen Vowell Reserve.
THE COURT: Yes. Now, there are other points of diversion shown on there, but that will do for the purpose of showing where one goes to after that.
THE COURT: What is this row of little squares in the Glen Vowell Reserve? Are those dwellings?
MR. GOLDIE: I think those are intended to represent the dwellings there.
THE COURT: Yes.
MR. GOLDIE: This is what is shown on the departmental map.
THE COURT: Well, is that point of diversion intended to be a flume or something of that kind?
MR. GOLDIE: It is the point at which the holder of the water licence is entitled to divert from the creek the amount of water and for the purposes stated in the licence, and that's what I wanted to come to now.
THE COURT: I'm just trying to locate myself. We don't know where the highway is?
MR. GOLDIE: Yes. It will be shown.
THE COURT: Is the highway the broken line?
MR. GOLDIE: The highway -- I said to your lordship the highway would be shown. My understanding is that it is the broken line that starts just above the R in Cassiar district at the bottom.
THE COURT: So that flume, if it's in place, would go under the highway?
MR. GOLDIE: Yes.
THE COURT: All right.
MR. GOLDIE: It's either a flume or an underground pipeline.
THE COURT: Yes. All right. That's if it's in place.
MR. GOLDIE: Well, that is correct. There's -- I will show in a minute to your lordship that there is an existing licence for the diversion of water at that point.

Now, the water branch, of course -- the Water Act of British Columbia enables the controller of water rights to interest himself in the beneficial use of water that is earmarked for a licensee, so a licence which allows the diversion of water which is not utilized is under certain circumstances subject to cancellation.

If your lordship would turn to the supporting documentation book, Map 25, water licences, Ministry of Environment and Parks supporting documentation. These are printouts, departmental printouts, and I don't think I need go through each of them. They are all arranged on the basis of stream names, and there are a variety of arrangements, some for -- only for purposes of restrictions. That's shown under -- Tab 3 of D. Page 83 is numbered for the purposes of this book. Now, it is not until we get to a little further on that we begin to get the licence numbers, but if your lordship would turn to page 136, the second entry on that page, it shows in the third column Dale Creek.

THE COURT: Yes.

MR. GOLDIE: And then the next is J, which is an identifying letter attached to the point of diversion that we saw on the map, the map number 93M032, then the use, which is 40,000 gallons a day for the Indian reserve number one, and the holder of the licence is the Indian Agency, Kispiox Band Counsel. That's the one that is apparently a source of domestic water for the -- for the village of Kispiox.

THE COURT: I'm with you except -- well, not quite, but my map doesn't have a J on it, I don't think. It has a D.

MR. GOLDIE: If we look at M -- 93M032.

THE COURT: Yes.

MR. GOLDIE: If your lordship will go back to the -- the village and go left on to Dale Creek.

THE COURT: Yes.

MR. GOLDIE: You'll find a black dot with the letter J.

THE COURT: Mine has a D. Sorry. There's no way I can make it into a J.

MR. GOLDIE: Well, the D is the identifying letter for the diversion from Sika dook Creek.

THE COURT: Right. And then I have a -- to the right of a dot, I have R/W.

MR. GOLDIE: Yes. That's the right of way for the --

THE COURT: Yes. I don't know if the J's important or not, but it's not on my map.

MR. GOLDIE: Well, is your lordship on Dale Creek?

THE COURT: Yes.
MR. GOLDIE: And you found the black dot?
THE COURT: I was on Dale Creek. No. I'm sorry. Oh, you're back up on Dale Creek now. You're not dealing with the Glen Vowell Reserve anymore?
MR. GOLDIE: No. I'm going to come back to that.
THE COURT: You're quite right. It has a J at Dale Creek. I was still back at Glen Vowell. You're way ahead of me.
MR. GOLDIE: As I say, bearing in mind that the printout register is based on the alphabetical listing of streams --
THE COURT: All right. Let me ask you something else. It says 40,000.00 gallons a day.
MR. GOLDIE: That's my understanding.
THE COURT: What does W.W.K. mean?
MR. GOLDIE: I think that's the use, waterworks.
THE COURT: Waterworks. All right. Yes.
MR. GOLDIE: There's a key --
THE COURT: Yes.
MR. GOLDIE: -- in this.
THE COURT: That's right. Thank you.
MR. GOLDIE: Now, turning over to page 194 to Sika dook Creek, the second and third entry indicates that there are two licences outstanding at the point identified with D on Sika dook Creek. One is a licence issued in 1967 for 15,000 gallons a day, waterworks. The holder is the Indian Agency, Glen Vowell Band. The second is a licence issued in 1977 for 15,000 gallons a day, waterworks, and that is again the same holder of the licence. That -- I haven't endeavoured to exhaust the references, but that will illustrate the sequence.
THE COURT: They're probably cumulative, are they?
MR. GOLDIE: Yes, they are. The two outstanding licences are cumulative, yes. The total would be 30,000 gallons a day.
Finally, and this again arises out of Mrs. Johnson's evidence, I wish to deal with the map indicating district lots. The large map --
THE COURT: You're leaving water now?
MR. GOLDIE: Yes, I am. Sorry, my lord. The large map is exactly the same as has been used by the plaintiffs and the defendants with respect to the land claims area. That is to say, it is -- it is the same scale and it is based on the National Topographic Series, but I'm instructed that with respect to this map, that the boundaries are those of June the 12th, 1985, which

was the --
THE COURT: Boundaries of the claim area.
MR. GOLDIE: Yes. That map shows surveyed district lots as they are throughout the claims area, and if one wishes to identify the date of gazetting and surveying from the district lot which is shown on that map, one can do so by reference to the supporting documentation. There are two volumes of supporting documentation. The first to which I'll refer is identified as Map 12, surveyed district lots consolidation by N.T.S. maps, Ministry of Forest and Lands' supporting documentation. It contains, as do the others, the -- the selection from the statutes and the description of the listing and under Tab B, your lordship will find a printout of district lots and on page 4 -- the page number is at the head of the column, and this is -- this printout is not created for the purposes of -- in the ordinary course of business. This is a printout of district lots and township sections in the claims area. But the -- the information on this printout is from the departmental records created in the ordinary course of business.

Now, to take an example from Mrs. Johnson's territory and using the -- the -- the map of her southern territory, which has been filed as Exhibit 179A, I believe it is, there are two district lots on the highway 344 and 345. They're between the village of Kispiox and Glen Vowell.

THE COURT: You said 344 and --
MR. GOLDIE: 354.
THE COURT: Yes.
MR. GOLDIE: If one wishes to determine when those lots were surveyed and gazetted, one can determine that from page 4. Those two lots are the fifth and sixth from the bottom on page 4. Lot 344 has an area of 64.75 hectares. The official plan number is 10TR1. It was surveyed in 1905 and it was gazetted in the same year. The N.T.S. map sheet is given, and then the -- a reference to the B.C. Map System, which is an adaptation, or follows that. 345 is 35.6 hectares and was gazetted and surveyed at approximately the same time. And one can do that with every number district lot. Now, that doesn't -- that doesn't purport to say anything about ownership. It simply gives the -- the date of surveying and gazetting.
THE COURT: But a district lot has been established.
MR. GOLDIE: Yes. And that's -- now, Volume 2 is simply

illustrative of the -- of the detail which is established in respect of each district lot. It is identified as supplement to Map 12 and is in relation to one district lot. I don't propose to go through that, but it provides the Court and my friends with a sense of the degree of detail that is involved.

Now, my lord, those are the documents which I ask your lordship to admit. I'll summarize the -- well, perhaps I can leave the numbering until my friend has made his submission. I -- I drew your lordship's attention to the marginal rule that we rely upon and I don't propose saying anything further on that.

THE COURT: That rule is again?

MR. GOLDIE: Under Tab 4, I believe it is, of the blue book.

THE COURT: And it's Rule 40 -- 40, 41 and 42?

MR. GOLDIE: Yes.

THE COURT: I'll look at it again.

MR. GOLDIE: And as I submitted to your lordship, that the exercise of your lordship's discretion may be made at any time before trial or after trial and the -- the statements on oath are contained in the affidavits and I don't propose to go through that. I don't think I need to -- to underline the convenience and saving of time which will flow from this, and I prefer only at this time to hear my friend's submissions.

THE COURT: All right. Thank you. Mr. Macaulay's not with us. Miss Koenigsberg?

MS. KOENIGSBERG: We have no submission except to support the inclusion of this material. We have in fact admitted this material as requested prior to trial upon examination.

THE COURT: Thank you.

THE COURT: Mr. Rush? Madam Registrar, would you move this away?

THE REGISTRAR: I certainly will.

THE COURT: Mr. Rush?

MR. RUSH: Well, my lord, I think I may have spoken precipitously yesterday concerning the assessment of the material. I was prepared to deal with certain aspects of this. I don't have any of this material with me here and, accordingly, I haven't reviewed it in the detail that obviously my learned friend has and I haven't had a chance to evaluate it in the same way that your lordship has as you were going through it. I think, in the circumstances, what I would like to do is to stand the motion down, have a look at the material and make my submissions based on that. I had

come prepared to deal with principally the trap line issue, expecting for the most part that the material would be analogous to it. I find in listening to it that I don't really think I can serve my clients well by not looking more meticulously at the material that has been presented to you and so for that reason, I would ask it to be stood down at least for the lunch hour. I'd like to review the material as it's come forward.

THE COURT: Well, what are you suggesting we do, Mr. Rush? I'm entirely sympathetic with any reasonable request you have for some time to look at this material, but what are you suggesting we do in the meantime? Mr. Goldie's at the point where I think he says to complete my cross-examination of Mrs. Johnson, I want to put some of this material to her. Is it your suggestion that we should put that off, so can we proceed with another witness, or are you suggesting we just adjourn until this afternoon?

MR. RUSH: No. I'm not suggesting that. There is Mr. Macaulay's continued cross-examination which he started yesterday.

THE COURT: Yes.

MR. RUSH: And subject to talking with Mr. Grant, I would propose that we begin the other witness if -- if in fact Mr. Macaulay finishes prior to noon and -- and then complete Mr. Goldie's cross-examination such as it would be depending on your lordship's ruling.

THE COURT: All right. Any difficulty with that, Mr. Goldie?

MR. GOLDIE: No, my lord.

THE COURT: Yes. All right. Well, then is Mr. Macaulay nearby?

MS. KOENIGSBERG: Yes. He is, I think.

My lord, I wonder if the matter could be stood down for the morning break.

THE COURT: Yes.

MS. KOENIGSBERG: I think Mr. Macaulay anticipated that Mr. Rush might be --

THE COURT: All right. We'll take the morning adjournment.

THE REGISTRAR: Order in Court.

(PROCEEDINGS ADJOURNED)

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

Kathie Tanaka, Official Reporter
UNITED REPORTING SERVICE LTD.

(PROCEEDINGS COMMENCED AFTER SHORT RECESS)

THE COURT: I understand you digested all the material, Mr. Rush. Are you ready to proceed?
MR. RUSH: Not quite.
THE COURT: All right then. Mrs. Johnson please.
THE REGISTRAR: Witness, I remind you, you are still under oath.
THE WITNESS: Yes.
THE COURT: Mr. Macaulay.
MR. MACAULAY: My Lord, at the adjournment last night I had an enlargement made of the Schedule D. The witness identified it as being a schedule to the petition, Exhibit 26, and I am going to try to have another run at it --
THE COURT: Thank you.
MR. MACAULAY: -- using that one. Your Lordship will notice -- I don't know if the Registrar kept the original Schedule D. I think it should be put before the witness again.
THE COURT: I have my copy here.
MR. MACAULAY: The original was laid out a little differently. We scaled -- the upper right-hand corners disappeared now because of the enlargement of the information concerning site numbers, clans, owners and so on, otherwise, I hope -- I trust it's the same. And we'll see if we can do a little better with the enlargement.

CONTINUATION OF CROSS EXAMINATION OF MRS. JOHNSON:

Q Mrs. Johnson, you remember yesterday you agreed with me that Schedule D, this is the smaller version, the original version, was one of the schedules to that petition that we looked at yesterday?
A Yes.
MR. MACAULAY: My Lord, could that be marked 26-A?
THE COURT: Yes.
MR. MACAULAY: The petition itself was 26.
THE COURT: All right.
MR. MACAULAY: There were a series of schedules, only one of which appears relevant to this.
THE COURT: 26-A.

(EXHIBIT NO. 26-A: SCHEDULE D TO PETITION)

MR. MACAULAY:
Q And now, Mrs. Johnson, I'll show you an enlargement.

It's an improvement, it's not -- perhaps it's not ideal. The best we can do up here today. And you told His Lordship yesterday about a number of fishing sites, and I would like to go over that and try and locate them, if possible, with you.

Now, I am going to refer, My Lord, to Volume 12 of the transcript of proceedings at page 770, first of all. This is not one of the sites the witness mentioned in the cross-examination yesterday. Witness, a few days ago, on May 28th, in your evidence you referred, first of all, to a fishing site near Wilt gallii bax, called Gwin --

A Gwin Disgyenn.

Q That's number 328, My Lord.

Q And it's across -- it's -- and you gave evidence that it was on the same side as Glen Vowell along the Skeena River. Do you remember that?

A Yes.

Q And so looking at this enlargement of Schedule D, can you -- here is Glen Vowell, part of the Sikadook Indian Reserve, number 2. Is it along the river bank somewhere near where you see the words "Glen Vowell"?

A It's past Glen Vowell. It's somewhere not far from the end of Glen Vowell where the Smoke House ends.

Q When you say -- now, this -- I assume this is -- north is at the top of the page?

A Yes.

Q So it's south of the Glen Vowell village, is it, down towards the bottom?

A North of the Glen Vowell village.

Q North of the Glen Vowell village?

A Yes, where the Smoke House is, and there is a spring water there.

Q You see the Indian reserves marked out on this Schedule D, don't you, the various reserves?

A Yes.

Q They are rectangles, most of them rectangles anyhow?

A Yes.

