Vancouver, B.C.
May 25, 1989

BARBARA LANE, Resumed:

THE REGISTRAR: In the Supreme Court of British Columbia, Vancouver, Thursday, May 25, 1989. Calling the matter of Delgamuukw versus Her Majesty the Queen at bar.
I caution the witness, you are still under oath.
THE COURT: I expect that counsel know that Mrs. Ritchie is going to leave us.
MR. RUSH: We learned that this morning.
THE COURT: You are all aware of that unhappy fact. We are grateful for what she has done and we are grateful for what she will do in the time with us. We welcome Ms. Tompson to take her place and she is looking forward with eager anticipation and pleasure to this trial. All right. Thank you. Mr. Rush.

EXAMINATION IN CHIEF BY MR. RUSH:

Q Dr. Lane, I would like to address you again -- have you look at tab 64, please, of volume 2 in the document book that is before you. This is a document in the papers relating to Mr. Nind to The Honorable the Colonial Secretary, July 17, 1865. Do you know this document, Dr. Lane?

A Yes, I do.

Q And can you give us the context for it, please?

A I beg your pardon?

Q The context for the document. What were the circumstances of it?

A Oh, yes. Mr. Nind was reporting to the Colonial Secretary on a dispute regarding Indian land claims in the interior of British Columbia. I would direct your attention -- the dispute were Indian claims and efforts of white settler's contentions over the land. I would direct your attention to the recommendation made by Mr. Nind at the close of the description of the difficulty in which he says:

> "I believe the only method of settling this matter satisfactorily and with equity to both Indian and whites will be for the Government to extinguish the Indian claims, paying them what is proper for so doing, and giving them certain reservations for their sole use."

THE COURT: Where is that, please?
THE WITNESS: I'm sorry, that is at page 30 at the end of the Nind communication.
THE COURT: Yes. Thank you. Who is Mr. Nind, please?
THE WITNESS: He was a justice of the peace at that time with the responsibility of settling such disputes between whites and Indians. I believe this is 1865. In 1863 he was a member of the Legislative Council, I believe. But I am not certain whether all J.P.s were or not, and whether he still was when he was writing this in 1865 I don't recollect.
MR. RUSH: And, Dr. Lane, what Indians of what area is being referred to here if you know?
THE COURT: Well, it says at the top "The Indian land claims above Kamloops and in its vicinity."
MR. RUSH:
Q Yes, thank you.
A Well, he also deals with another branch of the same tribe if you will see in the succeeding paragraph. I think that he is describing several areas of dispute, one of the Thompson River.
MR. RUSH:
Q Now, Dr. Lane, the colonies of Vancouver Island and British Columbia were united. What was the date of that?
A 1866.
Q And after that union is there further documentary evidence that relates to government consideration about native title?
A Yes.
Q And if I can direct you, please, to tab 69, I would ask you if this is one such document. This is a document entitled "Legislative Council Proceedings", February 11, 1867. It apparently appears in the British Colonist.
A Yes. It was printed in the newspaper on February 18, 1867, but refers to the previous Monday's discussions in the Legislative Council, yes.
Q All right. And can you direct his lordship's attention to the portion, if any, of this that you consider significant? I would ask you to look on pages 2 and 5.
A Yes. Before doing that I would perhaps direct attention to the fact that the initial paragraph there sets out who was present during these discussions and they include Mr. Crease who is now Attorney General of the United Colony, and Mr. Trutch is there and Mr.

O'Reilly. And, I'm sorry, you were directing me to what?

Q To page 2.

A To page 2. Yes, Mr. Crease, the Attorney General, in the first full paragraph on page 2 draws attention to, and I quote the language here:

> "The Indians were particularily sensitive of their rights as original possessors of the soil and were entitled to the greatest consideration."

THE COURT: Where is that, please?

THE WITNESS: The first full paragraph on page 2 of the typed transcript.

THE COURT: Oh, yes.

MR. RUSH:

Q And page 5, Dr. Lane?

A And at page 4:

> "Mr. Southgate asked whether it was contemplated to pay the Indians for their land because this was a great question with the Indians on the Island."

And finally on page 5 of that resolution another member:

> "Mr. Wood showed the difficulties that stood in the way of the settlement of the Indian title to lands, and the critical eye with which any acquisition of title would be watched at home and in the Colony."

MR. GOLDIE: I wonder, my lord, if the witness could again identify where this -- the original of this was found.

THE WITNESS: In the Provincial Archives of British Columbia in Victoria.

MR. RUSH:

Q This is a typescript prepared by you, is it?

A Yes, it is. I believe that I read this particular typescript in the collection at the Provincial Archives. If this particular issue was not readable there, I may have taken it from the microfilm copy at the public library in Victoria.

Q At this time, Dr. Lane, there was a reference in the article that you have just referred us to, to "the Indians on the Island". And you made references yesterday to the documentary record to the land in the

Cowichan Valley. Was that issue still outstanding at this time?
A Yes, it was.
Q And may I direct you, please, to tab 72. Can you identify this for us, please?
A Yes. This is again my typed transcription of a --
THE COURT: I'm sorry, where are you going?
MR. RUSH:
Q Tab 72, my lord. This is apparently an article in the British Colonist of July 9, 1868.
A It is not an article. It is a letter to the editor, I believe.
Q Thank you. And the typescript prepared by you?
A Yes.
Q And would you direct us to a passage here of significant to the court?
THE COURT: Do we know who the author is?
A No, we don't or I don't.
Well, in the close of the first long paragraph which opens the letter, the writer says:

> "The question of the extinguishment of the Indian title to the lands in Cowichan and the outlying districts cannot be much longer deferred, and if not soon settled will produce a fruitful crop of mischief."

Q Now, Dr. Lane, I want to direct your attention now please to tab 73. I would ask you if there was further government consideration evident in the documentary record with regard to Indian title in the year following 1869?
A Yes.
Q And this document at tab 73, can you identify it, please? It is entitled "The Chief Commissioner of Land and Works to the Colonial Secretary", December 30, 1869?
A Yes.
Q And it is signed by Joseph W. Trutch on the 30th of December 1869?
A Yes.
Q Now, who was Mr. Trutch at that time?
A Mr. Trutch at that time was the Chief Commissioner of Lands and Works in the United Colony.
Q And the Colonial Secretary, was that position held by an official in London?
A No. No, this is the Colonial Secretary in Victoria.

Q I see. Thank you. Now, can you direct us in this tab, Dr. Lane, to a passage or passages which you consider to be of significance to the court?
A Yes. A dispute -- may I give you the context?
Q Go ahead.
A A dispute had arisen with respect to the Indian reserve at the City of Victoria which had been established under one of the initial Douglas treaties. The report -- the memorandum which Trutch submits here is a review of the history of that reservation and how it was established and its status at this time. And he says at the second paragraph on the first page.
Q This is in the letter on page 64?
A Yes, this is in his letter of transmittal on page 64. He points out after Arabic number 2:

> "It is certain that the tract of land known as the Songish Indian Reserve, was formally set apart by the competent authority of the Hudson's Bay Company's Agent, acting on behalf of the Crown, for the perpetual use and benefit of the Indians of that tribe. And that this land is now held in trust by the Crown, acting under a solemn obligation, as guardian of the rights of the Indians in this respect."

MR. GOLDIE: I take it, my lord, that the context requires this next paragraph also to be considered.
MR. RUSH:
Q Now, Dr. Lane, the memorandum which is attached at page 65, it says, "Memorandum as to the Songish Indian Reserve at Victoria"?
A Yes.
Q This was appended to the transmittal letter, was it?
A Yes.
Q And is there anything in this that you would draw to his lordship's attention from your perusal of this record? I just direct your attention perhaps to the bottom of page 65 where Mr. Trutch apparently is outlining the history with regard to the Songish Indians.
A Yes. This again alludes to the initial history in which Mr. Trutch points out that:

> "When the first settlement was made at Victoria by the Hudson's Bay Company, the Songish Indians, composed of many families or septs, possessed by

occupation the whole south-eastern portion of Vancouver Island, including the Saanich Peninsula."

And mentions where their principal village was and so on. And then says:

"And in 1850 the possessory rights of the various families of this tribe in the lands before claimed by them were purchased by Sir James (then Mr.) Douglas, Governor of the Hudson's Bay Company, at that time lessees of Vancouver Island from the Crown, with full executive powers by written agreement (the original of which is in this office) which sets forth as one of the conditions of the purchase that - 'our village sites and enclosed fields are to be kept for our own use, for the use of our children, and for those who may follow after us. And these lands shall be properly surveyed hereafter.'

Under this condition the tract of land which the Indians had taken up their residence upon opposite Fort Victoria (about 90 acres in extent) as stated in an official return made in 1859 to the House of Assembly, was set apart by the Company's Agent in the Colony for their use and benefit."

Q All right.

A "And has since formally been laid out and established as an Indian Reserve, known as the Saanich Reserve."

Q Now, Dr. Lane, did Mr. Trutch express himself on the subject of native entitlement on subsequent communication?

A Yes, he did.

Q May I direct your attention, please, to tab 74. And if you can just identify first what is at tab 74.

A Yes. The copies of this correspondence, the cover letter at the top of the page from Governor Musgrave to Earl Granville back in England and the enclosed memorandum which begins midway down the page which is authorized by Mr. Trutch are taken here from again the collection of papers relating to the Indian land question which were published by the Province of British Columbia in 1875. I have compared these with

1 the originals, and I'm satisfied that they conform to
2 the originals accurately.
3 Q Dr. Lane, can you express in summary form what the
4 context was for the transmittal of the memorandum and
5 the preparation of the memorandum to Earl Granville?
6 A I'm sorry, the context?
7 Q Yes. The context, please.
8 A Yes, Mr. Sebright Green in Victoria was one of those
9 people who was much concerned and exercised about the
10 failure to extinguish title --
11 MR. GOLDIE: Well, my lord, this is a letter from Mr. Sebright
12 Green which is the context. And with due respect to
13 the witness, the letter is far more exstensive than
14 the witness suggests.
15 MR. RUSH: Well, she hasn't expressed --
16 MR. GOLDIE: She said: Much concerned about the extinguishment
17 of Indian title. I object to any characterization of
18 that kind when the document is here. I don't know
19 whether it is in this collection, but that's the
20 context.
21 THE COURT: Is the letter here?
22 MR. RUSH: It is not here, my lord.
23 THE COURT: Well, I take it that what the witness is doing is
24 sketching the context for the purpose of making a
25 connection between other things and the letter. In
26 other words, I suppose, painting a context or
27 background. But what she says must be taken in that
28 way when the whole context is available from the
29 deceased if somebody puts it before me. Is it any
30 more than that?
31 MR. RUSH: I don't think so, my lord. If I had the letter I
32 would certainly put if before you, and no doubt you
33 are going to see it from Mr. Goldie. But in my
34 submission what Dr. Lane is doing is to put you in a
35 sense of understanding of why these letters were sent.
36 And to that extent, in my submission it is appropriate
37 for her evidence.
38 THE COURT: Well, you see the transmittal says in paragraph 2:
39
40 "If the statements made by Mr. Sebright Green's
41 letter, forwarded to your lordship by the
42 Society..."
43
44 which is the Aboriginal Protection Society,
45
46 "...were statements of facts, they would be a
47 matter of reproach to the Colonial Government."

Now, what I gather the witness is telling me is that Mr. Green, Mr. Sebright Green, had expressed concern about the extinguishment of Indian title. I don't know whether the concern was -- I assume from the nature of his office that there was concern favourable to the Indians, but I don't know.

MR. GOLDIE: Mr. Green, as stated, was a member of the Aboriginal Protection Society which is an English organization, and he corresponded with the people in England to a very considerable extent. They were concerned about the state of aborigines throughout the empire. Mr. Green, I believe, was also the editor of the British Colonist, and at the time I think it is fair to say probably anti-government.

THE COURT: Yes.

MR. GOLDIE: But the context, my lord, is stated in his letter. In my submission it is inappropriate to summarize a document which is, I think, in my submission it is the duty of the plaintiffs to put forward. Unless the position being taken is that in the considered opinion of the witness Mr. Sebright Green's letter is not part of the context then in my submission we are just wasting time by having the witness state something which is already clearly stated in the letter. But if the witness' view is that Mr. Sebright Green's letter is not part of the context then we don't even need to hear the answer to the question my friend put.

THE COURT: Well, the problem with all this, of course, is that one can always find a reason to, I'll use the vernacular, second guess the collection. The witness may have thought that it should be here. It is in counsel's hands and if they didn't put it in it is not there. But she is telling me that this letter is an important one, and it refers to Mr. Green's letter which was one expressing concern about the extinguishment of aboriginal rights.

Now, I think the letter should be before me. But I don't think that the fact that it isn't is a matter that can stop the witness at this point without going on to deal with this letter.

MR. GOLDIE: Well, my point, I can put it very shortly, is it is like reading discovery. If the previous question should be read -- if the question that is being read should be read in the context of the previous questions, then those questions go in.

THE COURT: But with this exception that with the reading of

1 discovery the whole context is available in its -- and
2 is available conveniently. Here I don't know if the
3 letter is available. I don't know who has got it and
4 who hasn't got it. I think that if one applies the
5 analogy to discovery and say it is connected,
6 therefore it should be included and I think that it is
7 connected, it should be included but it doesn't have
8 to be right now.
9 MR. RUSH: My lord, I can only answer in this way that if all of
10 the documents that could be considered to paint the
11 context were to be put in the document book we would
12 have a pretty fat document book.
13 THE COURT: I'm sure we would.
14 MR. RUSH: There was an effort made to whittle out. Now, if my
15 friend thinks this document is important no doubt he
16 will put it to the witness. The decision was
17 counsel's decision, not the witness' decision.
18 Now, in my submission Dr. Lane can address the
19 context by reference to that document. And if she is
20 wrong in the summary of the document no doubt my
21 learned friend can point that out. But I do say that
22 we can proceed with what we consider to be matters of
23 significance, and there is nothing to require us to
24 put in this other letter. Although, I should say that
25 we have no objection to putting it in either. And if
26 the court wishes it, then we certainly don't have any
27 problem with having it before your lordship. In fact,
28 I'm happy to produce it. If you would like to see
29 another letter, my lord.
30 THE COURT: Well, I think the only thing I can add to that, Mr.
31 Rush, is I do not think that in this particular
32 circumstance that it is necessary that your friend put
33 it to the witness. I think that if it is shown to be
34 connected and I think it is and I think it is
35 something that I can call for and ask you to let me
36 have a copy then I can consider it along with the
37 contextual evidence that I have received.
38 MR. RUSH: I agree with that, my lord.
39 THE COURT: Your friend may forget about it when the time comes
40 to cross-examine. I think the point having been
41 raised of being so obvious that Mr. Sebright Green's
42 letter is connected that I can ask you to produce it
43 and have it before me. I ask you to kindly do that.
44 MR. RUSH:
45 Q All right. I just want to ask the witness about a few
46 factual inaccuracies stated by Mr. Goldie in his
47 attempt to summarize the context. Mr. Sebright Green,

Dr. Lane, who was Mr. Green, please?
A Mr. Green was a local resident in Victoria. He was one of those who had purchased land in the Cowichan Valley on the understanding that the government was going to extinguish the native title and was prevented from taking peaceful settlement with his family in the valley because the natives were disturbed that the Indian title had not been extinguished and he had, for some years, urged the government to take action so that the people who had purchased that land like himself would be able to enjoy the peaceful occupation of their land.
Q Now, we've been discussing a letter that he wrote?
A Yes. He eventually wrote to the Aborigines' Protection Society in England asking whether that society could exert any pressure to do something about the situation of Indians in the Colony of Vancouver Island or at this stage in the United Colony.
Q Do you know whether or not Mr. Green was a member of that society?
A As far as I am aware he was not. But he wrote to that society since they were active in that regard, and that society then forwarded his letter to the Colonial office which then forwarded it to Governor Musgrave asking for a response. Governor Musgrave then asked Mr. Trutch to prepare the memorandum which was the response.
Q All right. And that memorandum, is that set out on page 10 of the tabulation at tab 74?
A Yes. It begins at page 10 and carries on to page 13.
Q Right. And it is apparently the name of Joseph W. Trutch is there signed on page 13?
A That's correct.
Q Now, in this document what would you draw his lordship's attention to that is of significance, Dr. Lane? And I will first direct you to the memorandum.
A Well, Mr. Trutch is responding to Mr. Green's letter which has been given to him. And in the second paragraph he says:

> "It is not true, as he avers, that in this Colony we have 'no Indian policy whatever'."

