Smithers, B. C.

November 30, 1988.

THE REGISTRAR: Witness, I remind you, you are still under oath.
THE COURT: Mr. McKenzie?
MR. MACKENZIE: My lord, before the cross-examination continues may I take this opportunity introduce your lordship to Mr. Darrell O'Byrne.
THE COURT: Yes, Thank you.
MR. MACKENZIE: Mr. O'Byrne practices in Terrace and will be assisting us in these cross-examinations. And, my lord, I would request leave to leave the court after I finish my remarks and have Mr. O'Byrne continue in my stead.
THE COURT: You don't have to have leave for that. An assistant with an independent bar can come and go as they wish.
MR. FREY: Miss Russell is in court, although not gowned, and she may have something to say on this preliminary matter.
MR. MACKENZIE: I have one other preliminary matter, my lord, and it is this: We completed the cross-examination of Thomas K. Morris on Monday afternoon. On Tuesday morning, we received a package of interview notes and some of those notes are -- relate to an interview with Thomas Morris and deal with the territory described in his territorial affidavit. The notes relate to the territory that was discussed and questioned upon in the cross-examination on Monday. Therefore, my lord, we apply to reopen Mr. Morris's cross-examination and it's our submission that apart from all the substantive and the other reasons that this would be a convenient -- convenient to do that while we are in Smithers at any time during the last next three days, while all counsel are here, rather than wait for the new year or having him come to Vancouver.

My lord, I have further submissions relating to that application but I think my friend has a preliminary response; is that correct?

MS. MANDELL: Well, I advised my friend that I have no knowledge of the delivery of the notes of Thomas K. Morris's interview and I thought this would be an appropriate application to be made before Mr. Grant when he is back in court, certainly tomorrow morning, with Johnny David.
MR. MACKENZIE: My lord, I have no objection to making the application and discussing with Mr. Grant tomorrow, and I would presume it would not cause serious added

1 inconvenience to Mr. Morris if he were to be requested
2 to return to Smithers. I think he lives in Burns
3 Lake -- or, correction, not in Burns Lake but down in
4 the southern lakes area.
5 THE COURT: All right. Well, if that's the convenient way to
6 proceed, that's satisfactory. Mr. Grant will be here
7 tomorrow morning?
8 MS. MANDELL: Yes.
9 THE COURT: Where is he today?
10 MS. MANDELL: He is in Moricetown preparing Johnny David.
11 THE COURT: All right. Now, I think that I should warn counsel
12 that I cannot sit late this afternoon, I have to go to
13 Vancouver by private plane at 4:30 in connection with
14 some other matters and returning later this evening.
15 So I have to leave promptly at 4 o'clock.
16 MR. MACKENZIE: My lord, with respect to that, to your
17 lordship's travel arrangements, I wonder if it might
18 be post to discuss were counsel the possibility of
19 doing the remaining cross-examinations this week out
20 of court so that your lordship would not be required
21 to return until Monday. We don't have an in-court
22 examination scheduled for Friday.
23 THE COURT: I am in counsels' hands. If the application has to
24 be heard tomorrow, then I have to come back.
25 MR. MACKENZIE: Well, my lord, perhaps we can discuss that with
26 counsel and meet your lordship's travel concerns and
27 perhaps have the application Monday.
28 THE COURT: Well, do counsel want to adjourn and discuss it now
29 or do it at the break?
30 MR. MACKENZIE: We can do it at the break.
31 THE COURT: I should say I am quite happy to come back, the
32 plane's been laid on and I can come back in the
33 morning and I would be happy to come back. If I am
34 not needed here, there are other things I can do in
35 Vancouver, but I have set this time aside and I can be
36 here tomorrow if I am needed.
37 MR. MACKENZIE: We will advise your lordship later.
38 THE COURT: Thank you.
39
40 CROSS-EXAMINATION BY MR. FREY: (Continued)
41
42 THE COURT: Mr. Frey?
43 MR. FREY:
44 Q Mr. Tom, yesterday we were discussing the Harold Price
45 Creek territory. And you told us yesterday that the
46 territory bordering on the southwest was Gilseyhu
47 territory; is that correct?

1 A Yes.
2 Q Now, yesterday you gave us the term Mesdzii Yex.
3 A Yes, that's right, Mesdzii Yex is Laksamshu House.
4 Q I understood yesterday that that was the name for the
5 Owl Clan or the Owl Crest; is that correct?
6 A It's a crest also.
7 Q All right. And does the term Mesdzii Yex apply to all
8 Laksamshu members?
9 A Yes, it's their crest and it's their house, all of
10 Laksamshu Clan.
11 Q And Smogelgem is a Mesdzii Yex chief?
12 A Yes, that's their crest also. And I am sure it is,
13 for sure it is theirs.
14 Q Sorry?
15 A It's theirs for sure.
16 Q And Kloum Khun is an Mesdzii Yex chief?
17 A They are the chiefs in the Mesdzii Yex, Kloum Khun,
18 Tsaibesa and Smogelgem.
19 THE COURT: I didn't get the name, I am sure I have it on two
20 pages ago, but what is the spelling of the kind of
21 chief that Smogelgem and Kloum Khun are?
22 MR. FREY: It's not the type of chief, it's another chief. It's
23 M-E-S-D-Z-I-I, Y-E-X.
24 THE COURT: All right. Thank you.
25 MR. FREY:
26 Q Now, Kloum Khun was Johnny Mack?
27 A Yes.
28 Q And he passed away recently?
29 A Yes, it wasn't too long ago.
30 Q And has his successor been named?
31 A Yes, one of my nephews, about a year ago, had a smoke
32 feast and be designated and also there is another one
33 in Moricetown that's going to be successor to replace
34 Kloum Khun.
35 Q And who are these two individuals?
36 A Suzie Dennis, who is going -- who is designated to be
37 the successor. Her name is Tabe Tutghus, and is the
38 one that is designated to be the successor of Kloum
39 Khun.
40 Q And can I have the spelling for Suzie Dennis's name
41 that was given?
42 THE TRANSLATOR: T-A-B-E, T-U-T-G-H-U-S.
43 MR. FREY:
44 Q Now, there was another name you mentioned as an
45 Mesdzii Yex chief and it was Tsaibesa?
46 A Yes, all the Laksamshu belong to Mesdzii Yex.
47 MR. FREY: Mr. Michell, can I have a spelling for Tsaibesa?

1 THE TRANSLATOR: T-S-A-I-B-E-S-A.
2 THE COURT: Is Tsaibesa the person that's been designated from
3 Moricetown?
4 A One of the -- my grandmother was Tsaibesa in Hagwilget
5 a long time ago and they were also around the area in
6 Babine also.
7 MR. FREY:
8 Q Well, I think what his lordship is asking about is
9 that you referred a couple of questions ago to a
10 successor to Kloum Khun from Moricetown and I
11 understand the successor from Moricetown is Suzie
12 Dennis; is that right?
13 A Suzie Dennis is going to be the successor out in the
14 Babine area, and the Moricetown people are designating
15 Pat Pierre to be the successor.
16 THE COURT: As successor to Kloum Khun?
17 A Pat Pierre is going to be designated as successor to
18 Kloum Khun in Moricetown is what I hear, and his name
19 was To ghes tai, and there was also an old -- an
20 elderly person out on the Babine who was To ghes tai
21 for the Babine area. His name was Lane William.
22 MR. FREY: Mr. Michell, can we have a spelling for that name?
23 THE TRANSLATOR: T-O, G-H-E-S, T-A-I.
24 THE COURT: Thank you.
25 MR. FREY:
26 Q Just so that I have this right, Pat Pierre is to
27 become Kloum Khun in Moricetown?
28 A Yes, that's what they talked about in Moricetown
29 and -- it hasn't happened yet and the same thing with
30 Suzie Dennis, the feast hasn't taken place yet.
31 Q Is Suzie Dennis going to become To ghes tai or is
32 Suzie Dennis going to become a Babine Kloum Khun?
33 A Yes, she is going to be taking the name Kloum Khun
34 because she is the daughter to my sister, and she is
35 also a grandchild of Kloum Khun.
36 Q So when the process of feasts is finished, there will
37 be Kloum Khun in Moricetown, who is Pat Pierre, and a
38 Kloum Khun in the Babine who is Suzie Dennis?
39 A Yes, that's the way it is.
40 Q Now, I am going back to the chief called Tsaibesa, and
41 that's -- today is that Stanley Wilson?
42 A I guess that's who we call Tsaibesa. Does he live in
43 Hagwilget?
44 Q I am afraid I don't know where he resides.
45 You're not certain today whether it's Stanley
46 Wilson?
47 A I don't know for sure if he is the one called

1 Tsaibesa.
2 Q Is Tsaibesa a separate house?
3 A No, they are all in the same house, Laksamshu House.
4 Q Well, in this lawsuit we have come to use the term
5 clan as applying to the Laksamshu Clan, and we have a
6 term in this lawsuit that we have used called house.
7 And I am wondering whether Tsaibesa is a separate
8 house from Kloum Khun and from Smogelgem?
9 A They are all sisters and they all belong to one house.
10 Q And you're now referring to your grandmother and her
11 two sisters?
12 A Yes.
13 Q And you're talking about your mother's mother?
14 A Yes.
15 Q And your mother's mother was Ma'ul, M-A-'-U-L?
16 A Yes.
17 Q Mr. Holland, can you pronounce that name for me?
18 A Ma'ul.
19 Q Did your grandmother have an English name?
20 A Millie.
21 Q Now, Ma'ul is a name in the House of Smogelgem?
22 A Yes, it's a name in Mesdzii Yex.
23 Q Well, when you say it's a name in the Mesdzii Yex, you
24 mean it's a name in the Owl Crest? And what I am
25 wondering is, is it a name in the House of Smogelgem?
26 A Yes.
27 Q One of your grandmother's sisters was Theresa Grey?
28 A Yes.
29 Q And she was in the House of Kloum Khun?
30 A Kloum Khun is in Mesdzii Yex and you keep going in the
31 different direction. How many Mesdzii Yex did your
32 grandmother teach you to ask all these questions?
33 Q Today I am here to ask the questions.
34 THE COURT: How are you spelling Grey?
35 MR. FREY: It's spelled G-R-E-Y.
36 Q Now, what name did Theresa Grey hold?
37 A Since yesterday, I told you Theresa Grey held the name
38 Kloum Khun. Have you not learnt it yet?
39 Q Your grantmother's other sister was Rose Brown?
40 A Yes, I have told you also the same thing about five
41 times since yesterday. I should know them, I was
42 raised amongst them.
43 Q Well, if you can tell, Mr. Tom, I am trying to follow
44 his evidence and I am trying to understand this so
45 that his lordship can understand it as well so he will
46 have to bear with us.
47 A How many times you ask me these questions --

1 THE COURT: Well, just a moment, please. I don't think these
2 names were given yesterday. I haven't got a note of
3 Rose Brown or Theresa Grey yesterday.
4 MR. FREY: The name wasn't given yesterday. He referred to his
5 grandmother's sister and he may have given her Indian
6 name as Kloum Khun but I am not certain of that.
7 THE COURT: Yes, I have three names, Ma'ul, Tsaibesa and Kloum
8 Khun, but the English names weren't given and I don't
9 think it's accurate for the witness to say that he has
10 given this five times. That isn't so.
11 MR. FREY:
12 Q That's correct, my lord. Rose Brown -- do you have an
13 answer there, Mr. Holland?
14 A He just -- my grandmother's sisters, Kloum Khun,
15 Tsaibesa is the ones I was talking about all this
16 time.
17 Q And Rose Brown is Tsaibesa?
18 A Yes.
19 Q And the three sisters were all in the same house?
20 A Yes, they always had been in the Mesdzii Yex.
21 Q I am sorry, I missed the last word?
22 A Mesdzii Yex.
23 Q Now, today are Smogelgem, Kloum Khun and Tsaibesa in
24 the same house?
25 A Yes, that is their house.
26 THE COURT: I'd like to know what house are they all in?
27 A In the Indian, it is called Mesdzii Yex.
28 THE COURT: All right. Thank you.
29 MR. FREY:
30 Q So, Mr. Tom, if someone said to you that Kloum Khun
31 was in a different house than Smogelgem, you would say
32 they were wrong?
33 A Yes, it wouldn't be right for me if they were to be in
34 different houses, because in Indian way they all
35 belong to Mesdzii Yex.
36 Q And in the same way it would be wrong if someone said
37 that Tsaibesa was in a separate house than Smogelgem?
38 A It wouldn't be right for me also if Tsaibesa was in a
39 different house. What other house would Tsaibesa
40 belong to?
41 Q Well, I am trying to find that out, Mr. Tom.
42 Your mother was Lucy Tom and she was in the House
43 of Smogelgem?
44 A Yes, she belonged to them because she was a grandchild
45 of Smogelgem. Johnny Dominic and Lucy Tom were
46 brother and sister. Smogelgem was the uncle.
47 Q And did your mother also hold the name Ma'ul?

