Vancouver, B. C.
June 1, 1988.

THE REGISTRAR: Calling Delgamuukw versus Her Majesty the Queen, at bar, my lord. I caution the witness, you are still under oath.

THE COURT: Mr. Grant?

EXAMINATION IN CHIEF BY MR. GRANT: (Continued)

MR. GRANT:

Q Thank you. Yesterday at the end of the day you were explaining about your own personal involvement in the fishery, and you identified, and I would refer you in the document book to tab 15, Exhibit 575, which is the affidavit, your affidavit and the Gitwangak Indian Fishery By-law. The other day you referred to events that have occurred since 1977 with respect to the fishery and what I would like to ask you about, the area I would like to ask you about is the history of the events between 1977 and 1986 at the time of this -- the passage of this by-law, and focusing on why this, what efforts the Gitksan chiefs took with respect to the fishery. Can you explain what happened to initiate the concern with respect to the fishery around 1977?

A There was -- we had a number of disputes with respect to our fishery, there was a number of things that had occurred, a number of negotiations had been held with the Department of Fisheries in respect to attempt to reduce the number of charges imposed on the members of the band. And the one area that we had attempted was the taking of a blanket trapline, one --

Q When you say blanket trapline --

A A blanket food fishing permit for the whole area. That's for all the eight bands in the Gitksan and Wet'suwet'en area. That helped diffuse the tension between our people and the department. There was also other options that were looked at in the long term, not the long term but the interim solutions, one area that we had possibly had an opportunity to look at was the Indian Act, and the development of a fishing by-law for the bands in the whole Gitksan and Wet'suwet'en area. There were a number of by-laws that were developed, a number of negotiations had taken place with the Department of Indian Affairs, there was by-laws that were done in 1983 and they were

disallowed.
Q By the minister?
A By the Minister of Indian Affairs. There was a by-law that again was done in 1985, then again it was disallowed. We initiated court action challenging the minister's authority to disallow the by-law but again we made efforts to try and negotiate an acceptable by-law with the Department of Indian Affairs. And there were a number of changes in clauses and the areas of the by-law and in 1985 or -- '85 there was by-laws put forward again, just to set the agenda again with the Department of Indian Affairs. And the Department of Indian Affairs had discussions with the Department of Fisheries and Oceans to try and come up with an acceptable by-law. And there were clauses that were added, clauses that were deleted, to by-laws, and then in 1986 the by-law that, that's here right now was allowed to be passed. The only change that we added on there was that we would agree to meet with the other user groups up and down the Skeena. But that again took a lot of negotiations on our part. We met with David Crombie, who was the Minister of Indian Affairs then.
Q Were you yourself involved in those meetings?
A Yes, I was involved, Neil Sterritt, myself and I can't remember who else was involved in the meeting in Ottawa in March of 1986. And we added that clause that we would meet with other user groups, the commercial fishermen, the sport fishermen and other Indian groups along the Skeena. That's one area where we agreed and we added a clause to it.
Q Could you refer to Exhibit 575 in front of you and indicate to the court where that addition is in the by-law?
A It's the -- this -- the last whereas clause on page one and the first whereas clause on page 2.
Q Why was that change made? Why did you -- why was that asked for or why did you agree to make that change?
A The Department of Fisheries and Oceans were quite concerned about the commercial fishermen. There was a lot of lobbying going around by the commercial fisherman and sports fishermen with the minister of fisheries and to try and make sure that the by-law would be passed at this time or allowed to stand, we added that clause in there.
Q Were there negotiations between yourself and the Minister of Indian Affairs regarding the form of the

by-law between 1983, when you said you passed the first by-law, and 1986, when this by-law that's before the court was finally passed?

A Yes, there was.

Q Were they continuing negotiations over that period of time?

A There was a lot of negotiations.

Q What was the motivation, from your perspective, as to why a by-law, all of this effort should be put into a by-law over those three years?

A Mainly to diffuse all the charges that had happened, and there was extensive charges laid on our band members, the nets were taken, nets were burnt, there was increased patrols by fisheries. At that particular time there was fishery officers were carrying sidearms and our elders were confronted with, at times, 15 officers at a particular site and they were alone then. We needed something to try and protect them and to try and enjoy what we have always enjoyed with the fishery.

Q I would like to refer you to Exhibit 575 for a few moments, and I would like to ask you about some specific terms that are in this by-law that you passed. Paragraph 1(d) on page 2, states that "Insofar as this by-law enacted pursuant to the Indian Act may override legislation which conflicts or is inconsistent with this by-law, it is intended that this by-law is to be so construed."

Were you there arranging for the terms in there, were you -- did you consider -- did that have anything to do with what was going on regarding fisheries officers?

A Yes, that was mainly to force back the Fisheries Act outside of the reserve boundaries. And not to allow their legislation to be in effect on our reserves.

Q Now, I would like to ask you about paragraph or section 6 of the by-law on page four, which states: "Gitksan-Wet'suwet'en people are permitted to use, buy, sell, trade or barter fish caught within the waters of the Band in accordance with their traditional laws and customs."

Can you tell us why you put that clause in the by-law?

A It was mainly an attempt to try and develop an inland fishery and what we had discussed was a test inland fishery that was mainly to test the inland fishery. That's why you have the buy and sell in there.

Q Can you explain in more detail what you mean by the inland fishery?
A The inland fishery, it was mainly because we seen the salmon going right by our reserves that we have, we had specific products that we wanted to try and test the market on it, and use our own traditional methods, our own traditional training and the traditional salmon products like half smoked salmon, fully dried salmon, salmon strips and belly strips and it was to try and test out those products. And get into other products, like concentrated salmon soup and also to try and test out fish nuggets, those type of products that we wanted to test out and hopefully with the intent of developing that into the future, to be -- and to have a good economic base on our fishery, the salmon fishery. Our plans for that year was only to take 10,000 sockeye and that we would test that. And use our own products, the products that we have had and it was so relevant to us, it was so simple to do, but just enhance it with health standards and inspections, those sorts of things.
Q And were you considering the commercialization or the sale of these products?
A Yes.
Q Now, why did you put in section 6 that "...to use buy, sell, trade or barter...in accordance with the traditional laws and customs"?
A Because the fishery belongs to the hereditary chiefs, there are houses that own specific fishing stations or holes, sites, they own it and the plan was that the houses and the chiefs would be the ones that would be in authority over the inland commercial fishery, and the houses would get the economic benefit from developing a commercial inland fishery.
Q You described yesterday afternoon, Mr. Williams, about how you yourself are using Lelt's fishing site, would you -- with his permission -- would that be an example of complying with the Gitksan law which the by-law was considering?
A Yes.
Q I would like to refer you to section 4(a), which provides that you, that "Gitksan-Wet'suwet'en persons are permitted to engage in fishing in waters of the bands at any time and by any means..." and then there is the exceptions, "expolsive materials, rockets, combustibles, projectiles, shell or other like substances, subject to variations or restrictions as

may be made pursuant to this by-law."
I will comment, your lordship, that those exceptions are almost identical to the exceptions provided in the Fisheries Act itself, the rockets and combustibles, et cetera, in fact I think they are identical.
Were you -- you have described or referred to the fact of drift netting and set netting, was there any consideration of other methods of fishing in the Gitwangak area, other than drift netting and set netting, other than the provisions of the by-law?
A We had plans for using traps, fish traps and fish weirs, because what the fish trap does, it -- you can be very selective in using a fish trap, because you can grade the salmon as to ones you want. If all we wanted, for instance, say sockeye, we would only take the sockeye and the salmon would go into the trap, it wouldn't be damaged as opposed to a net, and if we didn't want the steelhead we would just take the steelhead out of the traps and let the steelhead go without being damaged. And those were the ideas that we had with traps. And the same thing with a fish weir, fish weir is just a fence and you can put a boat or a canoe on the other side of the fish weir and the salmon will just jump over into the boat and the ones you don't want, steelhead, like steelhead, you can just let them go again.
Q Maybe I could just refer you to sections 13 and 14 of the by-law on page five. Which is a -- appear to be prohibition sections to prohibit the pollution, in fact -- in the waters of the band. And section 14 and section 15 is with respect to slash. Why did you include that kind of provision within the by-law?
A The salmon has been a very -- has been a real part of our lives, and that the Gitksan and Wet'suwet'en people are not going to leave where they are living right now, and we wanted to ensure that the resource was protected, it wasn't going as to be damaged and we wanted to sustain the resource, we want to protect it for the future. And make sure that if any sawmills or logging companies or anybody that would -- had any influence on the river or the habitat, that at least we had some protection in ensuring that our philosophy of how to protect the salmon would be incorporated in our by-law.
Q I just direct you, and I will ask you further about this later in your evidence, Mr. Williams, but

sections eight and nine provide for the appointment of fisheries officers under this by-law?

A That's correct.

Q And that is something that you have been considering?

A Yes.

Q Now, I would like to refer you to part three, page eight, which deals with the Gitksan-Wet'suwet'en sports fishing regulations, and there is also a Schedule "A" at the end, which sets out a fee schedule for sports fishing. Can you explain to the court why sports fishing is of any concern or relevance to the Gitwangak people?

A There is -- we usually get lots of tourists from all parts of Canada, the U.S., we get lots of tourists that come to our community and camp and we have got really good sports fishing areas, right on the reserve and along the river bank. We usually have 40 to 50 anglers that come in and fish, particularly in September, the month of September and earlier on, and there is some concern with respect to the Gitwangak River, which is right on the reserve itself, concerns about the spring salmon that were going up that river, and concerned about the steelhead that were going up the river and the coho that were going up that river. And the majority of the sport fishermen would occur right at the mouth of the Gitwangak River where it goes up to where it empties into the Skeena. That's where a majority of the sport fishermen are and we were advised that in order to increase that, we had to control the sport fishermen in that particular area, as well as ourselves. To ensure that the stocks are built up.

Q And why did you set these fees in Schedule "A"?

A Mainly to help, help about the costs of having our own fishery officer and other fishing plans that we may have. It costs a lot of money to have people work for you, whether they look after the habitat or to pay for a fishery officer to develop your own licences, those sorts of things.

Q I would like to refer you to part five, on pages ten and 11 and 12, which sections 46 through to 58, which establishes a procedure for a review panel and it provides that a person has to have a permit before they can do anything to reduce the productive capacity of the waters of the band and it's under sections governing habitat protection. Can you explain why you passed those sections of the by-law?

A Just to ensure that the management regime was in place and the by-law was followed and it was understood, but mainly to ensure that there was management, the management was there to comply with the by-law, to comply with the -- with some of the -- with the habitat, how we -- that was mainly a management --

Q So was it the concept that this by-law would govern, this by-law would allow management of all aspects of the fishery?

A That's correct, on the reserve, yes.

Q I would like to to refer you to section 59 on page 12, which states that, "The band council shall appoint members to a Gitksan advisory board consisting of the hereditary chiefs of the Lakh Seel, Lakh Gibuu, Lax Sgiik and Kisgaast Clans of the Gitksan people to make recommendations to the Tribal Council regarding closures, use of specific sites, use of specific gear and regulations based on the traditional ownership and rights of access to traditional fishing sites within the waters of the band, which has nominated them as a member of the Gitksan Advisory Board."

Why that was provision incorporated into the by-law?

A All these sites belong to the houses, the chiefs and the members of their houses. It's really known what sites they have, it doesn't belong to the band council, and the reason why we stated the advisory of hereditary chiefs is that throughout our negotiations with Indian Affairs and Department of Fisheries, the Department of Justice was involved in that, and they simply wouldn't accept the authority of the hereditary chiefs. So we tried to build in the authority and their ownership into this law, clause that's basically the purpose of it, was that for ourselves, as the band council, to at least try and put that in in the by-law that recognize that it is theirs, it is their fishing sites and they own the -- they own it and they have their own management systems.

Q Why did you set this up, this, the body of the hereditary chiefs as a "advisory body" in the by-law, why didn't you have them actually be the administrators of the by-law?

A Because the Justice Department just wouldn't accept it, they wouldn't allow the by-law to go through if we said the authority of the hereditary chiefs. But the advisory was acceptable to them and that's how the by-law was allowed to pass.

Q In the context of your history of how you worked with the hereditary chiefs of Gitwangak, what would be the real effect of this advisory body, in terms of decision making, and here I would ask you about the decision making of the fishery, what role the hereditary chiefs would have, or what extent of say, as compared to the band council?

A Oh, the chiefs would have the ultimate say. I think they are the ultimate decision makers in respect to the fishery. You know, the band council can only attempt to assist in things like the by-law, that we can use that, the present band council system to advance some of what our chiefs have been saying and use the existing legislation that's available to try and advance what they have been telling us and attempt to try and get some recognition of their authority. But they are the ones that make the ultimate decisions.

Q How many times did you travel to Ottawa to negotiate this by-law with the minister in the 1983-'86 period?

A It may be twice but I remember one specifically. I remember one in March of 1986, where I went with Neil Sterritt.

Q And that was after you had passed the by-law but within the 40 day period in which the minister could or could not disallow it?

A That's right.

Q I would like to refer you to Exhibit 26 which, madam registrar, it's the Petition of Right.

THE COURT: 46?

THE REGISTRAR: 26.

MR. GRANT: Just for ease, I will refer to the actual exhibit and I have a copy here, my copy of the exhibit.

Q Are you familiar with that document?

A Yes, I am.

Q And were you involved at all in the work leading up to the development of that Petition of Right to the -- to Her Majesty the Queen in right of the Province?