And then much of the memorandum sets out Mr. Trutch's statements as to what the Indian policy has been.
Q Now, I ask you if you will, please, to turn to page 11. Can you draw his lordship's attention to what, if

anything, is significant in this memorandum at page 11?

A Yes. I would draw attention to the paragraph mid-page which begins:

> "But the title of the Indians in the fee of the public lands, or any portion thereof, has never been acknowledged by Government, but, on the contrary, is distinctly denied. In no case has any special agreement been made with any of the tribes of the Mainland for the extinction of their claims of possession; but these claims have been held to have been fully satisfied by securing to each tribe, as the progress of the settlement of the country seemed to require, the use of sufficient tracts of land for their wants for agricultural and pastoral purposes."

And in the following paragraph he describes the Douglas treaties in this fashion, and I quote:

> "In 1850 and 1851, shortly after the first settlement at Victoria by the Hudson Bay Company - at that time grantees from the Crown of the whole of Vancouver Island, with full executive powers of government - their agent, Governor Douglas, made agreements with the various families of Indians then occupying the south-eastern portion of the Island, for the relinquishment of their possessory claims for the district of country around Fort Victoria, in consideration of certain blankets and other goods presented to them. But these presents were, as I understand, made for the purpose of securing friendly relations between those Indians and the settlement of Victoria, then in its infancy, and certainly not an acknowledgment of any general title of the Indians to the lands they occupy."

Q Okay.

A I draw attention to these passages not for the content in terms of --

MR. GOLDIE: Well, in that case, my lord --

THE WITNESS: I have not finished my answer.

MR. GOLDIE: Excuse me, I am raising an objection. My lord, if it is not drawn for the purpose -- if the witness is not drawing it for any other purpose

1 than content, the document speaks for itself. I will
2 object to any submission, whether made by my friend at
3 this point or whether made by the witness, on the
4 interpretation of this document.
5 MR. RUSH: What were you about to say, Doctor, please, before
6 you were interrupted?
7 MR. GOLDIE: Well, I have made an objection, my lord. My friend
8 wishes to hear this witness interpret the document.
9 THE COURT: Well, I'm not sure that that is what is intended.
10 Even if she did I would have to sublimate or actually
11 replace her interpretation for my own if there were a
12 difference.
13 What I think this witness can do is to explain the
14 context of these documents so that I will be in a
15 position to put what appears to me to be a proper
16 construction on them. If the witness phrases her
17 answer in a way that sounds like an interpretation,
18 then it seems to me that I must either view it in a
19 different light or I must disregard it. I'm not sure
20 that it goes any further than that. At the moment I
21 have now forgotten what the precise language was that
22 the witness was using when Mr. Goldie made his
23 objection. Can I be reminded?
24 MR. RUSH: Well, she was about to say that she draws your
25 lordship's attention to these documents not for the --
26 and she was about to say something else. I think your
27 lordship should hear that. She has drawn the --
28 THE COURT: Yes, I think I should find out what she was going to
29 say and then I can find out whether that is something
30 that I should pay attention to or disregard.
31 MR. RUSH:
32 Q Now, Doctor, you have read the two paragraphs on this
33 page of the memorandum and you were about to state
34 something about the paragraphs.
35 A I simply wanted to make it clear that in directing
36 attention to particular passages I was not doing so
37 because I regarded the content of those passages as
38 necessarily being an accurate or inaccurate rendition
39 of fact, but simply to draw attention to those
40 statements.
41 MR. GOLDIE: Well, I assume that statement applies to every
42 document that has been read.
43 THE COURT: I should think so.
44 MR. RUSH: Well, I hadn't thought that my friend should be so
45 concerned about it.
46 THE COURT: All right.
47 MR. RUSH:

Q Dr. Lane, is there anything else on page 11 of the memorandum that you sought to draw his lordship's attention to?

A Yes. The following paragraph as well:

> "In reference to the Cowichan settlement, it appears from the records - for I cannot speak of this matter from personal knowledge, as I had no official connection with Vancouver Island until the year before last - that portions of the Cowichan Valley were surveyed by Government and sold in 1859. The settlement dates, therefore, from that year, although the unoccupied lands in this district were not thrown open for preemption until 1862. When these lands were surveyed, certain sections, containing in all 4635 acres, were set apart as reserves for the use of the Cowichan Indians and are now held in trust by Government for that purpose, with the exception of 500 acres which have since been withdrawn from this reservation, with the consent, as appears from the recorded correspondence in this office, of the Indians interested therein."

And then he continues in the next paragraph:

> "I can find no record of any promises having been made to these Indians that they should be paid for the lands in the Cowichan Valley which they may have laid claim to, nor can I learn that any such promises has ever been made. But it is probable that the Cowichans, when the white people began to settle among them, may have expected and considered themselves entitled to receive for the lands, which they held to be theirs, similar donations to those which had been presented to their neighbours, the Saanich Indians, years previously, as before mentioned, on their relinquishing their claims on the lands around their villages. It is further very likely that it was Governor Douglas' intention that such gratuities should be bestowed on this tribe, although no direct promise to that effect had been made."

And the rest of the sentence goes onto mention that agricultural implements and tools had been authorized

to be given them. And then I quote again:

> "Although no demands for payment for their lands had, to my knowledge, been made by these Indians of Government."

Q Now, Dr. Lane, have you evaluated this memorandum in the light of the documentary record which you reviewed up to this point?

A Yes.

MR. RUSH: And in so doing that, how do you evaluate Mr. Trutch's letter of the date of January 13, 1870 in light of that record?

MR. GOLDIE: Well, I object to that. That's a matter of argument.

THE COURT: I think it is. I think what the witness can be asked is for a list of references to documents which I can consider in assessing the correctness or otherwise of what Mr. Trutch has written.

MR. GOLDIE: Well --

THE COURT: And I think that has partly been done already.

MR. RUSH: It has, yes.

MR. GOLDIE: To my mind, and in my submission, that is the very essence of counsel's job.

THE COURT: Yes.

MR. GOLDIE: And my friend, Mr. Rush, at the end of the day is going to be saying: You ought to accept this with a grain of salt or I will demonstrate from this document that that statement is correct or incorrect. And your lordship at that time in argument will be hearing from me by reference to other documents. But at the present time to talk about evaluation of the document when the record is half complete is to introduce at this stage the very function of argument at the conclusion of the case.

THE COURT: Well, I think the problem is semantical. I haven't any doubt that in a situation such as this where there is a written record that the meaning of these documents is for me to decide. I think, however, that there are places that I have tried to indicate all along for historical researchers to direct my attention to matters that I ought to have in mind when I embark upon the interpretive process. Is that what you meant by your question, Mr. Rush?

MR. RUSH: I was going to direct her to the documents which she would have taken into account in evaluating the letter.

THE COURT: Well, I think the problem is whether or not she can be allowed to evaluate the letter. I suppose -- I suppose even if she is entitled to evaluate the letter she might think it is the most obvious piece of nonsense that she has ever read, but I don't think that is her function. I think her function is to say -- it is almost like when you ask a witness for a statement of reputation the person has for character they always lapse into specific detail. We are all supposed to be shocked by it, but I don't think we should be because that is the way people talk.

MR. RUSH: My lord, I am not asking this witness what she thinks of this letter.

THE COURT: Well, I think in one sense that is what you are asking when you say: Did you evaluate?

MR. RUSH: No, my question is: Did you evaluate this letter in the context of the previous records? The answer was: Yes. And my question was: How do you evaluate in the context of the previous --

THE COURT: Well, are you asking the witness: By what process did you evaluate the letter?

MR. RUSH: I think there are two questions which is a methodological question.

THE COURT: I see no difficulty with that one.

MR. RUSH: But I also wish to direct the witness' attention or have the witness direct the court on what the previous record was that she considered to be of significance in the process of evaluating the letter.

THE COURT: I have no difficulty with that either. I don't think your friend will either, but I may be wrong.

MR. GOLDIE: No, I think that the methodological question is perfectly all right.

THE COURT: Yes.

MR. GOLDIE: But the word "evaluation" connotes judgment.

THE COURT: Well, it is one of those beautifully ambiguous words. I remember with Mr. Justice Verchere asking an expert how he found the landslide. Mr. Justice Verchere couldn't understand whether it meant how was it discovered or how was it feeling.

MR. RUSH:

Q Well, maybe I can try this question, my lord, and see if this assists. Dr. Lane, in considering Mr. Trutch's memorandum of the 13th of January, 1870, what methodological tools did you bring to bear in term determining the significance of the passages that you have directed to his lordship?

A Well, I used the standard historical,

historiographical, ethnohistorical techniques in assessing a given document by looking at the writer, who the writer was, what position he held at the time, who the written document was prepared for, what the circumstances were that occasioned it to be written and prepared context which we discussed just before looking at the document. And then since it purports to review history, I looked back to the contemporaneous events in that history and writings by the actors in those events, by the documents that were referred to, and by commentary at that time on those events and those documents.

So that in this instance certain comments that purport to relate historical events such as whether the Cowichan Indians demanded payment for their land or whether government had ever promised them payment for their land. Specific items like that can be tested against a large body of other records which were made in the past to which Mr. Trutch is making reference to see whether his summary accords with the record that has been laid down in the previous years.

And I find, for example, I would look to Mr. Douglas' language used in the treaties as to what he says the payments are for, whether they are for amity and friendship from the Indians or whether they are for lands that are seeded or claims to land which are being extinguished, whatever language was used in the document. I would look then to Douglas' reports on his treaties to London in which he says what it was he did and what he spent that money for. I would look at the series of letters initiated by Governor Blanshard's correspondence to the Colonial office as to the manner in which the Hudson's Bay Company at Victoria was accounting for the monies spent for the extinguishment of Indians lands and the series of letters between the office and the Hudson's Bay Company in London which purport to describe what those monies paid for by Douglas to the natives were for.

And then I would look at the whole series of documents that we have been reviewing, I believe yesterday, as to the need for government to take action to expend money to extinguish Indian claims in London which occurred, as I recall, in the contemporaneous accounts of the discussions in the House of Assembly and the address of Governor Douglas to the assembly in which he alerts them to the need to expend money to extinguish Indian land claims in

Cowichan Valley and elsewhere.

I would refer specifically, and I don't recall the date, but it would have been sometime in mid-year in 1862 which describes the return of Governor Douglas from the Cowichan Valley with the 100 intending settlers and recounts that he had explained to the Indians who were there that they would return later in the fall and pay the Indians for their land claims in that valley. But they wouldn't do it now because most of the Cowichan Indians were away at their fishing stations. And perhaps I have said enough to respond to the question. There is a large volume of documents, only some examples of which we have discussed so far.

MR. GOLDIE: Well, my lord, that is my concern. What the witness has done, assuming every reference that she has in mind is in these documents is perfectly all right. But for her to say there are a large number of other documents is, in my submission, unsatisfactory. If there is anything which supports what she thinks that your lordship should have before you which would assist my friend in whatever submission he wishes to make on this letter, then it should be before the court.

THE COURT: Well, I'm not sure, Mr. Goldie, what you're imposing upon counsel carrying the burden of proof is a burden of calling all the evidence that relates to a point rather than calling enough evidence to establish what he thinks he needs in order to satisfy that burden. I think when one embarks upon an exercise of this kind it's necessary to be selective. I speak subject to correction not having had complete argument. But I think counsel still has the right to select the evidence which he thinks necessary to succeed. And for opposing counsel in an adversarial process to supplement it to the extent that it thinks necessary to answer whatever case is made out without any burden of exclusivity being -- not exclusivity, exhaustion being imposed upon either party. I don't think either of you have to pursue the burden of producing everything. You both have to produce what you think you need to succeed.

MR. GOLDIE: I accept that.

THE COURT: Thank you.

MR. RUSH: Dr. Lane, I want to refer you now please to the cover letter that is at the same tab.

THE COURT: Page what?

1 MR. RUSH: Page 10 at 74.
2 THE COURT: Thank you.
3 MR. RUSH:
4 Q It is tab 74, page 10, Governor Musgrave to Earl
5 Granville of January 29, 1870. Do you have that in
6 front of you, Dr. Lane?
7 A Yes, I do.
8 Q I direct your attention, please, to the second
9 paragraph which you have already directed his
10 lordship's attention to. But I ask you, in
11 particular, to look at -- well, the whole of the last
12 sentence, and perhaps for context beginning earlier.
13
14 "As the circumstances alleged and referred to by
15 Mr. Green were antecedent to my aquaintance with
16 the Colonly, I referred to his letter to Mr.
17 Trutch, the Commissioner of Lands and works and
18 Surveyor-General for a report; I now enclose a
19 memorandum from that officer upon the subject.
20 From other sources of information I have every
21 reason to believe Mr. Trutch's statement to be
22 correct."
23
24 Now, I direct your attention to, -- in particular to
25 this statement "from other sources of information." I
26 would ask you if in your review of the documentary
27 record whether you have been able to find other
28 sources of documentary information to which Mr.
29 Governor Musgrave made reference or to which he had
30 reference at the time of making this statement?
31 MR. GOLDIE: His statement, of course, is not confined to
32 documentary information.
33 THE COURT: No.
34 MR. RUSH: Unfortunately we are, my lord.
35 THE COURT: Yes.
36 MR. GOLDIE: Yes. And I entirely agree with that.
37 MR. RUSH:
38 Q Go ahead, Doctor.
39 A Yes. I made a diligent effort to search the
40 documentary records which would have been available at
41 that time and is still extent and available to us to
42 discover if there were any written records to which
43 Governor Musgrave referred that I might be able to
44 refer myself. I was unable to find in any records
45 that I have searched anything that would support the
46 voracity of the allegations made in the memorandum. I
47 did find a number of records from the government's own

1 holdings of that era which appear not to conform to
2 Mr. Trutch's characterization, but I didn't find any
3 that would have supported it or supported the various
4 contentions made or statements made.
5 Q Dr. Lane, would you look at tab 75, please. Is this
6 document that is contained here a copy of the document
7 that is in appendix B to the previous tab, that is to
8 say the Musgrave to Earl Granville?
9 A Yes.
10 Q It seems to be from another source?
11 A Yes. If I may give the context of this.
12 Q If you could just identify the source, please.
13 A Yes. This was a publication of the Aborigines'
14 Protection Society and the society had published Mr.
15 Green's letter and then published the response to it.
16 It was forwarded by the government.
17 THE COURT: How did the society get it, I wonder?
18 THE WITNESS: The Colonial office transmitted the reply that
19 they had received from the Aborigines' Protection
20 Society and suggested that they publish it.
21 THE COURT: I see.
22 THE WITNESS: Which they did.
23 MR. RUSH:
24 Q And this document I think it is called, what, "The
25 Colonial Intelligencer" is their house order?
26 A It was a publication.
27 MR. RUSH: Now, Dr. Lane, I would like to ask you now to turn to
28 tab 81 please.
29 THE COURT: 80?
30 MR. RUSH:
31 Q 81. This is a publication entitled "Correspondence of
32 Sir John Macdonald". I wonder if you could direct his
33 lordship's attention to any letter which you
34 considered in the course of your research.
35 A Yes. Beginning midway on page 183 there is a letter
36 dated October 14, 1872 which was sent by Lieutenant --
37 then by that time Lieutenant Governor Joseph Trutch to
38 Sir John A. Macdonald.
39 Q This is after the union of British Columbia with
40 Canada in 1871?
41 A That's correct.
42 Q And what, if anything, would you direct his lordship's
43 attention to in this letter?
44 A Well, there is a discussion of the appointment of Dr.
45 Powell to be the first Indian agent or superintendent
46 for the Dominion in the New Province of British
47 Columbia and discussion of Indian affairs and Indian

policy in British Columbia. And at page 185 in the first long full paragraph -- it is not a full paragraph. It begins at page 184. But midway in that long paragraph at the top of page 185 Trutch advises Macdonald as to his views regarding Indian policy in British Columbia. And he says, and I quote:

> "Then as to Indian policy I am fully satisfied that for the present the wisest course would be to continue the system which has prevailed hitherto, only providing increased means for educating the Indians, and generally improving their condition moral and physical. The Canadian system, as I understand it will hardly work here. We have never bought out any Indian claims to land, nor do they expect we should, but we reserve for their use and benefit from time to time tracts of sufficient extent to fulfil all their reasonable requirements for cultivation or grazing. If you now commence to buy out Indian title to the lands of B.C. you would go back of all that has been done here for 30 years past and would be equitably bound to compensate the tribes who inhabited the districts now settled farmed by white people, equally with those in the more remote and uncultivated portions. Our Indians are sufficiently satisfied and had better be left alone as far as a new system towards them is concerned, only give us the means of educating them by teachers employed directly by Government as well as by aiding the efforts of the missionaries now working among them."