Q And there is a space between Sikadook, number 2, and Kispiox, number 1?

A Yes.

Q Is that a fishing site in that space between the two reserves or can you not tell from that?

A There is another fishing site between Kispiox and Glen Vowell, that is called An Guux Di Git wank, like I told before, but this fishing site you are talking about is not very far from Glen Vowell. And vegetable

farm is not very far from Glen Vowell too, and that's part of the farmers that took the land behind the Smoke House.

Q Well, then, the vegetable farm you have been mentioning, that's not on a reserve, is it?

A I don't know. You said these reserve here?

Q Well, you can see the outline of the reserve, the Sikadook Indian Reserve?

A Yes, but the vegetable farm is right on the highway, the highway goes through our territory.

Q Yes.

A Yes.

Q And you can't tell whether the vegetable farms on the reserve or not?

A No.

Q Now, the second site you mentioned, and you mentioned that yesterday afternoon and also when Mr. Grant was asking you questions, was called An Guux Di Git wank?

A Yes, An Guux Di Git wank. That means that they whistle on the top of the hill.

Q That's number 329?

A In the very ancient time the folks from Kisgagas came to go to town to Hazelton, Gitanmaax, and then whistle on the top of the hill to let the folks know that they were passing by. But they holler -- those that live at the Smoke House -- holler to them, "Come on down and have something to eat with us", and that's what they did in the olden days. They never sell anything. And they were having some nice soup fish, and that's why they are called that Smoke House, An Guux Di Git wank.

Q Now, that's on -- that fishing site, the one you just mentioned and given us the origin of the name of, is that near two little islands that appear to be in the Skeena River inside Kispiox number 1? You see two little islands there?

A Yes, that's where. And after grandmother is the one -- that the other grandmother is the one that last lived there with her husband, and the grandmother's chief name is Gwin lax nisims, and they live there, but grandmother got --

THE COURT: Just a moment, just a moment. Madam Reporter, did you get that name?

THE REPORTER: Yes, My Lord.

THE COURT: Mr. Macaulay, did you say Hazelton Indian Reserve number 1 or Kispiox Indian Reserve number 1?.

MR. MACAULAY: I'm sorry, it's Kispiox. I should have said

Kispiox Indian Reserve number 1.
THE COURT: Well, aren't the two islands down by Hazelton --
MR. MACAULAY: No, there are a couple of islands down in the river. The Kispiox Reserve number 1 as well, My Lord.
THE COURT: Well, you said Kispiox number 1, I just want to make sure that's what you mean.
MR. MACAULAY: It's Kispiox number 1. I didn't say -- well, if I said Hazelton --
THE COURT: No, you said Kispiox.
MR. MACAULAY: I meant Kispiox.
THE COURT: I was confused by the reference.
MR. MACAULAY: And the witness and I were both looking at little islands in the stream in the river.
MR. GRANT: For the record, you were looking at it, I was looking at it, I don't know if the witness was looking at those islands. That's what you were pointing to. The witness was giving a description.
THE COURT: Where are these islands please?
MR. MACAULAY: Opposite numbers 121 and 122.
THE COURT: All right. Thank you. And that's where they whistled on the top of the village?
THE WITNESS: Yes. So after grandmother got arthritis. I have seen her when I was small and her husband's name is Guxw na hakst. He comes from the House of Ma'uus at Kispiox, and they got family. So they move the Smoke House on this side, where they cleared the land, and they got a nice land there on the island.
MR. MACAULAY:
Q On the island?
A Yeah. And they move the Smoke House there after she was sick, but they still fish across -- across where the Smoke House used to stand before.
Q Now, the third fishing site you mentioned on May 28th, that's when Mr. Grant was asking you questions, you connected with Holidays Ranch?
A Yes.
Q And is Holidays Ranch outside the Kispiox Reserve?
A Yes.
Q Is it north of Kispiox?
A North, yes.
Q It's north?
A Yes.
Q And Holidays Ranch is on the river somewhere, is it?
A Yes, close by the river.
Q Now, as we go north on the Skeena, there is a larger island in the river. You see that larger island?
A Yeah.

Q Which is outside any reserve?
A Yeah.
Q Is Holidays Ranch near that island or is it farther north again?
A Farther, farther south.
Q Farther south?
A Where Holidays Ranch is. And that's where the Smoke House stands is near the Skeena River close to the island. They call that island T'a'ootsip.
THE COURT: Spelling please.
THE TRANSLATOR: Number 341.
THE WITNESS: That's why the fishing sites name is Ga'tgits'unhlt'a'ootsip.
MR. MACAULAY: Maybe the translator --
THE TRANSLATOR: 338.
THE COURT: Was the island 371 or 341?
THE TRANSLATOR: 341.
THE COURT: Thank you.
MR. MACAULAY:
Q And that fishing site is south of the island that you just named?
A That's --
Q Or is it right across from the island?
A Across the island.
Q Across from the island?
A Yeah.
Q And which -- is it Yal who fishes there now?
A Yes, Yal is fishing there now. That's Wilfred Gawa.
Q If you -- number 4. The fourth site you mentioned when Mr. Grant was asking you questions is Miinhl Antselda. Do you remember that?
A Yes.
Q That's number 335, My Lord.
THE COURT: Thank you.
MR. MACAULAY:
Q And that's named after the little mountain?
A Yes.
Q And there is a trail that goes around it and there is some smooth stones nearby?
A Yes, there were things, smooth stones, and they called those stones An Saalda'm lo'op.
Q That appears in the transcript already, My Lord. That's Volume 12 at page 773, the last line.
Now, on Schedule D -- we are going north again, I guess -- that's those smooth rocks, and the little mountain are beyond north of the island, the larger island on the river?

A Yes, way beyond there is -- I remember the rest of the families fishing sites after the island, the island, then there is Dawamuxw's fishing site after that.
Q Well, we will come to Delgam Uukw's fishing site in a minute, but I want to stop at the one named after the mountain and the one near the smooth rocks.
MR. GRANT: Before my friend proceeds, the witness said Dawamuxw, my friend said Delgam Uukw.
MR. MACAULAY: I stand corrected.
MR. GRANT: So I believe Dawamuxw is number 3 on the list.
MR. MACAULAY: Okay.
Q But I'm now asking you to help me locate Miinhl Antselda. Is it on the -- as you look at this, the right bank of the river or the left bank?
A The left bank, as you go up north, yeah, and you could see the small little mountain. It's a large mountain but it's smaller than the rest, that's why I call it small. It took me two hours to walk up that mountain to pick some huckleberries.
Q On that side of the river, that is on the left as you go north, there is a reserve.
My Lord, perhaps I should stop here, and this is maybe a good time to point out that starting at Kispiox and going north there is a series of reserves and they have Indian reserve numbers. One of the features is that they go from 1 to 10, but there is no number 2, for whatever reason, and I am going to ask the witness now about number 4, which is Quan, Q-u-a-n, S-k-u-m-k-s-i-n, m-i-c-h, m-i-c-h, although on the map there doesn't seem to be any reference to K-s-i-n. It's just called Quan Skumksin mich mich.
You see that number 4 reserve on the left bank of the river going north, it's marked "IR4" underneath?
A Yes.
Q Are you familiar with that little reserve? Do you know if you drove along or went along the river, could you spot that reserve?
A Is it on this side?
Q Well, it's on the Kispiox side of the river.
A Oh, yes.
Q On the left as you go north. Have you ever been to that reserve?
A All I know is that's why I am trying to tell you how many Smoke Houses between Gaakhl An tselda 'til it gets to Gaakhl An tselda. I was started on Delgam Uukw's Smoke House, not far from Ga'tgits'unhlt'a'ootsip, and after that Delgam Uukw,

as you go up north, and there is Delgam Uukw's Smoke House. And go up north and again there is Haawx' Smoke House.

MR. MACAULAY: Just a minute. Get the name for that one.

THE TRANSLATOR: Number 27.

THE WITNESS: And go up -- I could see Haaxw' smoke coming out of near the river when we pick blueberries, and not far from that is Ts'uuts' Smoke House. Ts'uuts comes from the House of Gitginuxw at Kispiox.

THE COURT: Just a moment please. Go ahead.

THE WITNESS: So Ts'uuts Smoke House name is Anx kyo'o. And I forget to tell Delgam Uukw's Smoke House name. It's name is An ax biisxw.

MR. MACAULAY: Have you got that number?

THE TRANSLATOR: I don't think it's written down.

MR. GRANT: It's not on the list.

THE WITNESS: And I forget to tell Delgam Uukw's Smoke House name, the name is Gwank sim si mihl mihl. That means they got a spring water that's very cold during the hot summertime.

MR. MACAULAY:

Q Now, the smoke -- your fishing site, the one you describe as An tselda, is that farther north than all those Smoke Houses you just mentioned?

A Yes, this is after Ts'uuts Smoke House, then you still go up north, then you will get to the trail to Gaakhl An tselda.

Q Which is your fishing site?

A Yes.

Q And is that a fishing site used by Tsibasaa?

A Yes.

Q Now, you look on Schedule D and you will notice I have highlighted them so they are easier to read. You will notice in the petition Tsibasaa claimed four sites and he put numbers opposite them, 160, 161, 162 and 163, and then you find those numbers on the river, on both sides of the river, near Indian reserve 7 and 6. Is that where -- approximately where An tselda is?

A Because I didn't see the little mountain on the map.

Q No, unfortunately there is no mountain on the map. Do you know where the Sidina reserve -- oh, there are two or three Sidina reserves -- do you know where, say, number 7 Indian reserve is on the left side of the river? Have you ever been to that reserve?

MR. GRANT: Maybe my friend could ask her one question or the other. She may have been to that reserve, but if she doesn't know where it is, that doesn't help. You

asked two questions, that's all.
MR. MACAULAY: All right.
Q Have you ever been to Indian reserve number 7, which has the name Kisanuska?
A How do you pronounce that?
Q Well, I don't know how you will pronounce it, but I will spell it. K-i-s-a-n-u-s-k-a. It's one of the Kispiox reserves, Kisanuska.
Q Is that a familiar name?
THE COURT: Pronounce it for her, Madam Translator.
THE TRANSLATOR: It's Kisanuska, and I don't know what that means. I didn't get spelling.
THE COURT: K-i-s-a-n-u-s-k-a.
MR. MACAULAY: It looks like an "o" on the map, doesn't it? Our list of reserves, which will be produced in due course, spells it as K-i-s-a-n-u-s-k-a, but it bears the same number, number 7. It's either Kisanusko or Kisanuska. And I take it the witness isn't familiar with that name?
A No. All I seen when I was small and is all those Smoke Houses that I mentioned, and I know all those people that live there.
Q Have you ever heard of the Indian reserve number 9 called Andak, A-n-d-a-k, on the left side of the Skeena River as you go north? Did you ever hear of that one?
THE TRANSLATOR: Andak.
THE WITNESS: Andak.
THE TRANSLATOR: Andak.
THE WITNESS: Andak. No.
MR. MACAULAY:
Q Have you ever heard of a reserve, a Kispiox Reserve called Sidina, S-i-d-i-n-a?
THE TRANSLATOR: Sidina.
THE WITNESS: No.
MR. MACAULAY:
Q Now, in your evidence, Mrs. Johnson, you mentioned some fishing sites of Yal's near a bridge?
A Yes.
Q And just north of the bridge, is it?
A No, south of the bridge.
Q South of the bridge?
A I didn't see it, all I see is Yal's Smoke House when we go to a little trail to go to Hazelton. There is a shortcut.
Q On Schedule D Yal has listed as his fishing sites number 156 and 157, and you have to go over to the

left-hand side of the page, there is a special diagram showing a small stretch of the Skeena River, and there you find where 156 and 57, and then you see a bridge. Do you see that?
A Yes.
Q That is supposed to represent a bridge, that straight line across the river?
A Yeah.
Q Now, he or somebody on his behalf put those fishing sites on the north side of the bridge?
A Oh, yeah.
Q But you say that's not what you recall?
A No, it's on the south side where I seen the Smoke House. Wilfred Gawa knows where those fishing sites are.
Q Well, if he says they are on the north side, then you accept that?
A No.
Q The bridge?
A No, it's on the south side.
Q It's on the south side?
A Yeah.
Q Okay.
THE COURT: Do you know which bridge we are talking about?
MR. MACAULAY: Well, it's on the diagram.
THE COURT: Yes, but which bridge is it?
MR. MACAULAY:
Q Which bridge is that, Mrs. Johnson? Has it got a name?
A The bridge between Kispiox and Hazelton?
THE COURT: Yes, but --
THE WITNESS: They call this bridge Ganexsim aakhl tsilaasxw. That's what they call this place, Ganexsim aakhl tsilaasxw.
MR. MACAULAY: We better have that spelling. I don't know if that's on any list.
THE TRANSLATOR: Do you want the spelling?
MR. MACAULAY: Do you want it spelled, My Lord?
THE COURT: I would like to get some identification which bridge we are talking about. It doesn't seem to me to be the bridge that crosses into Kispiox.
THE TRANSLATOR: No.
MR. MACAULAY: It's on the highway to Kispiox.
THE COURT: So somewhere considerably south to where we have been talking about?
MR. MACAULAY: Well, it's obviously south of Kispiox.
THE COURT: Yes.

THE TRANSLATOR: It's called 4 Mile Bridge.
MR. MACAULAY: I'll suggest to the witness --
Q Is it also called 4 Mile Bridge?
A Yes, they call it 4 Mile Bridge.
THE COURT: Thank you. Thank you Madam Translator.
MR. MACAULAY:
Q And as you drive from Hazelton on the highway to Kispiox, you cross that bridge? You cross the Skeena on that bridge?
A Yes.
MR. MACAULAY: There was evidence about 4 Mile Canyon, My Lord, and I guess that must be what it is.
THE COURT: That's not the big suspension bridge, is it?
MR. GRANT: No, My Lord.
THE COURT: Thank you.
MR. MACAULAY:
Q Now, finally, Mrs. Johnson, you mentioned a -- I think you mentioned a site on the Kispiox River, a fishing site on the Kispiox River?
A Yeah.
Q Am I correct in my understanding of your evidence? Did you say "yes", that your House has a site on the Kispiox, a fishing site?
A Which part?
Q Well, in your evidence a few days ago, when you were responding to Mr. Grant's questions, he asked you -- one of the questions he asked you --
MR. GRANT: What page?
MR. MACAULAY: It's at page 775 of Volume 12, My Lord.
MR. MACAULAY: He asked you, and I'll read his questions. He said:

"Q Does Antgulilbix have any fishing sites on the Kispiox River?"