1 A No, my mother's mother was Ma'ul.
2 Q Now, your father was a Alex Tom and he was Gitdumden?
3 A Yes.
4 Q And --
5 THE COURT: I am sorry the name?
6 MR. FREY: Gitdumden, it's the Wolf Clan. Does your lordship
7 need a spelling for that?
8 THE COURT: No, Thank you.
9 MR. FREY:
10 Q What house was your father in?
11 A My father was from up in the Takla area and his uncle
12 was Gil ugh un and then when he passed on, my father
13 was Gil ugh un and he belonged in Cass Yex.
14 MR. FREY: Can I get a spelling for Gil ugh un?
15 THE TRANSLATOR: G-I-L-,-U-G-H-,-U-N.
16 THE COURT: We didn't get the house name.
17 MR. FREY:
18 Q And Cass Yex is the head chief of that House Madeek?
19 A Madeek and Gil ugh un and Sk'a liil, Bagh K'un, they
20 are the head chiefs of that clan.
21 MR. FREY: Well, I believe there were two new names there, Mr.
22 Michell.
23 THE TRANSLATOR: Sk'a liil, S-K-'-A, L-I-I-L and Bagh K'un,
24 B-A-G-H, K-'-U-N.
25 MR. FREY: My lord, I believe the closest correspondence to the
26 plaintiffs in this lawsuit would be Madeek.
27 THE COURT: I see.
28 MR. FREY:
29 Q Mr. Tom, did you know Donald Grey?
30 A Yes, I know him.
31 Q And what clan was he in?
32 A He is of the Tsayu Clan and they were married because
33 they lived in different areas, different villages when
34 they met one another, and they are Laksamshu and
35 Tsayu.
36 Q When you say they were married, you mean Theresa Grey
37 and Donald Grey?
38 A Yes, they were living together when I stayed with
39 them, because she was one of my grandmothers.
40 Q So was Donald Grey your mother's father?
41 A My mother's father was a Gilseyhu, her name was Maskii
42 Boo. He came from the area called Nee ta wi t'ai.
43 MR. FREY: Well there, both a chief's name and a place name
44 there, Mr. Michell.
45 A This was his village and that's the way they pronounce
46 it and that is how I pronounce it.
47 THE TRANSLATOR: Maskii Boo, M-A-S-K-I-I, B-O-O and Nee ta wi

1 t'ai, N-E-E, T-A, W-I, T-'-A-I.
2 MR. FREY:
3 Q But, in any event, Donald Grey was Tsayu, is that
4 right?
5 A Yes, Tsayu.
6 Q What was his chief's name?
7 A I have been around there for sometime and I had never
8 heard of them having a chief name because he came from
9 west of there and in the Gitsegukla area.
10 Q Was he adopted into the Tsayu Clan?
11 A This was a long time ago and I don't know what took
12 place at that time.
13 Q Now, yesterday I asked you about the Sun Crest, and I
14 am going to ask you now, have you ever heard it said
15 that in previous decades the Sun Crest was a crest of
16 Smogelgem's house and not a crest of the House of
17 Kloum Khun?
18 A The sun is a crest, it is a crest of the Laksamshu and
19 it's always been like that from generation to
20 generation in time and the same with the houses.
21 Q So, you have never heard anyone say that it was just
22 Smogelgem's crest?
23 A The Sun Crest belongs to the Laksamshu, Kloum Khun,
24 Tsaibesa and all of them, it belongs to the Laksamshu
25 and when you go out to Babine area, it's the same
26 there, it belongs to Dinee wiil and Ag'wasa. And
27 wherever you go in this world, it is their crest.
28 MR. FREY: Can I have those two Babine names?
29 THE TRANSLATOR: D-I-N-E-E, W-I-I-L and A-G-'-W-A-S-A.
30 MR. FREY:
31 Q And it's the same with the Owl Crest, that's a crest
32 of all of Laksamshu and it's not just Kloum Khun's
33 crest?
34 A Yes, that's all the same as with all the other crests.
35 Q Now, yesterday, Mr. Tom, I just want to remind you of
36 one thing you said yesterday, you said that Johnny
37 Dominic was the only person who taught you regarding
38 his territory but at the same time that you were
39 working with Ben McKenzie.
40 A Ben McKenzie was with his grandfather and he looked
41 after his grandfather on the territory and when he
42 passed on, that is when my uncle, Johnny Dominic, took
43 over the territory, and then when he passed on that is
44 when I took over.
45 Q Did Ben McKenzie also learn about the territory from
46 Johnny Dominic?
47 A He learnt from McKenzie, that was his uncle, and

1 that's why he was on the territory with him and that's
2 where he learnt the territory.
3 Q Now, I am referring now to the Harold Price Creek
4 territory, and I have a name that I am going to spell
5 and I would like you to try and pronounce it, Mr.
6 Holland.
7 Do you need something to write it down, Mr.
8 Holland?
9 A I will give it a try.
10 MR. FREY: Now, the spelling I have is A-L, K-A-N-E-'-T-E. Now,
11 Mr. Holland, are you able to pronounce that word?
12 A Al Kane'te.
13 Q Have you ever heard that name, Mr. Tom?
14 A Al Kane'te, I have been in that area and it belongs to
15 Dew sum t'suk.
16 MR. FREY: If we can have that name. Mr. Michell?
17 THE TRANSLATOR: D-E-W, S-U-M, T-'-S-U-K.
18 MR. FREY:
19 Q Is that a Wet'suwet'en chief or a Babine chief?
20 A Babine.
21 Q That's a Babine chief.
22 Was that land -- and I am referring now to Al
23 K'anee tai --
24 A That is within Dew sum t'suk's territory.
25 Q That territory that we are talking about, was that
26 ever Wet'suwet'en territory?
27 A No.
28 Q Now, have you ever heard that Smogelgem's territory at
29 Harold Price Creek, used to belong to Kloum Khun?
30 A Kloum Khun also used the area, the territory, and in
31 the way our law works is that if somebody is not
32 occupied, if you were to ask them to come and use the
33 territory to support your families, in this way we
34 create employment, much as you would, what you call
35 employment and we do the same thing to support one
36 another.
37 Q So you have never heard that in previous generations
38 it belonged to Kloum Khun and not to Smogelgem, you
39 have never heard that?
40 A Yes, he has never heard that he has ever held the
41 territory. When I was with my uncle in that
42 territory, I knew that Kloum Khun and Peter Grey, they
43 were also using the territory at that time.
44 Q I am sorry, I missed a name, I knew that Kloum Khun
45 and someone were using the territory?
46 A Peter Grey.
47 Q Peter Grey.

1 Now, Chief McKenzie held the name Smogelgem?
2 A Yes.
3 Q And do you know whether Chief McKenzie was known as
4 David McKenzie?
5 A I don't think I was born at the time when David
6 McKenzie was alive. He could have been the brother of
7 McKenzie. I believe that David McKenzie was Johnny
8 David's father, where they held the territory out in
9 the Perow area. That is what I believe that Johnny
10 David's name is, as it is today.
11 THE COURT: I didn't get the name of that territory?
12 MR. FREY: Perow, P-E-R-O-W. That's the name on the government
13 maps, I believe, my lord.
14 Q You never knew David McKenzie?
15 A No, I have never seen him. He passed on when I wasn't
16 even around yet.
17 Q Have you ever heard of a chief called Chief Roosevelt?
18 A I heard of him but I don't know who it would be. That
19 was long time ago.
20 Q Had you ever heard from your elders that David
21 McKenzie ran the Hudson's Bay store in Hazelton?
22 A Which David?
23 Q McKenzie.
24 A No, I don't know about that.
25 Q Now, Mr. Tom, did you know that you're registered as a
26 member on a trapline along with Thomas Grey Tait?
27 A Yes, I know of that. Donald, he was Donald Grey's
28 nephew. He wasn't really entitled to it when he gave
29 it back to me.
30 THE COURT: What was the name, Mr. Frey?
31 MR. FREY: Thomas Grey Tait, T-A-I-T.
32 THE COURT: Thank you.
33 MR. FREY:
34 Q And he was Donald Grey's nephew?
35 A Yes, he was Donald Grey's nephew and Donald Grey came
36 from the Gitsegukla area.
37 Q Was Thomas Grey Tait in a Wet'suwet'en clan?
38 A Yes, at this time Laksamshu clan are all as one, even
39 with the Gitksan people.
40 THE COURT: Sorry?
41 A Gitksan people.
42 MR. FREY:
43 Q So, if I understand, Thomas Grey Tait was in the
44 Gitksan Fireweed Clan?
45 A All I knew is that he was in Hagwilget when I was
46 staying with my grandmother and also his brother,
47 Herbert Tait was there and then Peter Grey was also

1 there, who was adopted by and raised by my
2 grandmother.
3 Q So, you don't know which clan he was in?
4 A Tommy Tait is Laksamshu.
5 Q Now, Johnny Dominic was registered on that trapline
6 with Thomas Grey Tait; is that correct?
7 A My uncle, Johnny Dominic, held that area with the
8 advice of Donald Grey, Tommy Tait was registered on
9 there.
10 Q And are you aware that Johnny Dominic objected to
11 Tommy Tait being registered on the trapline?
12 A It wasn't so, he didn't object to it, because he was
13 helping my grandmother, he was entitled to go on there
14 and then when -- later on he transferred it back to
15 me.
16 Q So, if I understand your evidence, you're not aware
17 that Johnny Dominic made any objection to Tommy Tait
18 being on the land?
19 A I didn't know about that myself. After my uncle
20 passed on, Tommy knew about this, that is why he
21 returned the register to me.
22 Q When did you get back on the register, what year?
23 A I re-registered it about a year ago but Tommy Tait had
24 made arrangements long before that to have it
25 transferred back to me and on his advice I went to the
26 game warden and I took the papers back to him and I
27 asked him, "Are these the papers that you're talking
28 about?" And he said, "Yes, I had arranged that for
29 you a long time ago." And that is when he signed it
30 with Freddy George as a witness and then I took the
31 papers back.
32 Q Now, are you aware that during the 1960s Johnny
33 Dominic was trying to get Tommy Tait off the trapline
34 and get it transferred to you and your brothers?
35 A I know of that, we went to the Indian agent and on the
36 advice of Tommy Tait and he told us that it was our
37 own territory, he said, "for you to take it" and that
38 is what we did.
39 Q When you say "he told us", do you mean Tommy Tait or
40 the Indian agent?
41 A Yes, it was Tommy Tait.
42 Q And do you know when that happened, what year?
43 A I don't know what year it was, but I -- Tommy was the
44 one that told me that and then later he gave the
45 papers back to me.
46 Q All right. Now that was after Johnny Dominic's death;
47 is that right?

1 A Yes.
2 Q I am talking about almost 20 years before, I am
3 talking about in the 1960s, and what I am wondering is
4 if you ever heard that back then Johnny Dominic was
5 trying to get the registration away from Tommy Tait
6 and was trying to get it transferred to you and your
7 brothers, did you ever hear about that?
8 A Yes, I knew of my -- when my uncle told me that I
9 should be included in that registry.
10 Q And it wasn't until some 20 years later that you were
11 included on the registry?
12 A All this time, I trapped in the area I didn't see
13 anybody out there and Tommy had told me that "you are
14 entitled to this territory. So you should trap out
15 there, whenever you feel like" and that is when he
16 returned -- he transferred the register over to me.
17 Q But he told you that in the the 1980s?
18 A It could he have been around the 1980s. How do you
19 know about all of this information you're asking me
20 about?
21 Q The Indian agent has files on these things.
22 Now, do you know why you didn't get on the
23 registration in the 1960s when Johnny Dominic was
24 trying to get you on the registration?
25 A I was told, Tommy told me at that time that I was
26 included in the registry, and later on I found out
27 that it wasn't so, so I asked him about it and that is
28 when he told me that I -- the registry would be
29 returned back to me.
30 Q Now, Johnny Dominic had two daughters, didn't he?
31 A Yes.
32 Q And what clan were they?
33 A Glan tun.
34 THE COURT: I am sorry?
35 A Glan tun.
36 MR. FREY: Do you have a spelling for that, Mr. Michell?
37 THE TRANSLATOR: G-L-A-N, T-U-N.
38 MR. FREY:
39 Q Is that a Babine clan?
40 A As I mentioned before that all these clans, Glan tun,
41 Gilseyhu, Laksamshu, Gitdumden, they are clans, they
42 have never changed at all.
43 Q Well, I have never heard the name Glan tun before. It
44 may have occurred in evidence. Can you tell me, Mr.
45 Holland, what clan that is? Is there an English word
46 for that clan?
47 A Yes, that's the same as Laksilyu.

Q Frog?
A Frog.
Q Now, have you ever heard that Johnny Dominic attempted to will his trapline to his two daughters, have you ever heard that?
A Yes, he wanted them included but traditionally I was entitled to it and that is why I got the papers back for it now.
Q If Johnny Dominic had willed the traplines to his daughters and left you out, that wouldn't be right under Wet'suwet'en law?
A Yes, that wouldn't have been right at all.
Q Now, I am going to ask you some questions about the territory that you described in your affidavits or affidavit, excuse me. Now, do you read maps?
A I understand maps, but I can't see because my eyes are not very good.
Q All right. Well, then perhaps I can direct your attention to a certain place, do you know where Blunt Creek flows in to Harold Price Creek?
A Is that the creek that comes from Lots wenii? You mention these names in English and I don't know, I only know the area in my own language.
MR. FREY: Mr. Holland, do you know these names in Wet'suwet'en? You don't know the names in Wet'suwet'en? Some of them are on the affidavit, two of them are -- perhaps the affidavit could be put to Mr. Holland and he could work with the Wet'suwet'en names there.
Q Now, Mr. Holland the name for Blunt Creek is on page 2 of the affidavit, and I am at paragraph 5 now. And you will see that in paragraph 5 there is a description of the boundary and on the second line there is a name Xaaz Kwe; do you know where that creek is, Mr. Tom?
A This Xaaz Kwe is a Wet'suwet'en word, other than what I know, and --
Q Well, Mr. Tom --
MR. FREY: He should finish translating the answer just given.
A Ses Kwe or Xaaz Kwe and then there is a creek coming in from Lots Wenii, that's Laksilyu territory and there is one that I would call Lots Wenii.
Q Well, Mr. Tom, I am taking this out of your affidavit, and in your affidavit, and I am sure Mr. Holland will help me with the pronunciation here, Harold Price Creek is referred to to as Ses Kwe.
A Ses Kwe is all the way down the territory and there is

1 a big smokehouse there where my uncle -- at the
2 smokehouse there and I have been with him all through
3 that territory.
4 Q Now, is Ses Kwe Harold Price Creek?
5 A White man called it Harold Price Creek but me I call
6 it Ses Kwe and I have walked through that area and I
7 was raised through there and I always called it Ses
8 Kwe.
9 Q Now, there is a creek that flows into Harold Price
10 Creek and this is where you began your description of
11 the boundary of the territory, and I am going to ask
12 Mr. Holland again to try and pronounce that creek.
13 A The boundary line goes across and where it starts near
14 Ses Kwe and the Lots Wenii is a different, that is
15 Laksamshu people's territory, and this Xaaz Kwe, and I
16 am not sure of which is a Wet'suwet'en word, and there
17 is two creeks coming in from Lots Wenii and then
18 another creek coming in from the other area called
19 G'itnee Dzel, that also flows in to that creek.
20 MR. FREY: All right Mr. Michell that creek near the end of the
21 answer.
22 THE TRANSLATOR: G-'-I-T-N-E-E, D-Z-E-L.
23 MR. FREY: My lord, if you have the Attorney-General of Canada's
24 map and if you have Harold Price Creek, the overlays,
25 between the words Harold and Price if you go right
26 down the map you will see a relief line of 3,000,
27 relief figure of 3,000.
28 THE COURT: 3,000?
29 MR. FREY: Yes there, an elevation, 4,850 and then immediately
30 underneath that you will see in much lighter
31 lettering, a relief line, 3,000, and immediately
32 underneath that is a creek, running parallel. That's
33 the creek I am trying to direct the witness's
34 attention to.
35 THE COURT: Blunt Creek.
36 MR. FREY: It was not named on this map.
37 THE COURT: I suppose it comes up Blunt Mountain. All right.
38 MR. FREY:
39 Q Now, Mr. Tom, when you swore this affidavit did
40 someone translate it to you from English into Gitksan?
41 Or excuse me, from English into Wet'suwet'en?
42 A It was read to me in English.
43 Q Was it read to you in Wet'suwet'en?
44 A I have never heard of the word Xaaz Kwe but personally
45 myself I know the area well, I can walk around the
46 mountain and know every area. I know where all the
47 ground hogs are.