Excuse me, I will also direct attention -- I won't read it here, but I will also direct attention to the following paragraph in which Trutch suggests that the Lieutenant Government, the post which he holds, would be the appropriate one for directing any new policy in the province.

Q Now, Dr. Lane.

A Yes.

Q Did you evaluate this correspondence between Trutch and Macdonald at that date in light of the record which you have examined?

A Yes. I employed the same methodology as I have already described.

Q And in terms of that description with regard -- I take

1 it when you say that you had previously described it,
2 in relation to what?
3 A I looked to the context of this particular document,
4 the purpose for which it was written, the time at
5 which it was written, the decisions which were being
6 taken by the Dominion Government at this time in
7 respect of establishing Indian policy and a framework
8 of officials to carry it out. And considered that
9 context in which these statements and recommendations
10 and statements about past policy were made, and
11 reviewed them in that context as well as comparing
12 them with statements that had been made earlier by
13 Trutch and by others.
14 Q Now, Dr. Lane, would you please look to tab 85?
15 A Yes.
16 Q Dr. Lane, just before I take you to this tab, in
17 reference to Mr. Trutch's letter of the 13th of
18 January of 1870, you indicated that you had reviewed
19 certain documents in the course of assessing or
20 evaluating that letter. I would ask you in terms of
21 the documents that you reviewed in respect of Mr.
22 Trutch's letter to Mr. Macdonald, did you look at
23 similar documents?
24 A Yes.
25 MR. GOLDIE: Similar document to which, please?
26 MR. RUSH:
27 Q Similar documents -- my use of the word "similar" was
28 similar documents in reference to your review of the
29 record in relation to the letter of the January 13,
30 1870?
31 A Yes, I did.
32 Q Now, tab 85, Dr. Lane. What is -- can you identify
33 this document, please, Dr. Lane?
34 A Yes. This is an order of the Privy Council which was
35 approved by the Governor General of Canada on 16th
36 June 1873.
37 Q And to what passage would you direct our attention to,
38 please?
39 A Well, to the entire document which is concerned with
40 setting up a board of commissioners or two boards of
41 commissioners, actually, to deal with Indian affairs
42 in the Northwest Territories and the New Province of
43 Manitoba on the one hand, and the second board to deal
44 with Indian affairs in the New Province of British
45 Columbia. I would direct your attention to the first
46 paragraph which sets that general matter out. And
47 then on the second page of the -- no, excuse me, the

1 third page of the document --
2 Q All the pages seem to be marked three.
3 A Because they were item three in a collection of
4 documents. The pages are not numbered.
5 Q Is this the fourth page in sequence?
6 A I guess it is the fourth page in sequence that I am
7 looking for.
8 THE COURT: I'm sorry, starting "That this board"?
9 THE WITNESS: Yes, "That this board". The final word on the
10 page is "should" underlined. I believe it is the
11 fourth page of the tab.
12 THE COURT: Yes, I have it.
13 THE WITNESS: "That this Board under the direction of the
14 Superintendent General of Indian Affairs at Ottowa
15 should suggest the general principles under which
16 the Indians are to be dealt with, arrange under
17 the directions of the Superintendent General all
18 negotiations and treaties with the Indian
19 Tribes and report from time to time the bases upon
20 which all questions of general policy re Indian
21 Affairs should be settled."
22
23 Now, this board in the first -- the beginning of the
24 first sentence there refers to the board that is being
25 set up to deal with Indian affairs in the Northwest
26 Territories and the New Province of Manitoba. But if
27 you continue to the next page, it says P.C.14 at the
28 top. The first full paragraph beginning there:
29
30 "The Secretary of State recommends that a Board
31 with similar Powers should be constituted in
32 British Columbia consisting of the Lieutenant
33 Governor and two subordinate Commissioners - one
34 of those to be a Protestant, the other a Roman
35 Catholic - that they should be jointly the
36 Executive officers, and should so alternate their
37 duties that one would always be at the Head Office
38 at Victoria..."
39
40 et cetera, et cetera.
41 Q Dr. Lane.
42 A Yes.
43 Q In your review of the documentary record, were you
44 able to determine whether or not the board as
45 suggested to be constituted was in fact constituted?
46 A Yes, it was constituted. Mr. Trutch as Lieutenant
47 Governor was meant to be the chief officer and Dr.

Powell who had been appointed the first Indian agent for British Columbia was the second member and Mr. Lenihan was appointed subsequent to this to be the third member of the board.

THE COURT: What is that name?

THE WITNESS: Lenihan, L-E-N-I-H-A-N.

MR. RUSH:

Q And does the documentary record indicate whether or not the board functioned?

A The board started to function, but immediately there was a problem because Mr. Trutch disapproved of actions taken by Mr. Powell who felt he had the authority to act as the Indian superintendent for British Columbia. Mr. Trutch felt that the actions taken by Mr. Powell were inconsistent with Trutch's other role as Lieutenant Governor of the Province of British Columbia. There was correspondence relating to this, and eventually the board was terminated because Mr. Trutch felt it couldn't function with him as Lieutenant Governor and head of the commission.

THE COURT: Is that name Howell or Powell?

THE WITNESS: Powell, P-O-W-E-L-L.

MR. RUSH:

Q Now, I would like to address -- have you turn your attention, Dr. Lane, to Dominion policy with regard to native title in British Columbia. My question is that after the union of British Columbia with Canada in 1871, do the documents address the issue of the recognition of Indian title in British Columbia?

A Yes.

Q And what would you direct our attention to in this respect to begin with?

A Well, I think the first substantive action taken by the Dominion Government was the setting up of the board just discussed which was to make treaties with Indians in British Columbia for the extinguishment of the native title.

MR. RUSH: And I want to direct your attention to tab 78.

MR. GOLDIE: Excuse me, what document are we referring to for that, please?

MR. RUSH: That was document 85. Tab 85.

MR. GOLDIE: Is that what the witness is relying on for her last answer?

MR. RUSH:

Q I'm not sure. In terms of your last --

A I was just referring to the last document we were referring.

THE COURT: Does it mention Indian title?
THE WITNESS: No, I believe it does not. I believe it says "treaties".
THE COURT: Where is that?
THE WITNESS: Oh, that was at page -- the fifth page of the tab.
THE COURT: Which page?
THE WITNESS: The fifth page. The one where the word "should" is at the bottom of the page.
THE COURT: Yes.
THE WITNESS: "That this Board under the direction of the Superintendent General of Indian Affairs at Ottawa should suggest the general principles under which the Indians are to be dealt with, arrange under the directions of the Superintendent General all negotiations and Treaties."
THE COURT: Yes.
MR. GOLDIE: That's the board for the Northwest Territories. I assume the witness is referring to the word "similar powers" with respect to B.C.?
THE COURT: Yes.
MR. RUSH:
Q Now, Dr. Lane, I had directed your attention to tab 78. This is an extract taken from the papers relating. And I, in particular, ask you to look at enclosure number 2, a memorandum at page 78. It is page 151, enclosure 2. That is from Mr. Laird, David Laird of the Interior?
A That's correct.
Q Could you just advise his lordship -- Minister of the Interior of the Dominion Government?
A Yes.
Q And to whom is this memo directed?
A To the Governor General and Council so stated in the first sentence of the memorandum.
Q All right. And the context of the document, Dr. Lane, can you advise us of that?
A The unsatisfactory state of the land question in the Province of British Columbia.
Q And what would you direct our attention to in the document, please? I ask you if you would look to page 152.
A Well, before going there I would simply say that the introductory sections of this memorandum refer to the ongoing disputes that have -- between the Dominion Government and the Province that have been going on since the establishment of the province and the discussions between the two governments relating to

Indian affairs in British Columbia. These concern the land question in the final paragraph on page 151 which I would direct your attention to.

THE COURT: Yes, I've read that.

MR. RUSH:

Q And on page 152, Dr. Lane, I am just directing your attention and I will direct your attention to the paragraph after halfway beginning "When the framers".

A Yes. Mr. Laird's observation, and I quote:

> "When the framers of the Terms of admission of British Columbia into the Union inserted this provision, requiring the Dominion Government to pursue a policy as liberal towards the Indians as that hitherto pursued by the British Columbia Government, they could hardly have been aware of the marked contrast between the Indian policies which had, up to that time, prevailed in Canada and British Columbia respectively."

THE COURT: Where do you find that, please, on page 152?

MR. RUSH: Yes.

THE COURT: Whereabouts?

MR. RUSH: It is just after the middle hole beginning "When the framers".

THE COURT: Yes.

MR. RUSH:

Q And on page 155, Dr. Lane, I direct your attention to the first paragraph and would ask if you took that into account as being significant?

A You mean the first paragraph at the top of the page?

Q That's correct.

A In the Laird memo?

Q Yes.

A Yes, I did.

Q And, Dr. Lane, the circulation of the memo -- I direct you to tab 79. Would you assist the court in determining the circulation by reference to enclosure number 1?

A Yes. The Laird memorandum was made available to the Privy Council by the Governor General and was eventually circulated to the colonial office in England.

Q And was it circulated to the representatives of the Province of British Columbia?

A Yes, if you --

Q I would ask you to go to tab 80.

A Thank you.
Q The bottom of page 150 at tab 80.
A Yes. This is a document from The Under Secretary of State to the Lieutenant Governor of British Columbia in which the memorandum is provided to that government for their consideration.
Q Who was the Governor General at this time?
A Mr. Dufferin.
Q Now, are you able to determine from the record whether or not he received a copy of the memo?
A Mr. Dufferin?
Q Yes.
A Yes, he did. It was he who forwarded it with one of his dispatchers to England to Lord Carnarvon.
Q I would just ask you to look at tab 82, please. And at tab 82 is a document with the heading "The Earl of Dufferin to the Earl of Carnarvon", December 4, 1844. Is this what you are referring to?
A This is the document I was referring to in which one of the documents was the Laird memorandum.
MR. GOLDIE: That would be one of the papers attached to the Order in Council.
THE COURT: That was the Order in Council which set up the board?
MR. GOLDIE: No, this was an Order in Council that considered Mr. Laird's memorandum and recommended certain action to be taken.
THE COURT: We haven't come to that yet.
MR. GOLDIE: And I don't know whether it is in here, my lord.
THE COURT: All right.
MR. RUSH:
Q What is the source of this document, Dr. Lane?
A I procured this document from the Public Archives of Canada in Ottowa. It is dispatch number 294 dated December 4, 1844 from the Governor General, Mr. Dufferin, to the Earl of Carnarvon.
It was a very long dispatch concerned with Indian matters in British Columbia and contained as an enclosure the Laird memorandum that we've been discussing. But it sets out in great length in official dispatch the concerns of the Governor General about Indian policy in British Columbia at that time.
MR. GOLDIE: My lord, excuse me. These are official documents. This isn't a private correspondence. In accordance with his constitutional duties, the Governor General of Canada is transmitting an Order in Council with the attached procedures. This was the appropriate

procedure to the Colonial office.
THE COURT: Yes.
MR. GOLDIE: Now, I am at a loss to understand the basis for excluding the Order in Council.
MR. RUSH: Well, my friend may be at a loss, my lord, but I think I am entitled to demonstrate the circulation in the manner that I have indicated. If my friend wishes to allude to the Order in Council, he may do so.
MR. GOLDIE: I want to point out, my lord, that this is not a private letter. This is the manner in which all Orders in Council went to the Colonial office.
THE COURT: Well, it starts by saying: "In transmitting for Your Lordship's consideration the enclosed Order in Council."
It falls within that category of documents we mentioned earlier which I think I should have before me as part of the context of the document.
Shall we take the morning adjournment?
THE REGISTRAR: Order in court. Court will recess.
(PROCEEDINGS ADJOURNED AT 11:20)

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

LISA FRANKO, OFFICIAL REPORTER
UNITED REPORTING SERVICE LTD.

(PROCEEDINGS RESUMED AT 11:35 a.m.)

THE REGISTRAR: Order in court.
THE COURT: Mr. Rush.
MR RUSH: Thank you. Direct your attention again to tab 82, Dr. Lane, and I would ask you if you would look please to the 11th page in sequence and unfortunately, my lord, these aren't numbered.
THE COURT: The 11th page.
MR RUSH: The 11th page along from the beginning, and I would ask you if you had reference to this in your selecting this document?
THE COURT: Is this part of the letter from Lord Dufferin?
MR RUSH: Lord Dufferin.
THE COURT: The Earl of --
MR RUSH:
Q That's right, beginning, "In Canada, you accept the theory has been..."
A Yes, I did.
Q And --
A You are referring to the paragraph that begins:

> "In Canada, the accepted theory has been that while the sovereignty and jurisdiction over any unsettled territory is vested in the Crown, certain territorial rights, or at all events rights of occupation, hunting, and pasture are inherent in the aboriginal inhabitants."

Yes, I took that into account.
Q And I would just ask if you would look over page 11 -- balance of page 11 and 12 and if you took that into account in determining the significance of this?
A Yes. This is the discussion about the need to -- or the past policy of always extinguishing Indian title.
THE COURT: Over the page, "Extinguished and the Districts..."
THE WITNESS:

> "...formally surrendered by the tribes or bands which claimed them for a corresponding equitable consideration."

MR RUSH:
Q And that's down to the end of that page, is it?
A Yes.
Q All right. Dr. Lane, would you look at tab --
A That doesn't end at the bottom of the page. It continues to the next.

1 Q Thank you. Direct your attention now to tab 83?
2 A Yes.
3 Q And can you identify this for us, please, and its
4 source?
5 A Yes. This is a typescript copy at the Public Record
6 Office, the specific source being listed there as
7 C.O.42/730. It is a minute which was placed on
8 Dufferin's dispatch to Carnarvon of 4 December 1874,
9 the same one we had been looking at, and it was a
10 minute which was entered on that dispatch in England.
11 Q And what does that indicate to you, if anything?
12 A Well, the minute by Mr. Blaine, which was made
13 December 18, 1874, discusses whether action is
14 required at this juncture from the colonial office on
15 the matters raised in the dispatch.
16 Q These are public records, are they, doctor?
17 A Yes, they are.
18 MR. GOLDIE: I wonder, however the witness might assist us,
19 these are of course all written in longhand on the
20 original document. Is the typescript the one that is
21 found in Ottawa or the typescript as taken from
22 microfilm here?
23 MR RUSH:
24 Q Dr. Lane, in the upper left-hand corner of the first
25 page at tab 83, it indicates Public Record Office?
26 A Yes.
27 Q Is that the place where this document was housed in?
28 A Yes.
29 MR. RUSH: Britain.
30 MR. GOLDIE: That's the original now.
31 MR RUSH:
32 Q I will just lead to it, please. And the typescript
33 that you have made reference to, is that a typescript
34 that was housed in that office or a typescript housed
35 in some other facility?
36 A I cannot determine that from looking at the material
37 in the tab here and I cannot recollect at this time.
38 Q Thank you. I was about to ask you if there were any
39 letters which were of a private nature that related to
40 the subject of the public correspondence on -- written
41 by Lord Dufferin?
42 A Yes. Lord Dufferin wrote both officially as in the
43 dispatch that we have been discussing and he also
44 wrote privately to Lord Carnarvon.
45 Q Now, I direct your attention to tab 84. Excuse me, my
46 lord, it wasn't 84. I had intended to direct the
47 witness' attention to -- yes, I am sorry. Just before

we go to the private correspondence, Dr. Lane, I had neglected to direct your attention to tab 84 and if you could just identify this document for us? It is signed by David Laird, Minister of the Interior, and it indicates enclosure in Lord Dufferin number 294, December 4, 1874.