A Yes, I was.

Q And I believe the other day you explained you were involved in the research, you assisted other staff members of the Tribal Council in mapping fishing sites which are ultimately referred to in that document or in the schedules to that document?

A That's correct.

Q Can you explain why the initiative was taken with respect to the Petition of Right in 1983?

A It was mainly to initiate an action against the province to try and exert the ownership and -- of the hereditary chiefs over the fishery and the fishing sites of the chiefs and there was a fiat that was -- that was sought at that time and was denied, and I don't think the action went very much further than that.

Q Now, with respect to the by-law, you -- which was Exhibit 575 that you were just looking at, you indicated that this by-law was not disallowed, and what happened subsequent to the non-disallowance of the by-law, is that after the by-law came into force at the beginning of April, 1986, what happened subsequent to that? For example, I would focus you on those whereas clauses where you had agreed to meet with the other fisheries groups, did you in fact meet with them?

A Yes, we did. The statement that we made to Tom Siddon and David Crombie was that we will not implement the by-law until mid-June of 1986. We made that commitment and we made that promise that we wouldn't implement them. We agreed to have consultation with other user groups, other native groups down the Skeena and up the Skeena, we also wanted to meet with the commercial fishermen and also the sport fishermen. We wanted to try and work out an arrangement of how we could all work together on the fishery on the Skeena River. And we did meet, there was a meeting planned for May 5th, 1986, with all the native groups in B.C., that was held at the Hotel Vancouver where the minister of fisheries was there, David Crombie was there, Minister of Indian Affairs, the commercial fishery was there, people like Paddy Green, that's who I remember, and industry -- the commercial industry, that's the canneries, the companies were all there, the sport fishermen were there, all the other native groups in B. C. were there, I remember seeing the Nisga'a, the west coast native groups, and they had that meeting in the morning and it was -- it didn't appear to be getting anywhere, and the -- I believe there was a suggestion that we would meet with the other user groups, if any native group wanted to meet with the commercial fishermen and sport fishermen there would be time alloted that afternoon, and that opportunity was there. Immediately Neil Sterritt, the president at that time, got up and said, yes, we have that commitment. We stated in our by-law we will meet

with them and we did meet with them that afternoon. And the plan was that there would be a small working group to try and sort out differences or any problems and we left that meeting with the understanding that the industry, sport fishermen and native group, would have a small working group together to try and work that out. And I remember Neil Sterritt saying that we were going to be meeting on the 15th of May, 1986, the small working group. That meeting never took place at all.

Q What happened?

A From my understanding with Neil, he said that the other groups didn't want to meet.

Q You were in attendance in this group of meetings on May 5th?

A Yes, that's correct.

Q And was the Minister of Fisheries and Oceans there?

A Yes.

Q And the Minister of Indian affairs?

A Yes, he was.

THE COURT: That was May 5th, was it?

A Yes, May 5th, 1986.

MR. GRANT:

Q Now, subsequent to the May 5th, 1986 meeting, what was the next thing that happened in terms of the working relationship between yourselves, that is the Gitksan and the other user groups?

A Well, we made that commitment, you know, that we wanted to, didn't want to implement the by-law until June 15th of '86. Meanwhile Neil Sterritt went on vacation and we still had that commitment, and because the other user groups didn't want to meet with us, we had to decide what we wanted to do with the by-law in our own communities. We met with our hereditary chiefs, and because there was some -- an opportunity to, with the by-law being passed, there would be massive sales of salmon that was legal under our by-law, we wanted to try and control that, we wanted to have a system in place on our own that would not allow for massive sales of salmon but we had talked about how we would conduct the by-law in 1986 and we established some principles, we said that the resource, the foremost in our mind was that the resource had to be protected, conservation was foremost in our minds, the food fishery was one of the principles that we should take enough food for our own supply, and if the chiefs had agreed to it at that

1 time, that there would be a limited test fishery of
2 10,000 sockeye. That was --
3 MR. PLANT: Sorry, if the chiefs had agreed?
4 A If the chiefs agreed there would be a limited test
5 fishery of approximately 10,000 sockeye.
6 MR. GRANT:
7 Q And what was the chiefs' response to this proposal of
8 these priorities?
9 A They endorsed them, they endorsed it, they agreed with
10 the conservation of the the food fishery and they
11 agreed with the consent of a limited test fishery.
12 Q And was this in advance of the June 15th date when the
13 by-law was going to take effect?
14 A Oh, yes, yes.
15 Q And so did you in fact implement the by-law and the
16 test fishery in 1986?
17 A No, we didn't.
18 Q Can you explain to the court what happened next?
19 A I think it was around June 15th that a ex parte
20 injunction was sought by the A. G. Department of the
21 province, along with the Pacific Defence Alliance.
22 Q Who is the Pacific Defence Alliance?
23 A The Pacific Defence Alliance is all the industry
24 companies and commercial fishermen, trollers, mainly
25 non-Indian groups. The non-Indian group in the
26 commercial fishery. And we had all the rod and gun
27 clubs of B. C. that were involved in getting the ex
28 parte injunction on us, all the sport fishermen groups
29 in the province, they were all a party to the ex parte
30 injunction, the Trollers Association, they were all
31 non-Indians.
32 Q What did you do after that ex parte injunction came
33 down?
34 A The ex parte injunction came down late on a Friday, we
35 had to defend the following week, we had to scramble
36 to try and put our defence together, what I just said
37 earlier, our commitment that the by-law wouldn't be
38 implemented until June 15th, our commitment to meet
39 with the industry, other user groups, we documented
40 that and tried to overturn the injunction. We spent a
41 whole week in Vancouver, we were unsuccessful, the
42 judgment came down the week following and confirmed
43 that the ex parte injunction would stay in place.
44 Q Did the Pacific Fishermens' Alliance publicize their
45 position around the time of this injunction in any
46 way?
47 A Oh, yes, yes. They publicized, newspaper articles in

the Globe and Mail, they bought a big section in the Vancouver Sun and they were -- they had radio stations all tuned into what their little number was, and news media.

Q I would like to refer you to tab 16 of your document book and ask if you have seen that document before? Do you recognize that document?

A Yes, I do.

Q Can you explain what that was?

A It is a news clipping on the Vancouver Sun of May 3rd and just before we met with Tom Siddon and David Crombie on May 5th, we noticed this big article just before we went into the meeting. And it was mainly to do with our fishing by-law.

MR. GRANT: I would ask that that document be marked the next exhibit, Vancouver Sun tear sheet, May 3rd, 1986.

MR. PLANT: I don't see the relevance of the document. So I object.

THE COURT: Well, is the objection one of relevance or is it one of admissibility?

MR. PLANT: Well I don't -- it may be both, my lord. I don't see the relevance of much of this evidence, but in particular the significance of this witness having seen a "news clipping" in the Vancouver Sun before going into a meeting, I don't see the relevance of that. Nor -- well, that's my primary objection, is that it's irrelevant.

THE COURT: This is an out of court statement made by the B. C. Wildlife Federation on behalf of all fishermen. How is it relevance against either of these defendants, Mr. Grant?

MR. GRANT: This document is not treated for the truth of the contents, but for the fact this advertisment was taken out at this time. It goes to the very issue, my lord, and I am -- I wish to comment that this document, this document was -- it goes to the issue of the opposition to the efforts by the Gitksan and the Wet'suwet'en to take over the management and control of their own fishery.

THE COURT: But I am hearing a contest between plaintiffs and defendants. How is a statement made out of court by someone else --

MR. GRANT: These -- this organization, my lord, as the witness has already explained, was subsequently in court by or with the aid and in fact of the provincial defendant.

THE COURT: Well, there may have been all kinds of relationships of one kind or another. But how does an out of court

statement by a third party become evidence in this trial?

MR. PLANT: Even assuming there is evidence that this is the statement of a third party.

THE COURT: Isn't there a section in the Evidence Act that says an advertisement in the newspaper is rebutably presumed to have been inserted by the person on whose behalf it appears to have been inserted?

MR. PLANT: This is an advertisement, my lord. It's been mis-identified by the witness as a news clipping.

THE COURT: I am going to assume the law is unchanged from when it was in 1955, when I remember there was such a section in the Evidence Act, whether it's there or not, unless somebody tells me different, there is such a section, I am prepared to treat this as a statement made by the Wildlife Federation. Or whatever it's called, B. C. Wildlife Federation. But I just have some difficulty with the admissibility of the document. Why can't the witness just tell me there was massive opposition from other groups who took out advertisements in papers and things like that? Why do you have to -- I mean, to go beyond that, because then you're getting the evidence in without having to meet the difficulties of the hearsay rule.

MR. GRANT: Well, of course, as I said, I say it's not a question of -- the hearsay rule doesn't apply, because it's not -- yes, the witness can say there were massive ads taken out by other groups in opposition, and I think the witness has alluded to that. The best evidence of that is the copy of the ad. It's not the truth of what's stated in the ad.

THE COURT: The best evidence rule doesn't supersede the hearsay evidence rule. Different principle.

MR. GRANT: Well, my lord, I am not putting this in for the truth of the facts asserted therein. I am putting it in for the fact this ad was taken out and therefore I say the hearsay rule doesn't apply.

THE COURT: How does the fact that the ad was taken out in these specific terms advance your case at all? You can't get everything in simply by saying I am not putting it in for the truth of the fact stated. I think you have gone as far as you can go, by what the witness said, that newspaper ads were taken out in opposition to the by-law. Now you attempt to prove this specific statement was made, is clearly contrary to the hearsay rule and I have an objection, seems to me I have to rule.

1 MR. GRANT: Well --
2 THE COURT: How does the specific language advance your case,
3 Mr. Grant, beyond the witness saying, which seems to
4 me to be for your purposes that there was massive
5 opposition. If there was. I don't know how -- I
6 gather by what the witness says there was widespread
7 opposition from other interested groups, sports
8 fishermen, trawlers, commercial fishing companies, the
9 government of British Columbia and all that. You have
10 got that now.
11 MR. GRANT: My lord, I am not going to press the point.
12 THE COURT: Thank you. Is there such a section, Miss Sigurdson?
13 MS. SIGURDSON: Yes, section 54.
14 THE COURT: It's still there.
15 MR. PLANT: I withdraw that part of my objection, nunc pro tunc.
16 THE COURT: Very gracious, Mr. Plant. Who would think that
17 piece of legislation would go undernoticed for 30
18 years? Haven't heard of it since.
19 MR. GRANT:
20 Q Mr. Williams, what happened after the injunction
21 against your fishery by-law was confirmed after the
22 hearing, as I understand you have said? That is,
23 there was a ex parte injunction and then it was
24 confirmed after a full hearing, what happened next
25 with respect to the Gitksan fishery at Gitwangak and
26 the by-law?
27 A We were unsuccessful in challenging the injunction and
28 we immediately had a major feast in Gitwangak during
29 that week, it was a Monday, I believe, that the
30 decision came down from, I think it was Madam
31 Proudfoot, and we wanted to comb through the
32 injunction to see the implications of the injunction
33 and what it meant and we had a major feast in
34 Gitwangak and I can't remember the exact date. I
35 think it was June 28, 1986. It was an assembly of all
36 the chiefs in the Gitksan and Wet'suwet'en area.
37 There must have been at least 300 people at that
38 feast.
39 Q This would have been the hereditary chiefs you are
40 referring to?
41 A Yes, hereditary chiefs and individuals as well. And
42 we tried to invite the Pacific Defence Alliance,
43 specifically Paddy Green, and also some of the other
44 people in the area. I think we tried to invite Mike
45 Hunter.
46 Q Who is he?
47 A He is the chairman or president of the Defence

1 Alliance, for the companies, commercial fishing
2 industry. We tried to invite them to tell them, you
3 know, that, you know, we tried our best to try and
4 talk to you guys, and you guys didn't want to and now
5 you have got your ex parte injunction, why do that?
6 The river was -- nobody was allowed to fish that day,
7 the river, logs were floating down there and what was
8 the urgency of getting a ex parte injunction?
9 Q When you say no one as allowed to fish the river that
10 day, what do you mean by that?
11 A The river was really high that day and throughout that
12 whole week. For about two weeks there was logs
13 floating down the river and nobody goes fishing at
14 that time. And we wanted to let them know, you know,
15 what the principles I just outlined earlier, at least
16 they would understand, but they didn't come. But
17 anyway, we presented the injunction, we noted some of
18 the sections of the injunction, what it meant, and
19 after that there was -- it was loud and clear through
20 all the speakers and the chiefs in that meeting that
21 we will not take any food fishing permits for 1986.
22 That was very loud and clear. And that we have our
23 own legal system of how we manage the fishery, but we
24 had to develop strategies for the summer of how we
25 would defend people from being charged with contempt
26 of court or nets taken and that's what the decision
27 there was to establish one fishing camp and to protect
28 nets that were in the river and to protect the legal
29 system that we have and the laws that we have
30 concerning fishery. And that was the -- and the camp
31 was developed on the reserve in Gitwangak for that.
32 Q Where was the location, what is the name of that?
33 A The location was on Highway 16 and Highway 37 and the
34 fishing sites name is Ankii iss.
35 MR. GRANT: Do you have a spelling for that?
36 THE COURT: We had that yesterday. That's the one that belongs
37 to your grandfather, Haluus, was it not?
38 MR. GRANT: No, it's not.
39 THE COURT: No? A-N-T --
40 MR. GRANT: Do you have that one?
41 THE TRANSLATOR: It's 1168.
42 THE COURT: How is it spelled, please?
43 MR. PLANT: It was just before the 11:30 break yesterday that
44 the word was referred to.
45 THE TRANSLATOR: A-N-K-I-I, space, I-S-S.
46 MR. GRANT:
47 Q Who is the -- who owns that fishing site?