1 Q Mr. Tom, when you swore this affidavit, did someone
2 read the affidavit to you in Wet'suwet'en or was it
3 only read to you in English?
4 A It was read to me in English.
5 Q Mr. Tom, can you read English?
6 A If I could read English I would talk to you myself.
7 Q All right. Now, because you're not talking to me
8 yourself, when this affidavit was read to you in
9 English, did you understand all the words?
10 A I didn't understand -- I don't understand, that is why
11 I have a translator.
12 Q All right. But when you swore this affidavit, you
13 didn't have a translator?
14 A Referring to -- if you really want to know for sure, I
15 will take you up there where my uncle's house is and I
16 will show you every hole where a trap has been set,
17 and I will show you where my uncle went and where I
18 went.
19 Q Mr. Tom, do you remember on May 17th, 1988 in Burns
20 Lake, that you swore this affidavit, do you remember
21 when you swore it?
22 A Yes.
23 Q On that day, when you signed your name on this
24 affidavit, did someone read the affidavit to you in
25 Wet'suwet'en or was it only read to you in English?
26 A It was read to me in Wet'suwet'en and I might have
27 misunderstood the Wet'suwet'en word in there.
28 Q Who read it to you in Wet'suwet'en?
29 A Are you referring to translator here and also there is
30 one -- two other persons that was there when I signed
31 this.
32 Q On May 17th, 1988, Mr. Holland read the affidavit to
33 you in Wet'suwet'en?
34 A Yes.
35 Q All right.
36 A Like I told you before, I may have misunderstood this
37 word at that time.
38 MR. FREY: I am wondering because we started early --
39 THE COURT: I think we will take the morning adjournment now,
40 please.
41
42 (PROCEEDINGS ADJOURNED AND RESUMED FOLLOWING RECESS)
43
44 THE COURT: Mr. Frey.
45 MR. FREY:
46 Q Mr. Tom, do you remember back in May of 1988 in Burns
47 Lake when you swore this affidavit, do you remember

1 that part of the affidavit was a description of the
2 boundary of the territory starting at a point and
3 going around the territory and coming back to that
4 same point, do you remember that?
5 A Yes, I know.
6 Q Now, I understand that you said that you may not have
7 understood every word in the affidavit; is that
8 correct?
9 A At this point, I may have misunderstood that one word,
10 because I can't read it all.
11 Q All right. Now, I am now going to refer you to the
12 part of the affidavit where you actually describe the
13 boundary, where you actually go around the territory.
14 Just tell him that, Mr. Holland. All right. Now,
15 when that was read to you in May of 1988, it was Mr.
16 Holland that read it to you?
17 A Yes.
18 Q Now, Mr. Holland, what I am going to ask you to do
19 again, I am going to ask you to read the first line
20 and a half of the territorial description, so I am
21 going to ask you to read and translate into
22 Wet'suwet'en, the following words: "Starting at the
23 the confluence of the Ses Kwe, (Harold Price Creek)
24 and Xaaz Kwe (Blunt Creek) "
25 Q Now, Mr. Holland, you read the first line and a half
26 to him just now?
27 A Yes.
28 Q Now, Mr. Tom, do you understand what Mr. Holland just
29 read to you?
30 A Yes.
31 Q All right. He just read to you a passage about two
32 creeks, where two creeks meet, one of them is Harold
33 Price Creek and the second one is what the white man
34 calls Blunt Creek, do you know where he is talking
35 about?
36 A I know Ses Kwe, there is three creeks coming into it.
37 There is the three creeks that join in with Ses Kwe,
38 one coming from Soon Dzel, and the other one -- and
39 there is one small lake coming from -- one creek
40 coming from a small lake that's called Mesdzii Delmuh.
41 MR. FREY: Now, my lord, the first word that was used I believe
42 is found in the affidavit --
43 THE COURT: I don't have a copy of the affidavit.
44 MR. FREY: The first word referred to is under paragraph 7, I
45 can make it on the transcript, in paragraph 7 it's the
46 second mountain named.
47 Q Now, there is a creek that flows out of the west into

Creek, isn't that right, at the boundary
2 point?
3 A It flows west.
4 Q All right. On the other side, there is a creek that
5 you have mentioned in your affidavit that Mr. Holland
6 has read to you and I will have Mr. Holland pronounce
7 this again, but it's Xaaz Kwe, can you pronounce that?
8 Now, do you know where that creek is?
9 A I know all the creeks there but Xaaz Kwe is confusing
10 me.
11 Q All right. So, today, when Mr. Holland says that name
12 to you, you don't understand the name and you don't
13 know where that creek is?
14 A He hasn't heard about that, hasn't heard about the
15 name Xaaz Kwe.
16 Q All right. And it was Mr. Holland that read you that
17 name in May of 1988?
18 A I may have misunderstood it at that time and I
19 probably didn't hear it.
20 Q So, you may have misunderstood it in May of 1988 and
21 you don't recognize the name at all today?
22 A I may not have heard it. I haven't heard that name
23 before.
24 Q All right. And you don't recognize it today when Mr.
25 Holland says it to you?
26 A This affidavit was written out and -- but I do know my
27 own territory.
28 Q All right. Well, I am just trying to learn about your
29 territory too and the second name that occurs in your
30 affidavit is the name that Mr. Holland has read to
31 you, Xaaz Kwe, or as Mr. Holland will pronounce it --
32 THE COURT: I am sorry, Mr. Frey.
33 MS. MANDELL: I was going to object at this point. We have been
34 around this bush at least eight times and I think my
35 friend has established what the witness knows about
36 this name, he has established what he knew at the
37 time, how the confusion may or may not have occurred,
38 and I think at this point it's just badgering.
39 THE COURT: Well, I would agree with you that we have been
40 around it and around it, Ms. Mandell, but I have
41 difficulty understanding why there is any difficulty
42 now in identifying the confluence of these two water
43 courses. The witness says he knows every foot of the
44 territory.
45 MS. MANDELL: Well, perhaps if that's the problem, the witness
46 says there is three creeks that flow in.
47 THE COURT: And we've eliminated now the one coming from the

1 west. We are only concerned about the one coming from
2 the east, surely the witness knows what Mr. Frey is
3 talking about now if he knows the territory at all,
4 and I am sure he does.
5 MS. MANDELL: He then next should be asked what the name of the
6 other creek is and perhaps we can put this matter to
7 bed.
8 THE COURT: I have think Mr. Frey is trying manfully to get an
9 answer out of him. You might take Ms. Mandell's
10 suggestion if you are so advised.
11 MR. FREY: I am going to ask that question but there is another
12 point I want to get to first.
13 Q This name we are having trouble with today, Mr.
14 Holland, please say that name to the witness?
15 A Xaaz Kwe.
16 Q If someone told you that that creek was in Smogelgem's
17 Harold Price Creek territory, if someone said that to
18 you, would they be wrong?
19 A Yes, I have never heard that name and it wouldn't be
20 right for me. I know the area because I set traps in
21 there and all throughout that area.
22 Q Well, you have never heard that name as being one of
23 the places in the Harold Price Creek territory?
24 A Yes, I wouldn't recognize it because I don't know
25 what's written in here because I don't write English
26 at all.
27 Q I understand that. But Mr. Holland has just read you
28 the line and a half we are concerned about. And that
29 line -- and that has a name in it, the short passage
30 he read to you, and I understand your evidence today
31 is that you don't recognize that name, have I got that
32 right so far?
33 A Yes, I have told you that I don't know that name
34 though.
35 THE COURT: And that name is Xaaz Kwe?
36 MR. FREY: In the affidavit it says X-A-A-Z, Q-W-E, and it's
37 found in the second line of the boundary description.
38 THE COURT: I think Ms. Mandell's objection is right, he doesn't
39 recognize the name and I don't think you can take it
40 any further than that.
41 MR. FREY: Well, maybe I will use Ms. Mandell's technique.
42 Q I am referring you to the southwest corner of the
43 Harold Price Creek territory, do you know where I am
44 talking about?
45 A I think you're talking about -- we would be talking
46 about the creek coming from Loots Wenii.
47 Q That's right. That's the creek I am asking about.

1 A Well, that is what I call it, and you mentioned it
2 differently from what I know.
3 Q And just so we have this straight, what is your name
4 for that creek?
5 A Loots wenii t'sanlii.
6 MR. FREY: Mr. Michell?
7 THE TRANSLATOR: L-O-O-T-S, W-E-N-I-I, T-'-S-A-N-L-I-I.
8 MR. FREY:
9 Q Now, that creek runs down into Harold Price Creek,
10 doesn't it?
11 A Yes, that flows into -- yes, that's the one I was
12 telling you about earlier, except that I -- I have a
13 different name for it.
14 Q All right. Now, that creek itself, is that creek in
15 the Harold Price Creek territory?
16 A Yes, where it runs into Ses Kwe, would be in, within
17 the territory mentioned. But where it starts from is
18 somebody else's territory.
19 Q So in other words, if I walked up that creek five
20 miles, that's not Smogelgem's territory?
21 A Yes, you would be in somebody else's territory by
22 then.
23 Q And the land on the south side of that creek, that's
24 not in Smogelgem's territory either?
25 A On the south side of Ses Kwe would be in Smogelgem's
26 territory.
27 Q No, I mean on the south side of Lots wenii tsanii?
28 A Where the creek flows into Ses Kwe would be in
29 Smogelgem's territory but where it starts from is
30 somebody else's territory, over the hills.
31 Q So the land on the south bank of the creek is not part
32 of Smogelgem's territory?
33 A Where it flows into Smogelgem territory that would be
34 his but anything south of that would not be his, it
35 would belong to the people that you were talking about
36 yesterday.
37 Q Gilseyhu?
38 A Yes.
39 Q Now, pretend we are standing at that point where Loots
40 Wenii flows into Harold Price Creek, and I am going to
41 now direct your attention to the land on the other
42 side of Harold Price Creek, the land on the east bank
43 of Harold Price Creek.
44 A Yes.
45 MR. FREY: All right. My lord, just for your references on
46 Canada's map I am now questioning about the blue
47 shaded area.

1 THE COURT: Yes.
2 MR. FREY:
3 Q Now, I believe you have told me about these creeks
4 already, but there is a creek that flows in from the
5 east almost at the same point where Loots wenii
6 ts'anlii flows in from the west; is that right?
7 A Can you rephrase that?
8 Q Loots Wenii ts'anlii flows from the west into Harold
9 Price Creek, across the river and just a little bit
10 further upstream, there is a creek that flows in from
11 the east, do you know that creek?
12 A There is a creek coming from the east, from Al K'anee
13 T'ai, that's where Ses Kwe starts and it flows from
14 the east and there is a series of little creeks
15 running into that where it starts.
16 MR. FREY: Could we have that name, Mr. Michell?
17 THE TRANSLATOR: Which one?
18 MR. FREY: The creek that flows from the east from --
19 THE TRANSLATOR: Ah'l Gaa Neetaiy? It's on the affidavit.
20 MR. FREY: Where is it?
21 THE TRANSLATOR: Areas, A-H-'-L, G-A-A, N-E-E-T-A-I-Y.
22 MR. FREY: All right. That's found in paragraph 7, my lord.
23 THE COURT: Thank you.
24 MR. FREY:
25 Q Now, you were telling us before about three creeks
26 that ran together, do you recall that?
27 A There is two creeks coming in from the C'etneey Dzel,
28 and Loots wenii and one creek, Neen lii, do you know
29 where Neen lii is?
30 Q No, I don't know where that one is. Does that one
31 come in from the east?
32 A There is a small opening, a field there, there is a
33 small lake across in there and there is waterfalls
34 there and that falls is quite high.
35 Q But does it come in from the east, does to flow into
36 Harold Price Creek from the east?
37 A It doesn't come in from the east, it goes through the
38 waterfalls and then it enters into Ses Kwe.
39 Q All right. If you --
40 A Harold Price Creek or Ses Kwe, comes in from the east,
41 from Ah'l Gaa Neetaiy.
42 Q I want you to imagine, Mr. Tom, that you're standing
43 at the point where Loots wenii ts'anlii flows into
44 Harold Price Creek and I want you to imagine you're
45 standing on that point on the west bank looking across
46 Harold Price Creek to the east bank.
47 A There is another creek there up further where that

1 goes, there is one coming from Soon Dzel.
2 MR. FREY: Can I get the spelling for that creek, please?
3 THE TRANSLATOR: S-O-O-N, D-Z-E-L.
4 MR. FREY:
5 Q Have you ever heard that the white man calls that
6 Money Creek?
7 A I never heard it and I wouldn't understand it. I just
8 know the Indian name for it.
9 Q All right. But that creek is across the river from
10 the west bank of Harold Price Creek where we were
11 standing we were standing at the junctions of the two
12 creeks, looking at east bank, and that creek flows in
13 on the east bank; is that right?
14 A I believe that would be right because there is a lot
15 of creeks there, they come in from all directions
16 there.
17 Q All right. If you're standing at the point where
18 Loots wenii ts'anlii flows into the Harold Price
19 Creek, and you are looking across at the east bank, is
20 that Smogelgem's territory there?
21 A If I am standing at that spot you mentioned, how far
22 am I looking when I -- that creek you're talking
23 about?
24 Q You are standing where Loots wenii ts'anlii flows into
25 Harold Price Creek, you're standing on the west bank
26 of Harold Price Creek and you are looking across at
27 the east bank of Harold Price Creek, have you got
28 that?
29 A I mentioned before that there is that creek coming
30 into where it starts, Ses Kwe starts and there is
31 another creek coming into that.
32 Q That's right. Now, listen to my question. If you're
33 standing at that point on the west bank and you're
34 looking over to the east bank, that is Smogelgem's
35 territory over there on the east bank?
36 A No, I wouldn't be -- wouldn't be his territory. That
37 would be Dew sum ts'uk's territory?
38 THE COURT: What did he say?
39 MR. FREY: We had that spelling before, do you have that word?
40 THE TRANSLATOR: D-E-W, S-U-M, T-S-'-U-K.
41 MR. FREY:
42 Q It's not Smogelgem's territory, it's Babine territory?
43 A Yes.
44 Q And if someone said that was Smogelgem's territory
45 they would be wrong?
46 A If anybody said that they would be wrong.
47 Q Now, Mr. Tom, did you go to an all-clans feast in