A This is simply a handwritten copy of the material that we have looked at earlier. The same Laird memo that I mentioned had been sent by Dufferin to Carnarvon when you asked me earlier about the circulation of the Laird memo.

Q Yes, all right. Thank you. That's the longhand version of the memo?

A Yes. I simply --

Q The Laird memo?

A -- included it here because it's marked at the top, Enclosure in Lord Dufferin's dispatch number 294, December 4, 1874.

MR. RUSH: And for cross-reference, my lord, the Laird memo that the witness has referred to is at tab 78.

THE COURT: Yes.

MR RUSH:

Q Thank you. Now, I am going to ask you about --

A If I might just assist here, the handwritten copy of the memo at tab 84 is the copy that was sent to me by the provincial archives in Ottawa -- not the provincial, the national archives -- the public archives in Ottawa when I requested the Dufferin dispatch of the date with enclosures.

Q Now, I'd like to have volume 2 set aside, madam registrar, and refer the witness to volume 3. And if you will turn please, Dr. Lane, to tab 86 and I would ask you if this is one of the letters of private correspondence of Lord Dufferin that you made reference to a moment ago?

A The letter dated November 26, 1874, which begins at the bottom half of page 111 and continues over to 112, is one of the private letters from Dufferin to Carnarvon that I made reference to, yes.

Q Okay. And would you direct his lordship's attention to any particular part of that letter?

A Yes. At page 112, I believe, the final paragraph begins:

> "By next mail I shall be sending you very important Despatch covering an Order in Council relative to the unsatisfactory position of the Indian question

in British Columbia. That Province appears to be treating its Indian subjects with great harshness. It does not recognize any obligation to extinguish the Indian title, before dealing with the Crown Lands."

And then it goes on discussing the size of the reserves.

Q At tab 87, is this another private letter from Dufferin to Carnarvon?

A Yes, it is.

Q It is in the Dufferin/Carnarvon correspondence, and dated December 21, 1874. I direct your attention to page 125 of that letter?

A Yes. In the middle of the page there is a paragraph:

"I don't think I have written to you privately on the subject of the long 'British Columbia Indian' Despatch I had to send you. I don't think that there is anything to add to the case set forth in the official papers. The B.C.'s have evidently been behaving very badly, and they certainly should be required to extinguish the Indian title before assuming possession of the lands, which is the universal principle observed in every province of the Dominion, but the truth is British Columbia is hardly a large enough Community to have as yet developed a conscience. If we leave out of account the mining population, who are a migratory class, I don't think there are more than two thousand families in the whole Province, including the capital, and most of those are more or less adventurers, without that sense of responsibility which is engendered under a more multiform and important polity."

Q Now, I refer you to tab 88. This is the report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council dated January 19, 1875, and it's over the signature of Mr. Bernard who is Deputy Minister of Justice?

A Yes.

Q And what were the circumstances of this report, in summary, Dr. Lane?

A Well, you will recall that the dispatch of Dufferin to Carnarvon is December 1874, and we are dealing here with a report a couple weeks later in 19 January 1875.

I think the context is somewhat clear. There were concerns and discussions going on about the state of Indian affairs in British Columbia, the failure to extinguish Indian title, and this is a report concerned with whether certain laws enacted in British Columbia should be allowed or disallowed by the Dominion Government, and there is a reference here to an act to amend and consolidate the laws affecting Crown Lands in British Columbia which is discussed in the report. It is a report prepared by the Justice Department and approved by His Excellency the Governor General in Council, 23 January 1875.

MR. RUSH: All right. I direct your attention to --

MR. GOLDIE: Well, my lord, surely that's an inadequate description of the context. This is the usual manner in which the Dominion considered the disallowance of Provincial legislation. The Provincial legislation being passed on the 2nd of March, 1874, and if it isn't disallowed within the year, it operates.

THE COURT: It operates until the disallowance even until --

MR. GOLDIE: Yes, that's correct, which has caused some problems.

THE COURT: Yes.

MR. GOLDIE: This is -- the power of disallowance was of course exercised many times by the Dominion during this period.

MR RUSH:

Q And this was one of those times that was exercised, was it, Dr. Lane?

A That's correct.

MR. RUSH: And, Dr. Lane, can you say whether or not this was a usual or an unusual manner with regard to the means by which disallowances occur.

MR. GOLDIE: My lord, that is a question of law.

THE COURT: The question is, is this the usual manner of disallowance, was it not?

MR. RUSH: Yes. My lord, my friend makes an assertion that this is the usual manner, and whether it is usual or not, I am not directing the witness' attention to it but, if he raises it, I think it becomes a matter of fact and we should find out if the witness knows whether or not it is the usual manner or it isn't.

THE COURT: There is only one way to disallow, and that's by the exercise of the authority of the Governor General in Council, is it not?

MR. GOLDIE: Under I think it is Section 55 of the British North America Act.

MR RUSH: I took it to mean by means of a report of the Deputy Minister of Justice.
THE COURT: You mean the proceedings leading up to disallowance?
MR. RUSH: Yes. Not talking about the legal means by which it is done, but here -- these are the physical means if I can put it that way.
In any event, Dr. Lane, let's return to the document and I direct your attention to tab or page 1027 and at the bottom of the page, would you take this into account in determining the significance of the document, Dr. Lane?
THE COURT: 1027?
MR RUSH: Yes.
THE COURT: The bottom?
MR. RUSH: Yes.
THE COURT: Last paragraph?
MR. RUSH:
Q Yes.
A Yes, I did.
Q That runs over to the top of the page 1028?
A Correct.
Q And Dr. Lane, I ask you to look at the middle paragraph on page 1028 of that tab?
A Yes. The two line paragraph mid page reads:

> "That which has been ordinarily spoken of as the 'Indian Title' must of necessity consist of some species of interest in the lands of British Columbia."

The context of that remark is explained in the preceding discussion.
Q Thank you. Now, at tab 89, Dr. Lane, there is a report of the Minister of Justice of November 10, 1875, Minister at that time being Mr. Edward Blake. Now, was this report approved?
A Yes, it was.
Q And what is the indication of its approval?
A Just above the date line 30 October 1875, in italicized print, report of the Honourable the Minister of Justice, approved by His Excellency the Governor General in Council on 10 November 1875.
Q The date of this report is October 30, 1875?
A Yes.
Q Just ask you to look at the concluding two paragraphs on page 1036?
A Yes.

Q Did you take those into account in determining the significance of this document?
A I did.
Q Now, if you will look to page 1038, there is a report of a Mr. Humphries. Do you see that?
A Yes.
Q And this says dated or approved on the 20th of April, 1876?
A That's correct.
Q And I wonder if you took any portion of that into account in relation to the previous report?
A Yes. We have skipped over it, I believe, but I think in the previous report the -- well, the question that's being discussed is whether the act relating to the Crown Lands in British Columbia which had been disallowed earlier and has been slightly altered cures the defects or not that were objected to by the Department of Justice, and the comment is made that they haven't been cured but that -- and I am reading now from the paragraph above Mr. Humphries' name that you were directing my attention to:

> "That the objections to the Act, amending the Crown Lands Act, are considered to be removed by the agreement for the settlement of the Indian land question by commissioners."

Q And --
A So they in effect allow the Act to go because of the creation of a new device for settling such problems as still exist.

THE COURT: You mean allow the Act to be disallowed?
THE WITNESS: No. They allowed it -- this time they didn't disallow it. They allowed it to go without being disallowed because -- not that the defects in the law that had been objected to had been cured but because a new apparatus was going to be set up --
MR. GOLDIE: Well, my lord --
THE WITNESS: -- described here.
MR. GOLDIE: The report of the Minister of Justice makes it perfectly clear, and he concludes with the words:

> "Upon this assurance of the Government of British Columbia the undersigned recommends that the Act be left to its operation."

Which again is the usual points.

THE WITNESS: Yes, that was the section I was looking for. Where is that?
THE COURT: Where is that, please?
MR. RUSH:
Q Dr. Lane, would you look next to the report of the Minister of Justice on May -- approved on May 6, dated April 28, 1876, it follows on 1038 over to 1039, that of Edward Blake, Minister of Justice, and I'd like to direct your attention, if you will, to the middle of page 1039. I think you, at least by implication, had referred to this?
A Yes. This is the passage I believe I was looking for.
Q Now, if you will just direct us specifically, Dr. Lane, to what it is you were directing us to? In paragraph 2, numeral 2, "By minute in council"?
A Yes.
Q It refers to the Act and then following that there was a reference to the Lieutenant-Governor's communication on this Act. Do you have that?
A Yes. This was not what I was looking for. This simply repeats that:

> "The Lieutenant-Governor's communication upon this Act states that the objections taken by council to it are considered to be removed by the agreement for a settlement of the Indian land question by commissioners."

And then the following material I believe is what I was looking for:

> "Although the undersigned cannot concur in the view that the objections taken are entirely removed by the action referred to; and, though he is of opinion that, according to the determination of council upon the previous Crown Lands Act, there remains serious question as to whether the Act now under consideration is within the competence of the provincial legislature, yet since, according to the information of the undersigned, the statute under consideration has been acted upon, and is being acted upon largely in British Columbia, and great inconvenience and confusion might result from its disallowance; and, considering that the condition of the question at issue between the two governments is very much improved since the date of his report, the undersigned is of opinion

that it would be the better course to leave the Act to its operation."

Q Now, the reference to commissioners, Dr. Lane, in the preceding paragraph, what is that to, do you know?

A This refers to a three-man body of Indian reserve commissioners which were set up by joint agreement of the two governments, the Government of Canada and the Government of British Columbia. The one commissioner being the representative of the Dominion Government, the second commissioner being a representative of the Provincial Government, and the third commissioner being a joint commissioner answerable to both governments. And they were to try to resolve the questions relating to Indian lands in British Columbia. More specifically, they directed their attention to the allocation of reserves -- Indian reserves in British Columbia.

Q All right. Now, that report is dated April 28, 1876. Following upon that, Dr. Lane, are there documents which indicate any statements of policy with regard to Native title in British Columbia?

A Yes.

Q And to what would you draw his lordship's attention?

A Well, the following year, 1877, was one of great excitement about the Indian land question in British Columbia. As the Indian reserve commissioners began their work in the interior of the province there was, among other things, concern that there might be a general outbreak of Indians dissatisfied with the non-extinguishment of Indian title.

Q And I direct you to tab 90.

A Yes.

Q The document entitled The History of the Administration by the Earl of Dufferin, Governor General of Canada. And I would ask firstly if you can identify what this document is?

A Yes. The title is The History of the Administration of the Right Honourable Frederick Temple, Earl of Dufferin, and this is a book published in 1878, the author is William Leggo of Ottawa, Barrister, Late Master in Chancery at Hamilton, Ontario, and discusses the questions that we have been discussing here at page 454, 455, and following.

Q And I direct your attention to 471?

A Yes.

Q Well, just before -- first to 455 --

A Yes.
Q -- Dr. Lane. It indicates at the bottom of 455 that the Earl of Dufferin made a speech at Government House, and it seems to be then in parenthesis and indented the speech?
A That's correct.
Q Am I correct? Now, may I just ask you what the circumstances were of Lord Dufferin being in British Columbia at that time?
A Yes. There were grave questions and dissatisfaction as between the British Columbia Government and the Dominion Government over the failure of the Dominion Government to live up to some of the promises made to British Columbia at the time of union, and the Governor General had come out on a mission of diplomacy in order to reassure the people of British Columbia that the Dominion Government would not neglect their interests.
Q And this speech that he -- that is reported here beginning at page 455, is that a speech that touches on some of those matters at issue between the two governments?
A Yes, it is, and it is made at the conclusion of Dufferin's visit to British Columbia. He has travelled up the coast and visited various places and received petitions and memoranda and so on from various groups, both in Victoria and elsewhere, during his travels in the province, and this is his final address as he is quitting British Columbia to go back to Ottawa.
Q And in the course of that address, does he make mention of questions pertaining to Native title in the province?
A At the close of the speech he does so, yes.
Q And I direct you to 471, page 471 in the tab?
A Yes. About a little better than midway down the page there is a sentence that begins:

> "And now, gentlemen, I must bid you good-bye, but before doing so there is one other topic upon which I am desirous of touching. From my first arrival in Canada I have been very much preoccupied..."

THE COURT: I am sorry, I haven't found that yet.
THE WITNESS: I am sorry, little better than midway down the page and in the middle of the line:

"And now, gentlemen, I must bid you good-bye."

THE COURT: Yes, all right. Thank you.
THE WITNESS:

"But before doing so there is one other topic upon which I am desirous of touching. From my first arrival in Canada, I have been very much preoccupied with the condition of the Indian population in this Province. You must remember that the Indian population are not represented in Parliament, and, consequently, that the Governor General is bound to watch over their welfare with especial solicitude. Now we must all admit that the condition of the Indian question in British Columbia is not satisfactory. Most unfortunately, as I think, there has been an initial error ever since Sir James Douglas quitted office, in the Government of British Columbia neglecting to recognize what is known as the Indian title. In Canada this has always been done: no Government, whether Provincial or central, has failed to acknowledge that the original title to the land existed in the Indian tribes and communities that hunted or wandered over them. Before we touch an acre we make a treaty with the chiefs representing the bands we are dealing with, and having agreed upon and paid the stipulated price, oftentimes arrived at after a great deal of haggling and difficulty, we enter into possession, but not until then do we consider that we are entitled to deal with an acre. The result has been that in Canada our Indians are contented, well affected to the white man, and amenable to the laws and Government. At this very moment the Lieutenant Governor of Manitoba has gone on a distant expedition in order to make a treaty with the tribes to the northward of the Saskatchewan. Last year he made two treaties with the Crees and Chippeways, next year it has been arranged that he should make a treaty with the Blackfeet, and when this is done the British Crown will have acquired a title to every acre that lies between Lake Superior and the top of the Rocky Mountains. But in British Columbia -- except in a few places where, under the jurisdiction of the Hudson Bay Company or under the auspices of Sir James

Douglas, a similar practise has been adopted -- the Provincial Government has always assumed that the fee simple, in as well as the sovereignty over the land, resided in the Queen. Acting upon this principle they have granted extensive grazing leases, and otherwise so dealt with various sections of the country as greatly to restrict or interfere with the prescriptive rights of the Queen's Indian subjects. As a consequence, there has come to exist an unsatisfactory feeling amongst the Indian population. Intimations of this reached me at Ottawa two or three years ago, and since I have come into the Province my misgivings on the subject have been confirmed. Now, I consider that our Indian fellow-subjects are entitled to exactly the same civil rights under the law as are possessed by the white population, and that if an Indian can prove a prescriptive right of way to a fishing station, or a right of any other kind, that that right should no more be ignored than if it was the case of a white man. I am well aware that among the coast Indians the land question does not present the same characteristics as in other parts of Canada, or as it does in the grass countries of the Interior of this Province, but I have also been unable to understand that in these latter districts it may be even more necessary to deal justly and liberally with the Indian in regard to his land rights than on the prairies of the North-West. I am very happy that the British Columbian Government should have recognized the necessity of assisting the Dominion Government in ameliorating the present condition of affairs in this respect, and that it has agreed to the creation of the joint commission for the purpose of putting the interests of the Indian population on a more satisfactory footing."