1 A It belongs to the, I believe it belongs to the Eagles.
2 THE COURT: I was given a different spelling for it yesterday.
3 A-N-K-I. Today I am given A-N-K-I-I.
4 THE TRANSLATOR: A-N-K-I-I-I.
5 THE COURT: I recall it was Mr. Grant who spelled it yesterday.
6 MR. GRANT: That probably explains it.
7 THE COURT: That's right.
8 MR. GRANT:
9 Q And this is a different site than the fishing site
10 that you use that belongs to your grandfather, Lelt,
11 is it?
12 A That's right.
13 Q And can you -- did certain chiefs authorize the use of
14 this site?
15 A Oh, yes, yes.
16 Q And did the Eagle Chiefs agree with this?
17 A Yes.
18 Q And can you tell the court what happened --
19 THE COURT: I am sorry, Mr. Grant, where did you say again this
20 site was?
21 A It's at the junction of Highway 16 and Highway 37.
22 THE COURT: 16 is the --
23 MR. GRANT: That's the Prince Rupert-Prince George.
24 THE COURT: And 37 is the one that crossers the river at
25 Gitwangak and goes on to Stewart, Cassiar?
26 A That's right.
27 MR. GRANT:
28 Q If you were crossing the river on that bridge going
29 north, could you describe where you would look to see
30 this -- first of all, could you see this fishing site
31 from the bridge?
32 A Yes, it's about 200 feet from the bridge.
33 Q Downstream or upstream?
34 A Downstream.
35 Q And on the highway side of the river?
36 A That's correct.
37 Q Now, was a fish camp set up at Ankii iss in the summer
38 of '86 after that meeting?
39 A Yes, a big smoke house was built, a traditional smoke
40 house, how -- it was about 20 by 30 feet.
41 Q Who built that?
42 A It was mainly just the people that were camped at the
43 site. It was mainly by the people that camped at the
44 site.
45 Q About how many people stayed at this fish camp?
46 A Between, on a regular basis, probably at least 40
47 people and sometimes up to 75 people that stayed

1 during or came by during the day.
2 Q And how -- who ran the camp on the fish site, was
3 it --
4 A It was mainly individuals that were at the camp.
5 Haluus was around most of the time, that's -- that was
6 Buddy Williams, he is a Frog Chief from Gitwangak, and
7 he was around most of the time. I was the one that
8 kind of gave direction most of the times that we were
9 there.
10 Q Were you present at the camp at different times?
11 A Yes, I was.
12 Q And was this camp set up, if I can use that term, by
13 the hereditary chiefs or by the band council?
14 A It was set up by the hereditary chiefs, like I said
15 before, the band council has nothing to do with the
16 fishery.
17 Q So what capacity were you present at the camp?
18 A I was myself, I was just there by myself. I didn't
19 want to be referred to being the title of the chief
20 councillor, I was just there as a Gitksan person.
21 Q Now, did the fishery, did a fishery occur at this fish
22 camp in the summer of '86?
23 A Yes, we had one net that we used and basically one
24 net, we mainly used one net that summer just to catch
25 salmon and distribute it around the community to some
26 of the elders in the community, the families that
27 needed the salmon. And the families, other families
28 in the community that just needed the salmon, and it
29 was where we caught it and distributed it in the
30 community. And it was also -- we also smoked the
31 salmon in the smoke house, half dried and fully dried
32 and strips and some families even came to the camp and
33 jarred their own salmon. And other villages came,
34 from Kitwancool, that came and if they wanted salmon,
35 we would give them salmon. And some from Hagwilget,
36 Moricetown, came, and if they wanted the salmon, we
37 would give them salmon. And it was a good time to --
38 for people to get together and learn how to process
39 the salmon, how to smoke it properly.
40 Q Was there any interference by fisheries officers with
41 the fishery at Ankii iss in the summer of 1986?
42 A We had encounters on July 3rd, approximately 1
43 o'clock, we had encounters with about five fishery
44 officers came and they had an RCMP that was in an
45 unmarked car, they came and told us that they had a
46 report of an illegal net in the river, and we told
47 them that the nets are not illegal, and they insisted

that they wanted to go down to the river and check out their illegal net and we said our nets are not illegal and they tried to tell us that the Fisheries Act entitles them to go down to the river and check it out and we told them that we have our own laws as well as with respect to the fishery that we have to uphold and our nets are not illegal. But they insisted then in trying to get down to the river and we told them that we have laws as well with respect to trespass and they continued to insist to go down to the river and they went by me and other members that were there, formed a human chain and they didn't allow them, and they said they will be back, and while they were leaving, all the little kids in the -- and the women and the group that was there, just as they were leaving, threw a whole pile of marshmallows at them and they never did come back after that.

Q And were you or did you speak at that altercation or at that time?

A Yes, I was the spokesman for the group.

Q Who selected you as the spokesman?

A There was just everybody that was at that particular site appointed me to be their spokesman.

MR. GRANT: My lord, as I indicated yesterday, and I believe the defendants have had an opportunity to review this video. It's not that lengthy. It is of the incident that the witness has just described and it's not a re-enactment.

THE COURT: Is there any advantage to me seeing it?

MR. GRANT: Given the witness's description, I would like to take a break now and think that over and consult with my co-counsel on it. It may not be necessary.

THE COURT: All right. Thank you.

(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.

Wilf Roy
Official Reporter

(PROCEEDINGS RECOMMENCED AFTER MORNING RECESS)

THE REGISTRAR: Order in court.
THE COURT: Mr. Grant. Where is Mr. Grant? He is missing again. You see him here, you see him there, we can't find him anywhere.
MR. GRANT:
Q Mr. Williams, you mentioned before the break that at the time of July 3rd, 1986 you talked with these fisheries officers about your laws. What laws are you referring to? And here I am asking you -- you have given evidence about Gitksan laws, and you have also given evidence about this fisheries by-law.
A It was mainly our own Gitksan law.
Q And how does that Gitksan law apply to the circumstances that occurred on July 3rd, 1986, when the fisheries officers came?
A We were mainly following our own laws, the Gitksan law with respect to the fishery, and the Department of Fishery wanted to impose their Fishery Act on us.
Q And did they -- okay. Can you describe -- you indicated that the fishery officers did not return after this time. Was there any other incidents that occurred at Ank'ii iss at that fish camp in the summer of '86 involving fisheries officer?
A Yes, there was.
Q Can you explain what happened?
A In August --
MR. MACAULAY: My Lord, I have to arise to object to this evidence on the grounds of relevance. The witness now quite clearly has shifted from a narrative, an interesting narrative concerning the circumstances under which the Fishing by-law was about to be implemented and why it was. Now the evidence is that there is some sort of a contest between the fisheries officers operating under the provisions of the Fisheries Act and the Gitksan law concerning which we have heard much evidence. Your Lordship ruled on February 12th of this year that the pleadings, the Statement of Claim as it now stands does not raise the issue that this evidence addresses. I refer particularly to Your Lordship's Reasons for Judgment handed down on February 18th, following the submissions made on the 12th, at page 7, on which Your Lordship says:
"The Statement of Claim does not sufficiently allege the 'paramountcy' of the plaintiffs'

alleged rights over federal legislation such as that relating to fisheries and transportation. I do not think, in the present state of the pleadings, that the plaintiffs, even if entirely successful against the Province, would be entitled to a Judgment that would not be subject to federal legislation relating to such matters as fisheries, railways, airports and other activities authorized by federal legislation."

THE COURT: Thank you. Mr. Plant?

MR. PLANT: I support Mr. Macaulay's objection.

THE COURT: Mr. Grant?

MR. GRANT: My Lord --

THE COURT: What is the purpose of this evidence, Mr. Grant?

MR. GRANT: Well, it goes to the defence and provincial defence that their latest amendment -- but also the amendment -- just a moment, My Lord.

THE COURT: You see, as I understand the evidence, and counsel may be able to correct me, because I only heard what has been said in court and I haven't had time to read the Fisheries Act and other relevant legislation, but from what I gathered from what this witness has said, this by-law was passed by the Gitwangak Band and was not disallowed and stands as a piece of what might be generically called municipal legislation or something equivalent to that. They could have rethought the little acorn, one side or the other, presumably, would have one, but it wouldn't make any difference to what I have to decide as to what the rights of the parties are. I am not sure what the witness says -- been talking about when he said we agreed we won't implement the by-law.

MR. GRANT: Until June.

THE COURT: Until June 15th. But it had been passed and it had not been disallowed and it stood for whatever it stands for. Now, does anything that anybody does, either in pursuance to the by-law or in contravention of the by-law, really make any difference to the legal questions?

MR. GRANT: Well, the provincial defendant has raised in the latest set of amendments the issue of acquiescence, and the federal defendant has raised issuance of permits to Gitksan people as evidence from their pleadings, one can only interpret, but as evidence that the Gitksan have given up the rights of ownership and jurisdiction which they are asserting. The

1 evidence of this witness as to the acts in defence of
2 those rights is, in my submission, relevant. If it is
3 not relevant, then there is no basis for a defence of
4 acquiescence. If one uses your own analogy, if the
5 Gitksan have the rights, it doesn't matter if they
6 took permits, it doesn't matter what they did, they
7 have those legal rights. Well, that could very much
8 narrow some of the defences, but that certainly is not
9 the ambit of the cross-examination, and it is not the
10 ambit of the amendments made by the province. And
11 if -- My Lord, if we are going to deal or have to face
12 that defence of acquiescence, the witnesses -- the
13 plaintiffs must be able to adduce evidence to say we
14 have not acquiesced. We did not acquiesce in the
15 past. We did not acquiesce today. And the
16 circumstances surrounding the issuance of licences or
17 permits for fishing is, in my submission, My Lord,
18 relevant.
19 It's like what you said yesterday. It's not
20 enough -- it's not fair to say, well, he got a permit.
21 That may not be the end of the question. He got a
22 permit in fact. Okay. What are the circumstances
23 surrounding getting that permit? This is an issue
24 that we haven't raised. Its been raised by the
25 defendants, but it's an issue they are raising on
26 cross, so it's not something we can sit in the weeds
27 on and say to you at the end of the defence, can we
28 reply to it, because they may not have called any
29 evidence. They may say, well, it's all done in the
30 cross-examination.
31 THE COURT: Well, I would seriously doubt if any argument would
32 be addressed to me by the province, even if their plea
33 of acquiescence goes to fishing rights, based upon
34 something that happened post 1986, after the Writ was
35 issued. It doesn't seem to me that the acquiescence
36 that the province is pleading is with relation to acts
37 as recently as post 1986.
38 MR. GRANT: Well, you heard evidence led on cross-examination of
39 exactly that nature from the province, and I haven't
40 got the transcript --
41 THE COURT: If I have, its been because there is no objection,
42 and it -- made as part of the avalanche of evidence
43 that I have heard. But I am not sure, firstly,
44 whether the province is pleading acquiescence with
45 respect to fishing rights, but secondly, I doubt if
46 the province is asserting acquiescence in connection
47 with the observance or non-observance or the form of

1 dispute of observance relating to the 1986 by-law. I
2 suppose I should ask Mr. Plant if that's a concession
3 he can make.
4 MR. GRANT: My Lord -- but the point of it is this, is that the
5 witness's evidence is that the laws that he was
6 asserting on July 3rd, '86 was not the fisheries
7 by-law. What it was was the Gitksan law. And that's
8 the evidence of the witness, and that's what I submit
9 is relevant. And the example of the acquiescence
10 raised by the province was a plethora of documents
11 relating to a tree farm licence application, or two of
12 them, by the Moricetown Band, much of which occurred
13 after the issuance of the Writ.
14 Mr. Plant yesterday said the plaintiffs, as I
15 understood him, and I don't have the transcript in
16 front of me, the plaintiffs can't rely on conduct
17 after October 22nd, 1984, but the defendants can rely
18 on the plaintiffs' conduct after December 22nd, 1984,
19 and of course he's raising an objection about all the
20 subsequent conduct, which we'll have the benefit of
21 full and frank argument at some day.
22 But what I submit, My Lord, is that the evidence
23 about the circumstances surrounding the creation of
24 this by-law, which was initially introduced by the
25 federal or provincial defendant, and the evidence
26 surrounding the assertion of rights is relevant to the
27 defence of acquiescence. And the federal defence,
28 with all due respect, is so general that I can't say
29 that they are not going to argue acquiescence, unless
30 Mr. Macaulay can assure us of that today, because
31 their defence really is a general denial, and one may
32 say a cat's paw in the province defence in that sense,
33 and they may well raise the same issues. So I submit
34 that this evidence is relevant and should be allowed.
35 THE COURT: Mr. Plant, do you have a relpy to your friend's
36 point on the acquiescence?
37 MR. PLANT: I can give a reply to this extent. I can't at this
38 point speak as to the purpose for which the whole of
39 the evidence that we have sought to adduce during
40 cross-examination was adduced. My understanding of
41 the reason for the Moricetown Band timber sale
42 activity was it went to an issue concerning the
43 conservation activities of the plaintiffs in their
44 alleged accordance of clear-cutting, rather than to
45 the defence of acquiescence. I say that if we don't
46 succeed in the defence of acquiescence, on the basis
47 of the events that occurred prior to the issuance of

the Writ in October, 1984, I doubt very much whether we would succeed on the basis of the events which have occurred subsequent to that, because it would be my view that the issuance of the Writ is an act which whether it occurred too late in the day or not, finally amounts to an assertion of a claim in this court.