And your answer was:

"A There's a fishing site not far from the village where -- where late Fred White used to fish. I remember the spot and my grandmother used to fish there too. It's not far from the village and that's all the fishing site I know."

Q Do you remember that?
A Yeah.
Q Is that on the Kispiox River?

A Yes.
Q And on number -- on Schedule D, this map we have been looking at, there is a -- the Kispiox River starts at the village and goes north as well, as well as goes -- and there is a bend, a very marked bend in the river. You see that?
A Yeah.
Q Now, is the fishing site you just talked about, Fred White's site, is that north of that bend or south of the bend?
A South of the bend.
Q Okay. And it's still being used by members of your family, is it?
A Yeah.
Q When did you first go to the coast to Port Edwards during the fishing season? When did you start going to the coast?
A After I started to work, then I go back and forth to the coast.
Q What age were you when you first went to the coast to work?
A A long time ago they didn't speak about ages. As soon as you are 12, then you start to work in the cannery.
Q Did you start working in the cannery when you were 12?
A Yes.
Q Did you go down every summer to the cannery for many years?
A Yes.
Q You used to go down on the train? Is that how you would get down there?
A Yes.
Q And you would stay for what, June and July, or was it a longer season than that?
A Yeah, stay to August.
Q 'til August?
A Yeah.
Q And many people from Kispiox used to go down to Port Edwards?
A Yeah.
Q The men did the --
A I mean not to Port Edwards, to the old cannery that they call Belmoral Cannery. It's a very old cannery. And Port Essington too.
Q When you first worked, which cannery did you go to the first time?
A To Port Edward.
Q Port Edward?

A Yes.
Q Was that the Cassiar or the North Pacific?
A Then to Belmoral Cannery. And after it's closed down, they move the people to Sunny Side Cannery.
Q Did you ever miss a summer? That is, did you ever stay home for a whole summer and not go to the cannery?
A No.
Q And how many people from Kispiox used to go every summer, when you were young, when you were in your teens?
A There were many use to go to the cannery.
Q Did your father go down -- go to the coast to fish?
A Yes, he is fishing.
Q And how about your grandfather?
A This was while they was still using sailboats.
Q There were no motors on the --
A No.
Q -- on the boats?
A No. And I was told the Indians were the first to fish at Belmoral Cannery. And they use only small little skiffs with their wives as their partner, and they didn't sleep during the night-time because of the tide, they watch the boats; and the ladies didn't drink tea or drink water during the daytime because they were out fishing with their husbands.
Q Did you see that yourself when you were young?
A I was told that. I didn't see it, but I seen the big sailboats that they use.
Q And your father started fishing before you were born, did he?
A Yes.
Q And did your grandfather go to the coast to fish?
A Yes, he was fishing. Daniel Gawa is fishing at Haysport Cannery after he's about past middle age, but he was still strong.
Q Your grandfather was born in 1866?
A I don't know when he was born.
Q And in recent years many of the people from Kispiox had commercial licenses and had their own boats as well?
A Yes, just recently after they used those gas boats.
Q Yes.
A Yeah. And before the canneries were rich and that's how the Indians live. And great-great grandmother said that she washes fish for the old cannery and she only gets $40.00 a month for working for whole summer.

But the food and clothing were very cheap in those days. They said a whole bundle of cloth, nice cloth, would cost $1.50 a bundle, and they bought those cloths to use for the Feasts like.

Q Now, the Tribal Council is involved in fishing now, is it, the Tribal Council --

MR. GRANT: My Lord, that question is pretty vague and general. I don't know what's meant by involved in fishing, whether --

THE COURT: It's a very general question. I'm not sure it's one the witness can't manage. Shall we see?

MR. MACAULAY: I'll start again.

THE COURT: Thank you.

MR. MACAULAY:

Q You were still a member of the Gitksan-Wet'suwet'en Tribal Council?

A Yes.

Q And you know that the Tribal Council is the registered owner of fishing boats through a larger co-op?

A No.

Q Does the Tribal Council have anything to do with commercial fishing, that you know of?

A Maybe some of them go out fishing, yes, some of the members go out fishing. Like I know a guy, a chief from Hazelton, Spookw. His name is Steve Robinson.

Q Yes.

A He goes out fishing every year. But some of them are --

Q Wallace Johnson goes out fishing, doesn't he?

A Yes.

Q And he has a boat called the Two Sisters?

A Yes.

Q How about Ambrose Stewart, is he also a commercial fisherman?

A Yes.

Q Now, what relationship is Ambrose Stewart to you?

A He is my son-in-law.

Q And he has a boat?

A Yeah.

Q Do you remember the name of the boat?

A No.

Q How long is it since you have been to the coast?

A Ever since I was retired.

Q Well, how long is that?

A I think it's '74, 1974.

Q That was the last year you went to the coast?

A Yeah.

THE COURT: Does that mean the last time you went to work or the last time for any reason?
MR. MACAULAY: Well, I think the sense of the question was --
THE WITNESS: No, I didn't work in the cannery for a few years. Before that I was --
THE COURT: Are you telling me that you haven't been to the coast since 1974?
THE WITNESS: Yes.
THE COURT: Thank you. Sorry, Mr. Macaulay.
THE WITNESS: Because our Houses down there are filthy, you know. See how the companies treat the Indians after they started them to be rich, and our Houses are really stink and could smell the big rats underneath the houses, and I'm glad I didn't go there anymore.
MR. MACAULAY:
Q When was the last time you went to work at the cannery? What year was it, the last time you went to work there?
A It's in '73. I just mended the nets, some nets.
Q During the earlier years, before 1973, do you remember the Department of Fisheries issuing food fishing permits at the coast?
A Yes.
Q And the system for many years, the system was that the fishermen would have their fish canned at the cannery; is that right?
A Yeah.
Q And then they would bring the cans home?
A Yes.
Q And your late husband, Mr. Angus, did he used to do that?
A No.
Q Mr. Angus was a fisherman, wasn't he?
A Yes, he's a commercial fisherman.
Q Peter Angus?
A Yes.
Q Yes. But he didn't bring any cans --
A No, no. He never went out as a food fishing.
Q Why was that?
A Because we got -- we used to make our own can during summertime on weekends.
Q In the summertime when you come back to Kispiox on weekends?
A Yes, I mean at the cannery.
Q At the cannery?
A But there was still fishing at Kispiox when we come back, like some steelheads and cohoe.

Q Right?
A Yeah.
Q That's when you used the fishing sites that you gave evidence about?
A Yeah, yeah.
Q And Leonard Gawa, is he a commercial fisherman?
A Yeah.
Q And he is Yal?
A Yes.
Q And --
MR. GRANT: My Lord, that's not the evidence. I don't believe that Leonard Gawa is Yal.
MR. MACAULAY: I'm sorry.
A Leonard Gawa is Gwin lax nisims.
Q It's Wilfred Gawa?
A Yes, Wilfred is.
Q And is Wilfred Gawa a commercial fisherman?
A He used to fish before, but he stopped going fishing. The reason is because the government charge so much taxes on those fishermen and they got nothing when they go home. They owed the taxes a lot of money, and the next year they still will be paying taxes. That's why Wilfred stopped going down. He didn't go fish anymore. And while the Indian is collecting all the fish, and they done nothing to help those fishermen. When the Fishery Department give the fishermen a day or two fishing, and while they owed taxation many thousands of dollars.
Q Your brother, Stanley Wilson, is he a -- that is your brother, isn't it, Stanley Wilson?
A Yeah.
Q Is he a commercial fisherman?
A Yes, he's fishing before he's on the health.
Q He was a commercial fisherman when his health was good?
A Yes.
Q Did he go to the coast for many years?
A Yes, he is fishing ever since he was young.
Q Okay. Did the men go to the coast at the age of 12 or 13? Did fishermen start that young?
A Yeah, some go out with their Dads, and that's the time they train them to be a fisherman.
Q Well, most of the members of your family were trained as fishermen, were they?
A Yeah.
Q And your -- the members of your House who have names are the men, are they mostly fishermen?

A Yeah.
Q Now, Daniel Gawa is your grandfather?
A Yeah.
Q And did he leave a will when he died?
A Yes, he leave a will for his wife and grandson, Wilfred Gawa.
Q I'll show you a -- this is a document taken from our -- well, it's our document number 3847, which is a file, and I am going to show the witness the document. I'll ask you if you have ever seen that before?
A No, I never see this will, but I heard that he made a will to some of these family, and he declared the land across the Sportsman's Lodge. It's a very large land, and some of these daughters and their husband's helped him clear the land, and that's why he used to say, while he's still alive, that all his children should be on the land and the grandchildren.
Q Well, in that will there are some names. Wilfred Gawa is one of them, isn't it?
A Yes.
Q And that would be his grandson?
A Grandson, yeah.
Q And Emily Latz was his daughter?
A Daughter, yeah.
Q And Elizabeth Gawa, was that a daughter?
A Yes, a daughter, but she died many years ago.
Q And then finally Harriet Gawa was a granddaughter, was she?
A Granddaughter, yeah.
Q Do you recognize -- one of the witnesseses is a Mr. George Wilson. Do you recognize that signature right at the bottom of this document?
A Yeah.
Q George Wilson?
A That's his -- that's his granddaughter's husband. He died too.
Q And who is Mr. Rutherford?
A He's a United Church Minister.
Q Did you know him, Mr. Rutherford?
A Yeah.
Q He was at Kispiox?
A Yes, he lives at Kispiox.

MR. MACAULAY: Could that be marked, My Lord, as the next exhibit?

MR. GRANT: My Lord, I object because I don't believe the witness has identified that. In fact she has categorically said she has never seen that document

before.
THE COURT: That's what she says.
MR. MACAULAY: We'll mark it for identification.
MR. GRANT: My Lord, I already raised the concern with respect to these documents of Mrs. MacKenzie, and I think, if the witness hasn't identified the document, I don't see what utility it is for marking it for identification at this point.
MR. MACAULAY: Well, there are documents of this kind that are relevant to this action, My Lord, that may have to be proved in a different way. It's quite possible the witness has not seen this before.
THE WITNESS: And I notice, too, that he also mention a trap line there --
THE COURT: Yes. Well, yes, I think we noticed that. Well, I think, Mr. Macaulay, if you have to prove it in another way, you may have to prove it in another way. I don't think that's aided in any way by being marked for identification now. I don't think it's proven now, and the -- I think we'll give it back to you and look forward to seeing it again in a different way, perhaps.
MR. MACAULAY: Now, I'll show the witness another somewhat similar document. If you will read that, Mrs. Johnson --
MR. GRANT: Which document is this from?
MR. MACAULAY: This is from our file, 1439.
THE COURT: This is a different Daniel Gawa from the previous one or is it the same person?
MR. MACAULAY: My instructions are it's the same person, My Lord.
THE COURT: What was the date of the other one?
MR. MACAULAY: The other one was January 19th, 1945.
THE COURT: Oh, all right. This is a later will?
MR. MACAULAY: Dealing with apparently different property.
THE COURT: Oh, I see.
MR. MACAULAY:

Q Have you ever seen that document before?
A No.
Q Did your grandfather have a -- 5 acres of land in -- on the Kispiox Reserve?
A Yeah, he had little bit of land on Kispiox Reserve and --
Q He had a house?
A A house, yes.
Q And a barn?
A And he had a small piece of land on the other side of

the river on the -- just close to the Kispiox Bridge.
Q Was that --
A Maybe he includes that, that's why he says it's eight acres of land, and he gave part of that land to my auntie. That's the land across the river, he gave it to Emily Latz, part of the land.
Q Is the land across the river, is that in the reserve?
A Yes, it's a reserve. It's very close to Kispiox Bridge.
Q What did Edith Gawa get? She got some land?
A Yes, she got the house and the land on the reserve. But the land is not very good. Just around the House is good. She used to plant potatoes there. But down below the Kispiox, close to the Kispiox River, is nothing but rocks. They used to make a fence there, and while there was still straw, and that's why they keep the cattle in.
Q Did your grandfather, when he died, did he have cattle?
A Yes, cattle while there was still straw, but after he died, grandmother looks after just very few, two or three.
Q And your grandmother got a house?
A Yeah.
Q And did that house later go to Wilfred Gawa?
A Yeah. But he didn't rebuild it and it was burnt down when the workers from the Band office burned the grass; and they didn't put the fire out before they go for lunch, that's why the House is burnt down, after grandmother died.
Q That was while Wilfred Gawa owned it?
A Yeah.
Q And he was -- Wilfred was Daniel Gawa's grandson?
A Yes.
Q Was Daniel Gawa Ma'uus?
A Yes, he is Ma'uus.
Q Ma'uus?
A From the Frog Tribe. And he also got a Smoke House this side of the bridge that we mentioned awhile ago. That was before the Highway Department filled up the road on the other side the bridge. And I seen his Smoke House stands there. And his family are still fishing on these fishing sites, they know where the fishing sites are.
Q That's Ma'uus' family?
A Yes.
Q Now, after your first husband died in 1950, did you

start dealing with the Indian agent about his estate?
A No.
Q Or the Superintendent?
A No.
Q You don't remember dealing with Mr. Boise?
A No.
Q Do you recall making an affidavit concerning the day of death and so on about Peter Angus, your first husband?
A Yes.
Q Yes. But do you recall asking the Indian agent to get Ernest Angus to waive his rights to the House on the reserve?
A Yes.
Q Yes. That was Mr. Boise at that time, wasn't it?
A Yes.
Q And Mr. Boise spoke to Ernest Angus or appears to have spoken to Ernest Angus?
MR. GRANT: I'm not sure that is admissible, My Lord. Mr. Boise spoke to Mr. Angus, unless the witness was present, I'm not sure -- going into conjecture here --
MR. MACAULAY: -- sometimes that's the better way.
Q After you made your request to Mr. Boise, Ernest Angus did waive his rights to the House, didn't he?
A Yeah.
Q And you got the House?
A Yeah.
Q And then do you remember speaking to Mr. Boise about getting the sale price of your husband's car?
A No. He got no car.
Q Well, didn't he have a Dodge when he died?
A Yeah.
Q And that was what, a 1939 Dodge?
A I think so.
Q And do you remember speaking to Mr. Boise about or writing to Mr. Boise?
A Yeah.
Q About getting the money from the sale of that car?
A Oh, I don't remember it. It's a long time ago.
Q You may have done?
A Yeah.
Q And do you remember claiming $400 from the estate for funeral expenses? That is Peter Angus's estate.
A No.
Q You don't recall that?
A No.
Q Were you paid any amount from estate?