MR. RUSH:

Q Now, the commission that's referred to there, Dr. Lane, you previously referred to commissioners. Does this have any relationship to the --

A The commission was made up of three commissioners.

Q This was a public statement by Lord Dufferin?

A Yes, it was.

Q Did Lord Dufferin comment privately on similar

subjects?
A Yes, he did.
Q And if I turn you to tab 91, this again appears to be a letter taken from the correspondence between Dufferin and Carnarvon, July 27, 1877?
A Yes.
Q And I direct your attention in particular to the first two paragraphs. Would you take this into account, Dr. Lane, in considering the significance of this private correspondence?
A Yes, I did.
MR. RUSH: Now, did federal --
MR. GOLDIE: Your lordship will find the context in the third paragraph, my lord.
MR RUSH:
Q I suspect your lordship will find the context in the entire document but -- Dr. Lane, is there anything you wish to comment in terms terms of the context of this document?
A Yes. The first two paragraphs refer, or at least the second paragraph refers retrospectively to the past history and the first one-sentence paragraph and the third paragraph set the context of the problems of the summer of 1877 when, as I said earlier, there was fear of a general Indian uprising with respect to the matter of the unextinguished Indian title.
MR. GOLDIE: As a result of the Indian wars to the south.
MR RUSH:
Q Now, Dr. Lane, did the -- did representatives of the Federal Government have an occasion to comment upon Dominion policy or Imperial policy regarding Native peoples in British Columbia?
A Yes.
Q I want to direct the witness' attention to two documents, neither of which are as yet tabbed but which I will hand up to your lordship, which ought to be placed in tabs 92 and 93, first of which is a document David Mills to Powell, August 2, 1877, and I am sorry, I will just give you the bench copy and the witness' copy.
THE COURT: I am sorry, did you say 91 and 92?
MR RUSH: 92 and 93.
THE COURT: I am sorry, which series now?
MR RUSH: It's in volume 2, it is the next tab.
THE REGISTRAR: Volume 3.
MR. GOLDIE: Volume 3.
MR RUSH: Volume 3, my lord.

THE COURT: All right, volume 3. Where were we at --
MR RUSH: We are at tab 92 of volume 3. Just insert it in there.
THE COURT: I see, yes. All right.
MR RUSH: There is a place for it.
THE COURT: All right, thank you.
MR RUSH:
Q Now, Dr. Lane, David Mills, can you tell us who he was, please?
A He was at that time the Minister of the Interior.
THE COURT: Of Canada?
THE WITNESS: I am sorry?
THE COURT: Of Canada?
THE WITNESS: Yes.
MR RUSH:
Q And Mr. Powell?
A Was the Indian Superintendent for the Dominion Government in British Columbia.
Q Do you have tab 92 in front of you?
A I am sorry?
Q Tab 92, the document at tab 92?
A Yes, I do.
Q I will assist there. And this document is dated August 2, 1877, Ottawa?
A Correct.
Q Now, Dr. Lane, I'd like to ask you if you would just look at this document and direct his lordship's attention to the passage of which you consider significant?
A The copy I have before me is very difficult to read. Perhaps you could assist by giving me a page number that I could scan here.
Q My copy is also difficult. If you will turn to page 2, Dr. Lane, in the middle of the page beginning, "In reading over..." Do you see that?
A Yes.
Q And I wonder if you consider that to be a significant passage?
A If you will give me a moment to read.
Q Yes, thank you.
A Yes. There is a word I can't read on this copy, but this is a paragraph which sets out the prior policy that's been pursued toward Indians in the province of British Columbia and contrasts it with the policy in other parts of the Dominion in Canada.
Q And if you can direct me to the word, perhaps I can assist?

A Well, turns out there is more than one word.
Q All right.
A I can provide you -- I am sorry, I have a transcript of this. You don't seem to have it. I'd be happy to give you a typed transcript but I am having difficulty reading the copy that's provided to me.
Q Perhaps we can provide the court with a typescript of it in due course. Now, Dr. Lane, I want to refer you to page 5.
A Of the same document?
Q Of the same tab.
A Yes.
Q 5 is also difficult to see but at the bottom of the page, what appears to be the beginning of a new paragraph, it says: "I do not know whether..." You see that?
A Yes.
Q "...the Government of Canada were fully aware"?
A "...of the condition of things at the time British Columbia was admitted into the union."

Q Yes.
A "Whether they were aware that the Government of British Columbia had undertaken to deal with the Indian lands of this Province without first having extinguished the Indian title, but however this may be, there can be no doubt whatever that no arrangement between the Government of Canada and the Government of British Columbia could take away the rights which the Crown has always recognized as belonging to the..."

Q "...Indian natives"?
A It appears to be Indian natives, yes.
Q All right. Now, Dr. Lane, you have done an excellent job in reading this. Do you have a typescript of --
A Yes, I do.
MR. RUSH: And perhaps we can assist the court with that as well.
Now, I want to refer Dr. Lane's attention, my lord, to the next document which I will ask you to insert at tab 93 which is a letter from Mr. Mills to Mr. Sproat of August 3, 1877.
THE COURT: Mills is the Minister of the Interior.
MR RUSH: Yes, my lord.

THE COURT: And Sproat?
MR RUSH:
Q What position did Mr. Sproat hold at that time, Dr. Lane?
A Mr. Sproat was the joint -- he was one of the three Indian Reserve Commissioners in the joint Indian Reserve Commission and he was the commissioner that represented jointly both the Provincial Government and the Federal Government.
THE COURT: I guess it is Sproat, is it?
MR. GOLDIE: Sproat, yes.
THE COURT: That's how the lake is pronounced anyhow.
MR RUSH:
Q Now, Dr. Lane, if I may ask you to turn to the first page 4 beginning the paragraph, "It is true that in the..." Do you see that?
A Yes.
Q And perhaps if I can assist -- it is this paragraph that you took into account?
A Yes. I think I can read that.
Q All right.
A Is that where you were?
Q Yes. I was going to ask if you could but, if you couldn't, I will give it my best shot.
A I think I can. If I run into trouble, perhaps you can assist.

"It is true that in the negotiations which took place between the Government of British Columbia and the Government of Canada, with a view to the admission of that province into the union, the Government of British Columbia assumed that they had entire control of the territory of the province."

I am not certain about the next word.
MR. GOLDIE: And this assumption.
MR RUSH:
Q And this assumption.
A

"And as this assumption was not questioned by the Government of Canada but however..."

MR. GOLDIE: There is an insertion.
MR RUSH:
Q It looks like an insertion.
A I guess the insertion is the material to the left.

"...nor does it appear that the Canadian authorities were at that time informed that no treaties had been made with the Indians for the surrender of the country."

And then it goes on. I am afraid I cannot read my copy.

Q All right.

A Oh, I can read it.

"But however this may be..."

Q It is obvious.

A

"It is obvious that agreement between the Government of Canada and the Government of British Columbia could affect the rights which, in this particular, the Crown has always recognized the Indian population as having in the soil."

Q Now, Dr. Lane, may I turn you as well to page 6, the top of the page, seems to be an insertion in the left-hand column?

A Yes.

THE COURT: Is this a letter or is this a draft? Seems to be a pretty --

THE WITNESS: This appears to be -- I am sorry.

THE COURT: -- pretty scribbled-up letter if that's what it is. Do we know?

MR RUSH:

Q Are you able to assist us?

A I believe so.

THE COURT: You believe it is a communication?

THE WITNESS: I believe this is the copy that was retained in Ottawa from which a clerk made a fair copy for sending. This is the only copy that we have been able to discover. The other copy would have gone to the recipients and that final copy may no longer be extant.

MR. RUSH:

Q All right. And the passage at the top of page 6, please?

A But if it will assist, this is the copy that's retained in the records of the Department of Indian Affairs. It is with the collection of the papers of the Indian Reserve Commission. I am sorry?

Q At the top of page 6?
A Yes. There was the -- I directed your attention to the paragraph beginning, "In order that the question may not be raised..."
A

"...and war avoided, it is of the utmost consequence that the commissioners, in setting apart reservations for the Indians, should make them so ample as to avoid the necessity of possible of raising the question. It is certainly in the interests of British Columbia, quite as much as it is in the interests of any other portion of the Dominion, that an Indian war should not be provoked and the people of Canada generally would not sustain a policy toward the Indians of that province which is, in my opinion, not only unwise and..."

THE COURT: But also illegal.
THE WITNESS: Yes, it is the word before "but" that I can't read. "Unwise and..." I am afraid I can't make out the next word.
MR RUSH: All right. Thank you, Dr. Lane. Now, my lord, I am going on to another subject.
THE COURT: All right. Two o'clock, please.
THE REGISTRAR: Order in court. Court will adjourn until two.

(PROCEEDINGS ADJOURNED AT 12:30 p.m.)

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

TANNIS DEFOE, Official Reporter
United Reporting Service Ltd.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

THE COURT: Mr. Rush.
MR. RUSH:
Q Referring the witness to tab 96 in volume 3. This is Treaty Number 8, Dr. Lane, made June 21, 1899. I would like to direct your attention, if you will, to page A3 and would ask if there is language there that you would direct his lordship's attention?
A Yes. The third from last paragraph, the very large paragraph on the page that begins:

> "As it is in the interest of the Province of British Columbia, as well as that of the Dominion, that the country to be treated for should be thrown open to development and the lives and property of those who may enter therein safeguarded by the making of provision which will remove all hostile feeling from the minds of Indians and lead them to peacefully acquiesce in the changing conditions, he the Minister would suggest that the Government of British Columbia be apprised of the intention to negotiate the proposed treaty; and as it is of the utmost importance that the Commissioners should have full power to give such guarantees as may be found necessary in regard to the setting apart of land for reserves the Minister further recommends that the Government of British Columbia be asked to formally acquiesce in the action taken by Your Excellency's Government in the matter and to intimate its readiness to confirm any reserves which it may be found necessary to set apart within the portion of the Province already described."

Q Thank you.
A This refers to the north-eastern part of British Columbia, Province of British Columbia, all that land from the Rockey Mountains to the eastern boarder of the province that is to be covered in Treaty 8 which is made by the Dominion Government with the Indians.
Q Dr. Lane, this document comprises Treaty 8?
A Yes.
Q It refers on the face page to adhesions?
A Yes. The treaty was first made in 1899. But then the decision had been taken, although they wouldn't be able to meet with all of the Indians at one time since

a large area was covered, to make one treaty and then add on different groups of Indians from time to time to adhesions to the treaty. The first British Columbia Indians were included in adhesion in the following year, and some as late as 1910.

Q Thank you. Please refer to tab 97.

A Yes.

Q There are two typescripts of correspondence in this tab?

A Yes.

Q The first typescript, is this prepared by you?

A Yes, it is.

Q And this appears to be a letter. Can you indicate who the sender and receiver were?

A Yes. A print-off from the microfilm is included under the typescript. The letter is from the Lieutenant Governor of British Columbia to The Honourable Secretary of State in Ottawa.

Q And I direct your attention to the passage fourth line from the bottom:

> "That I have referred to the favorable consideration of my Executive Council the request that my government formally acquiesce in any necessary steps taken by the Commissioner in setting apart a reserve within the portion of this Province mentioned in the said Minute."

A Yes.

Q And "my Government", do you understand that to be the Government of British Columbia?

A That's correct.

Q The print at the next page is that microfilm?

A Yes. And you will notice that this is a carbon copy of a letter. It doesn't show the letterhead. It is undated. And I should say that I made this typescript quite a long time ago when I first found this letter and the subsequent one under this tab, both of which were in the Provincial Archives of British Columbia and the correspondence records of the Lieutenant Governor of British Columbia. And at that time I was undecided as to the exact date. I wrote in parentheses at the top there "(prob. December 1898 or January 1899)". I have since realized from looking at associated correspondence that this was in fact December 1898.

Q And the next typescript Dr. Lane.

A Yes.

1 Q The sender and receiver, please?
2 A In this case the microfilm copy was signed, although
3 you can barely read the smudge and perhaps not at all
4 in the copy, xerox copy that was made. The sender was
5 T.R.E. McInnes, the Lieutenant Governor, the same
6 author as the preceeding letter, but this one is
7 addressed to the Provincial Secretary of British
8 Columbia.
9 Q All right. And the last document --
10 A And again the date is December 1898. This letter, in
11 fact, is the one that is alluded to in the previous
12 letter. He does, in fact, formally ask the Government
13 of British Columbia to acquiesce in the action taken
14 by His Excellency, that is the Dominion Government, in
15 the matter of Treaty 8.
16 Q And the document that follows the -- I guess it is the
17 microfilm copy seems to be under the number 2749.
18 What is that?
19 A This was an extract of a report of the committee of
20 the Privy Council which was approved 6th December,
21 1898.
22 Q The two letters just so that I can be clear about this
23 that you referred to in this tab were letters of a
24 date prior to the signing of Treaty 8?
25 A Yes. The treaty had not yet been negotiated and this
26 was the advance notice that the Dominion Government
27 gave to the Province Government and asked for their
28 formal acquiescence so that when the Treaty Commission
29 met with the Indians they would be sure that the
30 province would agree in confirming any reserves that
31 the Treaty Commissioners might make for the Indians
32 under that treaty.
33 Q And this document of December 6, 1898, is similarly
34 prior to the negotiation of the treaty?
35 A That's correct.
36 MR. GOLDIE: If it is the one that is set out, my lord, in type
37 form under the heading Treaty Number 8 that my friend
38 first referred to.
39 MR. RUSH:
40 Q Thank you. Is that so, Dr. Lane?
41 A I believe that's correct.
42 Q Yes.
43 A That this is the Privy Council original. The other is
44 a printed booklet about the treaty and the associated
45 documents.
46 THE COURT: Well, this looks like it is a letter to the
47 Superintendent General of Indian Affairs. No, I'm

sorry, it is headed "Extract From A Report Of The Committee". Who is the Superintendent General of Indian Affairs, British Columbia or Canada?
THE WITNESS: No, Canada.
MR. RUSH:
Q And the report is that of the Privy Council?
A That's correct.
THE COURT: So this is Canada talking to itself.
THE WITNESS: That's correct. The seal is the Privy Council of Canada in the left-hand margin at the top.
THE COURT: All right.
MR. RUSH:
Q Now, my lord, I am going to turn the witness' attention to another subject area. Dr. Lane, I am going to ask you if you reviewed documents to which you can refer the court's attention between representatives of the Province of British Columbia and Gitksan and Wet'suwet'en people or their representatives which address issues of native title?
A Yes.
Q And if I can ask you to please turn to tab 99 in this volume. This is a document dated 1884 over the signature of what appears to be Robert Tomlinson?
A Yes.
Q Now, in terms of the documents which you have reviewed, have you been able to determine a date at which communications between the Government of British Columbia or the Government of the Dominion and representatives or native people from the Gitksan and Wet'suwet'en area, what the earliest date of those communications was?
A The earliest communications that I have been able to discover between either the Indians or people writing on behalf of the Indians from that area are at about this date in 1884.
Q All right.
A With respect to matters of Indian title or any other matters, I should add.
Q Okay. Now, this is addressed to the Chief Commissioner of Lands and Works. Who was that at this time, do you recall?
A At this moment I don't recall.
Q All right. And Mr. Tomlinson --
A Was a missionary on the Skeena River at that time.
Q And you can identify this letter of February 27, 1884?
A Yes, I recognize the letter.
Q Okay.