So without having put that altogether clear, what I want to say is that my view is that acquiescence is not the issue in relation to post 1984 events, and evidence adduced by the plaintiffs which seeks to rebut that defence is irrelevant. But I would hate to make that submission fully and finally without having had an opportunity to consider at least over the lunch hour. I would like very much to be able to come to Your Lordship and say nothing that occurred after October, 1984 is relevant to the defence of acquiescene. I am concerned that I can't do that yet, without having some further opportunity for reflect.

THE COURT: Thank you. Mr. Grant, have you got other things you can go on with to take up the rest of the morning?

MR. GRANT: Yes.

THE COURT: I would like you to leave that subject, then, until Mr. Plant has had a chance to make what I will hope will be a definitive statement, and if he can't, I think I will probably hear the evidence subject to the objection.

MR. GRANT: I have other evidence with respect to the fishery, and also other evidence -- you wish me to leave the fishery matter?

THE COURT: I don't think so. If it raises the same problem that Mr. Grant has -- Mr. Plant has spoken about, then no doubt I will hear from him again.

MR. GRANT: I'll broach the subject more, and hope that I --

THE COURT: Okay.

MR. GRANT:

Q Mr. Williams, has -- can you advise what, if any, other events that have occurred, and I will ask you in the period between 1977 and 1986, what you have just been describing with respect to the fishery and interference with your fishery, that is with the Gitksan fishery in Gitwangak, as a result of activities of fisheries officers?

A There have been a number of nets taken, a number of charges for obstruction, charges for illegal fishery, some nets were burnt, and nets being taken and not given back.

Q Has this happened to you personally?
A Yes, it has.
Q Okay.
A And during that same period there has been an increase in patrols by Department of Fisheries, increase of use of firearms, sidearms by fisheries officers, there have been R.C.M.P. undercover along with fishery officers. Jet boats are now used on the river. Helicopters and surveillance planes are now being used. Those are some of the -- there are a number of charges.
Q What has been the impact of this on elders in your village who fish?
A It's quite an impact. You know, some of the charges take a long time to process through the courts. I know one specific elder that has gone for at least four years through the courts to try and defend himself, and their nets taken. It's a real impact when you are without a net, and they are so hard to get. It costs a lot of money to get a net, a net that's suitable to the river.
Q Can you explain in more detail when you say it's so hard to get a net? How do you go about getting a net, and what do you have to do?
A We usually try and use leftover nets from the commercial fishery and to reduce them in size. It's not as deep as the commercial fishery is, and they are usually gotten from the coast, and it's almost custom made for the area, for the fishery around the Gitwangak area.
THE COURT: How deep a net do you use?
THE WITNESS: 30 mesh, I believe.
THE COURT: 30 mesh.
MR. GRANT:
Q And does the length of the nets vary, depending on where you are using it?
A There is the standard size. I believe they are about 20 fathoms, I think, the lengths that we use.
Q Do you know Art Matthew senior?
A Yes, I do.
Q Has any of these types of events affected him?
A Yes, it has.
Q Can you explain?
A He was fishing at Wilson Creek. They live there during the fishery from about beginning of May 'til middle of August, and that's where they do -- they have a Smoke House there. They do all their salmon

there, smoke and drying. And he had an encounter one year where early one morning a number of fishery officers with jet boats --

MR. PLANT: I'm not sure if this witness was present to witness this encounter, if we are getting this on hearsay or if it's background to some other point that may make it relevant and admissible.

THE COURT: Is it hearsay, Mr. Grant?

MR. GRANT:

Q Were you present at the time?

A I wasn't present. I was just present in court.

Q Okay. You were present in court and heard this description of these events occur in court?

A That's correct.

Q And can you tell us what was the effect of -- was his net taken?

A Yes, it was.

Q And what was the effect of that on Art Mathews and his fishery in that summer?

A You know, you have to scramble to try and get a net, because he has a fairly large family. And it's a substantial impact, you know, making sure that the timing is right when you take the salmon out of the river, and it delays the processing part through the Smoke House.

A It has an impact on the family and --

Q Do you know Jeffrey Morgan?

A Yes, I do.

Q And he's now deceased?

A That's right.

Q But he was the former Axtii hiikw?

A That's right.

Q And he -- was there any impact on his fishery by fisheries officers' conduct?

A He was forced to take a food permit -- food fishing permit. That's mainly because of his location, that he's about 12 miles from the main community of Gitwangak at Wilson Creek, and in order to save his net he has to take a food permit, mainly just to protect his nets.

Q Had he lost nets?

A Yes.

Q Do you know Jerry Harris?

A Yes, I do.

Q He's a younger person of your community?

A Yes, he is.

Q Does he fish actively in the river?

A Yes, he does.
Q And does he fish for elders and others?
A Yes.
Q And did he -- was there anything that occurred regarding his fishery that interfered with his fishery?
A His net was taken by fishery officers and was burnt at the dump.
Q Can you -- you described many of the activities of fisheries officers --
THE COURT: Mr. Williams, did you see that happen?
THE WITNESS: No, I didn't. I was just told about it, and I believe there is photos of the burning happening.
THE COURT: What authority would a fishery officer have to burn a net that he confiscated?
MR. GRANT: That matter is presently before this court. There is no authority, in my submission. There is absolutely not a single scintilla of authority to burn nets, but they did it.
THE COURT: Or any exhibits, I suppose.
MR. GRANT: Or anything, I suppose.
THE COURT: All right.
MR. GRANT: There is provision for forfeitures.
THE COURT: That's a different matter.
MR. GRANT: That's a different matter, yes.
Q Were other -- were nets of other people of your community burned at that time as well?
A I believe there was one other family, Emily Daniels' family, that was burnt at the same time as Jerry Harris's net.
Q And Emily Daniels is an elder in your community?
A That's right.
Q Can you -- you have described many incidents and the operation of fisheries officers and the R.C.M.P. officers with respect to the fishery at Gitwangak. Has that activity of enforcement in the period of time from 1977 to the present, has that activity intensified, increased, has it stayed about the same, or has it decreased as you were dealing with these things such as bylaws and the petition of right and everything else?
A It's intensified. Now they use undercover R.C.M.P. officers. I am aware of that. They have used that. And as I said earlier, there is surveillance planes that go by early in the morning, and helicopters are being used and jet boats, and there is more personnel every year.

1 Q Let's move to another area of evidence, Mr. Williams,
2 and I would like to ask you about logging on the
3 territory of the Gitwangak chiefs, and the impact of
4 this logging on the territory. Have you observed
5 logging on the territories of Gitwangak chiefs?
6 A Yes, I have.
7 Q And can you -- has this had an impact or effect on the
8 people, that is the chiefs of Gitwangak?
9 A Yes, it has.
10 Q Can you explain that to the courts, what you have
11 observed the terms of logging, and what the impact has
12 been?
13 A There is a fair bit of logging that's happening in
14 the -- on the back road to Hazelton. There is a fair
15 bit of logging that is happening right in the
16 Gitwangak chiefs' territory. There is logging that is
17 occurring on the -- around the Shandilla area.
18 Q That's Shandilla Creek?
19 A That's Shandilla Creek. Also in the Price Creek area.
20 There is logging activity happening in the Seven
21 Sisters area. There is logging activity happening in
22 the Wilson Creek area and also in the Oliver Creek
23 area.
24 MR. PLANT: The what creek area?
25 THE WITNESS: Oliver Creek and Flint Creek.
26 THE COURT: I'm sorry?
27 THE WITNESS: Flint Creek.
28 MR. GRANT:
29 Q Are all of these areas that you just described within
30 the territory of Gitwangak chiefs, which are part of
31 this -- who are plaintiffs in the court action?
32 A That's correct.
33 Q And over what period of time -- has this logging been
34 stable or has it increased in intensity within the
35 Gitwangak chief's territory over the last, let's say,
36 ten years?
37 A Oh, yes, it has increased.
38 Q Okay. What has been the impact of this logging on the
39 chiefs, and the use of the territories of the chiefs?
40 A There's some harsh statements that are made by the
41 chiefs in respect to noticing a fair amount of logging
42 that's happening. They use statements like lilixws,
43 and they use statements that says that, you know, we
44 are living here today on this reserve, and yet we see
45 all this logging activities that's happening around
46 us. And what the statement says in our own language
47 is that they are slurping up our resources.

1 Q Just one moment. Could you just get a spelling for
2 that word.
3 THE TRANSLATOR: L-i-l-i-x-w-s.
4 THE COURT: I'm sorry. Start again please.
5 THE TRANSLATOR: L-i-l-i-x-w-s.
6 THE COURT: Thank you. That means what? Slurping what?
7 MR. GRANT:
8 Q What does that mean?
9 A It means theft.
10 Q And you said they use a term which means like
11 slurping. What does that phrase -- that term use --
12 A Gildip ts'eek, the Gitksan word.
13 Q Can you give a spelling for that?
14 THE TRANSLATOR: G-i-l-d-i-p t-s'e-e-k.
15 MR. GRANT: E-e-k is it?
16 THE TRANSLATOR: E-e-k.
17 MR. GRANT:
18 Q And have the chiefs, the Gitwangak chiefs done
19 anything to respond to the logging activities within
20 their territories?
21 A The only attempt to respond at this time was a
22 blockade that happened at Oliver Creek that I am aware
23 of.
24 Q And were you present at the time the chiefs discussed
25 that?
26 A Yes, I was.
27 Q Can you explain what happened?
28 MR. PLANT: Well, to refer to my notes, if I can, the time and
29 the date.
30 THE COURT: Mr. Grant.
31 MR. GRANT:
32 Q When did this happen?
33 A This happened February of 1988.
34 Q Can you tell us what happened?
35 MR. PLANT: Well, again, unless it deals with some other issue
36 other than acquiescence and that question, would it
37 not be more convenient to defer hearing this evidence
38 until after the lunch break? It seems to me to be of
39 the same category. I may be incorrect.
40 THE COURT: Is there a difference, Mr. Grant?
41 MR. PLANT: Well, maybe we are on a -- I understood that the
42 dealings with the fishery -- I was following Mr.
43 Macaulay's objection that it was the question of
44 whether or not the issue of the fishery was raised.
45 That was one issue. This issue here -- the evidence
46 here is a -- is the evidence is being led to deal with
47 the affirmation and enforcement of Gitksan law, and

1 that's not --
2 THE COURT: Well, Mr. Grant, if the plaintiffs are still calling
3 the case at the beginning of September, as I sort of
4 expect they will be, any number of things could happen
5 over the summer between now and then, and indeed
6 throughout the rest of the trial. I hope they won't,
7 but surely I shouldn't be hearing about all these
8 things, should I?
9 MR. GRANT: Well --
10 THE COURT: Let us take the worst possible scenario. Serious
11 confrontations and allegations and cross allegations
12 and mutual finger pointing. Surely I shouldn't hear
13 all of that. And if not, it seems to me I shouldn't
14 hear what happened as recently as earlier this year.
15 We are here not to conduct a royal commission, we are
16 here to determine what the legal rights were of the
17 parties at the date of issuance of the Writ.
18 MR. GRANT: Well, My Lord, I go back to a point, which is this,
19 which is that the defence --
20 THE COURT: Well, you are back to the point of acquiescence.
21 MR. GRANT: No.
22 THE COURT: All right.
23 MR. GRANT: The defence raises the issue that the Gitksan, if
24 they had a legal system, ended long ago. Now, if the
25 example that the witness gave happened in September,
26 1984, or if it happened in January of 1988, I submit
27 if the example is a demonstration of the Gitksan law,
28 it's irrelevant as to which date that example
29 occurred.
30 THE COURT: No, I don't think, with respect, that's right, Mr.
31 Grant, simply because for practical reasons the law
32 has developed a defensive mechanism to make sure that
33 it doesn't become burdened down with self-serving
34 events. And as a matter of policy, it seems to me, I
35 shouldn't hear of things that happened since then,
36 otherwise if those matters were admissible, then
37 parties would go out and do all sorts of things that
38 would, if given in evidence, assist their case.
39 It seems to me that there are certain things that
40 happened in the course of litigation that you have,
41 since the issue of the Writ, that you have to hear
42 about. For example, a person who is injured in a car
43 accident, you can hear evidence of medical treatment
44 and recovery up to and including the date of the
45 trial, but I am not sure those things don't have to be
46 decided on policy grounds, in order to do what's right
47 in an individual case. But in a matter of this kind,

a spontaneous -- what's a neutral word -- encounter that the witnesses encounter can happen, and parties react and counter-react and over-react usually. But surely I have to be insulated from all of that, just because if parties know that the court's going to hear it, then they may go out and do these things.

I don't know if I'm creating -- I haven't heard this argued, and I'm not sure that I have read it, but my instincts tell me that I ought not to be hearing recent happenings, for fear that on policy grounds they are self-serving.

MR. GRANT: Well, the point, My Lord, as I say, is that the defendants, both defendants, have relied on conduct by the defendants and the plaintiffs subsequent to the initial issue of this action. In terms of the federal defendant, has relied on the issuance of permits after the date of the action, and the provincial defendant has relied on the issuance of licences and all kinds of other conduct. And in the very nature of this litigation, My Lord, I am not suggesting that everything that has occurred is relevant, but in order for the witness to -- the witness can explain something in a general term in an abstract way, but I submit it is much more cogent for you to understand, if he explains it with reference to a particular event, as to explaining how it operates in that context.