A Yeah, I did pay it with -- do you mean the funeral expenses?
Q Yes.
A Yes, I did pay it for merchandise and furniture, yeah. I gave my new set of furniture to late Mrs. Kate Sterritt because she is the one that got the casket.
Q Did you get any money from your husband's estate in the end?
A No.
Q None at all?
A No.
Q You don't recall receiving any money in October 1952?
A No.
Q Now, Emily Latz, that was your aunt?
A Yeah.
Q She was a daughter of David?
A Daniel.
Q Daniel Gawa?
A Yeah.
Q And do you remember filling out a form requesting the Minister, that is the Minister of Indian Affairs, to administer the estate of Emily Latz?
A Yes, she stays with me before she's taken care in the hospital.
Q But did you go to the office and sign an application for administration of the estate?
A Yeah.
Q And you knew what -- you knew that that was a request that the Minister of Indian Affairs administer Emily Latz's estate?
A After she was in the hospital, they took off her pension -- and sometimes 365, depends on how many days it's in the month -- and they took it off because they took care of her in the hospital.
Q But after she died did you sign a form -- this is in 1983 -- applying -- supporting an application that the Minister of Indian Affairs be the administrator of the estate? Perhaps I can assist you. I am a showing you a document, this is from our file, 5036, and it's entitled Election to Transfer/Application for Administration.
MR. GRANT: I would ask, before that document is handed to the court -- my friend appears to be -- practices developed that he's -- I have been trying to be diligent when I'm putting a document to the witness and the witness can't identify it, I don't put it to the Court, and I would ask if the witness can identify

the document first. He has given two wills to the Court which have not been identified by the witness, and I ask that the documents not be tendered to the Court until the witness identifies them.

THE COURT: Well, I haven't got this document yet.

MR. GRANT: I am just interjecting.

THE COURT: I understand it was signed by her, but you can find out, Mr. Macaulay, if she admits her signature.

MR. MACAULAY:

Q Did you sign that document?

A Yeah, that's my signature.

MR. MACAULAY: May it be marked?

THE COURT: Yes, all right, it can be the next exhibit. What is the document please?

MR. MACAULAY: Application to Transfer/Application for Administration in the matter of the estate of Emily Latz.

THE COURT: Yes, thank you. 27.

(EXHIBIT NO. 27: APPLICATION TO TRANSFER/APPLICATION FOR ADMINISTRATION IN THE MATTER OF THE ESTATE OF EMILY LATZ)

MR. MACAULAY:

Q And by this document you requested that the Minister of Indian Affairs and Northern Development or his authorized representative administer the estate? That's what it was for?

A Yeah.

Q And your signature was witnessed by Rob McClure? Do you remember Rob McClure?

A Yes.

Q And do you recall telephoning Rob McClure or speaking to him at his office a few days earlier, that is a few days before February 11th, and telling him that you had signing authority for Emily's bank account?

A Yes.

Q And that was so, wasn't it, you had the signing authority?

A Yeah.

Q What is sometimes called the Power of Attorney; is that what you had?

A Yeah.

Q And that was because she was ill and couldn't look after those things herself?

A Yeah.

Q And you paid her expenses for her?

A Yeah.
Q And did you tell McClure you would pay the funeral expenses from the account?
A Yes.
Q And did you tell him that you had paid hospital costs too, about more or less two hundred dollars?
A Yeah, because I got all the receipts from the hospital too.
Q Uh-huh.
A And I know two ladies that takes care of it in the hospital, that's -- she is Mrs. Neil Sterritt and the other one is Shirley Muldoe.
Q Now, George Williams was your uncle?
A Yes.
Q You have referred to him as your uncle?
A Yeah.
Q He was your uncle. And he was your -- he had your name? Long ago he had your name?
A Yeah.
Q And he also was Tsibasaa at the same time?
A Yes.
Q So he had both names?
A Yeah.
Q And he owned about 75 acres of land?
A Yes.
Q That was Crown land, wasn't it?
A Yes, Crown land not far from Kispiox.
Q Was it north of Kispiox?
A North, yeah.
Q About four or five miles north?
A No, not very long.
Q And he had a farm there?
A Yes.
Q Including wagons and plows and all of those sorts of things?
A Yeah.
Q And when he died, his wife, Alice Williams, inherited the farm and the equipment and --
A Yes.
Q -- that?
A Yes.
Q I am talking about the Crown land now.
A Yeah.
Q And did she also inherit the reserve land that he had?
A Yes.
Q He was --
A And her children and grandchildren too.

Q Now, what clan was Alice Williams?
A Wolf.
Q Was she Luus?
A Yes, from Luus House.
THE COURT: We are talking about Alice Williams now?
THE WITNESS: Yeah.
MR. MACAULAY: The widow.
THE COURT: And she was Luus.
MR. MACAULAY:
Q Was she Luus or was she in Luus's House?
A Yes, Luus House, from Luus House, but she got a chief name from Wii elaast's House at Kispiox when she was young.
Q And after she died did the -- her property go to Steven Morrison?
A Yes, but that's her son.
Q Was that her adopted son?
A No, that's her son, her real son, but Steve is raised by Alice's elder sister, that's why it's Morrison. Kathleen.
Q Did you ever see Alice Williams will?
A No, no. But the only thing she did long long before she died, she gave me a hundred to repair the graveyard for her husband, George.
Q Well, that money was supposed to go to Emily Latz, wasn't it, and then Emily Latz became too ill to look after that?
A Yeah, she lost her sight and can't go around. That's why Alice was still alive at that time, and she is the one that gave the money to me and we did repair the graveyard.
Q Well, didn't you get the money after she died, in January 1974, January 15th, 1974?
A Who was that? Who do you mean?
Q Well, that hundred dollars?
A No. She gave it to me before she died, before -- long before she died, and she did see the graveyard is repaired.
MR. MACAULAY: I see it's 12:30, My Lord.
THE COURT: All right. Thank you. Two o'clock please.

(PROCEEDINGS ADJOURNED FOR LUNCHEON RECESS)

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE PROCEEDINGS HEREIN TO THE BEST OF MY SKILL AND ABILITY.

LORI OXLEY
OFFICIAL REPORTER
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THE REGISTRAR: Order in Court.
THE COURT: Well, Mr. Rush, are you anxious to make your submissions or is Mr. Goldie -- or Mr. Macaulay anxious to proceed with cross-examination?
MR. RUSH: Well, my proposal is that we put this application to tomorrow morning at 9:30. There is the consideration of the documents that were given to your lordship this morning which we're looking at, we looked at over the noon hour, frankly, with the court's copy. It wasn't enough time.

I should advise you that after having heard Mr. Goldie yesterday indicating that he was going to be seeking to admit the maps and the supporting documents in five separate areas, we contacted the person, our cartographer in Vancouver, who is holding our documents and asked him to ship them up. We don't have them yet and this explains part of the delay on our part, but I think with the use of the Court's copy, we can be ready to go in the morning, tomorrow morning.

THE COURT: I think that's seems to me to be a reasonable suggestion. Any dissent from that conclusion? All right. Mr. Macaulay then. Thank you.
THE REGISTRAR: Witness, I remind you you're still under oath.
MR. MACAULAY:

Q Mrs. Johnson, where is Heavener's Ranch? Do you know where that is?
A Heavener's?
Q Heavener's Ranch?
A It's right on my grandfather's territory, not -- not far from it. That's -- that's -- that's the land that he willed to his children and his family, but it's an ancient hunting ground.
Q Well, is there a ranch called Heavener's Ranch?
A Yes.
Q And does that belong -- who does that belong to? Who did that belong to?
A I don't know. Heavener's wife died long time ago. She's an aged woman. She is late Dick Lattie's mother.
Q Whose mother?
A Dick Lattie from Hazelton.
Q Perhaps we could have the spelling of that. Is Heavener's Ranch on the -- on reserve land?
A It's -- it's a Crown land, but it's a -- a hunting ground that belongs to Ma'uus.

Q So Heavener's Ranch is Crown land?
A Yes.
Q Not on reserve?
A No.
Q And the hunting ground next to it is Crown land too, is it?
A Yes.
Q Not on reserve?
A No. And all across it where the Sportsman's Lodge is, that's Ma'uus' land too.
Q There is now a building called the Sportsman's Lodge?
A Yeah.
Q And you say that's in Ma'uus' territory?
A Yeah, yeah.
Q And your grandfather had a ranch next to Heavener's Ranch, did he?
A Yeah. Right close to the Kispiox Village. You could see it across from the Sportsman's Lodge.
Q Did he keep horses there?
A Yeah. He keep all the cattle. About 40 heads of -- of cattle he got there when he was still strong.
Q That's your grandfather, Daniel Gawa?
A Yeah.

THE COURT: Mr. Macaulay, I have two notes. One is Heavener's Ranch is on my grandfather's territory and I've got another note that says it's right next to my grandfather's territory.

MR. GRANT: The second comment was made by Mr. Macaulay, not by the witness. He said it was on --

THE COURT: No. She said earlier that it was right on my grandfather's property and then she said right nearby and then again. It may be that the second suggestion is by Mr. Macaulay, but I have it both ways by the witness as well. Can we clarify it?

MR. MACAULAY: That is where the ranch was.

THE COURT: Are the two properties the same or are they different properties?

MR. MACAULAY:

Q Well, now, you've told us about your grandfather's ranch?
A Yeah.
Q Which was on Crown land?
A Yeah.
Q Is -- is that the same thing as Heavener's Ranch or is it next door to Heavener's Ranch?
A It's not far from -- from where grandfather lives where the Heavener's Ranch is. I remember one

incident perhaps that Heavener burn some brush and the fire went all on grandfather's ranch and it burnt down the -- the house that stands right near the river, Kispiox River.

Q And the Heaveners were settlers, were they?

A Yeah, yeah. This was after the first world war, after Heavener come back from the first world war. He lost his arm.

Q He was a soldier and he got some land when he got out of the army?

A Yeah. On -- on grandfather's territory, and maybe there's some other farmers there too.

Q But your grandfather himself had a farm or a ranch outside the reserve near Heavener's Ranch, next door to Heavener's Ranch?

A Yeah.

MR. MACAULAY Does that --

THE COURT: Oh, I think that's fairly clear, but I'm still left in some doubt. But I think it's a matter of communication with the witness more than anything else. She's never come right out and said it as clearly as I would hope, but I think she means they're close by, but I don't know if she says they're close by but they overlap or if she says they're close by but they don't overlap. I don't know.

MR. GRANT: She said that he was a soldier and got land on grandfather's territory.

THE COURT: You see, that's why I'm in some doubt, because grandfather's territory may refer to a claimed area.

MR. MACAULAY:

Q When you say that Mr. Heavener, the old soldier, got land on your grandfather's territory, you mean that the government granted Mr. Heavener some land on the traditional house territory?

A Yes. That's how they are. They stole away the ancestors' territory, but grandfather know it and she didn't -- he didn't know what to do until -- until some folks, when I was small, started the land claim and they go to Ottawa.

Q That was in 1927, was it?

A No. Long before that. As far as I could remember, I used to hear the -- the elders talk about it. They called the House of Parliament Wilp alalgyax. That's where people get together to talk, and they call the land claim liseewa yip. They talk among themselves about the -- about the land. They even go to Ottawa to talk about it.