A It was written on behalf of the Indian people, according to Mr. Tomlinson, because they were concerned about some land matters and asked him to write on their behalf to the Provincial Government.
Q Now, Dr. Lane, to your knowledge was there a response to this letter?
A Yes, there was.
Q And do you recall who authored the response?
A I believe it came back from the Chief Commissioner of Lands and Works. I cannot recall who that was at the moment.
MR. RUSH: My lord, I understand that this matter has been addressed by Dr. Galois in his evidence. I don't intend to canvass it with Dr. Lane. But I can advise your lordship that the response was from Mr. Robson to Mr. Tomlinson and was dated February 29, 1884. I will get you the exhibit number.
THE COURT: This one is only February 27th, isn't it?
MR. RUSH: Did I say 24?
THE COURT: No, you said 29th. That's two days quicker. Mails were quicker then.
MR. RUSH: Yes, they were.
THE COURT: All right.
MR. RUSH: Dr. Lane, referring you now to tab 100. This is a document again over Robert Tomlinson's signature dated at Metlakatla on October 20, 1884. Again, can you identify this document?
THE COURT: I'm sorry, Metlakatla? It says Victoria.
MR. RUSH: At tab 100?
THE COURT: Tab 1?
MR. RUSH: No, tab 100.
THE COURT: Sorry, there is 100 before that.
THE WITNESS: Again, if I may correct a misstatement that I made in answer to your last question I said I thought the response had been from the Chief Commissionerr of Lands and Works. I see from refreshing my memory from this letter it must have been from the Provincial Secretary.
Q And this particular document, Dr. Lane, you can identify this, can you?
A This was a further letter written by Mr. Tomlinson on behalf of the Indians in response to the answer that was received to the previous communication. The answer apparently came from the Provincial Secretary, Mr. Robson. His answer evidently did not satisfy them. This letter is written with respect to clarification of language in his answer.

Q All right. And he refers about six lines down in this letter to:

"A document containing the petition of all the Chiefs and principal men of the Kitwanga Village situated on the Skeena River about 120 miles from the mouth"?

A That's correct.

Q Do you understand this document to have transmitted that petition to the Provincial Secretary?

A That's correct.

Q Now, my lord, I can advise you that in Dr. Galois's evidence the petition was exhibited. It is dated October 10, 1884. The question I have to ask you, Dr. Lane, is that this letter is dated and placed at Metlakatla. Could you explain why that would be so?

A Well, Mr. Tomlinson was sometimes farther up the Skeena River and sometimes at Metlakatla near the mouth of the river. Mr. Duncan, another missionary, was stationed at Metlakatla and Mr. Tomlinson spent some time with him there assisting him.

Q All right. May I direct your attention, please, to tab 1, tab 101 I think we can take it to be. Now, Dr. Lane, this is a further letter apparently over the signature of Mr. Tomlinson dated November 12, 1984 in Victoria.

A 1884.

Q Excuse me, 1884. Yes?

A Yes.

Q Can you give the circumstances around why the place of the letter is postmarked Victoria?

A Oh, because Mr. Tomlinson had come down on the boat from the Skeena to Victoria and was in Victoria at the time and hand delivered the letter, I guess.

Q Now, appended to this letter are a number of -- he calls them temporary arrangements?

A "Outline of a temporary arrangement to be enforced until such time as the question is finally settled between the Government and the Indians"

is the heading that I see.

MR. RUSH: Yes, go ahead. And with respect to those temporary arrangements that he refers to there, what is there in these arrangements that --

MR. GOLDIE: They are not arrangements, my lord, they are Mr. Tomlinson's proposals.

THE COURT: Where are they?

MR. RUSH: They follow along in the letter.
THE COURT: Yes, I'm sorry, they are attached.
MR. RUSH:
Q Now, Dr. Lane, I take it these arrangements accompanied the letter, did they?
A Yes.
Q And, to your knowledge, does the documentary record indicate whether or not the proposals of Mr. Tomlinson were acted upon?
A It's a difficult question to give a simple yes or no answer to because there is a variety of points covered. But perhaps the simple answer would be that the government did not take formal steps to ensure that all of the suggestions made in this outline were followed.
Q Okay. Now, I would like to take you back in sequential order in these tabs, Dr. Lane, to tab 98, please.
A Yes.
Q Now, this is a typescript on the face page, Dr. Lane. Can you just explain what is contained at this tab, please?
A Yes. Again this is a transcription that I made and I would hope it is self-explanatory. The material on the following pages which are then numbered page 1, 2 and 3 are excerpts that I have typed out of a bench book of Judge Begbie. The bench book is held at the Provincial Archives of British Columbia in Victoria.
Q And this pertains to a trial that he sat on?
A Yes.
Q And that's referenced in the note, in the note on the face page?
A Yes. Attorney General and J.B. Nash v. John Tait. There were several Metlakatla Indians.
Q And what was the context for this document?
A Well, this was in 1886. The context is that the Metlakatla Indians were attempting to assert title, native title, Indian title to their lands at Metlakatla. The Church Missionary Society had asked the Provincial Government to have a small section of land up there surveyed which the Church Missionary Society claimed title to as a grant from the government. The natives disputed this saying that since their title had not been extinguished the government could not alienate portions of their land to third parties. And the Indians had been trying to talk to the government about this, had been

unsuccessful, so when the surveyor had been sent up to conduct the survey there was some resistance on the part of the Indians. They were then accused of trespass and this case was brought. This was in fact a test case about Indian title in that area.

MR. RUSH: And, Dr. Lane, I want to refer you to the --

MR. GOLDIE: My lord, I might ask that if my friend intend -- this is the celebrated Metlakatla incident which was a contest between Mr. Duncan and the Bishop of Columbia over jurisdiction, church jurisdiction. But be that as it may, it seems to me that the background of that is essential to an understanding of any discussion of the peripheral matters that occurred and this is one of them. It is a very celebrated incident. It led to several trips -- I shouldn't say several, but at least one important trip by one of Her Majesty's ships. And eventually Mr. Duncan and his followers went to Alaska and established a community there. But I feel that this is one of the circumstances in which the context requires the report of the commission that was set up to investigate this. I think it is the Cornwall-Planta commission that was set up to investigate this whole issue and issued a report and it is available and seems to me it provides the context.

MR. RUSH:

Q With regard to the context, Dr. Lane, I wonder if you can advise the court whether at the time there was consideration in the paper circulating in the colony discussion about the issues raised in the case?

A Yes, there was.

Q And do some of those letters appear after the divider in tab 98?

A Yes, they do.

Q And there are various views expressed here, I take it, from various points of view?

A That's correct.

Q And it is entitled "Correspondence On The Church And State Coercion, And The Indian Land Rights". I wonder if you can perhaps just place us a little more precisely within the debate that apparently was going on and the public media at the time of this case which gave rise to Judge Begbie's comments.

A Yes. The central issue, as I have said, was the question of Indian title.

Q Go ahead.

A And that is reflected in Judge Begbie's remarks from

the bench as well as much of the correspondence in the newspaper as well as -- well, let me stop there.

Q In respect of at least one of those articles, I direct your attention to page 431 of the document beyond the divider. And, in particular, I direct your attention to the second page 432 in an article apparently written by Edward Cridge.

A Yes, it is a letter to the editor written by Bishop Cridge.

Q And, Dr. Lane, Bishop Cridge apparently sets out his version of what occurred or what he perceived to be the issue in the case?

A That's correct.

Q Who was Cridge, by the way?

A Bishop Cridge was resident since 1854 in Victoria, British Columbia. He notes at page 432 at the last part of the first paragraph on that page:

> "The issue is twofold, first with the government, and secondly with the Church Missionary Society, an ecclesiastical sect (for in this province it is simple a sect) whose services they have dispensed with.
>
> The issue with the government is vital, being nothing less than denial of their title to the land."

And then he goes on discussing these matters.

Q Now, I take it that in this collection there are views of various types expressed, is that so?

A That's correct.

Q Now, I want to direct your attention, please, to Judge Begbie comments which I think you have typescripted as well. If you will go to the second page in sequence in tab 98 we have a document entitled Begbie Bench Book. It is dated October 28, 1886?

A Yes.

Q Now, what passage in here would you draw our attention to?

A Well, to all because he is discussing the issue of Indian title and whether it exists or not and how it has been handled in the law. But the thing which sets him off is Bishop Cridge's letter from which I just read an excerpt and which had appeared in the morning newspapers. And Judge Begbie -- I should say, of course, that the defence of the Metlakatlan Indian defendants in that case that was before the judge, the

charge of trespass was made by the Attorney General of British Columbia against the Indians and the defence -- and they were defended by Mr. Theo Davie, later of the Supreme Court. But at this time the person defending the Indians the arguments that were being made were arguments of native title.

Q And I ask you --

A And Judge Begbie's bench book from which I have taken these comments was reacting to that argument of defence.

Q Thank you. And I direct you to page 2. He refers to authorities cited by Mr. Davie. Do you see there that passage?

A At the top of the -- yes, I do.

Q And I just want to ask you if you have taken these comments into account?

A Oh, yes, I have. One of the authorities that was cited by Mr. Davie was the speech made by Lord Dufferin when he was in Victoria in 1876, I believe it was, and which we referred to earlier today.

Q Yes.

A And Judge Begbie notes in his bench book: "And as to the third authority" -- This is on page 1 of the typescript.

> "And as to the third authority, Lord Dufferin is a most delightful speaker, and came here with the object of cajoling or coaxing the inhabitants into a better humour with the Dominion. They were in a very bad humour then. And any expressions in a flatterg speech made by him to win over a Victoria crowd, it were ridiculous to suppose can in the least modify the uniform universally established law, acted on for centuries in every court -- in Courts of justice in Canada, in the U.S. (whose law is founded on ours) in the quasi judicial opinions from the Colonial office, in the Legislation of various Provinces. These authorities cited by Mr. Theo Davie may no doubt be considered useful to excite passions in public harangues or in letters to newspapers but they are quite out of place here."

And then he goes on.

MR. RUSH: Dr. Lane, in considering this document and the comments of Judge Begbie, what would you have his lordship take into account at the time of taking these

comments into account in reference to this document?
MR. GOLDIE: Well, my lord, I object to that. That is a case of evaluation.
THE COURT: I thought that what Mr. Rush was asking was what parts of this letter should I pay particular attention to and what other facts there, if any, that should be taken into account at the same time.
MR. RUSH:
Q Yes. I am asking you to take more than this document into account. I am directing this witness' attention to other documents to assist your lordship to evaluate.
A Yes. I would refer back to Mr. Begbie's statement in 1860 when he asked to review the Clark suggestions for a land policy in the New Province of British Columbia. Mr. Clark having written as a preface to his suggested scheme that he assumed Indian title had been extinguished and to which, as we noted the other day, Mr. Begbie responded: The Indian title has by no means been extinguished and must be soon and then goes onto make some comments about what will need to be done.

I would also refer to the context in which these remarks from the bench occurred which, as I say, was a test case on the Indian title issue at a time when people were very much concerned about the events at Metlakatla. I would direct your attention to page 430 behind the blue divider in which the Daily Colonist reported at an editorial, unfortunately undated here, that they understood Reverand Duncan was going to Washington D.C. to interview President Cleveland and his cabinet with a view to removing the entire nation to Alaska just beyond the border, and that if this exodus took place the loss would be a serious one to the province.
MR. GOLDIE: My lord, I might ask what document is this that we are looking at?
THE COURT: It is an editorial from the Daily Colonist.
MR. GOLDIE: No, I am talking about the story of Metlakatla at page 430.
MR. RUSH:
Q I think my friend is asking about the whole of the documents, my lord. Can you advise us on that?
A Yes. This was a book which was published in 1887 setting out the story of Father Duncan's mission at Metlakatla and the development of the community there. And at the end of the volume there are a number of

1 appendices including these pages which have been
2 reproduced here.
3 MR. GOLDIE: Can you provide us with the name of the author?
4 THE WITNESS: Certainly. The author was William Wellcombe,
5 W-E-L-L-C-O-M-B-E.
6 MR. RUSH:
7 Q And that you said was 1897?
8 A No, 1887.
9 Q Thank you.
10 A As I recall. It was published in England, I think.
11 THE COURT: Do we know whether these notes of Begbie represent
12 notes that a judge delivered or a journal being kept?
13 MR. GOLDIE: No. I think there was a case before him. As far
14 as I am aware, the bench book is an indication that he
15 heard an application and disposed of it.
16 THE COURT: I can take this as a judgment?
17 MR. RUSH: No, my lord, that's not his judgment.
18 MR. GOLDIE: I don't think so, my lord. I think the case went
19 off on a procedural point. But I have to confirm
20 that.
21 THE COURT: That's the best way for it to go.
22 MR. RUSH:
23 Q Dr. Lane, in terms of the comments recorded by Judge
24 Begbie are you able to illuminate his lordship on the
25 question of -- what's the basis for the recording?
26 How do you understand the recording?
27 A Well, I can only refer to what I have read there. And
28 I would point out that -- I'm sorry, in the enclosed
29 pages I believe one will find it. I didn't type
30 everything which was on the enclosed pages. Oh, yes,
31 it is here. I did type it. At page 2 of the
32 typescript about the beginning of the third line down:
33
34 "These authorities cited by Mr. Theo Davie may no
35 doubt be considered useful to" --
36
37 I read this before. Then he says:
38
39 "The very book, the very case from which you cite
40 the unsuccessful advocate's view contains quite a
41 long historical chain of authorities (I took the
42 book from him and read at pages..."
43
44 so and so. I assume that what is written in the bench
45 book is Judge Begbie recordings of what was going on
46 at the hearing.
47 MR. GOLDIE: In answer to your lordship, I don't think that the

1 judgment is in this material, but I will confirm that.
2 THE COURT: These are just musings then?
3 MR. GOLDIE: I beg your pardon?
4 THE COURT: These are just musings?
5 MR. GOLDIE: No, I think that they are his writings as he goes
6 along.
7 MR. RUSH: Pretty close to musings, my lord.
8 THE COURT: If it is not a delivered judgment then it's just a
9 note to himself.
10 MR. GOLDIE: I understand that.
11 THE COURT: Yes.
12 MR. GOLDIE: My recollection -- it has been some time since I
13 looked at this. I think they went off on a procedural
14 point, the actual proceedings before him.
15 THE COURT: All right.
16 MR. RUSH:
17 Q Now, I want to direct you back to the Upper Skeena,
18 Dr. Lane, and ask you if there were representatives of
19 the Government of British Columbia or Government of
20 the Dominion which attended there and for which there
21 are recordings for the purposes of establishing
22 reserves?
23 A Yes. The first official of the Indian department to
24 visit the Upper Skeena region at least in an official
25 capacity was the Indian Superintendent Mr. Vowell,
26 V-O-W-E-L-L in 1890.
27 Q And was his visit followed by visits of Mr. O'Reilly?
28 A Yes. And Mr. --
29 Q Go ahead. I was going to ask you who was Mr. O'Reilly
30 at that time.
31 A By this time the original three-man Indian Reserve
32 Commission had been reduced to a one-man commission
33 many years earlier. And at this stage Mr. O'Reilly
34 was the single Indian Reserve Commissioner. He
35 visited the area in 1891 in that capacity.
36 Q And at tab 102 of volume 3 this is the handwritten
37 account of an event which apparently occurred at
38 Hazelton on September 2, 1891. Can you identify that
39 for us, please?
40 A Yes. This is one of several such accounts at various
41 places in the Upper Skeena region where Mr. O'Reilly
42 visited in order to speak with the chiefs at the
43 various locations about defining Indian reserves for
44 the various groups of people in that area.
45 Q This is taken from the RG 10 series at the National
46 Archives?
47 A Yes, RG 10 being the Record Group 10, the records of

the Department of Indian Affairs.
Q Is this the handwriting of Mr. O'Reilly or does it appear to be so to you?
A I can't be certain about that.
Q It indicates what appears Mrs. Loring, interpreter?
A Yes.
Q And by reference to Hazelton, does that suggest this event occurred at Hazelton?
A Yes. And Mrs. Loring was the wife of the Indian agent for the Babine agency. They lived at Hazelton and were stationed there.
Q And along the side there appears in the margin to the left words to the effect "commission in" --
A Commissioner.
Q Commissioner and chief?
A Yes.
Q Can you assist us in respect to what that means?
A Yes. The chief in each case refers to the chief of that group of people that he has identified at the top of the page under the population figure there with his Indian titles and commissioner means Mr. O'Reilly.
Q Now, Dr. Lane, I understand you have a typescript; is that correct, of this?
A I do, but I don't see one here.
Q Thank you. I want to ask you about several of these tabs, Dr. Lane, in turn.
A Yes.
Q And if I may now direct your attention to tab 103.
A Yes.
Q This is a memorandum of an event apparently on September 2, 1891. Could you just identify each one of these for us in turn, please?
A Yes. These are notes obviously for the same date as the previous one setting out again population figures, the name of the chief and what the chief said. The second chief notes such as where there was timber opposite the village or gardens at the back of the village and so on.
Q All right.
A This is in a different hand from the previous notes. The third item is dated September 7th.
Q This that 104?
A I am still in the same -- I'm sorry, 104.
Q Yes.
A Tab 104. It is at another village. Babine Lake is mentioned in the heading and the names of various Indians in the left-hand margin next to presumably a

summary of what they said. And then words spoken by a man named Hall, an Indian. And then by the commissioner and then by Big George who was one of the chiefs and so on.