1 Burns Lake in 1987?

2 A Yes, I was there.
3 Q And did you address the people at the all-clans feast?
4 A Yes.
5 Q All right. And what did you talk about when you were
6 addressing the people at the all-clans feast?
7 A Yes, at that time I spoke on the boundary on that
8 territory, because I had just got the papers back for
9 that area, and I spoke on Dew sum ts'uk's territory
10 and the Dinee ts'o K'ees, which is from Chapman Lake
11 on down.
12 MR. FREY: That last word, Mr. Michell?
13 THE TRANSLATOR: D-I-N-E-E, T-S-'-O, K-'-E-E-S.
14 THE COURT: Thank you.
15 MR. FREY:
16 Q Now, when you say you were talking about the boundary
17 of that territory you mean the Harold Price Creek
18 territory?
19 A Yes, I spoke on that area wherever I had been.
20 Q When you say you just got the papers, you're talking
21 about the trapline registration?
22 A Yes, I was, when I got trapline registries that I was
23 talking about, when I got that back, it was our
24 territory, that is why.
25 Q All right. Now, this name that we had spelled for us,
26 which, Mr. Holland, you will help me with, Dinee ts'o
27 K'ees, is that the Babine name for the territory
28 around Chapman Lake?
29 A Yes, old fort.
30 Q And did you tell them about the boundary that's in
31 your affidavit?
32 A Yes, I told them about the three people that own
33 territories along there. And I believe that this
34 affidavit may not be all that accurate along there.
35 Q Who are the three people that own territory?
36 A That's the three people would be Dew sum ts'uk, Dinee
37 ts'o k'ees, and the Smogelgem area is the one I have
38 access to now.
39 MR. FREY: I am not sure if we have all three of those names,
40 Mr. Michell, the first two?
41 THE TRANSLATOR: Dew sum ts'uk, D-E-W, S-U-M, T-S-'-U-K and
42 Dinee ts'o K'ees, D-I-N-E-E, T-S-'-O, K-'-E-E-S.
43 MR. FREY:
44 Q And what you were saying is that the land to the east
45 of Smogelgem is Babine land and Chapman Lake is Babine
46 land, is that what you were telling me?
47 A Yes, that would be within their territory from way

1 back.
2 Q That's the Babine that you're talking about?
3 A Yes.
4 Q Now, was there an agreement reached between the
5 Wet'suwet'en and the Babine regarding the boundary on
6 the east around Chapman Lake?
7 A Yes, Casimel Williams, who is quite elderly, knew the
8 area around Chapman Lake. He spoke on that.
9 Q All right. Did the agreement regarding the boundary
10 on the east of Smogelgem's territory and around
11 Chapman Lake, did that affect the boundary of
12 Smogelgem's territory at all?
13 THE COURT: Just a moment, please.
14 MS. MANDELL: I don't think the witness said there was an
15 agreement, he has just explained that Casimel Williams
16 spoke about the area around Chapman Lake.
17 MR. FREY: I will ask that question again.
18 Q I am going to ask the same question I asked before,
19 Mr. Tom: At the all-clans feast in 1987, did the
20 Wet'suwet'en and the Babines come to an agreement as
21 to what the eastern boundary was around Chapman Lake?
22 A The same area, there was no agreement at that time. I
23 didn't see it myself, there was no papers drawn up or
24 anything.
25 Q Well, let me put it this way: Did the people at the
26 feast agree with the eastern boundary that you
27 described of Smogelgem's territory?
28 A Yes, the people that had territories along that area
29 had talked on that and they didn't totally agree with
30 everything and there is still going to be talk on it
31 yet.
32 Q All right. Now, Mr. Tom, I am moving on to another
33 area. I just want to go through some of the names we
34 went through yesterday, which are chiefly names in the
35 House of Smogelgem, and I want to make sure that I
36 have got them right and I am talking about chiefly
37 names.
38 A If you speak to me about the chiefs, you going to ask
39 me about it, I will tell you again.
40 Q All right. Your name G'ee Yeah Ghun or, as Mr.
41 Holland will pronounce it, that's a chiefly name?
42 A Yes, that's a chiefly name.
43 Q And the name Johnny Dominic had, Ghel Yii, that's a
44 chiefly name as well?
45 A Yes. He had the name Ghel Yii and G'wis-da.
46 Q I know that. Are those both chiefly names?
47 A Yes, G'wis-da, they are both chiefly names.

1 Q And today, no one holds either of those names; is that
2 correct?
3 A No.
4 Q All right. There is another name, which Mr. Holland
5 you will have to help me with, Goo'tseawh?
6 A That name Goo'tseawh comes from Babine and whoever
7 does good always receives that name.
8 Q All right. Well, just to make sure, my understanding
9 is that this name is held by Andrew George and it
10 could be my pronunciation, but can you tell me what
11 the name held by Andrew George is?
12 A Tsaibesa.
13 Q Andrew George holds Tsaibesa?
14 A Yes, he holds that name.
15 Q All right.
16 MR. FREY: My lord, just to make sure it's not my pronunciation,
17 I am going to have Mr. Holland read a name that's in
18 the interrogatory affidavits sworn by Smogelgem. Can
19 you say that name to Mr. Tom? Is that the name you
20 have been talking about?
21 A A lady from Babine held that name by the name of Janie
22 Holland.
23 Q Now, is that a name in Smogelgem's house or is that a
24 Babine name?
25 A Yes, it's also in Smogelgem's house because they all
26 work as one.
27 Q And did Andrew George -- has Andrew George ever held
28 that name?
29 A I don't think so.
30 Q And is that a chief's name in Smogelgem's house?
31 A Yes, it's a chief name.
32 Q All right. And the last name I want to ask you about
33 is the name your grandmother had, Ma'ul, is that a
34 chief's name in Smogelgem's house?
35 A Yes, it's a chief name in Smogelgem's house, a sister
36 to him.
37 Q Who holds that name today?
38 A One of my nieces, Suzie Dennis's child, by the name of
39 Deborah, holds that name now.
40 Q Now, are there any names that I have missed that are
41 chiefs' names in the House of Smogelgem?
42 A You mentioned all the names in -- from Babine that are
43 Laksamshu clan. I know an elderly woman in Babine who
44 has a chief name, Diit nee.
45 MR. FREY: Mr. Michell, could you spell that please?
46 A I was pretty small at that time when she -- but she
47 passed on in 1936 at the age of 105.

THE TRANSLATOR: D-I-I-T, N-E-E.

MR. FREY:

Q Does anyone hold that name today?

A Nobody holds that name at this time.

Q And that name, that's a chief's name in Smogelgem's house?

A Yes, that is a chief name.

Q Now, did you ever know little Dennis Michell?

A Would that be from Moricetown?

Q That's my understanding but it's -- it's also my understanding that that was Florence Hall's father?

A Yes, he comes from around here.

Q Did you know him?

A I didn't know him, he may be still around. I knew a lot of Michells.

Q Now --

A I probably heard of him, I never seen him. I only knew Jackie Michell's father, who drowned out in Babine, around Ses Kwe area.

Q All right. Smogelgem has a territory near Wallcott; is that right?

A I don't know anything about Wallcott, I just knew about the Perow area.

Q All right. There is a name that we have been given for this territory, and I will spell it for you, Mr. Holland, so that you can pronounce it for Mr. Tom: C-'-E-D-I-I, T-O-O, T-S-A-N. Do you want me to read that to you again?

THE INTERPRETER: Yes, please.

MR. FREY: C-'-E-D-I-I, T-O-O, T-S-A-N.

Q Can you pronounce that?

A C'edii too tsan.

Q Have you heard of that territory, Mr. Tom?

A I heard the Indians talking about it.

Q Have you ever been there?

A No, I never been there at all.

Q Have you ever heard the story that that territory was transferred to Little Dennis Michell because he bought a gravestone for the Smogelgem before Chief McKenzie? I don't know the name of the Smogelgem before Chief McKenzie, but the story I am referring you to, that is that Smogelgem before McKenzie died, Little Michell bought hes gravestone and because he bought the gravestone he got at territory at Wallcott, have you ever heard that?

A Yes, they used to do that a long time ago, they would give territories in compensation but this specific

1 story, I never heard about.
2 Q All right. And in terms of this territory we are
3 talking about, you don't know that much about it?
4 A No, I don't know it that well.
5 Q All right. Now, Leonard George is Smogelgem today; is
6 that correct?
7 A Yes.
8 Q And my understanding is that he is a native court
9 worker; is that correct?
10 A Yes.
11 Q And I also understand that he used to be a land claims
12 researcher as well, do you know that?
13 A Yes, I know of that.
14 Q And I also understand that he used to be a salesman,
15 did you ever hear that?
16 A Yes, I know of him when he was a salesman because he
17 come down to my place and he tried to sell me a
18 machine that eats dirt, and what the white man called
19 vacuum cleaner, and I told him, I says, no, my
20 forefathers they never use anything like that, when I
21 want to sweep my place out I break a spruce ball and I
22 used that to sweep the place out. He didn't sell me
23 anything, he just left.
24 Q Do you know of any other jobs that Leonard George has
25 had, besides the three we have talked about?
26 A No.
27 Q Where did Leonard George grow up?
28 A Around Telkwa.
29 Q And where does he live now?
30 A I don't know where he lives now. Probably lives in
31 the same place.
32 Q And was Leonard George's father Thomas George?
33 A Yes.
34 Q And Thomas George is Gitdumden?
35 A Yes.
36 Q And when you say Leonard George grew up in Telkwa, he
37 grew up with his father?
38 A Yes, I think his father raised him, a long time ago
39 his father became a white man and now as a result of
40 that Leonard then would also be white. And up to this
41 date, I think he got his status back. Could be.
42 Q Leonard George became Smogelgem in 1971; is that
43 right?
44 A Yes, I know the time.
45 Q Was there a feast?
46 A I wasn't present at the time when they had the feast,
47 but I heard about it, but people that would be his

1 uncles out in Babine, To ghes tai and G'us tl'ee, Alex
2 Zaa and Abelam C'oo.
3 MR. FREY: Well, Mr. Michell we will have to get the four uncles
4 from Babine?
5 THE TRANSLATOR: To ghes tai, T-O, G-H-E-S, T-A-I; Alex Z-A-A,
6 G'us Tl'ee, G-'-U-S, T-L-'-E-E, A-B-E-L-A-M, C-'-O-O.
7 MR. FREY:
8 Q Now, Mr. Tom, why weren't you at the feast?
9 A I wasn't advised or told about the feast at that time.
10 I didn't know about it. Any time the clan is going to
11 put up a feast, usually we advise everybody but at
12 that time I wasn't told about it.
13 Q Where were you living at that time?
14 A I was living in Burns Lake and then I was working at
15 Houston for Northwood at that time.
16 Q So, do you have any idea how much Leonard George
17 contributed to get the name Smogelgem?
18 A His feast took place without my knowing it so I
19 wouldn't know.
20 MR. FREY: My lord, those are my questions. Thank you very
21 much, Mr. Tom.
22 THE COURT: All right. Thank you.
23 Should we come back early or are we going to be
24 pressed for time?
25 MS. MANDELL: Well, my lord, I am scheduled to be upstairs this
26 afternoon with Mary Skin and she is a very elderly
27 lady, I don't know whether or not -- she certainly
28 can't go later today. She has been up since early
29 this morning so it would be my preference that we
30 attempt to start her on time. Although I should check
31 to see how the upstairs is doing.
32 THE COURT: What do counsel say about tomorrow?
33 MS. MANDELL: I haven't had a chance to confer with anybody so I
34 will have to speak to people over the lunch.
35 MR. O'BYRNE: I did speak to Mr. Mackenzie during the break and
36 I understand the discussions between counsel would be
37 that there would be a requirement for your lordship to
38 be here tomorrow.
39 THE COURT: There would or wouldn't?
40 MR. O'BYRNE: There would. Just the briefest of moments.
41 THE COURT: I will proceed on that basis then. What are you
42 going to do then, Ms. Mandell, do you want to stand
43 this witness down so you can be upstairs or do you
44 need to re-examine?
45 MS. MANDELL: I won't be long in re-examination. Perhaps five
46 minutes.
47 MR. O'BYRNE: I am not going to be very long. I would think, my

1 lord, just some general background questions.
2 THE COURT: Do you want to stay and do it now?
3 MS. MANDELL: That would be preferable.
4 THE COURT: I think we will stay and finish then, if that's
5 convenient.
6
7 CROSS-EXAMINATION BY MR. O'BYRNE:
8
9 MR. O'BYRNE:
10 Q Mr. Tom, how old are you, sir?
11 A 54.
12 Q Where did you grow up?
13 A Babine. That's where I was born.
14 Q And did you grow up on Babine Lake?
15 A Yes.
16 Q And did you go to school?
17 A No.
18 Q Where do you live today?
19 A Burns Lake.
20 Q How long have you lived in Burns Lake?
21 A I was living in Burns Lake when I was working and took
22 sick it would be approximately 20 years now.
23 Q Are you married?
24 A Yes.
25 Q Do you have children?
26 A Yes.
27 Q How many children do you have?
28 A I have nine children and I lost three, just last year
29 I lost one in a car accident, who was 25 years old.
30 There was a total of three that passed on.
31 Q And you're a grandfather, I take it?
32 A Yes. I have eight grandchildren.
33 Q You did some trapping on the territory you described
34 in your affidavit; is that correct?
35 A Yes, I trapped in the area when I was pretty young,
36 when I went out with my uncle.
37 Q How old were you last time you trapped on the area
38 described in your affidavit?
39 A I was about 30 years old when I got married and then
40 when I went out there and after that the price of furs
41 was down so I didn't do any trapping but I went out
42 there.
43 Q Have you ever trapped in any other areas?
44 A Yes, I trapped on the territory mentioned in the
45 affidavit and sometimes I went into another Laksamshu
46 territory belonging to Dyee C'oo.
47 Q Did you have a registered trapline other than in the

1 territory that you have discussed in your affidavit?
2 A No, the area that I hold register to is where I done
3 most of my trapping.
4 Q And that's the area described in your affidavit,
5 correct?
6 A Yes.
7 Q When was the last time that you were out on the
8 territory you described in your affidavit?
9 A I was up there last spring. We drove in there because
10 the whole area is logged out by the forestry.
11 Q When was the time then before the spring of 1988 that
12 you were last on the territory you described in your
13 affidavit?
14 A The time before that we drove up the road from Babine,
15 and I showed my children where their grandfather had
16 been trapping, looking into the area.
17 Q And when was that, please?
18 A It was a year ago in August. It was real beautiful up
19 there when you drive up in the mountains.
20 Q You told us that you worked for Northwood in Houston;
21 is that correct?
22 A Yes, I worked there. Yes, at that time the price of
23 furs was way down and that is why I went to work to
24 make a living for my children.
25 Q And how long did you work for Northwood?
26 A 12 years.
27 Q And what type of work did you do for Northwood?
28 A I was cleaning up for them and sometimes I would do
29 edging for them and cut-off saw.
30 Q Other than that type of work, what other type of work
31 have you done?
32 A When I first worked for them was out in Pendleton Bay,
33 I was boom man and tugboat operator, and pier man and
34 I the pier mand who died, drowned, him and I done the
35 pile driving for them.
36 Q Now, the affidavit that you swore in May of 1988, it
37 was translated to you by Mr. Holland, correct?
38 A Yes.
39 Q And it was a series of or a number of typewritten
40 pages, correct?
41 A Yes.
42 Q And when it was read to you, did you make any
43 corrections in the affidavit?
44 A Yes, referring to your translator, he translated it,
45 read it through for me, and there was no changes made
46 except for the word, one word that's there that I may
47 have overlooked or misunderstood at that time.