Q And is this when you're 12 years old, something like that?
A Yes. No. Very small, but I didn't forget.
Q When you were very small, did you ever go into one of the old long houses, the old houses that you identified in photographs?
A Yeah. All my life they used some of those houses that I identify as their Feast House, and this was before they built the community hall.
Q And when you were small, did families live in those long houses?
A No. They all move out. Only few elders live in those Feast Houses.
Q Did the chief of the -- of a house live in the long house when you were young, say six or seven years old?
A Yeah. Some of them did, but some -- a lot of them move out and built out -- built small houses.
Q And in the long houses, were there -- were there tiers of benches along the walls?
A Yeah.
Q One -- the ones against the walls were higher than the ones in front of them, were they?
A Yes. Some are, and -- and some even higher. That's where the -- where the maids sat when they had the show. They said I was too old. And the maids sat on the higher benches to -- just to entertain the guests. They didn't say anything. They just dress up like princesses and sat on those benches.
Q Today at Kispiox, are there any long houses?
A No. Just a community hall.
Q And when was the last of the long houses taken down?
A About -- about 20 years ago. When I see the last one is taken down, that's Gutginuxw's house and they move the building up to -- to the higher ground. This was after the flood. There was a terrible flood in 1936 and a lot of small houses were washed out.
Q Well, is it after 1936 that the last long house was taken down?
A Yeah, yeah.
Q Was it because of the water damage that it was taken down, in the flood?
A Yeah. There were -- Gyolugyet's house is not a very old house, but it was taken by the flood.
Q And at Kispiox today, everybody lives in family houses?
A Yeah.
Q And each house holds its Feasts in the community hall;

is that right?
A Yeah, yeah.
MR. MACAULAY: My lord, I don't know if there's any doubt now about what Mrs. Johnson was saying concerning her -- her grandfather's land.
THE COURT: I think it's still open to argument either way on the evidence. She -- there's no doubt she says that the -- that the Heavener Ranch is part of the ancestral territory. I don't know whether she's suggesting that -- that the two Crown grants overlapped in some way or whether there are two Crown grants. I still don't know whether they're still the same property or part of the same property or totally different properties.
MR. MACAULAY:
Q Did any part of your grandfather -- your grandfather's ranch, Daniel Gawa's ranch, overlap on the Heavener Ranch?
A The whole territory belongs to -- to my grandfather. That's Ma'uus. There were a lot of lakes on it. I didn't see it, but that's where they go to -- to catch some beaver, and it's a hunting ground. That's why I don't know why Roy Wilson Sr. tried to register ours that you have mentioned before and the rest of the lawyer. I don't know why, because next to Wil Masxwit is my grandfather's boundary, and it's a very large hunting ground, and it goes across to where the Sportsman's Lodge is. It'll be enough for many families.
Q Well, when Mr. Heavener moved in, did he put up a fence?
A Yeah.
Q And he was putting up a fence on your grandfather's land, is that it?
A Yeah. Yes.
Q And did he get --
A Yeah. Like -- like, the vegetable farm did to our land. They put up the fence and we can't do anything because the -- the government said it's theirs and they sell it.
Q Well, did your grandfather have Crown land? Did he have title to Crown land?
A No.
Q He didn't?
A He knows it's an ancient land, trap line.
MR. MACAULAY: I have no more questions for this witness.
THE COURT: All right. Thank you. I suppose the re-examination

should await the completion of the cross-examination, Mr. Grant. Are you able to proceed with another witness, Mr. Grant?

MR. GRANT: My lord, I wish to propose an alternative approach to it. That is, that subject to Mr. Goldie's reserving the right to cross-examine with respect to the maps, subject to that area, I'm prepared to deal with the redirect on this witness on the other evidence that has been called. I wish to say that I had anticipated being able to commence with the next witness. There has been some problems with the documentary material that will go in with this witness. I have had persons who are in Hazelton now bringing that material down and I would prefer, if at all possible -- given the lunch hour discussion with Mr. Rush and the application yesterday, I would prefer that I would either redirect this witness now on the areas that have been covered with a right to redirect on anything arising from Mr. Goldie's cross, further cross-examination, and then that we adjourn until tomorrow morning, and I would be prepared to start the next witness first thing tomorrow morning.

THE COURT: Well, let -- let me explore with counsel something else. I have no doubt that the problem of Mr. Goldie's use of maps and -- well, I put it the other way -- documents kept in the ordinary course of business and maps prepared from them is going to arise from time to time during the course of the cross-examination. The time -- the last time when Mr. Goldie would have to prove those documents might be in the -- during the course of his case. Is there any middle ground that -- that would permit Mr. Goldie to use those documents now as if they were proven for the purpose of cross-examination and leave, until we have some experience with these problems, a definitive and comprehensive ruling on admissibility or non-admissibility? It isn't that Mr. Goldie's under any obligation at this time to prove the documents this way or any way. He can do that when he opens his case or during the course of his case. But is there any serious difficulty with him doing what he can with the witness now so that we can get on with the case and -- and letting him prove documents through the witness, if possible, and leaving it to some other time so that Mr. Rush won't be under the pressure of having to do a hurry-up submission, and at the same we can get on with the trial. Is there any difficulty

with that?
MR. GRANT: The short answer is no. The explanation is that we have felt that the better course of proceeding was to have maps, such as the trap line map, put to the witness and to have the witness examined on that as to her knowledge or his knowledge or whether or not that witness can identify the map. In the case of the trap line map, at least in one portion of it, the witness was able to do so. I think we've maintained from the outset that that was the proper way to go. And, frankly, I thought that was what was going to happen in respect of the other maps which Mr. Goldie had indicated he was going to put to the witness and instead the documentary evidence and so on as well as having the map accepted for the truth of what it said, the opinions that it carried, was sought to be admitted as an exhibit.

Now, to come back to the question, we have no objection to my friends putting any of their documents or their maps to the witness and to be examined on that for the purpose of determining whether or not they've got anything to say about it. But should my friends wish to go further, it is that that we want to make our submission on.

THE COURT: Well, I think this matter should be resolved at an early date, but I'm not sure it should be resolved today or tomorrow or before Mr. Goldie finishes with the witness. Perhaps we should hear from Mr. Goldie. But I can say now that I have in mind that after I hear Mr. Rush's considered submissions, if I'm against him, I think that I would say I still am not sure that I want to rule on such a comprehensive matter until I've had some experience with the documents anyway, and -- and there's been an opportunity to test them in some variety of ways, which may or may not arise. But I think I should ask Mr. Goldie if there's any difficulty him proceeding with his cross-examination on the basis that he can use the documents without it being put in as evidence in the case at this -- at this instance.

MR. GOLDIE: Well, I think the difficulty is indicated by my friend Mr. Rush's comments. I can put one of these documents to a witness and the chances are 99 to 100 or 99 to 1 that the witness will have never seen them before.

THE COURT: Well, I'm not suggesting that that should be conclusive. I'm suggesting that you be allowed to go

ahead and use the documents for the purposes of your cross-examination as you may be advised without a prior ruling that they're all admissible to prove the truth of the facts stated in them and we'll see how we get along.

MR. GOLDIE: I'm quite happy to do that, except that at some point --

THE COURT: Yes.

MR. GOLDIE: -- I -- I want these documents to speak to the truth of the matters therein contained. And if I may give your lordship one example, and it may be of assistance to my friend, the mineral tenures map, I say, shows that there is a mineral claim on Mrs. Johnson's land. I want to put documents to her on the basis that that is a proven fact.

THE COURT: Well, she may know nothing about that though.

MR. GOLDIE: Well, that may be so, but that -- if that was as far as it went, I would not have proven the fact that there was a mineral claim on her land.

THE COURT: No.

MR. GOLDIE: But I want to -- I want that fact to be proven as a basis for my cross-examination. She may say I have never heard of it, but all that that does is say that she has not heard of something which is in existence.

THE COURT: Well, the very most you would get at this stage would be a ruling that the documents may be marked as exhibits and become evidence of the trial, but they certainly wouldn't -- there wouldn't be any ruling that they're conclusive.

MR. GOLDIE: Oh, well --

THE COURT: They would be prima facie evidence at best rebuttable by contrary -- or by evidence to the contrary.

MR. GOLDIE: I -- I agree with that, my lord. They -- they would -- that fact would stand --

THE COURT: Yes.

MR. GOLDIE: -- as if -- well, it would stand exactly in the way it is presented. Namely, that so far as documents created in the ordinary course of business go, the government records show a mineral claim.

THE COURT: Well, before the end of this week or early next week -- I don't think it matters much, although the rest of the week may -- may prove me wrong. It seems to me that we ought to go ahead with the trial. You should cross-examine Mrs. Johnson. I'm prepared to rule tentatively and I hesitate to rule tentatively, but I think I should in this case, that you can use

these documents as you may be advised. Put them to her and get whatever admissions you can, if any, from them. Put propositions to her that on the basis the documents are proven, which is nothing more or less than a hypothetical suggestion anyway, and I'm not sure you're going to get any more out of the witness if the documents are proven than you would if you're dealing with them just on the basis that you're using them now on the basis that they're going to be proven later or you're expecting to be proven later and I think we should carry on and see how we get along.

MR. GOLDIE: I'm quite prepared to do that. And the cross-examination I have for the witness is not all that extensive.

THE COURT: Let's go ahead and see how we do.

MR. GOLDIE: I do want to emphasize, my lord, that has got a long history to it.

THE COURT: I have no doubt of that.

MR. GOLDIE: And the idea that my friend is taken by surprise is not, with great respect, tenable.

THE COURT: I'm persuaded he's taken by surprise by the fact he doesn't have his documents with him here today. To that extent, I think he is genuinely taken by surprise.

MR. GOLDIE: On the 11th of May I said when a witness comes up that I need to --

THE COURT: Yes.

MR. GOLDIE: -- put these documents to, I'm going to be reviving this motion and --

THE COURT: I recall you saying that very clearly.

MR. GOLDIE: I can't say anything more plainly than that. However, I -- I will go on and see if I can --

THE COURT: Thank you.

MR. GOLDIE: -- see if I can --

THE COURT: At the moment, I'm merely ruling that you can use these documents in the course of your cross-examination without ruling whether they're admissible to prove anything or not. Some may get proven during the course of cross-examination and some may not. That remains to be seen.

MR. GOLDIE: Right.

MR. RUSH: All right. I think that is acceptable to us.

THE COURT: Thank you.

CROSS-EXAMINATION BY MR. GOLDIE CONTINUED:

Q Mrs. Johnson, do you recall anybody prospecting for and working on a mineral claim on your property, your southern territory, the Kispiox, near Kispiox Valley?

A No.
MR. GOLDIE: This morning I went through a series of documents and I want to show you a map, which I identify as being found in a document entitled "Maps 14 to 16 Inclusive, Mineral, Coal and Placer Tenure", and it's numbered M93M5W. I wonder if I can --
THE COURT: Good luck.
MR. GOLDIE: -- persuade my friend, Mr. Macaulay, to remove that.
MR. GRANT: Does he have copies of the map he's putting to her separate from the book?
MR. GOLDIE:
Q I do not. What I have got, my lord, are a couple of copies of a map available in the government agent's office, which is essentially the same. The document to which I'm referring the witness is the same as that which was delivered on April the 14th to my friends.
Now, this is a somewhat unwieldy document to ask you to look at, but I'm going to use this one here if I may recover it from Mr. Jackson. And I'm asking you to look in the quadrant with the big C in it and at the top of that, there's something called Date Creek. Do you know the -- the Gitksan name for that?
A What part of the country is that?
MR. GOLDIE: Well, Date Creek's name is Xsu Wil Masxwit. And you recognize that now, don't you? That's number 317, my lord.
THE COURT: 317?
MR. GOLDIE:
Q Yes. And towards the bottom of that -- I'm sorry. I asked you if you recognize the name Xsu Wil Masxwit. Do you recognize that name despite my pronounciation?
A I don't know your pronounciation, because sometimes you mispronounce all --
Q Most of the time.
A Yeah. You say a bad word sometimes.
Q Well, I'm going to ask Miss Steven or -- Miss Sampson to say to you number 317 there.
A Xsu Wil Masxwit.
Q Now you recognize it?
A Yes.
MR. GOLDIE: I detect a faint difference.
MR. GRANT: Ostensive difference.
MR. GOLDIE:
Q Now -- so that is the creek?
A Yeah.
Q Yes. All right. And down here is something called

Hazelton Creek, and do you know the -- the Indian name for that? And above it is Hazelton Peak, and do you know the Indian name for that? I'll ask that 322 be pronounced.

A Andamhl.

Q That's the mountain which is -- below which is the boundary of your territory, is it not?

A Yeah. The mountain is -- is a whole territory.

Q Now, referring back to this map, I direct your attention to the square which has got MO6072(3). And you may take it from me that that is a mineral claim, and as far as I can see, that mineral claim is on your territory. Would you agree with that?

A Do you mean this?

MR. GRANT: The witness is asking if you mean the square on the map.

MR. GOLDIE:

Q Yes, I do. I mean this little square that you have your thumb on.

A This is Hazelton.

Q I'm sorry. You're not aware of --

A Of?

Q Of that mineral claim?

A No.

Q No. All right. Do you know a Mr. Bruce Holden?

A Where is he from?

Q Hazelton?

A Oh. No.

Q You never heard the name?

A No.

Q Were you aware that in 1985 he spent time up there with a bulldozer and a trenching -- or digging trenches in that land?

A No.

Q Or in 1986 that a trail was blazed on that -- on that land?

A No.

Q You weren't aware of that?

A No.

MR. GOLDIE: All right.

THE COURT: Mr. Goldie, can you tell me where Xsu Wil Masxwit is? Is it the south boundary of the property, of the claimed territory?

MR. GRANT: It is part of the north boundary.

THE COURT: Part of the north boundary.

MR. GOLDIE: Yes. Would you be good enough to hand that up to his lordship? My lord, what I'm handing up is a

photocopy of the current claims status map in the government agent's office, and it is the same basic map as what is in the proposed exhibit.

THE COURT: Yes.

MR. GOLDIE: But it -- it's a little different, but not as respect -- as respect the mineral claim Mo. On that your lordship would note Date Creek.

THE COURT: Yes.

MR. GOLDIE: That is, I'm instructed, Xsu Wil Masxwit, and that is part of the boundary, the northerly boundary starting off from the west and moving east. And the boundary doesn't follow that to the Kispiox. It then diverges and follows --

THE COURT: All right. I have it.

MR. GOLDIE: -- follows Xsan Max Hlo'o.

THE COURT: I have it.

MR. GOLDIE: Otherwise known as Dale Creek. Some humourist called the first one Date and the second one Dale.

THE COURT: Thank you. I have it.

MR. GOLDIE:

Q Now, Mrs. Johnson, we discussed trap lines and we discussed Stanley Wilson's trap line and Roy Wilson's trap line and Norman Weget's trap line and the vacant trap line which had once been owned by Charles Johnson. Do you remember that discussion?

A Yes.

Q All right. Now, what I have done is traced from the Exhibit 5 a portion of the external boundary. Exhibit 5 is the big map which your counsel has introduced as showing the external boundaries of the claims area, and I have traced on that a portion of that boundary and the boundaries of the trap line 06302T030 and 0630T021. My lord, those are shown on Exhibit 24 and were -- the latter of those two is identified by the witness as being Stanley Wilson's trap line. And 0630T030 was identified as being vacant in the documents which were put to your -- explained to your lordship this morning. I'm going to put that in front of you. And I'm going to ask that his lordship have this in front of him.