I would submit that if the provincial defendants can rely on the conduct of the Moricetown Bands, for example, which came to my mind and sticks in my mind as an example, and go on and on about these licences issued and all of these other events that have occurred subsequent to the issuance of the Writ, for this witness to talk about what the chiefs have done, whether it's before or after the event, which now we are talking about three and-a-half years from the initiation of the Writ, that suddenly to say, well, anything that happened after October 23rd, 1984 you can't hear. Maybe this would have been, you know -- I'm not raising this to say a plethora of evidence. We are halfway through that game or over halfway through that now, but that given that the defendants have done exactly that.

THE COURT: Well, I don't think we should be concerned about that. If the point is a valid one, I would disregard the evidence of what's happened since 1984. Putting in evidence of a licence, for example, is such a

simple administrative problem, it doesn't require any time or doesn't involve weighing any evidence and -- or doing more than accepting it as a fact, but when you are talking about encounters, unilateral and reactive actions and activities, well then you are getting into matters where you have to lead a lot of evidence. You have got to weigh the facts. You have to reach conclusions of fact, not for the simple fact that they have a permit, which is a straight foward thing that isn't open to any disputes, it's only the conclusions that are significant. And if a point is right, then I don't think I should be -- I should take -- give any heed to the other side of the questions, as you put it.

I am really troubled about the slippery slope that you got me on now. If we are going to start hearing events of the kind you are talking about, we may not be halfway through this game. We may just be starting. Any number of things might happen between now and the time that the plaintiffs close their case, or even the defence closes their case, if they want me to hear about it. I don't think the law expects me to hear those things.

MR. GRANT: The problem is quite simply this, My Lord, is that if the plaintiff -- if the defendants, the provincial defendant, as this witness has already testified, intensify after October of '84, for example, that he has indicated over the last ten years they have intensified, that there has been logging that has intensified in the area and that has had an increased impact, if that has occurred after October, 1984, therefore the plaintiffs react, then the province -- the provincial defendants says well, we have issued all these licences, it's all out the door. One of their defences is that issuance of licences leads to extinguishment per se, and they say, but don't, don't listen or hear what the plaintiffs have done about that, and I submit that the reality is that neither side can freeze time. We can't freeze it that events haven't occurred subsequent to October 22nd, 1984, and I submit in fact that the logging within the territory has been intensified since that time, and that there will be evidence to show that to you, and my friends will jump up and say well that's irrelevant.

THE COURT: Well, why can't somebody tell me its been intensified and let it go at that? Can't we ever accept anything in a simple straight forward way? Why

do I have to hear about every tree that's been cut down and every reaction? Logging was intensified and if they left it at that, we probably wouldn't be having this dialogue now.

MR. GRANT: But that's -- that's correct, the logging has been intensifed, that's one point, but in the agreement with respect to reserving the issue of quantification of damages, the provincial defendant made it very, very clear that the damages, the impact on the territories of the different chiefs would have to be demonstrated for you to make a ruling with respect --

THE COURT: Well, damages are always at large, and what I am talking about now in any way apply to that, but when we are talking about this part of the case, I just have a sense that I am not supposed to hear about these things.

MR. GRANT: Well, I am very worried about that, My Lord, because that plays exactly, in my submission, into the provincial defendant's approach to the case.

THE COURT: I don't see how.

MR. GRANT: Well, it makes no difference, after 20 or 30 years of clear-cutting the territory, which is the subject matter of this action, as to whether or not the plaintiffs in this case have a right to the trees that happen to be on there, except if we are going to then go into a massive compensatory scheme. If the defendants agreed not to start any new logging operations, I would agree, then we could all say everything stops as of October, '84, we'll just keep things the way they are, but the plaintiffs are reacting to what's happened subsequent to the issuance of the Writ, and I submit that if the defendants can raise that they have issued licences and authorized logging within the territory, then that goes to the issues of extinguishment, from the defendants approach, from what I understand from Mr. Goldie's opening at the beginning of the trial and some of the authorities, then that is the plaintiffs' reaction to that -- the plaintiffs' efforts to control their own territories, which is the plaintiffs' claim in this action is equally relevant. But I am not -- I must -- I can assure you of this. I don't see this as raising a wide open -- a plethora of events. The particular incident that I am referring to is to have the witness explain the operation of some of the Gitksan laws.

THE COURT: You don't know what's going to happen in the long hot summer.

MR. GRANT: I have some sense, though, My Lord -- I hope I have some sense of the balance of the plaintiffs' case. I don't know what's going to happen in the summer, but if I can adduce the evidence before you today of an example of explaining how the Gitksan laws have been operating through this witness, I see no need for me to call on September 7th to ask for similar evidence in the summer, because I will have established that point. That's what I am concerned about, leading that evidence.

THE COURT: All right. Thank you. Mr. Plant or Mr. Macaulay, do you have anything to add to this?

MR. PLANT: Well, my friend's submissions to Your Lordship raises some fairly important issues that in my submission are tied and arise directly out of the discussion we already had this morning. And I am sorry to be so -- ask to have the matter put off. I would only say this, is that I would be happy to address Your Lordship in a definitive way on this very subject matter.

Your Lordship will recall that notwithstanding my friend's persuasive estimation to the effects of -- that he doesn't intend to repeat himself, that we have now heard two witnesses testify about the Wilson Creek blockade. Mr. Mathews junior gave evidence on that subject. There has been evidence about the Oliver Creek incident, as I recall, if it's the same one I am thinking of, Mr. Williams, who was examined on commission, gave extensive evidence about blockades and similar unlawful activity occurring after the issuance of the Writ. I would be happy to find a way to try and excise that evidence with whatever consequences it may have for my defence, but I can't do that right now.

THE COURT: All right. Thank you. Mr. Macaulay?

MR. MACAULAY: My Lord, we do not object to evidence of -- relevant evidence of things that have happened since the commencement of the action. We may submit at the end that it's significant that those events occurred during the course of the action, but not before. That's an argument that is open to us. It may be a practical problem about reviewing every confrontation and incident on logging roads or on the river, but I can't think of any principle, other than the very general that Your Lordship drew our attention to, which is really basic on public policy and the orderly administration of justice would exclude that evidence,

and there may be greater harm done in excluding it in the long run.

We have had an awful lot of evidence in this trial that might not have been admitted by the trial judge sitting in an ordinary trial regarding ordinary issues of the kinds we usually deal with in court. They may be perceived as -- the plaintiffs are unduly fettered by being confined to events that occurred --

THE COURT: Thank you, Mr. Macaulay. I am going to give -- I'm not going to expropriate counsel's lunch hour, but I am going to give counsel an opportunity to look at the authorities, if they want, and I will deal with this matter at 2 o'clock. If counsel don't have anything significant further to submit on this question, I want to think about it myself and -- but we have to get on with the trial, and counsel can spend their lunch hour and forty minutes as they may be advised.

(PROCEEDINGS ADJOURNED FOR THE LUNCHEON RECESS AT 12:20 P.M.)

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

LORI OXLEY
OFFICIAL REPORTER
UNITED REPORTING SERVICE LTD.

1 (PROCEEDINGS RESUMED AT 2 O'CLOCK P.M.)
2 THE REGISTRAR: Delgamuukw versus Her Majesty the Queen, at bar,
3 my lord.
4 THE COURT: Anything further?
5 MR. PLANT: I am prepared to address your lordship.
6 I have three points, the first is that paragraph 39
7 (b) of the -- what will eventually become the further,
8 further amended statement of defence, that is to say
9 the amendment that was recently granted by your
10 lordship, is confined to acts occurring prior to the
11 commencement of this action, because the amendment
12 deals with the delay in bringing such an action. Once
13 the action is commenced, subsequent events have no
14 bearing on that defence. That disposes of my friend's
15 argument in support of the admissability of some
16 evidence on the basis that it was responsive to our
17 laches and acquiescence defence, but it may not
18 dispose of the issue of relevance altogether.
19 Paragraphs 58, 62 and 63 of the statement of claim
20 should be referred to in this context. Paragraph 58
21 is the allegation that the plaintiffs continue to own
22 and exercise jurisdiction over the territory.
23 THE COURT: All right. I am sorry, I am going to have to
24 adjourn just for a moment, please.
25
26 (PROCEEDINGS ADJOURNED AND RESUMED FOLLOWING RECESS)
27
28 THE COURT: Sorry, Mr. Plant. Go ahead, please.
29 MR. PLANT: The first point, my lord, being that paragraph 39(b)
30 does not assist the plaintiffs.
31 There are three paragraphs in the statement of
32 claim that allege, where the plaintiffs allege
33 continuing ownership and jurisdiction over the lands
34 and the resources which are the subject matter of the
35 action.
36 Rightly or wrongly, it's been our construction of
37 those pleadings that they are directed to asking your
38 lordship at the end of the day to make a declaration
39 that as of that time the plaintiffs have those, the
40 rights that are alleged. And our defence has been
41 responsive to that, to those allegations, both in
42 terms of the pleadings and in terms of the evidence
43 that we have adduced. So, in practical terms, we have
44 understood that the plaintiffs are saying that they
45 are doing things now which support their allegation
46 that they continue to own and exercise jurisdiction
47 over the territory and it's open to us to lead

1 evidence which rebuts those assertions.
2 If the plaintiffs' case, if we have construed the
3 plaintiffs' case incorrectly, if their case is
4 directed at asking your lordship to declare that as of
5 October 23rd, 1984, they had rights, then what flows,
6 what has happened after October 23rd, '84, in my
7 submission, comes under the heading of consequences
8 and cannot be relevant in support of the assertion of
9 rights existing or not existing.
10 So, in effect, it's -- I am saying that the ball is
11 really in my friend's court on that. If my friend
12 says, we are asking you for a declaration that as of
13 October 23, 1984, the plaintiffs owned and exercised
14 jurisdiction over the territory, then I would argue
15 that a great deal of evidence that's being heard at
16 trial is irrelevant and if that has the effect of
17 throwing out evidence that we have sought to lead by
18 way of cross-examination, then we are happy to live
19 with those consequences or the consequences in those
20 terms. But, I can't, at the moment, I am really
21 governed by our view of the pleadings on that point.
22 The third point which may be more responsive to
23 your lordship's concerns, the question of statements
24 made after commencement of an action, and I have not
25 had an opportunity to review the law in any detail
26 over the lunch break, but in Phipson's text there is,
27 in paragraph 24-39, under the -- in the chapter
28 Statements By Deceased Persons under the heading
29 Declarations As To Public Or General Rights, there is
30 the following statement: "Declarations made in direct
31 support of a claim contemplated to be brought by the
32 declarant or otherwise obviously to subserve his own
33 interest will be rejected but if no dispute has arisen
34 or claim being contemplated the fact that the
35 declarations tend to support his own title or the
36 declarant stood or believed he stood in pari juri with
37 the party relying on them, affects their weight only
38 and not their admissibility."
39 Now, I have sometimes heard it said that you can
40 find support in Phipson for any proposition of the law
41 of evidence that you want to make. But it does seem
42 to me that there is, at least, at the very least, a
43 question of weight when we have evidence in the form
44 of statements by this witness or activity by this
45 witness, after the commencement of the action, which
46 is really just intending to -- intended to support the
47 claim already made. I cannot at this point, though,

say that it goes beyond weight to a question of admissibility in the terms that your lordship was describing before the lunch adjournment.

THE COURT: Thank you. Mr. Macaulay?

MR. MACAULAY: My lord, the only article and authority I have been able to locate in the short time available, it's Sopinka and Lederman.

THE COURT: That's reasonably authoritative now.

MR. MACAULAY: Yes. That's right. Well-known authors, my lord.

In which the general proposition is stated as follows: "There is a general exclusionary rule against the admission of self-serving evidence, although contradictory statements may be used against a statement, 'you are not entitled to give evidence of statements on other occasions by the witness in confirmation of testimony.'" Then the author goes on to examine that proposition in various circumstances and comes to the conclusion that that rule should not be extended to conduct, although a very early English case involving a gift or an alleged gift, seems to be authority for the contrary, an English case of 1818.

In the case at bar, leaving aside entirely for the moment the question of relevance, that is whether it's relevant on the pleadings or not, when this witness gave evidence that he confronted fisheries officers, and asserted his law, that might be interpreted as a conduct or an act rather than a statement. But if the witness went on to say, this is what I said to him, I said A, I said B and I said C, that would be self-serving and would offend against the rule.

I am just trying to apply what the authors of this learned work have to say about self-serving evidence to a particular piece of evidence that this witness has just given. Perhaps that's the best, as close as we can come to a satisfactory solution to this problem.

THE COURT: Thank you.

Mr. Grant, I think I am going to allow you to call the evidence, subject to the objection. I am almost convinced, but not quite, that it is not admissible, and I think in the middle of a trial, we have to get on with it.