1 Q Other than that one word that you overlooked, did you
2 tell the translator that there was anything wrong in
3 the affidavit?
4 A At that time, I didn't recognize any mistakes so I
5 didn't point out any mistakes except that I may have
6 overlooked this one word at that time.
7 Q You did not ask through the translator, then, to have
8 anything changed in the affidavit; is that correct?
9 A No.
10 Q Before the affidavit was translated to you, did you
11 talk to Marvin George about the territories of your
12 land?
13 A Yes, I remember Alfred Joseph talking to me on the
14 phone and he was talking to me about Dyee C'oo's
15 territory and advised him at that time that it was
16 different territory all together. That's what I
17 remember.
18 Q Who did you tell the boundaries of the territory to so
19 they could put it down in writing for you?
20 A Yes, I told Marvin George, with the assistance of a
21 translator, about the territory. That is what was
22 written down.
23 Q And did you ever correct the words that Marvin George
24 wrote down?
25 A I told him everything that I knew and I didn't think
26 that this mistake would appear at that time.
27 Q Whose mistake is it, is it your mistake or Marvin
28 George's mistake?
29 A The territory that I was talking about, I tell it the
30 best way I know how. It couldn't have been me, it may
31 have been Marvin that made the mistake in that one
32 word.
33 MR. O'BYRNE: I have no further questions, my lord.
34
35 RE-EXAMINATION BY MS. MANDELL:
36
37 MS. MANDELL:
38 Q You described that as a boy you went into this
39 territory with your uncle Johnny Dominic. At that
40 time, when you went in with him, did you hunt or trap
41 or fish?
42 A When I was with my uncle we went trapping and in the
43 winter months we would catch steelhead in the creek to
44 eat.
45 Q And where did you stay when you went trapping with
46 Johnny Dominic?
47 A There was a house where the edge of the field C'ee

1 Ng'heen.
2 THE COURT: Sorry?
3 A C'ee Ng'heen.
4 Q After you got married, did you continue to use this
5 territory for hunting, trapping or fishing?
6 A I saw -- I continually use it but like I said before,
7 when the price of furs was way down I still went out
8 there but in the fall time used to go hunting moose
9 out there.
10 Q And where did you stay since you were married, once
11 you went back on to the territory?
12 A Burns Lake.
13 Q And did you or did anyone from your family construct
14 any smokehouses on the territory?
15 MR. FREY: My lord, I am going to have to object. I didn't ask
16 about fishing and smokehouses and construction of
17 anything on the territory. I didn't even ask about
18 him going on to the territory.
19 MS. MANDELL: I think both of them asked about him using the
20 territory.
21 THE COURT: Certainly Mr. O'Byrne did. I think it's opened up
22 by the question about using the territory.
23 A Yes, like I mentioned before, that when me and my
24 uncle went out there, we had a smokehouse there and
25 that's where we lived.
26 MS. MANDELL:
27 Q And I was asking apart from that smokehouse that you
28 have told us about, did you or your family construct
29 any other smokehouse on that territory?
30 A No.
31 Q And have you used the territory throughout your
32 lifetime for picking berries?
33 A There is a place called Saa wig'us ai, that's where we
34 pick berries and because the woman's picking berries
35 there they call it woman's camp.
36 MS. MANDELL: I don't think that name appears in the affidavit.
37 THE TRANSLATOR: S-A-A, W-I-G-'-U-S, A-I.
38 MS. MANDELL:
39 Q Would you be able to tell us whether you have gone to
40 the territory to either hunt or pick berries or fish,
41 how often in the last 30 years have you gone, could
42 you give us an estimate, do you go every year, every
43 other year?
44 A Yes, we were able to travel up there by cars and they
45 will go picking berries and around August time we go
46 up in the most to go and hunt for groundhogs.
47 Q And did you also fish in the area?

1 A We didn't go fishing up there, but in the summertime,
2 around August, we spent a whole month smoking salmon
3 in the Babine area.
4 Q And if I could ask you again the question: Over your
5 lifetime, would you go into that territory often, like
6 every year or would you go less frequently?
7 A Yes, since the forestry built roads in there, we
8 can -- we drive in there and go hunting in there most
9 every year.
10 Q You mentioned that in 1987 you went to a feast in
11 Burns Lake and there you discussed this territory, did
12 you describe the eastern boundary of this territory at
13 that meeting?
14 A Yes, I talked, I told them about it, because I knew
15 where the boundary was.
16 Q And what were the main features that you mentioned to
17 the meeting you were on the eastern boundary?
18 A Yes, I told them about all the different names, the
19 Indian names that I knew of and these names have been
20 there as long as I can remember and it's been there
21 long before, these names were used long before my time
22 by my ancestors and grandparents.
23 Q And can you tell us today what those names were that
24 you mentioned at the feast?
25 A This area that I was talking about, Saa wig'us ai, and
26 a mountain Tsa g'es and then continuing from that
27 mountain there is one called Nee'ats from, continuing
28 from that on the north side it belongs to the Babine.
29 THE COURT: I will have to get those names, Ms. Mandell.
30 THE TRANSLATOR: T-S-A, G-'-E-S and N-E-E-'-A-T-S.
31 MS. MANDELL:
32 Q Were there any other major landmarks that you
33 identified at the meeting in describing the eastern
34 boundary of the Babine at Burns Lake?
35 A Yes, as I mentioned, C'eetney Dzel one time, a long
36 time ago, there was a lady by the name of Rosa went up
37 there with a gentleman friend and she took -- when
38 they killed a cariboo, she broke the horn off and she
39 drove it into the a jack pine, C'enduu.
40 Q And is that a boundary marker now?
41 A It's just a major landmark. You asked about a major
42 landmark but the line is inside that.
43 Q All right. Did anybody at the meeting at Babine
44 disagree with the way you had described the eastern
45 boundary of this territory?
46 A When I was talking on that territory, nobody disagreed
47 with me.

1 MS. MANDELL: I have got no further questions.
2 THE COURT: All right. Thank you. I suppose we will have to
3 adjourn -- I think we will all try to get back here as
4 reasonably quickly as we can and we will start when
5 everyone is ready to start, somewhere I would think
6 shortly after 2 o'clock, perhaps.
7
8 (PROCEEDINGS ADJOURNED FOR LUNCH AND RESUMED AGAIN AT 210 P.M.)
9
10 THE COURT: All right. Where are we now?
11 MR. MACKENZIE: It's Tuesday so we must be in Smithers, my lord.
12 Actually, it's Wednesday. So I think we are still in
13 Smithers.
14 My lord, we discussed this question of your
15 lordship's returning tomorrow with other counsel and
16 I -- the concensus is that we wish to have Johnny
17 David cross-examined in court tomorrow. He is the
18 witness scheduled tomorrow. We have estimated a day
19 for his cross-examination. He is an elderly gentleman
20 and my friends may wish to -- he may wish to have a
21 break and continue Friday morning. But at the present
22 time, we don't have another witness scheduled for
23 Friday, in court.
24 THE COURT: All right.
25 MS. MANDELL: I can confirm that, my lord, we would like Mr.
26 David to come tomorrow. He is quite elderly and he is
27 reasonably well, it seems, so we would like him to
28 start tomorrow. And if he does tire tomorrow it may
29 be required that he be stood down and continue on
30 Friday.
31 THE COURT: Would it help if we started early and even if we
32 have to break early? Some of these people are better
33 in the mornings than later in the day.
34 MR. RUSH: I don't think we should change the time to start. I
35 think they will be here at ten and ready to go.
36 People are coming from Hazelton all the way through so
37 they are expecting to start at ten.
38 THE COURT: All right. What are we going to do this afternoon?
39 MR. RUSH: Yes, we have Mr. Ken Muldoe is next on the schedule,
40 as I understand it. Call Mr. Muldoe to the witness
41 stand.
42
43 KEN MULDOE, a plaintiff herein,
44 after first being duly sworn
45 testified as follows:
46
47

1 CROSS-EXAMINATION BY MS. KOENIGSBERG:
2
3 MR. RUSH: I should advise that Mr. Muldoe's affidavit is 606
4 and was tendered on June 20, 1988 and Mr. Muldoe is
5 being tendered for cross-examination now.
6 THE COURT: Ms. Koenigsberg?
7 MS. KOENIGSBERG:
8 Q Mr. Muldoe, your chief's name is Delgamuukw?
9 A That is correct.
10 Q And there is a house by the name of Delgamuukw?
11 A Only a chief by the name of Delgamuukw.
12 Q There is no house by that name?
13 A There is a house.
14 Q There is? And is Delgamuukw the head chief of that
15 house?
16 A That's correct.
17 Q And are there other chiefs in that house as well?
18 A There are several chiefs.
19 Q And is George Muldoe one of those chiefs?
20 A That's correct.
21 Q What is his chief's name?
22 A Neke.
23 Q N-E-K-E?
24 A Correct.
25 THE COURT: And his name again?
26 MS. KOENIGSBERG: N-E-K-E.
27 THE COURT: His English name?
28 MS. KOENIGSBERG: George Muldoe.
29 Q And is George Muldoe your brother?
30 A That's correct.
31 Q And is Earl Muldoe also a chief in the House of
32 Delgamuukw?
33 A That is correct.
34 Q And is his chief's name is 'Wii a lax?
35 A Yes.
36 Q Is that spelled W-I-I,-A-, L-A-X?
37 A That's correct.
38 Q And.
39 MR. RUSH: Sometimes with a W, I think.
40 MS. KOENIGSBERG:
41 Q W-I-I,-A-, L-A-X sometimes with a W. And is Earl
42 Muldoe also your brother?
43 A That is correct.
44 Q And is Samson Muldoe also a chief in the House of
45 Delgamuukw?
46 A He is a chief.
47 Q And what is his chief's name?

1 A Waa'a.
2 Q Is that spelled W-A-A-'-A?
3 A That's correct.
4 Q And that's pronounced Waa'a?
5 A Waa'a.
6 Q And is Lottie Muldoe a chief in the House of
7 Delgamuukw?
8 A That's correct.
9 Q What is the chief's name that she holds?
10 A Axgii gi'ii.
11 Q Is that spelled A-X-G-I-I, G-I-'-I-I?
12 A Close enough.
13 Q And is Ray Mowatt a chief in the House of Delgamuukw?
14 A He is a chief.
15 Q What is his chief's name?
16 A Hag'e.
17 Q Can you spell that? I found at least three spellings
18 for it?
19 A H-A-G-'-E.
20 Q And that's pronounced Hag'e?
21 A Hag'e.
22 Q And Lloyd Muldoe is a chief in the House of
23 Delgamuukw?
24 A That's correct.
25 Q And what is his chief's name?
26 A Gan nu Lax ha.
27 Q And could you spell that for us please?
28 A Programmes the speller could.
29 MS. KOENIGSBERG: Miss Howard?
30 THE TRANSLATOR: G-A-N, N-U, L-A-X, H-A.
31 THE COURT: Thank you.
32 MS. KOENIGSBERG:
33 Q Are there any other chiefs, hereditary chiefs, in the
34 House of Delgamuukw that I haven't mentioned?
35 A There is Haaxw.
36 Q Could you spell that?
37 A No, I can't.
38 THE TRANSLATOR: H-A-A-X-W.
39 MS. KOENIGSBERG:
40 Q And who holds that name?
41 A Charles Olson.
42 THE COURT: Charles Olson?
43 A Yes.
44 MS. KOENIGSBERG:
45 Q Are there any other chiefs?
46 A No.
47 Q Now, when we -- when I say that Delgamuukw is the head

1 chief, are all of the other chiefs whom we have
2 listed, are they of equal rank in the House of
3 Delgamuukw?
4 A In some circumstances.
5 Q And do any of them have territory separate from that
6 of Delgamuukw?
7 A The only one is shepherd from Delgamuukw, Waa'a.
8 Q Sampson Muldoe?
9 A Right.
10 Q And where is that territory located?
11 A North of Kispiox.
12 Q Now, Albert Tait held the name Delgamuukw before you;
13 is that correct?
14 A That's correct.
15 Q And he died January 18th, 1987?
16 A That's correct.
17 Q And he died unexpectedly, did he?
18 A That's correct.
19 Q And you took the name on January 22nd, 1987; is that
20 correct?
21 A That's correct.
22 Q At the funeral feast for Albert Tait?
23 A That's correct.
24 Q And at that feast, contributions were made and did you
25 make a contribution?
26 A I made a contribution.
27 Q And was that in part for the taking of the name?
28 A That was in part.
29 Q And what was your contribution?
30 A Cash contribution was $1600.
31 Q And was there a further contribution in goods other
32 than cash?
33 A There was goods included, above the cash contribution.
34 Q Were they valued at the feast and announced?
35 A They were valued at the feast.
36 Q What was the announced value?
37 A Approximately $500.
38 Q Now, we have heard evidence in this trial that it can
39 take up to seven years for a person to take the name
40 of a head chief, not necessarily seven years but up to
41 seven years, and many feasts; was this quite a short
42 period of time for someone to take a head chief's
43 name?
44 A Not necessarily.
45 Q Now, on the plaintiffs' map 9A, are you familiar with
46 this plaintiffs' map? I am just holding up and
47 showing you an overlay over a number of maps, it's

1 been produced by your counsel in this trial, and it is
2 shown as map 9A; have you seen that?
3 A I have seen it.
4 Q On this map, Delgamuukw claims three distinct
5 territories; is that correct?
6 A That's correct.
7 Q And just for clarity's sake, or an attempt at clarity,
8 I would just like to describe those territories in
9 relation to one another so we can keep them
10 separately. The first one I will describe is the most
11 northerly on this map, and it is on the westernmost
12 boundary of the claim area. And is it sometimes
13 referred to as the Kwinageese territory?
14 A That's correct.
15 Q And going south on the map, the next area is one which
16 I think could be described as the Ironsides Creek
17 area?
18 A That's correct.
19 Q And that's the English name for a creek for which
20 there is, of course, a Gitksan word, what is that
21 Gitksan word?
22 A Willi wax.
23 Q Is that spelled W-I-L-L-I, W-A-X, approximately?
24 A Approximately.
25 MR. RUSH: Mr. Pete Muldoe's affidavit it was spelled in the
26 second, W-A-X-W.
27 MS. KOENIGSBERG:
28 Q And the third area on this map, smallest territory
29 claimed could it be described as the Tenas Hill,
30 T-E-N-A-S?
31 A That's correct.
32 Q And it is a smaller and the southernmost territory
33 claimed on this map?
34 A That's correct.
35 Q You have sworn an affidavit that is Exhibit 606 in
36 these proceedings, that relates only to the Kwinageese
37 territory; is that correct?
38 A That's correct.
39 Q And for the record, my lord, and for your assistance,
40 Mr. Pete Muldoe gave evidence with regard to the
41 Ironsides Creek territory and the Tenas Hill.
42 THE COURT: Thank you.
43 MS. KOENIGSBERG: Territory.
44 Q Now, before Mr. Tait died, Albert Tait, he swore an
45 interrogatory or an affidavit appending some answers
46 to an interrogatory and you reviewed that
47 interrogatory, did you not?