Now, if I may explain this to you, the solid line is the external boundary taken from that map behind you, which is the -- is the plaintiff's claim map. The line which has got a long one and a dot and a long one is the outline of your territory out near Swan Lake. And that too is taken from the map which your counsel has prepared. And then the dotted lines are

the trap line maps and one is 630201, which is Stanley's line, and the other is the vacant line which used to belong to Charles Johnson. And I ask you if you have ever had occasion to examine the degree to which those two trap lines relate to your territory?

A No. All I know is late Charles Johnson got nothing to do on our trap line. The name of the creek is Xsi Wis An Skit and the end of the creek is where the compensation that was given to us.

MR. GOLDIE: My lord, I would be tendering that as an exhibit if the -- if the -- because it's simply a tracing from three proven exhibits. If your lordship's ruling is to stand, then consistently with that, I would tender that for identification until that particular point is resolved.

THE COURT: Well, it's a tracing from Exhibit what?

MR. GOLDIE: The exhibit numbers are from Exhibit 5 and Exhibit 24.

THE COURT: Well, I think it could be Exhibit 5A. It's merely a tracing from exhibits that are already in.

MR. GOLDIE: Perhaps Exhibit -- yes. All right.

THE COURT: 5A.

MR. GOLDIE: All right, my lord.

THE COURT: I guess this is the original, Madam Registrar.

THE REGISTRAR: Thank you.

MR. GOLDIE: Now, that is identified as trap line and Antgulilbix territory tracing prepared by defendant Province June 8th, 1977. I have a similar one with respect to the territory --

MR. GRANT: Before my friend proceeds, I just want to note for the record that this should be -- I would submit that this should be an exhibit for identification at this stage because Exhibit 24, as I believe, was only admitted for a limited purpose, and it's part of what the application is about.

THE COURT: It's merely a tracing from Exhibit 5 which you put in, is it not?

MR. GRANT: In part, and in the tracing from Exhibit 24, which is the document which Mr. Goldie's application this morning -- was one of the documents which Mr. Goldie's application this morning was with respect to.

THE COURT: Did the witness not identify those numbers from Exhibit 5?

MR. GOLDIE: She identified the numbers from yesterday.

THE COURT: Yes.

MR. GOLDIE: From Stanley Wilson's drawing. And she identified the number 6302T021 as Stanley Wilson's trap line and

the 30, the one ending with 30 as the late Charles Johnson's trap line.
THE COURT: I thought Mr. --
MR. GRANT: I don't believe she identified 30 as Mr. Charles Johnson's. I believe what she did is she said those two numbers were on the map which was tendered the Stanley Wilson map. I believe it's Exhibit 23.
THE COURT: Well, I don't think anything is going to turn on this numbering system at the end of the day, but I suppose to be cautious it won't do any harm to mark it for identification.
MR. GOLDIE: The -- I'm quite happy to do that because if your lordship accepts my submission, then this will be proven because it will have been simply a tracing from proven documents.
MR. GRANT: Yes. And with respect to Exhibit 5, I have no problem. It's the Exhibit 24.
MR. GOLDIE: Excuse me. The outline of Stanley Wilson's trap line on Exhibit 24 has been proven, and the exhibit was accepted for that purpose. I believe that is correct, my lord, in my submission.
THE COURT: Well, I don't think it matters, gentlemen. We'll mark it as Mr. Grant requests, Exhibit 5A for identification, and it'll sort itself out as they always do.
MR. GRANT: That was 5A?
THE COURT: 5A for identification, yes.
(EXHIBIT 5A FOR IDENTIFICATION: Tracing)
MR. GOLDIE:
Q Would you hand up another tracing to his lordship? Now, this is the same sort of thing, Mrs. Johnson, but in this case it's of the southern territory and from the documents that we were dealing with this morning, the large trap line, 630630T007, is, I believe, Mr. Roy Wilson's. That's Mr. Weget's trap line. And then below that is 0630T004, and that's the trap line of Mr. Roy Wilson. And then outlined with the -- not the solid line, but the line with the long line and a dot and a long line and a dot is your territory near Kispiox Village. And would you agree with me that those two trap lines appear to completely take up your territory down there?
A No. They are not supposed to register anything on our territory. Like I said, he owes -- Roy Wilson Sr. should -- should chase the people off the Sportsman's Lodge and take the house. All they'll do is just pick up their blankets and go, because the territory

belongs to him, and he got nothing to do on our territory.

MR. GOLDIE: I -- I won't pursue that. I would tender that as an exhibit based on the fact that it is created in exactly the same way; simply depicts what is indicated in the Exhibit 5 and Exhibit 24.

THE COURT: I take it to be marked as Exhibit 5B for identification.

MR. GOLDIE: Thank you, my lord.

MR. GRANT: My lord, I just want to note that, of course, none of these numbers -- unlike Exhibit 5A, none of this has been identified by the witness. That is, the numbers that are on this exhibit.

MR. GOLDIE: I quite agree. Those numbers come from the --

THE COURT: From the documents.

MR. GOLDIE: -- the documents themselves. If those documents are accepted, those numbers will be proven.

THE COURT: All right. That will be Exhibit 5B.

(EXHIBIT 5B FOR IDENTIFICATION: Tracing)

THE COURT: Do I understand, Mr. Goldie, that on that tracing 5BB, the black ink is the total of -- is -- the black ink represents the total claimed area of this witness' house in its southern portion?

MR. GOLDIE: That is correct.

THE COURT: The shape shows to be the -- the shape it's suggested it is, and what you're suggesting is that this trap line, 0630T004, takes up almost all -- but not entirely, but almost all of the southern -- southerly claimed territory?

MR. GOLDIE: Yes.

THE COURT: Yes. That's what the map looked like.

MR. GOLDIE: And seven takes up the balance, as I understand it.

THE COURT: That's supposed to be clear to me from the tracing?

MR. GRANT: Yes. It's clearer on the exhibit. Of course, the photocopies don't show the colours, the colours that they're referring to.

THE COURT: All right. Thank you.

MR. GOLDIE:

Q Yesterday, or today -- no. Yesterday I asked you about water streams or people using the streams in your territory. Were you aware that the water for Kispiox Village and the water for Glen Vowell is taken from two of the streams on your territory?

A Yes.

Q And are there dams there?

A Yeah. There's a dam at Kispiox where the Xsan Max Hlo'o runs from the mountain and into the Skeena --

into -- into Kispiox River, I mean.
Q And did you know that the holder of the water licence is the Indian agency of the -- of the -- of the Kispiox Band?
A No.
Q And that the one for Glen Vowell is -- the holder of the water licence is the Indian agency of the Glen Vowell Band?
A No. I don't know.
Q But you knew that there was water --
A Yes.
Q -- being taken from those creeks?
A Yes. Yes.
MR. GOLDIE: All right. Thank you. I wonder if my friend has the original of the Jonathan Johnson map that I asked to be produced. This is the map which I spoke of at the beginning of my cross-examination, and I believe my friend was -- didn't have it with him the day that I asked.
MR. GRANT: No, I didn't. I don't have it here, but I could arrange for it at the break.
MR. GOLDIE: Well, I have the copy that was given to me and I wonder if my friend would agree that this is a true copy of the Jonathan Johnson map which was produced as a result of Mr. Sterrit's examination for discovery.
MR. GRANT: Yes. That is a copy if my friend wishes to tender it.
MR. GOLDIE:
Q All right. Thank you.
I wonder, Mrs. Johnson, if you would be sufficiently patient with me to look at another map. This was produced by Mr. Grant as Jonathan Johnson's map, or a copy of it. Have you ever seen that?
A No.
Q No. All right. Well, we won't bother tendering that. I asked you yesterday about Mr. Stewart Forsythe, and I was asking you if you were aware of whether he was logging in your territory, and I think you told me, no, you weren't?
A He's farming.
Q He's farming?
A Yeah. He's a farmer.
Q I see.
A And he sells meat.
Q Have you ever seen his signature?
A No.
MR. GOLDIE: My lord, I'd like to tender as an exhibit the

affidavit signed by Mary Johnson after I have her identify it, to which is attached the question and answer to two questions relating to the maps which have been marked as exhibits and which were attached to those affidavits. Those are Exhibits 19, which is the south property, and Exhibit 21, the north. If I may ask Mrs. Johnson if you identify that as your signature.

MR. GRANT: My lord, before my friend proceeds, I just -- I understood yesterday that the cross-examination which was left outstanding was with respect to the alienation maps. We have dealt with the question of the interrogatories and I just wonder if my friend is going to canvass many other areas with respect to beyond the areas of the maps, which was my understanding of what he expressly said yesterday.

MR. GOLDIE: I've concluded, my lord, but I do want to file as an exhibit the -- the affidavit verifying the production of those maps.

THE COURT: I'm not sure that I have a full understanding of the issue that seems to have arisen. You have concluded your cross-examination on the maps, Mr. Goldie?

MR. GOLDIE: I've concluded as far as I propose going at this time and for any time with this witness --

THE COURT: Yes.

MR. GOLDIE: -- on the documents that we discussed this morning.

THE COURT: Yes.

THE COURT: Mr. Grant is suggesting that your cross-examination was kept only for that purpose.

MR. GOLDIE: Generally speaking, that is correct. And I --

THE COURT: You're seeking leave then to ask to put this further document to the witness?

MR. GOLDIE: That is correct.

THE COURT: All right. Is there any reason why I shouldn't allow that, Mr. Grant?

MR. GRANT: Well, given that he said that this is -- if he is concluding, that's fine. I just wondered how broad he was going to go.

THE COURT: Go ahead, Mr. Goldie.

MR. GOLDIE:

Q Are you able to identify your signature?

A Yes.

MR. GOLDIE: I tender that as an exhibit, my lord. It is a copy of the exhibit.

THE COURT: Does it have maps attached to it?

MR. GOLDIE: No. Those -- the maps are Exhibits 19 and 21.

THE COURT: What is it? Let me see the affidavit, please, Madam

Registrar.
THE COURT: The maps -- you say the maps that are attached to this affidavit of Schedule B are Exhibits --
MR. GOLDIE: 19 and 21.
THE COURT: 19 and 21.
MR. GOLDIE: I think they were 3 and 4 on her examination for discovery.
THE COURT: All right. Then this affidavit will be -- any objection, Mr. Grant?
MR. GRANT: Well, yes. The affidavit which my friend has put to the witness is an affidavit dated the 26th of January. It should be '87. It says '86. It's my understanding that the maps were tendered with an affidavit of the witness which was sworn on July 7th, 1986. And in fact, those maps were not filed with this affidavit.
MR. GOLDIE: Well, I think they stated as already been delivered. I think if my friend wishes me, I'll file the affidavit of 1986 also as a part of this.
MR. GRANT: I'm only saying if my friend wishes that the -- if my friend intends to file an affidavit upon which the maps are attached, this is not the correct affidavit which the maps were attached to, although they were referred to there and the maps were attached to the earlier affidavit. That's the only point I'm making, my lord, so that my friend was mistaken in his understanding, I guess, of the matter.
THE COURT: Well, this says, "What are the boundaries of your house's territory?" I take the answer is "See maps which are attached as Schedule B". Do you say that means see maps that are attached as Schedule B to some other affidavit?
MR. GRANT: That's correct.
THE COURT: I would have read that these maps were attached to Schedule B of this affidavit. If you say that isn't so, if your friend says, well, I'll file the other affidavit as well, is there any problem?
MR. GRANT: There's no problem. I'm saying that there's -- I'm not -- I don't know what my friends intend to do ultimately with this and I want it to be correct, that's all.
THE COURT: All right. Mr. Goldie, can I ask you to solve the problem by filing the other affidavit as well?
MR. GOLDIE: Yes. What happened, my lord, is that there was an earlier response to an interrogatory and it was later required to be in March by an order of Mr. Justice Locke. It was done by filing a fresh affidavit. And as the affidavit stated, the Schedule B had already

been delivered and I'll --
THE COURT: Well, let's put the two affidavits together as the next exhibit then.
MR. GOLDIE: That will be exhibit 28, is it, my lord?
THE COURT: Yes. I think so.
(EXHIBIT 28: Two affidavits of Mary Johnson)
THE COURT: All right. Then you're finished then, Mr. Goldie?
MR. GOLDIE: Yes, I am.
THE COURT: All right. Are you ready to re-examine then, Mr. Grant?
MR. GRANT: I assume that we may take a break. I'd like to have a break to discuss --
THE COURT: All right. Has the other affidavit been tendered?
THE REGISTRAR: No, it hasn't.
THE COURT: All right. When it's tendered then, the two can be put together and marked as Exhibit 28. And we'll take the afternoon break.
THE REGISTRAR: Order in Court.

(PROCEEDINGS ADJOURNED)

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

Kathie Tanaka, Official Reporter
UNITED REPORTING SERVICE LTD.

MR. GOLDIE: My Lord, I have handed to the registrar a copy of the affidavits that Mr. Grant requested and the copy of -- a clean copy of Exhibit 23.
THE COURT: Thank you. All right. Thank you. Mr. Grant.
MR. GRANT: Yes. Before proceeding with redirect, My Lord, there is one matter that I left unsettled on the direct and that is with respect to Exhibit 17, which is the document book, and I would ask that that document which was marked as an exhibit for identification be introduced as an exhibit proper. Mrs. Johnson identified all of the documents which were located in that document she referred to and identified them all.
THE COURT: Any difficulty with that, Mr. Goldie, Mr. Macaulay?
MR. MACAULAY: No.
MR. GOLDIE: No.
THE COURT: Yes. All right, that will be Exhibit 17 not for identification, then.

(EXHIBIT 17: DOCUMENT BOOK)

RE-EXAMINATION IN CHIEF BY MR. GRANT:

Q Mrs. Johnson, you were asked by Mr. Goldie, a week ago on the Friday, if children on the reserve attend school elsewhere on the reserve, and you answered yes. Do children from Kispiox reserve attend school within Kispiox?
A Yes.
Q Do non-Indian children living outside of the reserve attend the school in Kispiox?
A Yes.
Q You referred to Robert Wilson, Jonathon Johnson, George Wilson and Art Wilson in one of your answers. Did all of these people hold one name at different times?
A Yes.
Q What name was that?
A Wii'mogulsxw. That's Robert Wilson's name. And then when he died, Jonathon Johnson took over. After Jonathon died, then late George Wilson; and when George died, then Art Wilson took the name, the chief name.
THE COURT: The name again please?
MR. GRANT: Wii'mogulsxw.
THE TRANSLATOR: Number 78.