And turning to tab 105 we have more of the same instead this time Old Fort Babine, Hagwilget Indians September 10, 1891. And again what was spoken by the commissioner and various Indians.

Q Tab 106?

A Similarly, September 18, tab 106, Hagwilget Indians. A different interpreter this time, George Short in the upper left-hand corner. And again the date is 18th September, 1891. And again a description of where they are about 35 miles from Hazelton and the population, the name of the chief and so on.

Q All right.

A Similar to the previous ones.

Q And 107, please?

A Same thing,this time September 30, 1891 at New Kitsegukla about nine miles above Hazelton. Mrs. Loring is the interpreter. And again a representation of the words spoken at this meeting.

Q All right. And would you turn to 108.

A Yes.

Q This is a document said to be the statement of Mrs. Loring interpreter made at Kitwanga on the 1st of October, 1891?

A Yes.

Q And it is signed by Margaret Loring on the second page?

A Yes, that is Mrs. Loring.

Q Yes. And what does this pertain to?

A Well, this is one of a series of accounts of an incident that took place on September 26th in which the commission ran into some resistance from the Indians. Individual accounts of what transpired were recorded by those present from the commission side, that is Mrs. Loring, Mr. Loring, the commissioner, Mr. O'Reilly, and the surveyor Mr. Ashtown Green and also an Indian policeman who accompanied them.

Q And at tab 108 is that statement of Margaret Loring, Mrs. Loring.

A That's correct.

Q And 109?

A So the is the statement of Mr. Loring.

Q All right. And 110?

A Statement of the Indian policeman, constable.

Q And at 111?
A It is not signed, but this is the statement of Ashtown Green, the land surveyor that accompanied Mr. O'Reilly.
Q Was he a Dominion land surveyor?
A He was a B.C. land surveyor or employed by the Dominion Government to survey Indian reserves in British Columbia.
Q Okay.
A One of several.
MR. RUSH: Now, tab 112, please. Can you identify the documents?
THE COURT: We didn't touch 11, did we?
MR. RUSH: Yes, we did. Dr. Lane just indicated that that was the account of the incident at Kispiox by Ashtown Green, the surveyor.
THE COURT: What is 110?
MR. RUSH: The account of the constable.
THE COURT: That's the policeman?
THE WITNESS: That is the Indian constable.
MR. RUSH: His name appears to be Louis Akacoket.
THE WITNESS: A-K-A-C-O-K-E-T, L-O-U-I-S.
THE COURT: All right.
MR. RUSH:
Q Now, I have moved the witness' attention to tab 112. It appears to be a letter from Peter O'Reilly of the Indian Reserve Commission on October 20, 1891. Can you identify this document?
A Yes. I believe this is Mr. O'Reilly's handwriting. This is one of his reports as Indian Reserve Commissioner for the information of the Superintendent General of Indian Affairs as to the progress of his work as Indian Reserve Commissioner.
Q And he is reporting upon his visit to the Upper Skeena?
A That's correct.
Q And is this in relation to the events described in the previous tabs 102 to 111?
A That's correct.
Q And at tab 113?
A Again it seems to be a letter from Mr. Peter O'Reilly on July 18, 1892?
A This is the following year. He is writing as Indian Reserve Commissioner and reporting to Mr. Vankoughnet who was the Deputy Superintendent General of Indian Affairs in Ottawa.
Q Okay.

A V-A-N-K-O-U-G-H-N-E-T.
Q Is this in Mr. O'Reilly's hand so far as you --
A I believe it is.
Q And at tab 114, Dr. Lane?
A Another such report, this one dated July 20, 1892.
Q Again by Mr. O'Reilly?
A Yes.
Q And at tab 115?
A Another dated February 9, 1894.
Q Now, at 116 there is a typed letter from Mr. R. E. Loring, Indian Agent dated August 3, 1896. What does this refer to, please?
A Well, the Indian agent at Hazelton, Mr. Loring, is writing to the Indian Superintendent for B.C., Mr. Vowell who is at Victoria with respect to the Indians at Kispiox who had prevented Mr. O'Reilly and Mr. Green originally in the incident that everybody was commenting on or describing from defining reserves. Apparently now they wished to have some reserves defined for them, according to Mr. Loring. And he has been asked to report as to the character of the land there how much would be needed for the Indians and whether whites would be likely to want to take up lands in the Kispiox Valley.
Q And at 117, Dr. Lane?
A Yes.
Q This is with respect to the Hagwilget Indians and seems to be dated at Hazelton?
A Yes.
Q You can you identify this document for us?
A Well, again this is one which seems to have chief and commissioner written in the left-hand side and it appears to be an extract of conversation. But I have great difficulty reading the copy before me.
THE COURT: This is Mr. O'Reilly's handwriting, is it not?
THE WITNESS: I'm not certain.
MR. RUSH:
Q Let me direct you to 118.
A Yes.
Q Can you identify the author of this document? It is at Kispiox, July --
A No, it is at Kis --
Q Kisgegaas, yes, thank you.
A July 28, 1898. And again it is similar to those that we were looking at earlier. But I cannot make out the copy in front front of me.
THE COURT: Shall we take the afternoon adjournment, Mr. Rush?

MR. RUSH: Thank you, my lord.
THE REGISTRAR: Order in court. Court will recess.
(PROCEEDINGS ADJOURNED AT 3:00)

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

_____
LISA FRANKO, OFFICIAL REPORTER
UNITED REPORTING SERVICE LTD.

(PROCEEDINGS RESUMED AT 3:20 p.m.)

THE REGISTRAR: Order in court.
THE COURT: Mr. Rush, you mentioned this morning that some of these documents are difficult to read which reminded me of Boswell's encounter after her recital, said that it was difficult to play the violin and make it sound pleasant. He said it isn't difficult, madam, it is impossible. I am having that trouble with some of these documents and I wonder what you have in mind for us.
MR RUSH: Well, I have in mind for those documents that are documents 102 up to 118, I hope to provide you with typescripts, and I believe these are available and we can provide your lordship with them, and I regret that we haven't been able to do so.
THE COURT: I was going to suggest that, if necessary, that maybe I would really have to rely on counsel at the time of their argument to furnish me with, in the argument, otherwise with something that I can read because I really can't make out much of several of these. And I don't think any amount of strain or magnification will help.
MR. GOLDIE: It gets worse.
MR RUSH: Well, if you can leave that with me, my lord, my intention was to provide you with a typescript with those documents and I think that's where most of the difficulty has arisen, where we haven't had a typescript.
THE COURT: I would even go further than that, Mr. Rush, and say if you wanted to furnish me with just the part you want to rely upon, that -- maybe that's adequate, although the context might be lost in it.
MR RUSH: Well, if your lordship can leave me with an attempt to providing you with something that will assist you more than these will.
THE COURT: Thank you.
MR RUSH:
Q Thank you. Now, Dr. Lane, I am directing your attention now to tab 119 please and this is a typed letter from Mr. Loring, Indian Agent, and it is dated March 25, 1904. And this appears to be a report of some kind, is it, Dr. Lane?
A Yes. At the close, it sites the date of the letter and its identification number that it's in response to.
Q That's on page 3?

A Yes.
Q And would you direct his lordship's attention to the first paragraph?
A Yes. It's in response to a circular letter which was sent out to all Indian agents and it reads:

> "In referring to your circular letter (to all agents) No...."

I believe it is H4, 254, another number:

> "...dated respectively the 19th and 25th August last in regard to the advisability or otherwise of increasing or diminishing Indian Reserves through this Agency, stating that in the opinion of the Provincial Government, the time had come to do so in British Columbia, on the grounds that in some cases the native population has decreased whilst in others it is thought that many of the small reserves laid off for fishing and camping grounds, et cetera, were now, owing to changed conditions, not absolutely needed. I have the honour here for the present to state the following, to wit:"

And he then gives a report on the matters in his agency indicating that the population has increased rather than decreased. And then talking about other conditions.
Q Can I now direct your attention to tab 121? This is a letter of Loring to Oliver, Hazelton, June 24, 1909?
A Yes.
Q Appears to be a copy and duplicate?
A Yes.
Q And this appears to be a report. Am I correct on that, Dr. Lane?
A Yes. It's supplementary to some other reports respecting Indian unrest in the Skeena River area.
Q Thank you. And directing you now to 122?
A Yes. I should perhaps indicate that this is one of the large series, and the Indian name Kapelano, who is cited in the first paragraph of that letter, was one of the leaders of the -- in the first decade of this century of the B.C. Indian effort to have the matter of Indian title addressed by the Dominion Government or by the Imperial Government, or by the Provincial Government.
Q Kapelano there is spelled K-a-p --

A It is spelled K-a-p-e-l-a-n-o here, yes.
Q All right. And please turn to 122. If you could just identify Mr. McLean, please?
A J.D. McLean was the Assistant Secretary, the Department of Indian Affairs in Ottawa, Assistant Secretary-General.
Q All right. And he is directing this letter to Mr. McLaughlin of the Indian Office in Victoria?
A Yes.
Q Thank you. Now --
A Well, this is a copy of a telegram at tab 122, I believe.
Q Yes, thank you. Now, I just ask you to skip 123 and move to 124, Dr. Lane.
A Yes.
Q This is a copy -- a typed copy that's somewhat too difficult to read but the date appears to be 19/0 something. Can you assist us with the date?
A Yes. This is part of a series of communications between Mr. Charles Lugrin of the British Colonist in Victoria with Mr. Laurier in Ottawa.
Q Pertaining to what question?
A Pertaining, again the preceding communications were, the Indian unrest in the Skeena area.
Q All right. And is this -- can you assist us with the signature or the absence of it? It appears not to contain a signature or a signed copy?
A I am sorry, this was from Wilfrid Laurier to Mr. Lugrin, and this is a carbon copy so it doesn't bear the letterhead or the signature here but it comes out of a series of correspondence, I think we have some of the others right here.
Q All right. Now, just moving along then, I am going to take you to a number of tabs, Dr. Lane. 125, this appears to be Mr. Lugrin's response to Mr. Sir Wilfrid Laurier of August 3, 1909?
A Yes, responding to one of the 17th of the previous month.
Q And does this pertain to the same subject as you indicated Wilfrid Laurier's letter referred to?
A Yes.
Q And 126, please.
A Now, this is from the McBride papers. This one again unsigned is from Richard McBride to Sir Wilfrid Laurier dated the 29th September 1910, respecting discussions about Indian lands in British Columbia.
Q All right. Now, my lord, I am going to refer the

1 witness back to 123, and if you will just refer to
2 that for a moment, Dr. Lane. It is virtually an
3 unreadable typescript over the name of Mr. Newcombe.
4 I am going to refer Dr. Lane to 149 which is a
5 typescript, I believe, of what is contained at 123, if
6 you will just confirm that for us?
7 A Yes. This is a typescript which I prepared because
8 the print-offs from the microfilm were very difficult
9 to read.
10 MR. RUSH: And, my lord, rather than torturing through the
11 original, I'd ask you to turn to 149.
12 THE COURT: Thank you.
13 MR RUSH:
14 Q To what would you direct his lordship's attention with
15 respect of this document, Dr. Lane, signed by Mr. E.L.
16 Newcombe? Perhaps before I ask you to answer that,
17 you will tell us who Mr. Newcombe was?
18 A Yes. Subsequently, Mr. Newcombe was a member of the
19 Supreme Court of Canada but at this stage he was with
20 the Department of Justice and prepared this memorandum
21 for the Prime Minister as background briefing material
22 on the discussions that had been going on about Indian
23 title in British Columbia because the Prime Minister
24 was about to meet with the Premiere of British
25 Columbia and Mr. Newcombe wanted him to be advised or
26 apprised of necessary facts that he should have before
27 such discussions.
28 Q And I'd like to direct your attention, if you have
29 taken this into account, Dr. Lane, to the few
30 sentences before the indent on page 1?
31 A Yes. There had been serious contention between the
32 two governments regarding Indian land matters in
33 British Columbia, and eventually Mr. Newcombe, on
34 behalf of the Dominion Government, had prepared a
35 series of ten questions to be submitted for decision
36 by the Supreme Court of Canada, and had been in
37 correspondence with the legal counsel for the Province
38 of British Columbia, Mr. Lafleur in Montreal, on these
39 matters. Mr. Lafleur had agreed without amendment to
40 the ten questions that Mr. Newcombe had drafted and
41 then at the last moment things broke down because Mr.
42 McBride, the Premiere of British Columbia, declined to
43 a reference to the court of the first three of these
44 ten questions, the first three being specifically
45 directed to the issue of Indian title. And that's
46 what's referred to here, Mr. McBride. One of the
47 first three taken out in the other differences

relating to competing Dominion and Provincial claims regarding reserve lands to be addressed by the court. And Mr. Newcombe writes here:

> "I replied that I considered the first three questions essential, and would not recommend any reference which did not embody them."

And then goes on describing further efforts of communication, and the reply that he received.

Q Now, in the end, Dr. Lane, I am going to be referring you to some other correspondence with regard to this. Was there any reference?

A Not in this planned procedure because of the difference in opinion between Mr. McBride and the two legal counsel. Instead, there was a reference to the Supreme Court of British Columbia which was brought by on certain questions, not of course Indian title, by the Province in which the Dominion did not participate.

Q Let me direct you now back in the sequence of tabs that I had departed from a moment ago.

A Yes.

Q And I'd like to ask you to turn to page 127?

A Tab 127?

Q Yes, thank you. And it is a document to Sir Wilfrid Laurier dated October 22, 1910, apparently from the Prime Minister's office in the Province of British Columbia, and I direct your attention to the second full paragraph beginning with, "Since, however".

A Yes. This is:

> "Since, however, you prefer to proceed with the reference to the Supreme Court, there is nothing further to be done on this score. If you recollect, I mentioned this matter to you at Government House, but in the midst of your many engagements I can quite understand it having escaped your memory."

This is referring to the differences between Mr. McBride and Mr. Laurier as to how this matter should proceed and be settled, be addressed.

Q Tab 128 is a letter from Sir Wilfrid Laurier to Mr. McBride, October 8, 1910?

A Yes.

Q If you will look to the full -- first full paragraph,

appears to be a reference again to the judicial reference to the Supreme Court?

A That's correct. Mr. Laurier said:

"I am in receipt of your favour of the 29th of September confirming your telegram of the same date. On my return from the Western Provinces, I immediately looked into this matter of the British Columbia Indian lands. I find that the question had not only been discussed between your Government and this Government, but had been very far advanced, with the view of having the rights of the Indians determined by the highest judicial authority, and that a series of questions had been prepared by the Department of Justice and almost agreed to by your Attorney General.

I see no reason why this reference should not be carried out to the end. I do not exactly understand what there is to arbitrate at this moment. We, the Dominion Government, are the guardians of the Indians and we will not be on safe ground unless the rights of the Indians are determined judicially by the highest court of the Realm. You..."

Sorry.

Q This is Mr. Laurier setting out the position of the Dominion Government?

A That's correct.

Q Now, can we move along to 129 then, Dr. Lane?

A Yes.