1 A That's correct.
2 Q And he swore that interrogatory on August 7th, 1986,
3 do you recall that?
4 A That's about the date.
5 Q And subsequently you swore an affidavit appending
6 answers to interrogatories on January 28th, 1987, and
7 you swore them as though you -- the answers given were
8 given by Albert Tait?
9 A That's correct.
10 Q And in that interrogatory -- in the interrogatory
11 which you swore, I am just showing you the affidavit
12 itself, and it has affixed to it just one page, but
13 could you identify that as the affidavit which you
14 swore?
15 A That's the affidavit I swore.
16 Q I have appended to the document which I showed you,
17 Mr. Muldoe -- maybe I will just put one in front of
18 you -- answer 59(c), and 59(c) there, do you recognize
19 that? It refers to the boundaries of your house's
20 territory?
21 A That's correct.
22 Q Do you see under 59(c) --
23 A That's right.
24 Q And it says "see map which is attached as schedule C",
25 and then it says, "our territory also includes a berry
26 picking place where the Combs now live in the Kispiox
27 valley."
28 A That's correct.
29 Q And 59(c), I understand, has been marked as an exhibit
30 in these proceedings, it's Exhibit 682 for
31 identification.
32 And could we just mark this affidavit as the next
33 exhibit?
34 THE COURT: The affidavit and answer?
35 MS. KOENIGSBERG: With 59(c) attached.
36 THE COURT: We don't we just call it Exhibit 622.
37 MS. KOENIGSBERG: 682?
38 THE COURT: Do you wish it to be an exhibit?
39 MS. KOENIGSBERG: The map itself is marked but I don't think
40 it's marked with the affidavit, at least on our list.
41 THE COURT: What are you asking to be 682 for identification?
42 This --
43 MS. KOENIGSBERG: No, the affidavit itself, I think, has been
44 identified or could be made an exhibit proper in these
45 proceedings, and I am just going to make reference to
46 the map. I don't think we will have to mark it again.
47 THE COURT: What are you tendering now?

1 MS. KOENIGSBERG: The affidavit of Mr. Muldoe with exhibit --
2 with answer 59(c).
3 THE COURT: All right. What's the next exhibit number, please?
4 THE REGISTRAR: 824.
5
6 (EXHIBIT 824: AFFIDAVIT OF KEN MULDOE SWORN JANUARY 28, 1987)
7
8 MS. KOENIGSBERG: And just perhaps for completeness, I am just
9 going to show you Mr. Tait's first interrogatory. And
10 again, I have just -- I just have the affidavit and
11 attached to it 59(c), question and answer 59(c), do
12 you recognize Mr. Tait's signature on that affidavit?
13 A I recognize it.
14 MS. KOENIGSBERG: I believe the witness said he recognized it.
15 THE COURT: All right.
16 MS. KOENIGSBERG:
17 Q And is the page appended to that affidavit, 59(c), as
18 you recall it from reviewing Mr. Tait's
19 interrogatories?
20 A I recall it.
21 THE COURT: Is that already in?
22 MS. KOENIGSBERG: I don't believe it is.
23 THE COURT: All right. And you're tendering it as --
24 MS. KOENIGSBERG: The next exhibit.
25 THE COURT: 825.
26
27 (EXHIBIT 825: AFFIDAVIT OF ALBERT TAIT SWORN AUGUST 7, 1987)
28
29 MS. KOENIGSBERG:
30 Q Now the map, which I believe is already marked as
31 Exhibit 682 for identification, I will show you the
32 copy that we had and ask the witness if he can
33 recognize it. Is this the map which was schedule C?
34 A That was the original draft copy.
35 Q That's the map that you saw when you reviewed those
36 affidavits?
37 A Right.
38 Q And this map is a map which corresponds with the area
39 that is claimed as the Kwinageese territory; is that
40 correct?
41 A That's correct.
42 Q Now, Mr. Muldoe, in this affidavit, in answer to
43 question 59(c), which asks for the boundaries of the
44 territory, and we have this map as a draft of the
45 boundaries of the Kwinageese territory, there is no
46 description of either the claimed area today of
47 Ironsides Creek area or the Tenas Hill area, isn't

1 that correct?
2 A It's been described by my father in court in
3 Vancouver.
4 Q Yes?
5 A It's been entered into the courts.
6 Q But my question to you is: In answer to the questions
7 in the interrogatories, the answers to which we have
8 just looked at, where it says: "What are the
9 boundaries of the territories claimed by this
10 house..." And it's Delgamuukw we are speaking of, the
11 only territory which was described, whose boundaries
12 were described, was the Kwinageese territory, isn't
13 that correct?
14 A That's correct.
15 Q Another territory is mentioned, it's said to include a
16 berry picking place where the Combs now live in the
17 Kispiox Valley, correct?
18 A That's correct.
19 Q And there is no other territory described as belonging
20 to the House of Delgamuukw in these interrogatories?
21 MR. RUSH: Well, I think -- excuse me, I would just like to
22 interrupt. My friend's question, framed in the way it
23 does, I think would suggest that all of the
24 interrogatories should be put to the witness because
25 the question was, in these interrogatories there are
26 no other territories so described, and my reading of
27 the interrogatories is that that's not so. I don't
28 know whether the witness's answer would be otherwise
29 but I think he should see the whole of the
30 interrogatories.
31 MS. KOENIGSBERG: I have no difficulty with that, with putting
32 it in, but rather than getting into that I will
33 confine my question to:
34 Q The only territory whose boundaries are described as
35 being boundaries is the one described as the
36 Kwinageese territory?
37 A That's correct.
38 Q But in addition, in answer to that question, there is
39 another area which is referred to, that is a berry
40 picking place where the Combs now live in the Kispiox
41 Valley?
42 A We have several other areas that aren't on there but
43 it's been disclosed by my father in Vancouver, fishing
44 areas.
45 Q But in January of 19 -- I should say in August of
46 1986, and January of 1987, the only boundaries, areas
47 with boundaries claimed by the House of Delgamuukw,

1 was the Kwinageese territory and an area which is not
2 indicated with a boundary as a berry picking place in
3 the Kispiox Valley, that's correct, isn't it?
4 A All three of them were claimed in one way or another.
5 Q My question to you is: That --
6 A I answered your question regarding boundaries already
7 and it's coming back to me the same again. I have
8 answered your question.
9 Q I wanted to be sure that we are very clear about this.
10 Let me just ask you, where is the Combs place in the
11 Kispiox Valley or the berry picking place where the
12 Combs live in the Kispiox Valley?
13 A It's approximately three miles from Kispiox.
14 Q Approximately three miles from Kispiox.
15 And is it within any of the claimed areas on map 9A
16 that is claimed by Delgamuukw?
17 A It is within Waa'a.
18 Q Within Waa'a?
19 A Yes.
20 Q There is no area on 9A ascribed to Waa'a, is there?
21 A I have to see a different, a bigger map than that.
22 Q A bigger map?
23 A Yes.
24 Q I think we are all handicapped, this is the biggest
25 map any of us has brought but let me put it in front
26 of you and let you look at it. Admittedly the print
27 is small, I am just pointing to the area that we have
28 described here this morning or this afternoon, the
29 Kwinageese territory is here with the name Delgamuukw
30 on it?
31 A That's correct.
32 Q And there is another area with Delgamuukw on it, which
33 we have described as the Ironsides Creek area -- you
34 have just put your finger on that. And then there is
35 the smaller area just south of that, with Delgamuukw
36 on it?
37 A That's correct.
38 Q Is the Combs family or the Combs berry picking area in
39 any one of those three?
40 A It's in this one here.
41 Q It's in the southernmost area which we have described
42 as the Tanas Hill area?
43 A That is right.
44 Q And you say that area belongs to Waa'a?
45 A Waa'a, in the House of Delgamuukw.
46 Q But you say that Waa'a has a separate territory?
47 A He is in the same house. It's been amalgamated.

1 Q It's been amalgamated?
2 A Yes.
3 Q So it's just as accurate to say Delgamuukw as Waa'a on
4 this territory?
5 A Delgamuukw is Waa'a.
6 Q What did you mean when you said it was a separate
7 territory?
8 A At one time Waa'a had a separate house, right now it's
9 been amalgamated just like Hag'e.
10 Q Is it then accurate to say that if the head chief of
11 the house has the authority to direct where the
12 members of that house will hunt, fish or trap or use
13 the territories, that it would be Delgamuukw who would
14 direct people in the Tanas Hill area or would it be
15 Waa'a?
16 A If would be a consensus of all the chiefs in the House
17 of Delgamuukw.
18 Q Would any one chief have more authority over that
19 territory than any other?
20 A I will have the final say.
21 Q So then, the answer to my question is, that Delgamuukw
22 has precedence in terms of authority over the area
23 known as Tanas Hill?
24 MR. RUSH: I think his answer was "I will very the final say."
25 MS. KOENIGSBERG: Well, this is cross-examination, my lord.
26 MR. RUSH: I know, I wasn't sure whether you were trying to
27 summarize the evidence or whether you were posing a
28 new question. If it was a summary I think it should
29 be faithful to the answer.
30 MS. KOENIGSBERG: How about a summary question?
31 THE COURT: How about a summary answer?
32 MS. KOENIGSBERG: That would be nice too.
33 A I practice my authority.
34 MS. KOENIGSBERG:
35 Q You practice your authority and you practice it over
36 the Tanas Hill area?
37 A That is correct.
38 THE COURT: Do I understand you to be saying, Mr. Muldoe, that
39 the Combs Ranch is within the Ironside Creek area?
40 A No, within the Tanas Hill area.
41 MS. KOENIGSBERG: The Tanas Hill area, my lord, and it's the
42 southernmost, it's closest to Kispiox.
43 Q Is that a fair way of putting it?
44 A That's correct.
45 Q In fact it would appear on map 9A, if I am correct, to
46 encompass Kispiox; do you have that?
47 THE COURT: I think -- a moment ago but I think I lost it now.

1 MS. KOENIGSBERG: If you can find Kispiox and just move north,
2 you are in the Tanas Hill area designated with the
3 name Delgamuukw on that map.
4 THE COURT: Yes. All right. So Tanas Hill is in the southern-
5 most area marked Delgamuukw, is it?
6 MS. KOENIGSBERG: Yes, my lord.
7 THE COURT: That's the one that goes down and includes Kispiox?
8 A That is correct.
9 MS. KOENIGSBERG: Yes.
10 THE COURT: Thank you.
11 MS. KOENIGSBERG:
12 Q The berry picking place, which is referred to in your
13 interrogatory, in the interrogatory which you signed
14 and which Mr. Tait swore, I didn't mean to make a
15 distinction there, which you swore and Mr. Tait swore,
16 is not meant to encompass the entire area now claimed
17 as the Tanas Hill area, is it?
18 A Could you repeat that again?
19 Q Where it says in answer to 59(c) on the interrogatory,
20 where it says a berry picking place where the Combs
21 now live in the Kispiox Valley, that is not meant to
22 encompass all of the area now claimed as what we were
23 referring to as the Tanas Hill area?
24 A It's part of it.
25 Q It's part of it.
26 Now, going back to the Kwinageese territory, which
27 is the one which you have sworn an affidavit for, and
28 which is shown on 9A as well as the northernmost
29 territory designated with the name Delgamuukw, did you
30 know Chris Harris?
31 A Chris Harris is my uncle.
32 Q Than he held the name Luus?
33 A That's correct.
34 Q And he died about 1976?
35 A Somewhere around there.
36 Q And you're familiar with a map which Chris Harris
37 drew?
38 A I am aware of it.
39 MR. RUSH: What's the exhibit number, please?
40 MS. KOENIGSBERG: Exhibit 22 for identification.
41 Q Yes, I think that's the trial exhibit number, because
42 the Neil Sterritt discovery exhibit number is 20.
43 You have seen that map before?
44 A Not in this version.
45 Q You have seen a slightly different version?
46 A Smaller. Very small.
47 Q And you were shown this map when you were examined for

1 discovery by Mr. Goldie, do you remember that?
2 A I don't remember.
3 Q You don't remember being examined for discovery or you
4 don't remember being shown this map?
5 A No.
6 Q I am sorry, you don't remember being shown the map?
7 A I don't remember seeing it when I was being questioned
8 by Mr. Goldie.
9 Q When was it that you saw this map or a smaller version
10 of it?
11 A Maybe three years ago.
12 Q And who showed you the map?
13 A I think it was Neil Sterritt.
14 Q And I am just going to leave that here because it may
15 be easier for you to refer to it in its fuller
16 context.
17 But I have taken the liberty of just copying the
18 part, which I hope I got right, as the part that seems
19 to correspond to the Kwinageese territory. And I have
20 had photocopied, Mr. Muldoe, the part of this map
21 which includes from where it says on the most -- on
22 the westerly side here, Skawill and then just
23 Skawill/Joogosle'e, Gyolugyet, Tsii Basa'a and further
24 on down, do you see that?
25 A I see it.
26 Q Now, do you recognize the area which -- that would
27 correspond approximately to the Kwinageese territory
28 on the Chris Harris map in front of you?
29 A I recognize it, it's bordered by the Gyolugyet,
30 Joogosle'e and Tsii Basa'a.
31 Q We don't see when we look at this map the name
32 Delgamuukw, do we?
33 A No.
34 Q Is Axgii gii the name that is on the bulk of the area
35 claimed as the Kwinageese territory on 9A?
36 A Axgii gii was held by the late Delgamuukw before any
37 of these maps were ever made, that's why you see the
38 name Axgii gii on there.
39 Q I am going to ask you a few questions about that but
40 before I do, does the Kwinageese territory claimed on
41 map 9A also cover the part of the Chris Harris map
42 that shows Gyolugyet coming across the northern
43 section?
44 A That is not a right map to describe Delgamuukw's
45 territory.
46 Q All right. My question to you is: On Chris Harris's
47 map, if we were to try to identify the area which is

1 claimed as the Delgamuukw-Kwinageese territory on map
2 9A it would cover the area as ascribed to Axgii gii
3 and part of the area ascribed to Gyolugyet?
4 A That's correct.
5 Q And it's the northern part, the boundary of which, the
6 northern boundary of which is the Nass River?
7 A That's correct.
8 Q And so that would read all of Delgamuukw?
9 A That would be all Delgamuukw.
10 Q Is there any other part ascribed to any other house on
11 the Chris Harris map which is included in the
12 Delgamuukw-Kwinageese territory?
13 A None.
14 Q Now you mentioned that Axgii gii was a name held by
15 Delgamuukw a long time ago?
16 A Yes, that's correct.
17 Q And Fritz Harris held that name, did he?
18 A Fritz Harris? Different clan.
19 Q He didn't hold the name Axgii gii?
20 A No.
21 Q Your mother now holds that name?
22 A That's correct.
23 Q Who held that name before your mother, do you know?
24 MR. RUSH: He said --
25 A Albert Tait.
26 MS. KOENIGSBERG:
27 Q He held the name Axgii gii as well as Delgamuukw?
28 A Yes.
29 Q And before Albert Tait?
30 A I don't recall.
31 Q I am showing you a document which was produced by your
32 counsel in his genealogy for the House of Delgamuukw.
33 Have you seen that genealogy before you? You may have
34 seen it all spread out.
35 A I have seen it.
36 Q Did you review that genealogy?
37 A Not in the sense that you review it to know it. I
38 used it for reference.
39 Q And did you provide any of the information which is
40 contained on this genealogy?
41 A Genealogy information was provided by the late
42 Delgamuukw.
43 Q And to your knowledge, is it accurate, this genealogy?
44 A It's fairly accurate.
45 Q Let me leave a copy of it in front of you. On this
46 genealogy, on page four -- do you have a copy?
47 MR. RUSH: Yes, I do, thank you.