THE COURT: Thank you.
MR. GRANT:
Q You described today -- you were questioned this afternoon by Mr. Macaulay about the Heavener Ranch, and you were asked whether it was close to or on your grandfather's territory, and he was Ma'uus, Daniel Gawa was?
A Yes.
Q And in part of your answer you described that next to Wil Masxwit is my grandfather's territory, and you were referring, I believe, to Daniel Gawa?
A Yeah, that's the boundary. As Stanley is not here -- he should know where the boundary is. That's where Roy senior got every right to be on Ma'uus's very large territory. And there was some mountains behind it.
Q What House is Roy Wilson senior in?
A He is from Ma'uus's House.
Q Now, a week ago Friday, when Mr. Goldie was questioning you, you answered questions about the boundary of your territory near Kispiox. You recall that?
A Yes.
Q Now -- and you described that you had a discussion with Mr. Sterritt. Before you talked to Mr. Sterritt, did you know that Ma'uus's territory was next to Wil Masxwit?
MR. GOLDIE: How does that arise out of my cross-examination? That refers back to my friend's examination-in-chief where he dealt with -- it was he who introduced the discussion of Mr. Sterritt in his examination in chief.
THE COURT: That is true, Mr. Grant.
MR. GRANT: But this arises out of not Mr. Goldie's questioning but Mr. Macaulay's questioning because the witness this afternoon gave an answer that Ma'uus's territory was next to Wil Masxwit, and my question is whether she knew that before she had the discussion with Mr. Sterritt.
THE COURT: Well, wasn't the question of boundaries fully covered? Surely it was part of your burden in chief.
MR. GRANT: I'm not talking about the boundaries here, I am talking about -- there was some suggestion in cross-examination as to whether this area was new, and what she said today, in answer to Mr. Macaulay's question relating to the Heavener Ranch, was that Ma'uus had a territory on -- next to Wil Masxwit, and

I just want to know whether that answer was an answer she -- whether that was based on what Mr. Sterritt told her or based on what she knew previously. That is where this question is arising out of.

THE COURT: I don't know what Wil Masxwit is.

MR. GRANT: Wil Masxwit is on Exhibit 17-9-A.

THE COURT: Is that -- we are talking about a stream?

MR. GRANT: Xsu Wil Masxwit is a stream.

THE COURT: I know what you mean now.

MR. GRANT: It's the one that yesterday morning you were having some --

THE COURT: Oh, I'm having a terrible time. Any potential for judicial understanding has been sacrificed with these names. They just have gotten me completely lost, and I don't think I will ever straighten them out, but I will do the best I can, but it really is terribly discouraging to be constantly uncertain of what counsel are talking about.

MR. MACAULAY: I asked no questions along these lines at all, My Lord. None of my questions were directed to Wil Masxwit or whether anybody's boundary bordered on that.

MR. GRANT: Mr. Macaulay, of course, asked about whether the Heavener territory was on the Ma'uus' territory.

THE COURT: Yes. Well, I don't see any harm in allowing you to proceed, Mr. Grant. I don't think it's proper re-examination, but I can't imagine any prejudice to anyone. I am happy to have the record as clear as you can make it. I am going to allow you to proceed. We have the time and I see no harm in it, but I think we can't run part of the trial as if it was a criminal trial and then have unlimited re-examination either now or when your friends come on. There has to be some control of this. But you go ahead, Mr. Grant. I see no harm in this, and perhaps some enlightenment will arise.

MR. GRANT: Okay.

THE COURT: But counsel have to understand they have been living with these names and working with them, and this is all brand new to me and I'm, frankly, lost. I don't mind telling counsel I am lost. It's the names that are doing it to me. I am struggling with it but I warn you, that it's hardly understandable. Go ahead.

MR. GRANT: Thank you. I'll go back to my question.

Q Mrs. Johnson, Mr. Macaulay this afternoon asked you if you knew where Mr. Heavener's Ranch was?

A Yes.

Q And you referred to it as being on your grandfather's territory?
A Yeah.
Q And you were talking then about Daniel Gawa, who is Ma'uus?
A Yeah.
Q He questioned you further as to whether it was next to his territory or on his territory?
A Yeah.
Q And then in answer to that you said that your grandfather's territory was next to Wil Masxwit?
A Yeah. It's so plain, sir, this Wil Masxwit. The mountain is called Wil Masxwit. That's where our ancestors got the mountain goat, main food, and groundhogs that they used the skin for the Feasts, and this Wil Masxwit and Xsu Wil Masxwit comes from Wil Masxwit and runs into Kispiox River. So they call this Xsu Wil Masxwit-Antgulilbix's Genim jap. That means that Antgulilbix' hunting ground in the ancient time. So next to Xsu Wil Masxwit is Ma'uus's boundary. So Stanley is not here, Tsibasaa, he knows where the boundary is, and Roy senior should know where the boundray is, and he shouldn't come into our territory and register it where there is enough of his own next to it. And then Ma'uus and then Kliiyem lax haa, you see the bridge where the 17 Mile Bridge is called Ant'ki ge'n. I know the history about that, and that's the boundary between Ma'uus and Kliiyem lax haa.
Q And that 17 Mile Bridge is in the Kispiox valley?
A Yes.
Q My question to you is this, Mrs. Johnson. Before you talked to Mr. Sterritt, did you know that Ma'uus -- where Ma'uus's territory was?
A Yeah.
Q Now, you have just described it. Did you know that before you talked to Mr. Sterritt?
A They call his territory Tam k'aldix seeksit because --
Q I just want to make sure the Reporter has it.
A Tam k'aldix seeksit. And when he goes out to hunt, he went up and always had the road past the Heaveners Ranch. That's where he goes up and caught many furs. And across the -- where his house burnt down is the Sportsman's Lodge, and they call that place Xsa'an gehlaast. That's the name of the creek that runs into Kispiox River.
Q Okay. Now, before you proceed further, my question to

you is, did you know that Ma'uus -- where Ma'uus's territory was before you spoke to Mr. Sterritt about the map?

A Yes. Ever since I was small.

Q Thank you. Now, you were asked by Mr. Goldie, I believe, about logging on Andamhl?

A Yes.

Q And on Exhibit 17-9-A Andamhl is written a long -- it's a long line. Mr. Goldie marked it with a circle and a small point. Can you tell the Court, is Andamhl a sharp peak? When you are talking about Andamhl, are you talking about a sharp peak or a long mountain?

A It's a mountain and there is another sharp peak behind it, just on the same mountain, but it's sharp peak and that's what we call Andamhl. My ancestor called it Andamhl, as far as I could remember, and the white people call it where the moon shines on.

Q When you have been talking about Andamhl in your evidence, are you talking about this sharp peak or are you talking about the -- what you have called the mountain in front of it?

A Not in front of it, it's the same mountain that we call Andamhl.

Q It's all one mountain?

A One mountain, yes.

Q When Mr. Goldie was asking you questions about your territory, and he was -- this was a week ago Friday, he was asking you on many occasions about this creek, Xsan Max Hlo'o, 320 on the list, you kept referring to the man that lived on the mountain, the man who was mean?

A Yes.

Q Now -- and you talked about the clearing where this man -- the clearing below where this man lived, I believe. And this is page 850 of the transcript?

A That's where he lives, on the clearing.

Q Okay. My question to you is: How did you know where the mean man on the mountain lived?

A Because great-great grandmother tells me and my grandmother tells me that's where Gyadim Lax ts'inaast live. It means the man that lives on the clearing, and he's mean.

Q And was that part of the -- an adaawk?

A Yes, it's an adaawk. And he's so mean and ugly, so they made a mask out of him, and it's in our House, both House of Antgulilbix and Tsibasaa. Every tribe got a mask and they also named the mask.

Q In answer to a question from Mr. Macaulay you referred to one of your -- I believe it's one of your fishing sites, Antselda. Is that upstream of Kispiox or downstream, that site?
A Where is that?
Q I am referring to, I think it was Antselda?
A Antselda, yeah, we call it the mountain, Gaakhl An tselda, where the trail goes around.
Q That fishing site, is it upstream of Kispiox? Is it going up the river?
A Yes, up the river, and it's on Skeena River.
Q Now, when you talked about that, you referred to a place known as 4 Mile?
A Yeah.
Q When you referred to 4 Mile, is that a place that is up the Kispiox valley?
A Up the Kispiox valley.
Q Then you were asked about another map and about a bridge this afternoon or late this morning?
A Yeah.
Q And you referred to it as 4 Mile Canyon. Is that -- that is a different place than 4 Mile, where Antselda is?
A Yes, it's different.
Q You were referred to by Mr. Goldie, a map, provided by your brother, Stanley -- Exhibit 21 please. And --
MR. GOLDIE: 23, I think it is.
MR. GRANT: 23. Exhibit 23.
Q And this map was referred to you as a map that your brother had given -- provided through counsel to Mr. Goldie?
A Yes.
Q Now -- and you were referred to earlier in your -- a map which your brother had, Stanley had, which was made by George Williams?
A Yes.
Q Now, George Williams, you have indicated, died around 1943; is that right?
A Yes.
Q Now, did George Williams ever describe the northern territory to you, that is the northern territory of Antgulilbix, Tsibasaa?
A Yeah, yeah.
Q When he described that territory, did he include Xsi Wis An Skit as part of that territory?
A Yes.
Q Did he include Xsi Lapsit as part of that territory?

A Yes, Xsi Lapsit, yes, a small creek that runs into Xsi Wis An Skit.
Q Did he ever tell you that --
THE COURT: Well, Mr. Grant, these are terribly leading questions.
MR. GRANT: I'm sorry.
Q Now, do you know if Xsi Wis An Skit was ever excluded from your territory by Mr. Williams?
A No.
Q Xsi Lapsit, do you know if it was ever excluded from your territory by Mr. Williams?
A No.
Q I would ask you to look for a moment at this map, Exhibit 23. And you were asked about these numbers on it, and there is this 063OT021?
A Yes.
Q And 06302030?
A Yes.
Q And 65 and 68. Those are examples of some of the numbers?
A Yes.
Q Do you know what those numbers mean?
A No.
Q Okay.
THE COURT: That's Exhibit 23?
MR. GRANT: 23, yes. I'm losing an Exhibit, My Lord.
Q You were shown this map by Mr. Goldie, I believe, yesterday, if I recall rightly. How long before you have seen this map in court have you seen this map, Exhibit 23?
A That's the first time I have seen it.
MR. GOLDIE: My Lord, that, if I may say so, is extraordinary because the witness referred to a map on her examination for discovery and it was asked that be produced, and this is what was produced; and it was referred to on a number of occasions by the witness on her examination for discovery. Now we are told that this is the first time she has seen it. I therefore renew my request for the map referred to by the witness on her examination for discovery.
THE WITNESS: Excuse me, Mr. Grant.
MR. GRANT: Uh-huh.
THE WITNESS: I forget you -- we see the map, I and Stanley, before -- maybe it's before the court case, after they work Gyolugyet.
MR. GRANT:
Q You mean when the court case had started but before

you gave evidence?
A Yes, yes. And Stanley took out the copy from the Fishery Department because we wanted the map that Uncle George Williams' handwriting when he made out the map when he registered the hunting ground.
THE COURT: Well, was it produced on discovery?
MR. GRANT: No.
THE COURT: All right.
MR. GRANT: No, this map, Exhibit 23, was a map that was produced to counsel and had been produced to me.
THE COURT: All right.
MR. GOLDIE: It was produced after the discovery as a result of the request.
MR. GRANT: As a result of the request, that's right.
THE COURT: All right.
MR. GRANT: I note my friends request, and I am going to renew my investigation on it.
Q Mr. Goldie asked you whether Stanley Wilson's registered trap line was the same as the boundary of your House territory, and you said it was?
A Yeah.
Q Has Stanley -- do you know if Stanley has trapped outside of your territory?
A No.
Q I'm sorry, I made a classic error in my question. Has Stanley trapped outside of your territory?
A Do you mean on the territory way up north?
Q Yes.
A No, because he knows the boundary.
THE COURT: The way I have it is that Stanley Wilson hasn't trapped outside the northern territory.
THE COURT: Of the witness's House.
MR. GRANT:
Q That's the northern territory of your House, and you said he knows the -- I just didn't get what you said. He knows the territory, is that what you said?
A Yeah, he knows the boundary, I said.
Q Okay. You were asked by Mr. Goldie whether Charles Johnson had a right to trap on your territory, and I believe you said no. Do you know if Charles Johnson ever did trap on your territory?
A No, because he is from the House of Dawamuxw and K'alii sgalan, and all his life he lives on Lax dit'ax. That's another very large territory. He got his own trap line there. We live with them once and I have seen it.
Q I wish you to refer to Exhibit 23 as part of the

application for trap line. Now, you were referred to the second part of Exhibit 25, which was a listing of people in your House. I'll just read them to you -- or I should say a list of people, I apologize. My question is -- it refers to Stanley Wilson, Leonard Gawa, Wilfred Gawa, Gordon Johnson, Mary Johnson, Alfred Latz, L-a-t-z, Arnold Tait and Donald Tait. Are those persons in your House?

A Yes.

Q Are any of them not in your House?

A No, they are all in the same House.

Q You gave evidence -- you were asked questions about Chris Harris and you said that you knew Chris Harris and that he attended Feasts?

A Yes.

Q You also said that he was sick?

A Yeah.

Q Do you recall how long Chris Harris was sick before he died?

A No.

Q Do you not remember if Chris -- did Chris Harris attend Feasts while he was sick?

A No.

Q Did Chris Harris attend a Feast hosted by your House at which the adaawk of your House was told?