I don't want to pre-judge anything, I am going to allow this evidence to be adduced because the witness is here and he is in the box, and I think we should err on the side of admissibility. It's always been my policy, that is not to err, but if to err, err on the

1 side of admissibility. But if other things happen
2 during the course of the summer, I give you fair
3 warning that I think I will follow my instincts on
4 that and say that I am not going to pre-judge that
5 blindly, but that is my present position. You may
6 call this evidence subject to Mr. Plant's objection,
7 but if somebody raises the subject as to the what the
8 evidence is, that is before the court.
9 Thank you.
10 MR. GRANT: Thank you.
11
12 EXAMINATION IN CHIEF BY MR. GRANT: (Continued)
13
14 MR. GRANT:
15 Q Mr. Williams you were talking about the impact of
16 logging on the territories of the Gitwangak chiefs,
17 could you or have you observed whether that logging
18 has, the logging activities on the Gitwangak chiefs'
19 territories has, since 1984, has been stable, that is,
20 gone on at about the same rate, has decreased or has
21 increased since the commencement of this court action?
22 A Logging activity has increased.
23 Q And can you give examples of where it has increased,
24 where it has commenced since 1984 that it wasn't going
25 on before?
26 A There is logging activity happening at Oliver Creek,
27 logging activity happening in the Clint Creek area,
28 logging activity happening in the Wilson Creek area,
29 and logging activity happening in the back road to
30 Hazelton from Gitwangak.
31 Q Has all that logging that you have just referred to
32 happened since or commenced since 1984 in those areas?
33 A That's correct.
34 Q Now, whose territory is Oliver Creek on?
35 A That's Luulak's.
36 Q Now, can you describe what happened with respect to
37 Luulak's territory and the logging that occurred
38 there? You commenced to explain that something
39 occurred in February of this year, and if you could
40 advise the court of your involvement or the basis of
41 your knowledge of it?
42 A I was approached on the morning of -- I can't remember
43 the exact day, in February, I was informed by Stanley
44 Williams that there was logging activity happening
45 adjacent to Highway 16 near Oliver Creek and he told
46 me about the logging that was happening there, and I
47 then called Mr. Ryan, Don Ryan at the Tribal Council,

we -- he immediately came down that afternoon and we went and visited the site and we then agreed that we would have a meeting that evening. The chiefs of the Gitwangak were at that meeting that evening.

Q Where was that?

A That was at the community hall.

Q In Gitwangak?

A In Gitwangak. And Stanley Williams presented the information that said there was logging that was happening, meanwhile this court case was continuing, and it was undermining the chiefs' ownership of the land.

THE COURT: Sorry, what year are we talking about?

A 1988, February, 1988.

THE COURT: Thank you.

A It was undermining the chiefs' ownership and authority over their territory and the province was taking the strong position that if you don't stand up to your territory, you have lost your rights. And that was explained to people and they immediately stated that there would be no more logging and that logging at Oliver Creek should stop. I made my position very clear at that meeting that the band council has no --

THE COURT: I shouldn't be hearing all this, Mr. Grant, should I, about what somebody said to somebody else?

MR. GRANT: Well, the witness is only explaining what -- I think this goes to the relationship of the chiefs and the band council, my lord, what he just saying right now.

THE COURT: Well what head of admissibility does it fall under?

MR. GRANT: Well, the witness is just about to say what he, his position was, that is his involvement, I asked him what his involvement was --

THE COURT: Surely the most I can hear is what happened. Surely not what they said to each other. This is totally in the absence of the other parties to the litigation. It's the clearest kind of hearsay.

MR. GRANT: This witness can be cross-examined on this.

THE COURT: Mr. Grant, that's an exploded theory of the admissability rule.

MR. GRANT: I am talking about what this witness said. I will ask him what his involvement was, my lord, if I can.

THE COURT: You can't get both side of the conversation in and say what they said to each other in the absence of other parties. That's a common misunderstanding at the bar of what -- a witness can only say what he said to somebody, and the most outrageous circumstances. But we don't have that here. But surely you can tell

me what happened but I don't have to hear what everybody said to everybody.

MR. GRANT: I think what the witness said what his involvement was and maybe I will phrase it up --

THE COURT: He wants to tell me what his position is. Surely I ought not to be hearing that. I ought to be hearing what happened.

MR. GRANT: I will rephrase the question.

THE COURT: Thank you.

MR. GRANT:

Q Can you explain what your role or your involvement was in this? This was when you were chief councillor, wasn't it?

A Yes.

Q Can you explain what your role was and why you were involved in that?

A I was asked to helped out and I just helped, just helped in organizing the -- what the chiefs had wanted.

Q And what did you do and what happened?

A I went with them the next very morning to the site on the logging road and I was with other members of the band and notices were made out that -- and we did go down there early that morning and blocked off the access road to the site and gave the loggers the notices that what the chief said, and they were not allowed to enter that site.

Q Were hereditary chiefs there as well?

A Yes, they were.

Q Could you say who else was there with you that morning, which hereditary chiefs?

A There was Dax jok, that's Darlene Morgan; Allan Johnson, who is T'ewelasxw, Ksaux, and I can't remember all of them. There was a few there.

Q Just a moment. Can you just get those three names, Dax jok, T'ewelasxw and Ksaux?

THE COURT: Just the numbers would be sufficient, if you have them.

THE TRANSLATOR: I just spelled them out.

THE COURT: You did?

THE TRANSLATOR: Yes.

THE COURT: You don't have the numbers?

THE TRANSLATOR: No. D-A-X, space, J-O-K, and T'ewelasxw is T apostrophe, E-W-E-L-A-S-X-W and Ksaux is K-S-A-U-X, is number 63.

THE COURT: Thank you.

MR. GRANT:

Q Now, what were the notices that the chiefs arranged to give to the loggers, what did the notices state?
A The notices state to stop logging on that particular territory and to remove all their equipment.
Q Was there a time limit on those notices?
A The first notice there was no time limit on it.
Q And do you recall what day that was?
A I can't recall exactly what day it was.
Q And what happened next there?
A There was other, the first loggers were subcontractors that came and got the notice, then the contractor came and they were given notices, and then Bell Pole came out, who had owned the timber sale came out and talked, and they were also given notices as well.
MR. PLANT: Bill Pole?
A Bell Pole. And later that day the RCMP came around and checked out what was happening. They were also informed.
MR. GRANT:
Q And did the chiefs and yourself stay there all that day?
A Stayed there all that day.
Q And what happened next?
A That evening, there was another meeting at the community hall and there was a report made there,
Q Was there decisions made there as to what to do the next day?
A Yes, there was. There was a notice given to remove the equipment by a certain time, there was a deadline put on the notice to remove the equipment at a particular time, and I can't remember exactly what the time is. And the instructions from the chiefs were that if the notice, or if the equipment wasn't removed it would be seized.
Q Was that set out in the notice?
A That was set out in the notices. The time had lapsed on that, and the deadline was passed, and notices were made that the equipment was to be seized. And the arrangements were made to try to get a lowbed to remove the equipment, we were unable to secure a lowbed, and Friday, I am sure it was Friday, at 1 o'clock, the final notice was not honoured by the subcontractors and the equipment was seized, a 966 loader was then taken to another reserve and notices were properly put on a log skidder and a trailer that was on the site. There was also a notice given not to remove any of the logs that were on the site, as we

1 are getting close to one of the reserves belonging to
2 the band, the RCMP came and they seized the loader at
3 that time.
4 Q And were charges laid as a result of this incident
5 against any of the Gitksan chiefs?
6 A Yes, there was.
7 Q Who was that?
8 A Peter Turley, who is an Eagle, and his name is
9 Giila'wa.
10 MR. GRANT: Do you have a number for Giila'wa?
11 THE TRANSLATOR: Number 9.
12 MR. GRANT:
13 Q And you had indicated earlier these events and this
14 Oliver Creek was in Luulak's Territory, was Luulak
15 involved at all in these events?
16 A Yes.
17 Q Was she present?
18 A She was present I believe for three days.
19 Q And that is Sandra Williams.
20 MR. PLANT: I thought the witness said "he" was involved. I may
21 have misheard the witness' evidence.
22 MR. GRANT:
23 Q Who is Luulak?
24 A Luulak is Sandra Williams.
25 Q And you had mentioned Dax jok, is that Darlene Morgan?
26 A That's correct.
27 Q Was she a member of Luulak's house?
28 A That's correct.
29 Q And Luulak is a member of or is in the same house as
30 Lelt?
31 A That's correct.
32 Q Aside from Luulak, were other hereditary chiefs there
33 on each of the subsequent days after the first day?
34 A Yes, there was.
35 Q Can you just say some of those that you recall that
36 were there?
37 A Allan Johnson, Ray Morgan, there were other chiefs
38 from Kispiox that were there, Peter Turley was there.
39 Q Did logging resume at Oliver Creek after these three
40 days?
41 A Yes, it did.
42 Q Has logging recommenced there now?
43 A I believe they are finished now.
44 THE COURT: Where is Oliver Creek, please?
45 MR. GRANT:
46 Q Can you describe Oliver Creek in relation to Gitwangak
47 Village?

A It's approximately 35 miles midway between Gitwangak and Terrace, on Highway 16.
Q And is it -- is it within the territories claimed by the plaintiffs?
A Yes, it is. It's right near the boundary.
Q Maybe I will just refer you to here and you can just indicate by pointing approximately where Oliver Creek is on Exhibit 5.
A This is Big Oliver and this is Little Oliver and this is where exactly where the logging was happening.
THE COURT: Thank you.
MR. GRANT:
Q I would like to ask you about the Seven Sisters, you alluded to the Seven Sisters that there was logging going on there or proposed for there?
A Yes.
Q And which of the chiefs was involved or concerned about the logging activities at Seven Sisters?
A Wii Hlengwax and Haalus.
Q And did either of those chiefs approach you with respect to their concerns and their ideas on how to resolve it?
A Yes, both of them.
Q And when would that have been, approximately?
A In January of 1985.
Q Did anything -- has logging commenced on the Seven Sisters?
A Yes, there has.
Q And how is Wii Hlengwax and Haalus, were they doing anything to prevent that logging?
A I can't remember exactly. I can't recall it.
Q Now the Haalus who approached you would that have been Buddy Williams?
A Yes, that's right.
Q And he passed away in September of 1976?
A That's right.
Q I am sorry, '86.
I'd like to refer you to the document at tab 14 entitled a 1981 education report. It's a submission to the Board of School Trustees, School District 88 dated September, 1981. Are you familiar with that document?
A Yes, I am.
Q And were you involved in the authoring of this document?
A Yes, I was.
Q Can you explain to the court why this document was

prepared to School District 88?
A School District 88 wanted to review the Gitksan language programme that was in the Gitwangak Elementary School and we wanted to have some input in that review process. And out of that this document was prepared for that and presented to School District 88.
Q Now, the introduction refers to the history of education or the education of the Gitksan people --
MR. PLANT: I object to any reference to this document, my lord.
THE COURT: What's it about, Mr. Grant?
MR. GRANT: It's a submission prepared by this witness to the school board relating to education and I was just going to lead into the educational questions with respect to Gitwangak with reference to the document.
THE COURT: Under what head of admissibility do you find comfort?
MR. GRANT: I would submit that it's a document prepared by this witness himself and --
THE COURT: Well, that doesn't get you very far.
MR. GRANT: I mean, the -- I would submit that it is not hearsay because of that, this witness can be cross-examined on it. Mind you, I concur that it may well be my friends may object on the basis of their position that it is self-serving. There is some recommendations made in the document, to which I wish to refer the witness, in other words, this was a proposal put to the school district, I want to ask the witness what, if anything, has happened with respect to those those proposals. This was prepared seven years ago.
MR. PLANT: And fortunately I had disclosure to me yesterday, so I could spend three hours yesterday evening reading this 50, 60 page document. The document at tab 15, maybe not 15 but another nice one at tab 17, I have never seen until yesterday, and another long document at tab 18, another long document at tab 19, another long document at tab 20. Pages and pages of delightful information, most of which I was able to read last night but I can tell you that with respect to tab 14, my lord, I was unable to read the part commencing Native Rights and Self Determinations, an address by the Honourable Mr. Justice Thomas R. Berger of the Supreme Court of British Columbia, to the Upper Skeena Counselling and Legal Assistance Society, which occupies the last 23 pages of this document. I did not have time to read that. So I am not in a position intelligently to respond to it. But I am not seeking

to be unnecessarily obstreperous. If my friend had produced this document to me six months ago, and I had had an opportunity to read it, I may well have admitted it. But in the circumstances, particularly given some of the statements that are made, and in the first page or two, which I was able to read, I can't admit it, I can't accept the admissibility of this document. So I am driven to object to it.

THE COURT: Well, Mr. Grant, if Mr. Williams had written a text on Gitksan land claims, you couldn't introduce it in chief, could you?

MR. GRANT: Well, no, and I just want to clarify a couple of points. Number one is that I have no problem with excising any of these appendices, including the document my friend referred to. That's not the point. But to be more precise, the only point of this document that I wish to lead to the witness, is pages 14 through 16, which deals with recommendations. But if I gave an excised portion of a document, I was afraid that I would be faced with some objection there. There were recommendations made, the recommendations are listed. It's not a question of what --

THE COURT: But what are these recommendations, the opinions of the witness?

MR. GRANT: The recommendations are proposals to improve the education of Gitksan children, which is part of the evidence, my lord, of the continuing efforts to utilize the existing systems that are in place now to advance the position of the Gitksan to the extent possible. And I want to ask the witness as to the -- whether or not those were successful or whether they were followed or any of those, that type of question. That's what the point of the document is.