1 MS. KOENIGSBERG:
2 Q It shows -- is that your mother Lottie Harris?
3 A That's correct.
4 Q And it shows her as Axgii gii, and just above that, it
5 shows Solomon Johnson and did he hold the name Axgii
6 gii?
7 A I don't remember.
8 Q Okay. But you believe that Albert Tait gave this
9 information, is the author of this information that we
10 see on this genealogy?
11 A He is the author of this.
12 Q Yes. And just below Solomon Johnson, the line on
13 which Solomon Johnson is, is the line where Albert
14 Tait is, do you see that? Do you see Albert Tait
15 there?
16 A Just below or beside it?
17 Q Just beside it, I see Albert Tait. Yes, now you have
18 your finger on Albert Tait, Delgamuukw? It doesn't
19 show Axgii gii as his name there, should it be there?
20 A Depends in what year this genealogy was made.
21 Q Okay. If you turn over to page eight.
22 A Page eight?
23 Q The last page, eight.
24 Do you see the name Peter Brown about the middle of
25 the page?
26 A Peter Brown?
27 Q Yes.
28 A Yes, I see it.
29 Q And it has Axgii gii under it?
30 A That's correct.
31 Q And did you know Peter Brown?
32 A Not in my lifetime.
33 Q Do you know if he ever held the name Axgii gii?
34 A I wasn't even born.
35 Q You never heard that?
36 A No.
37 Q It doesn't show any relationship lines, if I can put
38 it that way, Peter Brown, do you know how he was a
39 member of the House of Delgamuukw?
40 A Because he he was a Frog.
41 Q Because he was a Frog?
42 A He was Frog Clan.
43 Q Delgamuukw is in the Frog or Lax Seel clan?
44 A Yes. Lax Seel.
45 Q Do you know what house Fritz Harris is in?
46 A Chris Harris?
47 Q Fritz Harris?

1 A House of Luus.
2 Q House of Luus. And you don't believe that the name
3 Axgii gii was ever in the House of Luus?
4 A Different clan. I said that before.
5 Q Yes. So, to your knowledge, the name Axgii gii would
6 not be in the House of Luus?
7 A Never.
8 Q In any event, at the time that Chris Harris made this
9 map, if he made it within a short time before he died,
10 and he died in 1976, you believe that Albert Tait held
11 the name Axgii gii?
12 A I believe that he held it, and I also believe that he
13 worked that area and that he built one complete cabin
14 and another uncompleted cabin on it and I know that he
15 had walked from Kispiox to that area.
16 Q When did your mother take the name Axgii gii?
17 A I don't recall.
18 Q Was it before Albert Tait died?
19 A Well before.
20 Q Well before. Might it have been in 1975 or '76?
21 A I believe she took it when the late -- the former
22 Delgamuukw took -- the former Delgamuukw, Mark
23 Johnson, passed away and Albert Tait took Delgamuukw
24 and my mother took Albert Tait's name which was Axgii
25 gii.
26 Q On the genealogy on page one it shows Mark Johnson
27 having died in 1954?
28 A That's about right.
29 Q And so your mother took the name approximately in
30 1954?
31 A That's right.
32 Q So, if this map by Chris Harris was made after 1954
33 your mother would have been the holder of the name,
34 Axgii gii?
35 A Could be.
36 Q And would Axgii gii have been the head name of the
37 House of Delgamuukw at the time this map was made?
38 This map referring to the Chris Harris map?
39 A Not that I recall.
40 Q Would the fact that the name is put on this territory
41 signify that that's the most -- that's the head
42 chief's name?
43 MR. RUSH: I would object to that question. I don't think it's
44 within the compass of any of us to know what it would
45 signify, the right -- that fact what the name is.
46 THE COURT: I think that's right. I think you could frame the
47 question a bit differently.

1 MS. KOENIGSBERG:
2 Q Would you expect that the name being attached to a
3 territory identifying the territory, as signifying
4 that the name is the highest name in the house to
5 which its ascribed?
6 A No.
7 Q So we could expect to see -- it would not be unusual
8 to see Axgii gii attributed to an area that belonged
9 to Delgamuukw and Delgamuukw would be the highest
10 chief's name in that house?
11 A This is just an informational map that was drawn by my
12 late uncle to try and pull things together and whoever
13 had use of that property at that time, his name was
14 put on there.
15 Q Did Axgii gii have territory separate from that of
16 Delgamuukw at one time?
17 A Not to my knowledge.
18 Q Now, the boundary of the Axgii gii territory on the
19 Chris Harris map is shown considerably south of the
20 Nass River, that's correct, isn't it?
21 A That is wrong.
22 Q Well it's wrong but it's correct that it's on this
23 map, isn't it?
24 A That's the way it's shown on this map but it's wrong
25 according to our own.
26 Q And your information is different?
27 A That's correct.
28 Q And it shows that Gyolugyet in fact is across the
29 north part of this territory and goes right over to
30 the western boundary of it on the Chris Harris map,
31 that's correct, isn't it?
32 A That's right.
33 Q But on map 9A, all of that territory which is ascribed
34 to Gyolugyet and then the most northerly part of the
35 Chris Harris map on 9A is ascribed to Delgamuukw?
36 A That's correct.
37 Q Is it fair to say that Chris Harris was a
38 knowledgeable person about boundaries of the Gitksan?
39 A Knowledgeable.
40 Q I asked you once before -- maybe I will leave that
41 there so you can refer to it -- I asked you once
42 before if you remembered being examined for discovery
43 by Mr. Goldie with reference to this particular map
44 and you said you didn't remember it?
45 A Still I don't remember.
46 Q I am just going to read you some questions and answers
47 on page 27 of that examination for discovery, and ask

1 you if you remember giving or hearing those questions
2 and giving those answers, and I want to ask you what
3 you meant. And I am beginning at question 219:
4
5 "Q Going back to Exhibit 20 on Mr. Sterritt's
6 discovery..."
7
8 And if we looked at the Chris Harris map it says
9 exhibit to Sterritt's discovery:
10
11 "The copy of the Chris Harris map, the northerly
12 boundary of the House of Axgii gii, which is now
13 as you have told me is part of Delgamuukw, is
14 south of the Nass River and the name Gyolugyet
15 appears in there. Is that a house?
16 MR. RUSH: It appears in where?
17 MR. GOLDIE: Between the -- well, it is to the
18 northeasterly side of the boundary of Axgii gii.
19 Q I want to know if that name is the name of a
20 house?
21 A It is not within my territory and I cannot
22 answer.
23 Q I am sorry, I did not catch that.
24 A It is not within my territory. I cannot answer
25 whether it is a house or not, that is the
26 question you asked me.
27 Then just stopping there.
28 Do you recall now being asked those questions and
29 giving those answers?
30 A There was a conversation with Mr. Goldie and Mr. Rush
31 here and -- that is not all of it, also there is the
32 next page to it.
33 Q Yes, it goes on but for the purposes of my question, I
34 don't think we need to go on. You go on to answer the
35 that Gyolugyet is Mary McKenzie and so on. I want to
36 know now if you recall being asked questions and
37 giving answers that had reference to that map.
38 A I recall that, I recall not answering on someone
39 else's territory.
40 Q Okay. My question to you now is: What do you mean
41 "it is not within my territory and I cannot answer"?
42 And I will just refer you back to the question, which
43 was a lengthy one:
44 "Q Referring you to the Chris Harris map and
45 referring you to the northerly boundary of the
46 House of Axgii gii, which is now as you have told
47 me a part of Delgamuukw, is south of the Nass

1 River and the name Gyolugyet appears in there, is
2 that a house?"
3 Your answer was:
4 "A It is not within my territory and I cannot
5 answer."
6 What did you mean by that answer?
7 A It is not within my territory as the map depicts.
8 Q Okay. So is it fair to say that you meant that the
9 area ascribed to Gyolugyet at the top is not in your
10 territory?
11 A Not within my territory with the reference you're
12 using.
13 Q Okay. Those are all my questions on that.
14 THE COURT: I take it what you're saying here, Mr. Muldoe, your
15 territory is not of the Nass to this, this territory
16 you are being asked on this map is south of the Nass
17 and is therefore not in your territory?
18 A All I am saying that not the territory with a
19 reference that's been used, which is my late uncle's
20 map, it is not in my territory to -- within this map,
21 and the newer maps it is within my territory.
22 THE COURT: All right. Thank you.
23 THE COURT: Mr. O'Byrne?
24 MS. KOENIGSBERG: I am finished my examination on this point.
25 THE COURT: I thought you said you were finished.
26 MS. KOENIGSBERG: I said I was going to be short but not quite
27 that short.
28 Q I'd now like to ask you some questions about your
29 employment history and where you have lived. You were
30 born in Port Essington?
31 A In Haysport.
32 Q That is near Port Essington?
33 A Across from there.
34 Q And you were born in 1937?
35 A That's correct.
36 Q And how old were you when you moved back to Kispiox?
37 A A few months.
38 Q It's not something that you really remember, is that
39 fair?
40 A No.
41 Q How long did you live in Kispiox?
42 A Approximately 20 years.
43 Q And then I understand you went to Vancouver?
44 A I went to Vancouver Vocational Institute.
45 Q You went to the Vancouver Vocational Institute?
46 A That's correct.
47 Q To school?

1 A Yes.
2 Q And when was that?
3 A 1958.
4 Q And did you work in Vancouver?
5 A I worked in Vancouver.
6 Q And where did you work?
7 A Johnson Motors.
8 Q Johnson Motors?
9 A Yes.
10 Q And how long did you work there?
11 A Approximately two-and-a-half years.
12 Q And I understand that you trained at Vancouver
13 Vocational Institute as a heavy- and light-duty
14 mechanic?
15 A That's correct.
16 Q And did you work then as a mechanic for Johnson
17 Motors?
18 A I worked as a mechanic for Johnson Motors.
19 Q Did you work as a mechanic after the two-and-a-half
20 years with Johnson Motors?
21 A I worked as a mechanic.
22 Q Where?
23 A Several locations in Vancouver.
24 Q And how many years in all did you work in Vancouver?
25 A Approximately 12.
26 Q 12 years. That takes us to about 1970?
27 A Yes.
28 Q Did you move back to Kispiox after that?
29 A I moved somewhere in there.
30 Q You moved where? Sorry.
31 A I moved somewhere in that time, 1970, '71.
32 Q And it was back to Kispiox?
33 A That's correct.
34 Q And have you lived in Kispiox since 1970?
35 A I have lived in Kispiox since I moved back.
36 Q And you also have been a commercial fisherman?
37 A I am a commercial fisherman.
38 Q And you still are?
39 A I am still.
40 Q And when did you first become a commercial fisherman?
41 A Approximately 20 years ago.
42 Q So, the first time you went commercially fishing you
43 were living in Vancouver?
44 A I was living in Vancouver.
45 Q And did you -- you owned your own boat?
46 A For the first few years I was a crew member of a seine
47 boat.

Q On a seine boat?
A Yes.
Q Where did you fish?
A Coast-wide.
Q Coast-wide?
A Yes.
Q And when did you first purchase your own boat?
A Approximately five years ago.
THE COURT: Sorry, five years ago?
A Five years ago.
THE COURT: A gillnetter or seine boat?
A Gillnetter.
THE COURT: Gillnetter?
A Yeah.
MS. KOENIGSBERG:
Q And where do you fish now?
A Coast-wide.
Q When you say coast-wide, can you give me the outer boundaries?
A From Alaska, Canadian border right down to the border down Vancouver Island.
Q And you fished on the west coast of Vancouver Island?
A I have been there.
Q Have you fished in the Fraser?
A I fished in the Fraser.
Q And you also worked for the Department of Indian Affairs?
A That's correct.
Q And you worked for that department for how many years?
A About two years.
Q And where were you located?
A Hazelton.
Q Hazelton. Are there any other occupations which you have held as principal occupations other than the ones we have discussed?
A Chief of the Frog Clan.
Q Chief of the Frog Clan. You mean Chief Delgamuukw?
A That's correct.
Q You are also a Kispiox band councillor?
A That's correct.
Q How long have you been a Kispiox band councillor?
A I was involved with council for approximately 14, 15 years.
Q And you still are?
A No, I am not.
Q When did you stop being a band councillor?
A About a year ago.

1 Q You hunted and trapped on the territories of
2 Delgamuukw?
3 A I have hunted and trapped on those territories, that's
4 correct.
5 Q On all three of the territories which are claimed by
6 Delgamuukw in this lawsuit?
7 A That's correct.
8 Q Have you hunted and trapped in other territories?
9 A Pardon.
10 Q Have you hunted and trapped in other territories
11 within the claim area?
12 A Yes, I have hunted in other claim areas.
13 Q You say you have hunted, have you not trapped also?
14 A I have not trapped -- I do not trap on anybody else's.
15 Q When did you first go trapping in the Delgamuukw
16 territories?
17 A Approximately 15 years ago.
18 THE COURT: I am sorry, 15 or 50?
19 A 15.
20 MS. KOENIGSBERG: He might be in the Guinness Book of World
21 Records if it was 50 years ago.
22 Q And 15 years ago you were also working in Vancouver?
23 A I had moved up here, I had been up this way about 15.
24 Q About 15 years. And when you first trapped was it in
25 the Kwinageese territory?
26 A In the Willuu Wakw territory.
27 Q The Ironsides Creek territory?
28 A That's right.
29 Q And how often have you been trapping there?
30 A Just about every year.
31 Q Every year for the last 15 years? Sorry?
32 A About every year except for maybe two years.
33 Q Okay. And have you trapped in the Gwinagiist
34 territory?
35 A I just came from there.
36 Q You trapped this year?
37 A I am still there.
38 Q We have interrupted your trapping season, have we,
39 this year?
40 A That's correct.
41 Q When was the first time that you trapped in that area?
42 A Oh, about six years ago.
43 Q And what about the Tanas Hill area, have you trapped
44 there?
45 A Members of my family have trapped there.
46 Q But you have not?
47 A No.