A No.

Q Mr. Goldie asked you about a road through your territory, if you knew there was a road through your territory, and I believe my recollection of your evidence was that you said there was and this was the road between Hazelton and Kispiox?

A Yes.

Q Was that road between Hazelton and Kispiox used by the Gitksan before it was a road?

MR. GOLDIE: Well, she said the road was there before she was born, and I accepted that answer. I don't see how my friend can go behind that.

MR. GRANT:

Q Do you know, from what your grandmother told you, whether that road was there before the white man came?

MR. GRANT: I object to that. I haven't objected to questions which suggest answers but that's an obvious one.

THE COURT: It's very leading, Mr. Grant.

MR. GRANT:

Q Let me ask you this. Can you tell the Court, from your knowledge and what your grandmother told you, how long the road has been there or the trail has been

there?
A The trail has been there when my ancestor live at Wilt gallii bax. That's below the mountain, what we call Andamhl, and there is an ancient village there. So after that the chief of Kispiox ask Antgulilbix, Tsibasaa to move into Kispiox.
Q And you have told us about that?
A Yeah. And there is a road there, but they kept on using the territory as their hunting grounds, and I didn't see when the Glen Vowell folks moved to Glen Vowell. They were from Kispiox.
Q Did chiefs of Kispiox block that road at any time?
MR. GOLDIE: Well --
THE COURT: That doesn't arise out of any questions, does it?
MR. GRANT: My friend has raised the whole question of a road going through her territory.
THE COURT: Oh, I know, Mr. Grant, but there has to be some limit to re-examination, and this seems to me is raising a whole new area of investigation, if we get into it.
MR. GRANT: Well --
THE COURT: Surely, if you want that evidence, you can get it from another witness, so we don't have this kind of problem.
MR. GRANT: Certainly, My Lord.
THE COURT: Re-examination always causes far more difficulty than anything else. There is always a problem with re-examination that can be avoided, I think.
MR. GRANT:
Q Mr. Macaulay put a document to you entitled Petition of Right, Exhibit 26, and I would like to refer you to part of this document.
First of all I would refer you to paragraph 82 of that document, and I will only refer to it -- I will edit out what I've said. It says -- just to the relevant parts -- "your petitioners", and then it lists a number of them, including Tsibasaa and Yal, "are hereditary chiefs of village of Kispiox". Are Tsibasaa and Yal hereditary chiefs of the village of Kispiox?
A Yeah.
Q I refer you to paragraph 84 on the same page. And there I only ask these questions with respect to Tsibasaa and Yal, who are referred to with others as Kispiox chiefs, and it says there: "Kispiox chiefs and their ancestors have been living on these said lands and fishing at these said traditional fishing

sites included in these lands since time in memorial and have used their specific hereditary Kispiox fishing sites since time in memorial." Is that true with respect Tsibasaa and Yal?

A Yes.

MR. MACAULAY: My Lord, I object to that line of examination. There was no cross-examination on any of those allegations, and that's all they are.

MR. GRANT: This document was put in by Mr. Macaulay and wasn't even introduced on direct, and he introduced the document as an exhibit and put it to the witness.

MR. MACAULAY: I put two paragraphs of the document to the witness. There are over a hundred.

MR. GRANT: I don't intend to go over a hundred. I am dealing with two or three paragraphs.

THE COURT: Well, is this the witness to ask that question?

MR. GRANT: These allegations are made and extensive cross-examination was led of this witness with respect to the fishing sites.

THE COURT: Well, she has indicated, and I don't know that he's -- is Tsibasaa going to be a witness?

MR. GRANT: Yes.

THE COURT: Wouldn't he be the person to ask that question?

MR. GRANT: Well, he can be asked that question as well, but these are --

THE COURT: You are asking this witness if these other people have -- if this statement is accurate for these other people. Isn't it better to ask the other people when they get to the witness box? I suppose I have a problem that I have to resolve arising out of Mr. Macaulay's objection, if you press the point, but do you have to press it with this witness? We don't have to win every point in a lawsuit to --

MR. GRANT: I agree, My Lord, but this document was put in by Mr. Macaulay and certain aspects of it were put to this witness. Now that he has put it in, I submit that it -- that it's proper -- it's allowable for me on redirect to say -- to ask the witness questions about that document, which was not put to her on direct and was something new that arose out of his cross-examination.

MR. MACAULAY: This is part of the plaintiff's case. Mr. Grant could have put any of those questions to her in chief. He didn't. Not in so many words. The issue wasn't raised with the witness on cross examination, and I submit it's not properly within the scope of re-examination.

THE COURT: Well, isn't it the burden of this witness's evidence, Mr. Grant, that the House she represents has lived in these lands within the area shown on the maps from time in memorial, lived or occupied on or used them as their fishing sites and that sort of thing? Isn't that her evidence in chief?
MR. GRANT: I'm not going to pursue it.
THE COURT: Aren't you asking exactly the same question again?
MR. GRANT: Well, I am asking her about certain allegations in this document, but yes, they lead to the same point, and I'm not going to press it. Given the time, I think I will go directly through this.

Q When Mr. Macaulay referred you to the O'Reilly Indian Reserve Commission -- do you know what the O'Reilly Indian Reserve Commission was?
A Do you mean when they surveyed the reserve?
Q Well, that's what I am asking you. Do you know or did did your grandmother tell you about a man named O'Reilly that came to Kispiox?
A Yeah.
Q Okay. You referred, and I can't recall who provided the name, yourself or Mr. Goldie, but to Louis Wesley? What House was --

MR. GOLDIE: The witness did.
MR. GRANT: That's what I thought.

Q What House is Louis Wesley from?
A From the House of Xsim gaakhl. I showed you the great big Feast House, a log house on the picture the other day.
Q Right.
A And they are related with Wii elaast's House. They got their own House, so Louis was his chief name, is Ama gyet.
Q I just wish to refer you to -- and I don't have to -- I'm just going to make reference to Exhibit 26-A. Mr. Macaulay asked you questions about a small island in the river, and I believe it was -- you referred to the fishing sites, which is number 329, An Guux Di Git wank. It's number 329 on the territory names. Is An Guux Di Git wank, is it across from fishing -- well, is it near fishing sites of Gwiiyeehl?
A Gwiiyeehl.
Q Yes.
A No, An Guux Di Git wank is not far from Wilt gallii bax. You could see from, as we stand on the road. Yeah. And the island he showed me is T'a'ootsip, like I told them before. That's another fishing site.

Q You were asked about Yal's fishing sites at 4 Mile Canyon?
A Yeah.
Q And whether they were on the north side or the south side?
A South side of the bridge.
Q Okay. What I would like you to describe for the Court is if you are driving to Kispiox from Hazelton, are they on the Hazelton side of the river or the Kispiox side of the river?
A On the Hazelton side.
Q Okay. If you're driving across that bridge towards Kispiox, would you look to your right-hand side or your left-hand side to those fishing sites?
A You can see it as you cross the bridge.
Q But what I am asking is would it be to your right -- I understand you can't see the site -- would it be to your right or to your left, if you're facing Kispiox on the bridge?
A If you cross the bridge going to Hazelton and it's on your left side, that's where I see the Yal's Smoke House.
Q You were asked about fishing in the summer and going -- and going to the coast in the summertime, and you have said you went every summer when you were younger?
A Yeah.
Q To the coast. When you went to the coast every summer, did anyone from your House fish at the fishing sites on the Kispiox River?
A Yeah, that's what they do. One of my aunties, while she's still alive, she fish at An Guux Di Git wank. Her name is Kate Hakst. That's Sarah Doll's sister. She is the last one to live there.
Q You described Daniel Gawa, your grandfather, as having a Smoke House. This is an answer, I believe, to Mr. Macaulay's answer, this side of the bridge?
A Yeah.
Q And then you said in further answer, you said his family still fishes on his fishing site?
A Yeah, that's -- I mean his relatives are fishing there.
Q Okay. My question to you is when you say his family or his relatives, who are you referring to?
A I mean his family crest.
Q The people in his House?
A Yeah, the people from Ma'uus's House, like Geoffrey

Harris Junior.
THE COURT: Mr. Grant, are you going to be long?
THE WITNESS: He used to fish there.
MR. GRANT: I have about two or three questions.
THE COURT: I promised the Reporters we wouldn't sit longer hours.
MR. GRANT: No, I have two or three questions.
THE COURT: All right. I think Madam Reporter doesn't mind.
MR. GRANT:
Q You described, in answer to questions from Mr. Macaulay -- my note this morning that this was with respect to one of the funerals. You said "I paid for merchandise and furniture, I gave my new set of furniture to Mrs. Kate Sterritt because she paid for the casket"?
A Yes.
Q Why did Mrs. Sterritt pay for the casket?
A Because our custom is when a baby is born, the brother would fix a cradle for the newborn baby, and when the baby had a Feast among the village and get a name, then they pay gifts to the brother that fixed the new cradle. So as an example, I am old, any time I go and my Dad's relatives would buy a nice casket for me, that will be my last cradle. That's why it is still among our people today. They still carry the custom in the ancient time.
Q Is that what Kate Sterritt was doing?
A Yes, that's what she does because she is related to my husband's dad from the House of Wii elaast. Even though the family would pay back the amount of the casket, and on top of that they gave gifts.
Q Did you give -- in what circumstance -- where were you when you gave her this furniture?
A I mention it at the Feast Hall, after my husband's family paid back the casket. I just mentioned the furniture and they picked it up later on.
MR. GRANT: Thank you, Mrs. Johnson, I have no further questions.
THE COURT: Thank you. I just have two questions, Mrs. Johnson. When you told me some weeks ago that you got divorced, did you mean divorced in accordance with Indian custom or British Columbia law or both?
THE WITNESS: Both.
THE COURT: Both.
THE WITNESS: I divorced in our Indian law and I was divorced by the --

THE COURT: Thank you. Now, you told me that a number of people, you mentioned Yal and somebody called White and others, owning fishing sites?
THE WITNESS: Yeah.
THE COURT: How is it that they own them, apart from the House? Where do they come to own these fishing sites? I took it you were telling me that they owned them individually, not as a member of a House. Have I got that wrong?
THE WITNESS: Do you mean about the fishing sites?
THE COURT: Yes.
THE WITNESS: Yeah, we got a lot of fishing sites, the Giskaast tribe.
THE COURT: Yes. But you told me, for example, that Yal owns fishing sites and you mentioned others.
THE WITNESS: Yeah. That's how there are different chiefs live on different fishing sites with the rest of the family. Each chief is supposed to look after one fishing site. That's how it is.
THE COURT: But does -- you told me that Yal owns a fishing site in 4 Mile Canyon?
THE WITNESS: Yeah.
THE COURT: That's his private property, is it?
THE WITNESS: Yeah.
THE COURT: Doesn't belong to the House?
THE WITNESS: It belongs to the House because Yal lives in Hazelton; and I was told, too, that we got a Feast House in Hazelton in the ancient time, and also Yal get territory somewhere near Hazelton.
THE COURT: Which House does Yal belong to?
THE WITNESS: He belongs to both Tsibasaa and Antgulilbix.
THE COURT: All right. So he doesn't own these fishing sites himself?
THE WITNESS: He owns it himself. That's how it is. He looks after it, and anyone that got his name will take over the fishing site and hunting ground where he goes.
THE COURT: Yes. I am not sure if you're telling me that he owned the fishing site himself or if he owns it for the House.
THE WITNESS: He owns it. He took care of it for the House.
THE COURT: All right. Lastly, where is the Sportsman's Lodge?
THE WITNESS: It's accross the -- Ma'uus's territory. It's part of Ma'uus' territory, but it is only -- the Kispiox River runs between it, between the territory. That's why -- that's where the Sportsman's Lodge is, and --
THE COURT: Well, is it across the Kispiox River from --
THE WITNESS: Yes, yes, just close to the highway. Right on

the main highway.
THE COURT: Well, could the witness be shown 17-9-A. Do you see Kispiox on that map, the village?
THE WITNESS: Yes.
THE COURT: Where is the Sportsman's Lodge that you mentioned?
THE WITNESS: It's this side, this 17 Mile Bridge where Sportsman's Lodge is. Just right across Ma'uus's territory.
THE COURT: Well, does Ma'uus's territory cross the Kispiox River?
THE WITNESS: Yes, it goes across the the Kispiox River. That's the reason why the Sportsman's Lodge stands on Ma'uus's territory.
THE COURT: Well, this map would suggest that the land between the two rivers belongs to someone else. I can't even --
MR. GRANT: Kliiyem lax haa.
THE COURT: Is that not so?
THE WITNESS: Oh, it's the other way, Your Highness,
THE COURT: It's on the same side of the Kispiox River?
THE WITNESS: There is a bridge that we call An kya ge'in Bridge, where the 17 Mile is, so Ma'uus and Kliiyem lax haa's territory is An kya ge'in.
THE COURT: It's on the same side of the Kispiox as Ma'uus's property?
THE WITNESS: As you go up north, it will be on your right side after you cross the bridge is Kliiyem lax haa's territory.
THE COURT: Just a minute. Is the Sportsman's Lodge on the same side of the Kispiox River as Ma'uus's properties?
THE WITNESS: It's across it. Kispiox River runs --
THE COURT: It's accross the Kispiox River?
THE WITNESS: Yeah, yeah.
THE COURT: But not on Kliiyem lax haa's property?
THE WITNESS: No, no.
THE COURT: How far from Kispiox, the village?
THE WITNESS: It's not far. I mean, there is the bridge and the bridge is -- still call it 17 Miles, and not very far from the bridge is Sportsman's Lodge.
THE COURT: All right. Thank you, Mrs. Johnson.
Thank you Madam Reporter. We'll adjourn then 'til 10 o'clock tomorrow morning.

(PROCEEDINGS ADJOURNED)

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE PROCEEDINGS HEREIN TO THE BEST OF MY SKILL AND ABILITY.

LORI OXLEY
OFFICIAL REPORTER
UNITED REPORTING SERVICE LTD.