THE COURT: You see, what I -- I am not sure but I have the view that, the preliminary view, that what we are doing is just getting inundated with documents that are probably inadmissible when the evidence could be given vive voce, probably quite quickly and quite expeditiously. If the witness has knowledge of circumstances in the community, and has a solution to the problems, subject to possible objections on expert or opinion evidence, I think the underlying facts would probably be admissible and wouldn't take long. But when you ask me to receive and you ask your friends to agree to receive a lengthy document, with all kinds of information in it, what am I supposed to

do with all that information? Screen it and decide what I can regard as being the evidence of the witness or -- and then what comes from other people, or what is opinion evidence and what isn't? I just don't know what's in this document. That's not evidence. That's the trouble.

MR. GRANT: I am not concerned, my lord that this document itself go in as an exhibit. I wish to refer the witness to some of the facts with respect to Gitwangak in 1981, seven years ago, I would refer him to the document with reference to those facts and with respect to the recommendations which are a couple of pages.

THE COURT: At the moment, as presently advised, I see no difficulty in the witness giving me evidence of matters of which he has personal knowledge relating to circumstances in Gitwangak in 1981. I see no difficulty in that. Whether it's going to be useful or relevant at a later stage isn't my concern now. I think it probably would be admissible. It's the documents that are getting me into all that trouble that -- I am having my trouble seeing my way through that all.

MR. GRANT: Well, it's a relief, my lord, because I -- I have been facing many documents as well. I don't wish the court inundated with them.

THE COURT: I appreciate, of course, there is a difference between evidence in chief and cross-examination. That applies to both sides of the case depending on who happens to be calling evidence at any particular time. But -- and I am only dealing now with the admissibility of documents that this witness wrote or participated in and which you are tendering and that's generally regarded as admissible, as an admissibility no-no.

MR. GRANT: The only point, I would like to be able to use the document with respect to the facts the witness knows to refresh his memory.

THE COURT: What are you referring to?

MR. GRANT: I am referring to page 11, which talks about the dropout rate of the Gitwangak Indian Band at that time.

THE COURT: Well, if he has knowledge of what the dropout rate is and can state it, I think that it may well be admissible. I have in mind those wide-sweeping words of Chief Justice Dickson in Cuker and Manuel, and rather committed to applying that law. But are we

1 looking at page 11?
2 MR. GRANT: Page 11. Under local data, the third paragraph,
3 which is one sentence long.
4 THE COURT: Well, you see, there is the problem. You could have
5 asked him that question and we wouldn't have had all
6 that trouble. If you hadn't gotten mixed up on the
7 documents.
8 MR. GRANT: I am not pressing on the documents.
9 THE COURT: Go ahead.
10 MR. GRANT:
11 Q Did you, in 1981, at the time you were involved in
12 preparing this document, did you analyze what the
13 dropout rate was for Gitwangak at that time?
14 A Yes, we did.
15 Q What was it?
16 A It was 80 percent.
17 Q And did you --
18 THE COURT: That's at what level?
19 A That's at grade 12, highschool level.
20 THE COURT: That's 80 percent of all the students who were
21 enrolled in the school during --
22 A That's the native students.
23 THE COURT: Native students in the school?
24 A That never completed grade 12.
25 THE COURT: So if a student enrolled in grade eight and left
26 halfway through, he would be given the same weight in
27 this calculation as a student who dropped out in the
28 middle of grade 12?
29 A Hm-hmm.
30 THE COURT: Yes.
31 MR. GRANT:
32 Q But there was 80 percent of the band members?
33 A That's correct.
34 Q And they had not completed grade 12?
35 A That's right.
36 Q Now --
37 THE COURT: That's grade eight to 12, is it?
38 A Yes.
39 MR. GRANT:
40 Q Now, in -- were you involved in preparing
41 recommendations to School District 88 with respect to
42 proposals to improve education for Gitksan children?
43 A Yes, I was.
44 Q And I just ask you to look at pages 14 at the bottom,
45 under recommendations, page 15 and page 16 and 17.
46 Does that contain the recommendations that were made?
47 A Yes, it was.

1 Q Now, you have had a chance to review these
2 recommendations before giving evidence today?
3 MR. PLANT: He wrote them. Oh, I am sorry.
4 MR. GRANT:
5 Q You have had a chance to review these recommendations
6 again before you gave evidence today?
7 A Yes.
8 Q And have any of these recommendations been followed,
9 or been adopted by School District 88 since 1981?
10 A The only one that has been discussed in the last month
11 or two, was on page 15, item number (c). And they
12 have a budget of approximately $50,000 to hire a
13 Director of Indian education.
14 THE COURT: What's that, one teacher for one year?
15 A That is a staff member.
16 MR. GRANT: A director tore of Indian Education. That
17 recommendation, my lord, states that "The School
18 District 88 appoint a director of Indian Education
19 within the Department of Native Studies for the
20 purpose of supervising material for the district,
21 complete with the manpower and other resources to
22 accomplish this task and one full-time native student
23 studies co-ordinator to be situated in the Gitwangak
24 and Hazelton area."
25 It appears that recommendation is for two persons,
26 Director of Indian Education and a Native Studies
27 Co-ordinator. Has that recommendation been followed
28 or considered with respect to both or just one of
29 those positions?
30 A Just the one.
31 Q The director of native education?
32 A That's correct.
33 Q And other than that none of the other recommendations
34 have been followed up on by the school district?
35 A That's correct.
36 Q And is the -- did that, the failure of the school
37 district to follow up on those recommendations, have
38 anything to do with the decisions that you and the
39 other people in Gitwangak made, including the
40 hereditary chiefs, concerning the establishment of
41 your own school?
42 A Yes, it did.
43 Q Can you elaborate on that, please?
44 A There is no improvement in the elementary/high school
45 in the Gitwangak Valley and that's why we took over
46 grades one to three back in the community in 1987.
47 MR. GRANT: Now, my lord, solely for the purposes of brevity

and as the witness referred to these recommendations, I would ask that the title page and the recommendations, and I will arrange for a copy to be made, starting at the bottom of page 14, 15, 16 and 17, that that be marked as an exhibit. And I will excise the balance of the document. Rather than reading through all of the recommendations and asking him if each of them was adopted individually. He has explained about them, seems to me to put it in context.

THE COURT: Mr. Plant?
MR. PLANT: No objection, my lord.
MR. MACAULAY: No objection, my lord.
THE COURT: All right. Title page and pages 13 --
THE REGISTRAR: 14 to 17.
THE COURT: Don't the recommendations start --
MR. GRANT: The bottom of page 14.

(EXHIBIT 576: DOCUMENT ENTITLED SUBMISSION TO BOARD OF SCHOOL TRUSTEES SCHOOL DISTRICT NUMBER 88, TERRACE DATED SEPTEMBER, 1981)

THE COURT: Sorry, I am -- the recommendations -- I see, at the bottom not at the top. Pages 14 to 17.
THE REGISTRAR: Exhibit 576, my lord, tab 14.
THE COURT: All right.
MR. GRANT:

Q Now, I would just like to ask you if you know of an organization called the Gitksan-Wet'suwet'en Education Society?
A Yes, I do.
Q And have you been involved in some of the programmes of the Gitksan-Wet'suwet'en Education Society?
A Yes, I have.
Q And have they been involved in educating Gitksan and Wet'suwet'en people in particular areas?
A Yes, they have.
Q Can you explain the areas of training that they have had?
A The initial one was the Native Indian Teacher Training Programme, the Fishery Technician Training Programme, the Forestry Technician Training Programme, and the Drug and Alcohol Addictions Programme.
Q And when was the Teacher Training programme, approximately?
A It was approximately started in 1982, I believe.
Q And where was that training, where did that take

1 place?
2 A That took place in Hazelton and with some studies
3 taking place in Victoria at the University of
4 Victoria.
5 Q Were teachers -- have qualified teachers graduated
6 from that programme?
7 A Yes, there have.
8 Q About how many students were in that programme?
9 A The initial student numbers were approximately 22
10 students.
11 Q And why was that programme initiated?
12 THE COURT: I am sorry, 22 were enrolled, I think the question
13 was how many graduated?
14 MR. GRANT: Yes, I didn't follow up on that.
15 Q You said the initial numbers were 22, do you recall
16 how many graduated?
17 A I am pretty sure there was around eight, eight
18 graduate.
19 Q Are they presently teaching in schools inside the area
20 or outside the area?
21 A Most of them are within the area.
22 Q That's within the Gitksan-Wet'suwet'en?
23 A That's correct.
24 Q Why that was programme initiated?
25 A It was mainly to try and get in -- increase the number
26 of native Indian teachers and to try and establish a
27 local training programme that would be in the
28 community and to have some cultural content of Gitksan
29 -Wet'suwet'en in the course.
30 Q Now, I think the second programme that you referred to
31 that this Gitksan-Wet'suwet'en Education Society was
32 involved in was the Fisheries Technician Programme?
33 A That's right.
34 Q About how many people were involved in that and when
35 was that programme started?
36 THE COURT: Is this forestry or fish?
37 MR. GRANT: Fisheries.
38 THE COURT: Thank you.
39 A There must have been at least 15 students in that
40 programme.
41 MR. GRANT:
42 Q How long was that programme for?
43 A I believe that was for approximately a year, a one-
44 year programme.
45 Q And what was the purpose of training fisheries
46 technicians?
47 A The purpose was mainly to look at the habitat and

1 document some of the habitat to learn a bit more about
2 fish biology, and to take care of the fishery source
3 and at least have some fish technicians for the
4 hereditary chiefs. That was the long-term plan on
5 that.
6 Q Were persons that were members of Gitwangak involved
7 in that programme with students, do you recall?
8 A No, I don't believe so.
9 Q I think the next programme you referred to was the
10 Forest Technician Programme?
11 A Yes.
12 Q And when was that programme initiated?
13 A That programme was initiated in October of 1987 and
14 has about 20 students that are in the programme.
15 Q And why was that programme commenced?
16 A It was similar to the Fishery Technician Programme, it
17 was mainly to learn about the forestry, learn about
18 the trees, the silviculture programmes, and to
19 document some of the management plans, and again it
20 was mainly to develop our own people with the
21 long-term plan that if we had the ownership and
22 jurisdiction of the chiefs, there would be technicians
23 available to undertake forestry activities.
24 Q Is that programme still going on now, are there
25 students still in that programme now?
26 A Yes, it is. It's a two year programme.
27 Q Was there a drug and alcohol counsellors' programme
28 set up by the education society?
29 A Yes, there was. It was mainly for -- in preparation
30 for the Wilp Sisatxw Treatment Centre, which was again
31 to get our own people involved and preparing to
32 counsel and have staff members available when the
33 treatment centre opened.
34 Q Is there any connection between these training
35 programmes set up by the education society and the
36 action of the chiefs, that is, the claims of the
37 chiefs in this case, with respect to the territory?
38 A As I said, with the fishery and with the forestry and
39 a lot of the -- the curriculum of these programmes,
40 incorporate the philosophies and values of the Gitksan
41 and Wet'suwet'en people and it's to prepare for when
42 the chiefs have full authority and ownership of their
43 territories, there would be these technical people
44 available to assist in management and controls of that
45 whole territory.
46 Q Now, I would just like to ask you briefly about the
47 Gitksan laws, the Gitksan legal system which many

other witnesses have given extensive evidence about, can you explain from what you have been taught by your grantfather and others, as to who would, under the Gitksan laws, have authority over the territory, let us say, the territory of a particular house?

A It's mainly the head chiefs in that house and that house itself that has authority over that territory.

Q And is there a Gitksan term or phrase that your grandfather would use in explaining that authority over the territory?

A Dax gyet.

MR. GRANT: Do you have a number for that?

THE TRANSLATOR: 664.

THE COURT: Thank you.

MR. GRANT: Thank you.

THE COURT: How do you spell it, please? Did you have --

THE TRANSLATOR: D-A-X, underlined, G-Y-E-T.

MR. PLANT: Excuse me for interrupting, but is the grandfather being spoken of here as the instructor Fred Johnson, Chief Lelt, who has testified on commission in this case?

MR. GRANT:

Q I referred to your grandfather, you meant Fred Johnson?

A That's correct.

Q And when there is a feast being held, who has the authority over how the feast is conducted and what happens in the feast ultimately?

A The authority is within that particular house group, that is, the main host of that feast, and is mainly the hereditary chief of that house is the major decision-maker along with his house members. They are the ones that are in main control of the feast.

Q And how -- well, let me ask you this: Does the authority of that house chief in the feast hall, connect to the authority of the chief on the territory?

A Yes, it does.

Q Can you explain how?

A What the chief is doing, that house group, the chief in that feast, what he is doing is demonstrating publicly in that feast to the other chiefs that he has invited in the feast hall, that he has laws that he has to follow for that particular feast and that he is demonstrating publicly that he has land, that he has fishing holes and that he has power and that he has wealth and that he owns the land and these are my

other members of my house, immediate house. That's what he is doing. He is publicly telling all the people in that feast hall, that this is who I am, I am a chief, I am a high chief, and this is my authority.

MR. GRANT: And would that apply to any Gitksan house at any Gitksan feast what you have just described?

A That's correct.

THE COURT: All right. Take the afternoon adjournment, please.

(Afternoon adjournment taken)

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

Wilf Roy
Official Reporter

(PROCEEDINGS RECOMMENCED AFTER RECESS)

THE REGISTRAR: Order in court.
THE COURT: Mr. Grant.
MR. GRANT:

Q Mr. Williams, I asked you before the break, you were talking about the relationship between the chiefs' authority, that is the house chiefs' authority and feast hall and his authority over his territory. I would like to ask you another aspect, again focusing on the feast and another part of your evidence, which does the Gitksan feast have any connection to education of the Gitksan?