1 Q You were a band councillor of the Kispiox Band in
2 1983?
3 A That's correct.
4 Q And you were a councillor when that band applied for
5 financial assistance to the Department of Indian
6 Affairs to set up a dispute resolution group?
7 A What group?
8 Q I will call it a dispute resolution. There were some
9 outstanding disputes within the Kispiox Band over land
10 within the reserves, fishing sites and trapping lines,
11 do you recall that?
12 A I recall but not in exactly the name that I hear now.
13 Q It's my name, which was meant to be descriptive. I am
14 just going to put in front of you two documents which
15 are from the plaintiffs' list 58-12 and 57-97, and
16 looking at the document first, which is plaintiffs'
17 number 57-97, there is a letter there to a Mr. Peter
18 Clark dated June 23rd, 1983 and signed Mr. George
19 Muldoe, who is your brother and who was chief
20 councillor of the Kispiox Band Council in 1983?
21 A That's correct.
22 Q And that letter appends as the last page of that group
23 of documents that I have just handed you, a band
24 council resolution; do you see that?
25 A I see it.
26 Q And it says: "Whereas the Kispiox Band Council wishes
27 to settle disputed lands, traplines and fishing sites
28 within the Kispiox Band; and whereas an elders and
29 hereditary chiefs group will be set up as outlined..."
30 I think that should be, "...in a letter to Peter
31 Clark, director of reserves and trusts dated June
32 23rd, 1983, therefore be it resolved that the
33 Department of Indian Affairs transfer to the Kispiox
34 band $10,000 to carry out the proposed programme."
35 And it's said to be subject to an agreement signed
36 July 14, 1981. You signed that band council
37 resolution?
38 A I signed it.
39 Q Was my characterization of the group as one of dispute
40 resolution a mis-characterization do you think?
41 A No.
42 MS. KOENIGSBERG: Could this group of documents, which includes
43 the letter from Mr. George Muldoe, which is two pages,
44 and some pages which are appended, which -- there are
45 two pages appended which just seem to be a listing of
46 lots within the reserve which are the subject of
47 dispute and the band council resolution I have just

1 read, be marked as the next exhibit?
2 THE COURT: What's the next exhibit number, please?
3 THE REGISTRAR: 826.
4
5 (EXHIBIT 826: SIX PAGES, FIRST PAGE BLANK, NEXT PAGE
6 LETTER DATED JUNE 23, 1983)
7
8 MS. KOENIGSBERG:
9 Q And the next document which I handed to you, which is
10 document number 58-12, is another Band Council
11 resolution dated October 24, 1984? Do you recognize
12 that resolution?
13 A I recognize my signature on it.
14 Q And that is a resolution for the continuation of the
15 same programme that we have just heard about?
16 A That's right.
17 MS. KOENIGSBERG: Could that be marked --
18 Q And there is a page appended to it which appears to be
19 a setting out of a monthly honorarium to each of the
20 elders who will participate in the dispute resolution.
21 THE COURT: It's the budget.
22 MS. KOENIGSBERG: Yes, I believe so.
23 THE COURT: 827.
24 MS. KOENIGSBERG: Is that correct?
25 A Yes.
26
27 (EXHIBIT 827: THREE PAGES, FIRST PAGE BLANK, NEXT PAGE
28 BAND COUNCIL RESOLUTION DATED OCTOBER 24, 1984)
29
30 MS. KOENIGSBERG:
31 Q This was a programme which was successful, was it, for
32 the Kispiox band in terms of resolving disputes?
33 A One of them.
34 Q Traditionally, the matters referred to, that is, the
35 allocation of lands, the resolution of disputes over
36 traplines and fishing sites, would have been in the
37 feast hall; is that correct?
38 A That's correct.
39 MS. KOENIGSBERG: Those are all the questions I have. Thank
40 you.
41 THE COURT: Mr. O'Byrne?
42
43 CROSS-EXAMINATION BY MR. O'BYRNE:
44
45 MR. O'BYRNE:
46 Q Mr. Muldoe you were asked some questions about your
47 capacity as a chief councillor, what were the years

1 then that you acted as a councillor in the Kispiox
2 Band?
3 A I am sorry, I can't -- could you speak a little bit
4 louder or a little bit more clarity? I have had about
5 75 percent loss of hearing.
6 Q All right. You tell me if you can't hear me.
7 A Okay.
8 Q What year did you commence in the capacity as a band
9 councillor in Kispiox?
10 A I remember being a councillor before I left for
11 Vancouver and I was -- that was in 1957, I had to
12 resign. That was my first year as councillor.
13 Q And you came back then to Kispiox in the early '70s,
14 did you?
15 A That's correct.
16 Q And you, again, took up a role in the Tribal Council
17 that was then ongoing?
18 A That's correct.
19 Q It was then known as the Gitksan-Carrier Tribal
20 Council?
21 A That's correct.
22 Q You were chairman of a variety of meetings over time;
23 is that correct?
24 A Sometimes.
25 Q All right. I want to direct your attention to a
26 meeting in December of 1981, a meeting of the Gitksan-
27 Carrier Tribal Council held in the Totem Cafe banquet
28 room, you were the co-chairman of the meeting. There
29 was a discussion on the need of staff in the Hazelton
30 office of the Tribal Council, do you recall that
31 meeting at all?
32 A I recall it.
33 Q And do you recall that there was a discussion about
34 whether or not people to be hired should have some
35 preference in being able to speak English?
36 A Be able to speak English?
37 Q Or to be fluent in English?
38 A No.
39 Q Do you recall some discussion where there was some
40 concern whether there should be a person from the
41 Gitksan tribe and one from the Carrier tribe to
42 eliminate a language barrier?
43 A One of the objectives.
44 Q Do you recall saying that there should not be a
45 language barrier, you thought the language barrier had
46 pretty well been overcome by your people?
47 A Perhaps.

1 Q Do you recall saying that?
2 A That's a long time ago. Not word for word.
3 Q Well, do you recall saying words to that effect?
4 A What is the question?
5 Q I was asking you whether or not you stated "there
6 shouldn't be a language barrier, I think that's pretty
7 well been overcome amongst our people"?
8 A I could have said that.
9 Q All right. Now, do you recall a meeting as well of
10 the Gitksan-Carrier Tribal Council in March of 1972,
11 at this meeting you were the chairman of the meeting,
12 and there was some discussion of the Gitksan history
13 that was being prepared. Do you recall that?
14 A I recall that.
15 Q And do you recall there was some concerns about the
16 Xsan information and the information they were
17 gathering from the elders?
18 A That concern is still there.
19 Q What was the concern, do you recall?
20 A That the information wasn't going to be made available
21 to us and it's still locked up.
22 Q And you wanted that information because you were
23 concerned firstly about the Nisga'a Tribal Council
24 having an overlapping claim in the Gitksan land claim
25 area; is that right?
26 A That's one of them. There was many concerns.
27 Q And another concern was that you wanted this
28 information that was being gathered at that time in
29 1972 to assist you in your own land claims within the
30 Gitksan-Carrier Tribal Council?
31 A Perhaps.
32 Q Were there other concerns?
33 A Perhaps.
34 Q Do you recall them?
35 A In 1972?
36 Q I take it then you don't recall?
37 A No.
38 Q All right. Do you recall a meeting of the Gitksan-
39 Carrier Tribal Council in March of 1973, it was in, I
40 believe, the high school library, you moved that
41 discussions be continued on the land claims that had
42 been under discussion at the meeting and there was as
43 well discussion amongst the people assembled about the
44 way that the Gitksan-Carrier Tribal Council and the
45 people of it should be compensated by way of land
46 claims; do you recall that?
47 A Compensated?

1 Q Yes. There was discussions of royalties and money
2 being paid, do you recall that?
3 A I remember the meeting.
4 Q Do you remember stating that cash settlement would be
5 a sell out, arrangements should be made so as to
6 receive compensation on a continual basis for years to
7 come?
8 A Maybe I said that.
9 Q Do you recall saying that?
10 A Pardon?
11 Q Do you recall saying that? Do you recall putting
12 forward that any settlement should be on the basis of
13 royalties?
14 A That's one of the bases.
15 Q And you put that forward, correct?
16 A Yes.
17 MR. O'BYRNE: I have no further questions, my lord.
18 THE COURT: Mr. Rush?
19
20 RE-EXAMINATION BY MR. RUSH:
21
22 MR. RUSH:
23 Q Mr. Muldoe, you were asked some questions about the
24 contributions which you have made at the feast, when
25 you took the name of Delgamuukw. You were asked the
26 question of what amount of cash contribution did you
27 make and your answer was $1600. Was this a personal
28 contribution of $1600?
29 A It was personal.
30 Q How much cash did your house contribute at the same
31 feast?
32 MS. KOENIGSBERG: Excuse me, my lord, I object. I don't think
33 that arises out of my cross-examination. We are
34 talking about the name and his contribution and there
35 is actually a lengthy document that deals with these
36 contributions but I didn't cross-examine on it. I
37 don't see what it has to do with my cross-examination.
38 MR. RUSH: Well, I think it arises -- that's the note I had, I
39 made a contribution and the question, I think it's
40 clearly the question is whether or not there is a
41 house, whether Mr. Muldoe in his capacity as a house
42 member, or in his personal capacity, makes
43 contributions and how much money was contributed in
44 respect of the name. I will ask the same question
45 with respect to the goods. If anything turns on what
46 his personal contribution is, the evidence earlier has
47 been that the house makes contributions of both cash

1 and goods contributions in support of the succeeding
2 chief.
3 THE COURT: Well, in view of the fact that there was no mention
4 in examination in chief, I think you should be allowed
5 more latitude than would normally be the case in
6 re-examination. I think you may proceed.
7 MR. RUSH:
8 Q My question to you is: Do you recall the cash
9 contributions made at that feast by members of your
10 house, that is, the House of Delgamuukw?
11 A Our house had two feasts. Which one are you referring
12 to, the most recent one, the burial feast or the
13 headstone feast?
14 Q The burial feast?
15 A The burial feast, $1600.
16 Q Okay. What was the contribution, do you recall the
17 contribution made by other house members of goods at
18 your feast at the burial feast?
19 A There was considerable but I don't know the exact
20 amount. I would be guessing if I gave you a figure
21 now.
22 Q Was it in excess of $500?
23 A It was well in excess of $500.
24 Q Thank you. I want to direct your attention to a map
25 that there was some examination on, this map, which is
26 Exhibit 22 and although it's marked for
27 identification, my lord, it's Exhibit 22 in the
28 proceedings, you were asked in particular about the
29 word Giloget, G-I-L-O-G-E-T, which shows in the --
30 looks to be the northeast, above the northeast dotted
31 line on this map, where the word Axgii gii, A-X-G-I-I,
32 G-I-I, and his lordship asked you about the place of
33 the Delgamuukw territory there as being below or above
34 the Nass River. Assuming for the moment that the
35 place where Nass River is described in this, on this
36 map, do you see where I am pointing to?
37 A Yes.
38 Q And assuming for the moment that the dotted line here
39 is intended to refer to a boundary, is the place, is
40 the word Giloget, G-I-L-O-G-E-T, in a place that is --
41 well, is that the right place for the attribution or
42 description of the territory of Gyolugyet?
43 A It's in the right position as far as being a
44 neighbour. The same Joogoslee to the north, Giloget
45 and Tsii Basa'a.
46 Q All right. This map suggests, again, if this is a
47 boundary that's a correct boundary of Axgii gii goes

1 to this line and north to the Nass River, is that
2 right?
3 A That's not right.
4 Q Was that right, has that ever been right?
5 A Not in my memory.
6 Q You were asked about trapping, Mr. Muldoe, and you
7 were asked if you trapped at Kwinageese and your
8 answer was that you trapped there about six years ago.
9 Do other members of your house trap in the Kwinageese
10 territory?
11 A All the members trap in the Kwinageese territory.
12 Q All right. And do you know for how long other members
13 of your house trapped at the Kwinageese territory?
14 A The former Delgamuukw trapped there.
15 Q Excuse me, I should have been clearer in my question.
16 I do not mean to say earlier members, I mean to say
17 the present members of your house who are --
18 A There is my brothers trap up there, my nephews trap up
19 there.
20 Q How long have your brothers been trapping there?
21 A 12 years.
22 Q And the question that was put to you by Ms.
23 Koenigsberg, in reference to this document 57-97, just
24 want to be sure that that is in front of you. And
25 this document is or pertains to a letter to a Mr.
26 Clark dated January 23rd, 1983 and I direct you to
27 your paragraph two of that letter, do you see that,
28 where it says in part: "The conflict between sections
29 42 to sections 48 of the Indian Act and the hereditary
30 system still enforced by the hereditary chiefs has
31 created problems which cannot be solved by the elected
32 Band Council or through departmental procedures." Do
33 you recall, Mr. Muldoe, what sections 42 and 48 refer
34 to?
35 A No.
36 Q It goes on to say in the same paragraph, and I quote:
37 "The lands affected included surveyed and unsurveyed
38 lots within the Kispiox Indian Reserve boundaries,
39 registered and unregistered traplines and fishing
40 sites." There is a list attached to that document and
41 it makes reference to lot numbers in Kispiox, is that
42 in the Village of Kispiox, the reserve?
43 A That's in the Village of Kispiox.
44 Q And those block references and lot references are to
45 lots in the reserve at Kispiox?
46 A Kispiox Reserve Number 1.
47 Q You agreed with Ms. Koenigsberg in reference to this

1 document that traditionally the resolutions of
2 disputes occurred in the feast hall?
3 A That's correct.
4 Q My question to you is: Do they occur in the feast
5 hall today?
6 A They still occur.
7 MR. RUSH: That's it.
8 THE COURT: All right. Thank you. We will adjourn then until
9 10 o'clock tomorrow morning.
10 MR. RUSH: Thank you, my lord.
11 (PROCEEDINGS ADJOURNED TO THURSDAY, DECEMBER 1, 1988 at 10
12 O'CLOCK A.M.)
13
14
15 I hereby certify the foregoing to
16 be a true and accurate transcript
17 of the proceedings herein to the
18 best of my skill and ability.
19
20
21
22
23
24 Wilf Roy
25 Official Reporter
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47