Q This is a letter of Mr. J.N. Clark, apparently is a solicitor, to the Honourable Richard McBride, December 3, 1910?

A No, I think not. I am sorry, he is a solicitor and the letter is addressed to McBride. I had misheard you. I thought you said he was a solicitor --

Q All right.

A -- to Mr. McBride.

Q No, I ran the words together. And here I just direct your attention to the first paragraph. You indicated that there was a lawyer in Montreal who acted on behalf of either the Province or the Federal --

A The Provincial Government.

Q The Provincial Government in respect of this matter?

A Yes.

Q Do you know on whose behalf Mr. Clark was acting?

A Yes. Mr. Clark was retained, I believe at this time, by the friends of the British Columbia Indians which was a group of non-Indian people in the province and elsewhere in Canada who were concerned about the unresolved Indian title question in British Columbia.
Q All right. And on page 2 of this letter, Mr. Clark sets out his perspective on this question. Is that so?
A Yes.
Q All right. And, my lord, may I direct you to tab 130. This is Mr. Laurier again to Mr. McBride of September 6, 1910?
A That's correct.
Q And this is further correspondence on the same question?
A Yes.
Q Next I'd like to turn you to 131, and this appears to be correspondence from a Chief Wedildahld dated February 18, 1911, to The Honourable Richard McBride. Can you tell his lordship what is the source of this document, please?
A This is, I believe, found with the McBride papers at the Provincial Archives of British Columbia.
Q All right. Now, I am going to ask you if Mr. McBride's response is at tab 132, March 3, 1911?
A Yes, it is.
Q And at 133, a further letter from Chief Wedildahld?
A That's correct.
Q That's W-e-d-i-l-d-a-h-l-d. And 134, Dr. Lane, apparently a response, the date of which is not readily visible. And this is --
A Yes.
Q -- the response of Mr. McBride?
A That's correct.
Q Now, I direct your attention, please, to tab 135, again a letter from Mr. Clark of May 5, 1911?
A Yes.
Q Directed to Sir Wilfrid Laurier?
A Yes.
Q And I previously referred to counsel acting on behalf of British Columbia references apparently made in this letter to a Mr. Eugene Lafleur?
A Yes. He was the Montreal lawyer that had been advising the British Columbia Government in respect of Indian title.
MR. RUSH: All right.
MR. GOLDIE: Well, I don't quarrel with that proposition but it

1 doesn't necessarily flow from the fact that he's
2 retained as counsel.
3 MR RUSH: I agree with that. Perhaps it would be a long bow to
4 suggest that, but I might suggest it in argument.
5 MR. GOLDIE: Yes, I would expect you would, given Mr. Lafleur's
6 reputation.
7 MR RUSH:
8 Q Now, carrying on, Dr. Lane, at 136. This appears to
9 be a letter to Mr. McBride of June 3, '11?
10 A Yes.
11 Q And from Mr. Sir Wilfrid Laurier, is it?
12 A Yes, although the signature is not here.
13 THE COURT: Who is it from, Laurier?
14 THE WITNESS: Laurier, yes.
15 MR RUSH:
16 Q Yes.
17 A They were both in London simultaneously and apparently
18 missed a meeting that was scheduled.
19 Q And at 137, Dr. Lane, this is a letter of Ashtown
20 Green, August 27, 1911?
21 A Yes.
22 Q And he apparently is reporting upon his return from
23 Kispiox in the Skeena Valley?
24 A Yes.
25 Q This is the same Ashtown Green you referred us to
26 earlier as being a surveyor?
27 A That's correct.
28 Q All right. And I'd like to take you along to 138,
29 please, another letter from Chief Wedildahld, same
30 spelling, and speaking for a committee here, to The
31 Honourable Richard McBride of November 3 -- 13, 1911?
32 A Yes.
33 Q Now, Dr. Lane, to 139 if I can direct your attention,
34 this is a letter from Mr. Renwick, Deputy Minister of
35 Lands of November 12, 1911 -- excuse me, that's 22,
36 November 22, 1911. This letter is addressed to Mr.
37 Green?
38 A Yes, Mr. Ashtown Green, the surveyor.
39 Q All right. Could you just give us the context of this
40 letter, please?
41 A Yes. We have run rather quickly through a series of
42 documents that related to the resistance of the
43 Indians at Kispiox initially to having any reserves to
44 find for them because they claimed they owned the
45 whole of the Kispiox Valley, and the Dominion
46 Government was quite anxious to set aside some
47 important fishing stations in that area prior to them

being taken over by non-Indians, and as it appears from this letter, Ashtown Green -- you recall we referred to a communication from Mr. Loring saying that the Kispiox realized their mistake and were now willing to have -- point out some areas and have them defined as reserves. And so Mr. Ashtown Green had gone up and identified these fishing places, Kispiox fishing stations and other points, and he'd sent a blueprint of this to the land office, the Provincial Land Office in Victoria, asking that those -- any applications for those places from whites be held in abeyance, not -- those places not be alienated by the province to third parties even though they had not yet formally been set aside as Indian reserves. Perhaps I'd better read his own language.

"I have the honour to acknowledge receipt..."

This is from the Lands Commissioner:

"I have the honour to acknowledge receipt of your letter of the 2nd instant, enclosing blueprint of the sketch of the Kispiox Indian fishing stations on the Kispiox and Skeena rivers, and requesting that any applications for lands that encroach on these stations be disallowed until the Indian question is settled.

In reply I beg to state that, as the Department of Indian Affairs at Ottawa has already been advised, until some steps are taken by the Dominion Government with a view to securing the necessary re-adjustment of Indians Affairs generally throughout this Province it is not the intention of the Minister of Lands to consent to the creation of any more Indian Reserves nor to make any further withdrawal of lands from settlement by whites at the request of the Departments of Indian Affairs."

Q Thank you, Dr. Lane. May I refer you to tab 140?
A Yes.
Q This is a letter to Mr. Rogers, apparently it is a copy and unsigned. Are you able to assist us with the signer?
A Yes. Mr. Rogers at this time was Deputy Minister of the Interior -- I don't mean Deputy, I mean Dominion Minister of the Interior -- and I am not sure that I

can identify at the moment the sender of this letter.
Q All right. Now, perhaps I could just refer you to the bottom of the first page, reference is made to a Mr. Newcombe?
A Yes.
Q And is that the same Mr. Newcombe or a different Mr. Newcombe?
A No, that's correct. It is the same Mr. Newcombe with the Department of Justice that we had reference to earlier; in fact, it says so in the first paragraph mid section.
Q All right. Just carrying on, Dr. Lane, if I may direct you to 141, please. This appears to be a response to Chief Wedildahld of December 6, 1911?
A Yes.
Q And are you able to assist us in respect --
A Oh, yes. I guess these come from the McBride papers.
MR. RUSH: All right. Excuse me, page or rather tab 142.
THE COURT: Does that mean it came from the Premiere?
THE WITNESS: Yes. I am sorry, it is from the McBride papers, the Premiere's papers at the Provincial Archives in British Columbia, and these are carbons without letterhead or signature. Copies of letters sent. Yes.
MR. RUSH:
Q Now, Dr. Lane, I was referring you to 142?
A Yes.
Q The memorandum for the Deputy Minister over the signature of Mr. Bray, chief surveyor?
A Yes.
Q February 16, 1912. He says at the concluding -- in the concluding sentence:

> "I beg to draw your especial attention to this matter and to submit that it would appear to be advisable that steps be taken to arrive at some definite understanding with the Province at as early a date as possible."

And reference is made to Mr. Green's application and are you able --
THE COURT: Mr. Green's report. Is there an application somewhere else?
MR RUSH:
Q Well, he, in the previous sentence, the reference is to Green's application. Just asking Dr. Lane to what that refers?

A Yes, Mr. Bray was the chief surveyor with the Department of Indian Affairs at Ottawa to whom Mr. Ashtown Green reported. And this refers to the same matter that we touched on a few moments ago where Mr. Green had asked the Department of Lands in Victoria to withhold from alienation those fishing stations that had been identified as Kispiox Indian fishing stations, and this is a letter from Mr. Bray apprised of the same information repeating and discussing the same matter.

Q And in respect of that same matter, Dr. Lane, I direct your attention to tab 143, letter from Mr. McLean, Assistant Deputy, I can take it, of the Department of Indian Affairs?

A That's correct.

Q And this is addressed to Mr. Renwick, Deputy Commissioner, Department of Lands, Victoria?

A Yes.

Q And that's February 21, 1912. And this letter is in reference to this matter that you have just referred us to?

A That's correct.

Q Okay. Now, 144, this is a letter from the Methodist Church to Mr. McBride, March 1912. Where would this letter have been found, Dr. Lane?

A In the McBride papers, letters received.

Q Thank you. And 145?

A Yes.

MR. RUSH: Direct your attention to a letter of a Mr. Bodwell to the Attorney General, the Province of British Columbia, March 25, 1912. And what is this document in reference to, Dr. Lane?

MR. GOLDIE: Isn't it self apparent, my lord?

THE COURT: Well, tell me. I haven't found out yet who it is addressed to.

MR. GOLDIE: The Attorney General. It is an opinion addressed to the Attorney General by Mr. Bodwell who is counsel for the Province of British Columbia on the attempted reference to the Supreme Court of British Columbia.

MR RUSH:

Q It appears, Dr. Lane, by reference to the first paragraph that Mr. Bodwell has been referred to certain documents provided by "The Conference of the Friends of the Indians of British Columbia" and then he makes -- he offers an opinion following that. And can you assist us with regard to The Conference of The Friends of the Indians of British Columbia?

A Yes. This is the same group that I referred to earlier which was a group of concerned citizens including among them many methodist ministers and missionaries who were attempting to solicit Government action or court reference in respect of the Indian title issue in British Columbia.

Q Now, at 146, please, another letter from Mr. McLean, and are you able to -- oh, yes, to Mr. Ashtown Green, June 15, 1912?

A Yes.

Q And this appears to be with reference to the survey at the Andimaul Indian Reserve. Can you assist us with regard to the last paragraph, Dr. Lane?

A Yes.

"It is hoped that you will be able to overcome the opposition of the Indians and to explain to them that whatever outcome there may be to their claim for the whole territory..."

Q "...that in any case..."

A

"...that in any case the chosen spots which are..."

I can't make out the next part.

"...for their use..."

THE COURT: Necessary.

MR. GOLDIE: Necessary.

THE WITNESS:

"...necessary for their use should be secured for them."

MR. RUSH:

Q Thank you. Now, Ashtown Green appears to be the author of the letter at 147, Dr. Lane, October 23, 1912?

A Yes.

Q And Mr. McKenna is the recipient of the letter?

A Yes.

Q At that time who was Mr. McKenna? He is identified as a Special Commissioner?

A Yes.

Q Assist us as to what that means?

A Yes. Mr. J.A.J. McKenna held various posts with the Department of Indians Affairs at Ottawa, and this is

the same McKenna of the McKenna/McBride Agreement.
Q Thank you. Turn your attention now to tab 148?
A Yes.
Q And this styles itself Memo For Ministers Re British Columbia Indians, May 1907 - April 1914, and it appears to be a letter dated December 17, 1913 from a Mr. Doherty?
A That's correct.
Q And can you explain in summary form what this pertains to?
A I believe at this stage Mr. Doherty was with the Dominion Department of Justice and the subject matter was the petition of the Nishga Indians of British Columbia who were pressing the claim of Native title in a petition at that time, and I would gather from the title that this was a report prepared for the perusal of various ministers of the Government.
MR. RUSH: All right.
MR. GOLDIE: Well, I am sorry --
THE WITNESS: The Dominion Government, excuse me.
MR. GOLDIE: Is that so? It is addressed to somebody, in particular, Dr. Roche.
THE WITNESS: That's true.
MR RUSH:
Q Did the cover letter -- did the cover -- Dr. Lane, I suppose both is possible?
A That's correct.
Q The cover, did that attach to the letter?
A Yes.
Q In the repository from which it came?
A Yes.
MR. GOLDIE: Well, my lord, it may have attached to the letter but the cover says May 1907 to April 1914. The document is October 17, December 1913. It is hardly likely that a letter of that date would be prepared for a memo covering the period to April 1914. There is no particular mystery about it. Mr. Doherty, I believe at this time, was the Minister of Justice.
MR RUSH:
Q Are you able to assist us here, Dr. Lane, in terms of the source of this particular document? It indicates "Mbs 100 box" up in the upper left-hand corner?
A Yes. I believe this comes from the Public Archives in Canada but I would have to refresh myself on this.
MR. GOLDIE: In the upper right-hand corner of Mr. Doherty's letter there is some stamp. Is that decipherable?
THE WITNESS: It looks like it says UC -- U -- I cannot make it

out. It may be -- no, I cannot read my copy.

MR RUSH:

Q All right. Now, Dr. Lane, can I refer you now to tab 150, please?

A Yes.

Q This is a lengthy enclosure, the tab runs some 52 pages, from Mr. McKenna?

A Yes.

Q And Special Commissioner of the Government of Canada, and this is directed to Sir Richard McBride?

A Yes.

Q And what passages if any would you direct our attention to in this document, Dr. Lane?

A Well, on the first page -- I might say that this very lengthy memorandum is part of the papers prepared during the discussions between the two levels of government in an attempt to resolve Indian land matters in British Columbia, and follows the failure of the reference to the courts of these questions that were referred to earlier, and in this report, it is the same Mr. McKenna that we referred to earlier. He sets out some of the questions that are at issue that have been discussed in conversations and lists some claims that are made on behalf of the Indians, including the first one, the one of aboriginal title:

> "That the various nations or tribes have aboriginal title to certain territories within the Province, which, to perfect the Crown title in the right of the Province, should be extinguished by treaty providing for compensation for such extinguishment."

And then goes on to other matters between the Provincial and Dominion levels of Government in respect of Indian reserves, and third:

> "That Indians should be freely allowed to pre-empt lands open for pre-emption by others."

And then goes on to the question of Indians should be enfranchised and so on. And then says:

> "As to the first claim, I understand that you will not deviate from the position which you have so clearly taken and frequently defined, ie., that the Province's title to its land is unburdened by

any Indian title, and that your Government will not be a party, directly or indirectly, to a reference to the Courts of the claims set up. You take it that the public interest, which must be regarded as paramount, would be injuriously affected by such reference in that it would throw doubt upon the validity of titles to land in the Province. As stated at our conversations, I agree with you as to the seriousness of now raising the question, and, as far as the present negotiations go, it is dropped."

THE COURT: This is Newcombe's letter, is it?
THE WITNESS: No, this is Mr. McKenna. And this is just before the McKenna/McBride Agreement.
THE COURT: Yes, all right.
THE WITNESS: And it is agreed that for the moment, or for the purposes of these negotiations, the question of title will be set aside.
THE COURT: What do you want to do, Mr. Rush?
MR RUSH: I think we will pause there, my lord, and I think I can advise your lordship I will finish tomorrow but I won't finish as soon as I had thought. I will take the day, and I think if we re-visit the discussion we had the other day about the issue of sitting on Saturday or not, and whether we should put the matter over for cross-examination, I think, given the obvious reality that we will have to put the matter over for cross-examination, I propose that I complete the direct tomorrow, that we adjourn to the 12th for the cross-examination, and I think Mr. Goldie indicated that yesterday or the day before, not disputed by Ms. Koenigsberg, that that would be a convenient time to have the matter stood over to.
THE COURT: All right. Will three days do it in mid June, Mr. Goldie and Ms. Koenigsberg?
MR. GOLDIE: As presently advised, yes, my lord.
MS. KOENIGSBERG: Yes.
THE COURT: All right. I have made -- and I have to leave on the 15th, but we can sit some evenings if we have to. All right. Ten o'clock tomorrow morning. Thank you.

THE REGISTRAR: Order in court. Court will adjourn until ten a.m. tomorrow.

(PROCEEDINGS ADJOURNED AT 4:05 p.m. TO MAY 26, 1989)

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

TANNIS DEFOE, Official Reporter
United Reporting Service Ltd.