A Yes, it does.

Q Can you explain that connection?

A The feast, when it's held, is an educational process in itself, whereby how the different chiefs are seated according to their rank. That's an educational process. The identity that you have to know the ranks of different chiefs and how they sit is educational. The procedures that happen at a feast is an educational process. The different types of the -- how the business is proceeded is an educational process. The names given at the feast is an educational process. How it is given and who christens individuals is a process of education. And different statements that are made at the feast are philosophies of the chiefs, and it's based on our value system. That's educational. And when you sit at a table, I explained a bit earlier the private discussions, that's educational. And the other part of it is that the land ownership, the different areas that the particular chief owns, who is the host, that's educational. And the verification of the high chiefs at the end of the feast, whether they agree or disagree with the statements and the business that's conducted is an educational process.

Q Would you see yourself at this stage in your life and at this stage as a chief in Malii's House as a student in that educational process in the feast hall, or as a teacher, or both?

A I'm still learning. I'm still being educated. And whatever I have learnt, I pass it on to the people in my generation and my nephew and my children.

Q You have referred to the fact that within the feast hall one of the things that is taught is the philosophies of the chiefs and the value systems of

the chiefs, which you referred to and described the other day. You also referred to the value systems of the Gitksan as being part of the programme of the training for the fish technicians and the forestry technicians. Are those part of the same value systems that you are talking about?

A Yes, it is.

Q And can you explain what part of that value system is being taught in the -- or was taught in the fisheries technician and the forestries industries technician programme?

A A lot of it is on habitat, you know. What you hear is you can't walk on where fish eggs are laid, you know, you can't even walk on it. How to clean out streams, where there is trees in the stream. How to take care of the salmon and respect the salmon. Don't play around with the salmon. Don't make fun of it. Don't laugh at it, and always return the eggs back into the river. Those are some of the values. And ensure that the salmon is protected for future generations.

Q And what about in the forestry field?

A Basically the same. Again, don't destroy the land because the basic philosophy is that we have to take care of the land now, to ensure that future generations that we pass on land to will have some -- will have the land in the future.

Q I would like to return again in this arm of evidence to the feast, and does the -- in the feast system is there -- is it connected to the laws of the Gitksan? Now, just to be clear, you have described how some of the laws of the feast hall were, as have other witnesses, but you also described the July, '86 incident, that you were upholding the laws with the fisheries officers. Are those laws that arise out of the feast system, or is there connection between the feast system and those Gitksan laws?

A Yes, there is.

Q And can you explain that connection?

A The feast is mainly demonstrating who has ownership to particular territories, who has access to those territories or the fishing sites, and there are certain laws that -- regarding access, regarding use of the territories or the sites, and who has a right to be on there, and who is an authority over it.

Q Okay. Do the chiefs have a method or have a way to enforce their laws today?

A They are very limited of how they can enforce their

1 laws, particularly the only area that I see in being
2 able to enforce is the usage of fishing sites. They
3 are very restricted to their own enforcement in that
4 area. And also on the land, that I can't just go and
5 use or you can't just go and use somebody else's
6 territory to go and hunt, and they'll -- they will,
7 you know, disagree with that and tell you that, you
8 know, you shouldn't be here.
9 Q Have you been involved at the time that you have been
10 the chief councillor or with the chiefs in trying to
11 improve methods of enforcement of the Gitksan laws?
12 A Yes, I have.
13 Q Can you explain to the court when that occurred and
14 what has gone on to improve the ability of the chiefs
15 to enforce their own laws?
16 A Basically its stemmed from the community, where we had
17 a number of domestic concerns in the community, and in
18 order to address those properly there was an
19 enforcement that we needed. The option that was
20 available to that was to develop our own policing
21 programme. We discussed that in December of 1987.
22 That concept was agreed to. We did discuss it again
23 in February of 1988, and that we presented to the
24 chiefs that -- how far do you want to take the
25 policing programme, and should we narrow it down just
26 to the reserves alone, and who should have the
27 authority over it. They endorsed the concept that it
28 should be the territory of the Gitwangak chiefs from
29 Legate Creek to Andimaul, and that's the -- and the
30 authority came from the hereditary chiefs of that
31 community, and not to limit it to domestic concerns,
32 but to develop our own fishery officers and our own
33 game wardens under the authority of the hereditary
34 chiefs.
35 Q Have you had a policing programme in effect developed
36 by your community since last December?
37 A No, we haven't.
38 Q Have you had any -- do you have any policing within
39 your community, aside from the R.C.M.P. visits to the
40 community?
41 A Yes, we do.
42 Q Can you explain what you do have?
43 A What we have is a used ex-police car that we bought at
44 an auction. It was an ex-Delta police car that we
45 bought. We bought some lights, police lights that are
46 on top of the car. We bought -- we have equipped it
47 with a radio telephone and also a radio scanner, and

we have three volunteers that volunteer, mainly on weekends, to police the community.
Q How long has that programme been going on?
A Since December of 1987.
Q And has that had any -- what were the problems within the community that you were trying to resolve with that policing?
A Well, mainly the R.C.M.P. in Hazelton was quite -- takes some time to respond to calls in the community, and sometimes they don't come, and that's why we wanted to develop our own police force.
Q And what kind of problems does your own police force deal with within the community?
A They deal with domestic disputes, family matters, patrol the village roads and investigate minor problems.
Q Can you give some other examples? You have said domestic disputes. What other kinds of -- maybe I could just refer you to Tab 21 and just, if you could, indicate there. There is a breakdown of the kinds of reports or offences that were reported to the police, and if you look under the section under A, under B, under C and under D, what kinds of matters does your own local police deal with now?
A Drinking and driving is one of the areas that they deal with.
Q How do they deal with that?
A Mainly if people are drinking and driving, they stop them and their keys are taken away and they are taken home. That's one area that -- and assaults. It's mainly going into a home where there is domestic disputes happening there, and talking to individuals and seeing whether they could resolve the problems.
Q Are they involved in preventing vandalism?
A Just by patroling in the community, the vandalism doesn't -- its been reduced.
Q And has the impaired driving -- has it had any impact on the impaired driving?
A It has greatly reduced the drinking and driving. Its greatly reduced the drinking and driving that happens.
Q Now, have you been involved in the development of expanding this police programme to the Legate Creek, Andimaul area?
A Just looking at developing the 16 week training programme.
Q What does that training programme --
A The training programme consists of physical training,

how to counsel individuals on domestic disputes, how to deal with drinking and driving, and how to use firearms properly, and how to write reports, and administrative procedures.

Q In the fishery by-law, exhibit 575 I believe, there was reference to the appointment of fisheries officers. Would this training programme include the training of persons to administer the fisheries?

A Yes.

Q When you were involved in the -- when the Oliver Creek incident occurred with respect to the logging, was your volunteer police officers involved in that?

A Yes, they were.

Q What was their involvement there?

A It was mainly to -- mainly there to keep the peace, talk to the R.C.M.P. That was mainly their role.

Q And were they successful in that function?

A Yes, they were.

Q I would like to again just return to the feast and go to another area, and that is, does the feast of the Gitksan have anything to do with the economics, the economic system of the Gitksan?

A Yes, it does.

Q And can you explain that?

A It's a redistribution of the wealth. Certain individuals are commissioned, like your -- from your father's side are commissioned to undertake certain tasks, and whatever wealth that you have is transferred or given over to your father's side. That's -- and whatever money or gifts that you have got in, that is given back to your father's side. And also the food that you bring to the feast is given out to all the other guests in the feast hall. There is usually more than enough food that is given out, redistributed, and at the end there is money that is given out as well to the high ranking chiefs and to your father's side or whoever you have asked to do certain things for that main house group.

Q When you say food is given out, is there a surplus of food that is more than people can eat in the feast itself?

A Oh, yes, there is lots of food that is given out.

Q And other witnesses have testified about the feast and that there is -- for example, food is brought in and kept at the door and then distributed. Is there a name for that accumulation of the food and the goods that are brought in and accumulated at the door?

A It's called Ligii will.
Q And what does that mean?
A It means all the gifts and all the food that is in your possession, and what it represents is the wealth of a particular house. The more food you have, it indicates the wealth of that particular chief in that house group.
THE COURT: I didn't get that wording.
MR. GRANT: I'll just ask Miss Howard for it.
THE TRANSLATOR: L-i-g-i-i w-i-l-l.
MR. GRANT:
Q I just want to -- again talk about the economics, and in relation to the feasts and the economics I would like to divert for a moment. You indicated you were the band social worker for a time for the Gitwangak band. When did you first see social assistance apply to your community?
A The first time was when my father was -- got hurt in -- I think it was around 1967 my father got hurt and he had to go to Hazelton to the Indian Affairs Department.
Q How did he get hurt?
A He cut his hand with a chain-saw.
Q This was while he was working?
A While he was working. And he had no other means of income, and he went to Hazelton and got a social assistance cheque, but I was unaware of that. But later on my mother told me how they just snuck around, not to be seen, and he didn't want anybody to know about it, because it was a terrible meaning in our language. It means that -- we have a word for it called Giintxw.
MR. GRANT: Do you have that word?
THE TRANSLATOR: G-i-i-n-t-x-w.
MR. GRANT:
Q What does that word mean? How would you translate it literally?
A That means when you are able bodied and healthy, that somebody just takes a spoon and hand feeds your mouth. That's what it means.
Q So it's a shameful term?
A That's right.
Q Is that shame of social assistance still felt today?
A To some extent, but not that much any more.
Q Is the economic redistribution in the feasts that you referred to, is that comparable to this term Giintxw or social assistance, or is it something quite

1 different?
2 A It's quite different.
3 Q Can you explain how it's viewed differently?
4 A We always used to live off the land. All the food and
5 all the activity came from the land, and you ensured
6 that you prepared berries, you prepared moose meat,
7 bear meat, salmon, you did all these things, and
8 planned out the amount of food that you have and to
9 survive all winter. And for some individuals that's
10 not been done any more, it's mainly through the
11 dependence on the social assistance programme.
12 Q You described how the resources from the land are
13 used. If you or Malii gives money and food to another
14 chief in the feast hall, how is that different than
15 when the Department of Indian affairs gives some
16 member of your community a social assistance cheque?
17 What do you see as the difference?
18 A You are depending on another form. You are depending
19 on the government and the Department of Indian Affairs
20 to -- you are relying on their budgets, and you are
21 relying on their policies of how they give out money,
22 and the social assistance programme. They are relying
23 on another form of government to have the money
24 available for you.
25 Q If you give out money in the feast hall to another
26 chief, does that other chief at some stage -- is it a
27 reciprocal relationship, or does it only go one way?
28 A I don't really --
29 Q When I say reciprocal, does that other chief at some
30 stage also distribute money to you and to others at
31 another --
32 A Yes, he does.
33 Q Within the Gitksan laws, as you understand them, are
34 Gitksan chiefs restricted to distributing only food
35 and money at the feast hall, or could they distribute
36 other things?
37 A They could distribute other things if they want.
38 Q Do you see that as a possibility in the future?
39 A Oh, yes, they distribute -- I have seen where they
40 have distributed guns that are worth a thousand
41 dollars, TV's, they have distributed that. More
42 expensive items that are distributed now. I can see
43 in the future that we have the rightful economic
44 benefits from our territories, it could get bigger and
45 more valuable as we gain the economic benefit from our
46 territories and redistribute that in the feast system.
47 Q Would that -- can you see, if that occurs, would

1 social assistance and these fundings from the
2 Department of Indian Affairs be necessary still?
3 A No, they wouldn't be.
4 MR. GRANT: My Lord, I just wanted to comment on one point. I
5 have put into the document book other documents
6 relating to what has been referred to in evidence as
7 devolution. In view of the comments made by Mr. Plant
8 this morning and the comments by Your Lordship, it is
9 my view that it's not necessarily relevant, and I
10 don't intend to examine the witness in chief on this.
11 If it's -- I may take a position, if it's raised on
12 cross-examination, and of course I just want to raise
13 this now, rather than getting into this in an area
14 that I now see is constrained, as it's something
15 entirely new that happened after October of '84, I, of
16 course, would reserve my right to raise -- to deal
17 with it on redirect, if my friends decide to raise it
18 and the court rules that they can introduce this
19 evidence. And I wish to say it now, because, of
20 course, if you just look at the index of the document
21 book, it's apparent it's not something that is -
-
22 hasn't come to my attention.
23 THE COURT: All right.
24 MR. GRANT: Subject to that, I wondered if I could have the
25 liberty of an early recess today. I don't anticipate
26 there would be anything more, but I would like to
27 review my notes.
28 THE COURT: I don't see any reason why we shouldn't adjourn a
29 few minutes early.
30 MR. GRANT: And I will be asking the clerk to excise the
31 documents. I will refer to that with the clerk.
32 THE COURT: All right. Mr. Williams, just one thing I wanted to
33 ask you. You say there is a 80 percent drop-out rate.
34 Do you know what the rate is province wide or in any
35 other non-Indian jurisdiction?
36 THE WITNESS: No, I don't know offhand.
37 THE COURT: All right. All right. We'll adjourn then until 10
38 o'clock tomorrow morning. Thank you.
39 THE REGISTRAR: Order in court. This court will adjourn 'til 10
40 a.m.
41
42 (PROCEEDINGS ADJOURNED AT 3:50 P.M.)
43
44
45
46
47

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.