SEPTEMBER 12, 1989
VANCOUVER, B.C.

THE REGISTRAR: Order in Court. In the Supreme Court of British Columbia, this 12th day of September, 1989. The matter of Delgamuukw versus Her Majesty the Queen at bar, My Lord.

THE COURT: Ms. Russell.

MS. RUSSELL: My Lord, Mr. Macaulay has asked me to make a couple of comments this morning. The Federal defendant is very concerned with this argument on the Morrell report, chapter 4 of the Morrell report, since Your Lordship held in the first instance that certain parts would not be marked under their lack of relevance to the case. We are now in the position, we are preparing our own case, of course, and the expert's report which we submit will be cut substantially, depending on what parts of the Morrell report remain excluded. But we gather, since Mr. Grant intends to re-argue this point, we would like to know as soon as possible when it can be done, and have it set down shortly. We have so notified the plaintiffs on this point.

The other matter that Mr. Macaulay asked that I raise was that a date be set fairly shortly for the business records' argument, since, of course, much of our case will be based on the submission of those kinds of documents. We'll have many submissions to make on that ourselves, and would like to know when that can be set down. Thank you.

THE COURT: All right. Well, what do counsel say about that? Are you able to speak for the plaintiffs, Mr. Adams?

MR. ADAMS: Yes, My Lord. As far as the Morrell argument, I am not in a position to say when it could be, and I am not even aware of what Mr. Grant's intentions are, but subject to his availability, there is no difficulty with having the argument at a convenient time.

THE COURT: Is he in town?

MR. ADAMS: No, he's in a trial in Smithers, I believe, at least four days of this week. But I can certainly reach him today and report back.

THE COURT: All right.

MR. ADAMS: As far as the business records' argument, that can be at any convenient time, because I am responsible for that. But my understanding is that it depends on an election by the plaintiffs as to whether to call further trapline people, and as soon as that election

is made, which is to be by the end of this week, and we know the date, if any, for that witness or witnesses, then it seems to me we could schedule the business records' argument. And I have no difficulty with that being as soon as possible, once that question of calling further witnesses is set.

THE COURT: Am I hearing something that I should have in mind, but I have forgotten, the plaintiffs calling more trapline evidence? Was that a matter that was reserved as a possibility? Have I heard of that before?

MR. ADAMS: What that -- there were further certificates of conservation officers, and this came out of last week, when Mr. Grant and myself were in court for the plaintiffs, and Mr. Willms for the provincial defendants offered to make available a number of further witnesses who had delivered certificates.

THE COURT: I see. Yes. All right.

MR. ADAMS: And the arrangement was that Mr. Grant was to let my friends know by the end of this week whether he wished to cross-examine any or all of those further witnesses.

THE COURT: I recall now. Yes. All right.

MR. PLANT: I have some concerns with the second of these housekeeping matters. Because, I take it, from what my friend Mr. Adams said yesterday, that he concedes there would be some relationship between this so-called business records' argument, which pertains only, as I understand it, to the admissibility of certain documents put to Mr. Brody during cross-examination. That, on the one hand, and on the other the admissibility of the alienations project. Now, as part of our scheduling my friend has known it to be such for a long time that this week would be devoted to the proof of the alienations project. I am, as Your Lordship is aware, I was ready yesterday. I am ready today. And I would most grievously want to deal with this simple matter of translating these exhibits for identification into exhibits proper some time during this week, during the course of the week set aside for that purpose.

Now, as I understand it, we have witnesses scheduled for next week, matters that will start to roll, including people who come from out of town to give testimony. It's important that we get things done in the timetable that has been accepted to be as devoted to such matters when they arise.

A, I am not persuaded by the argument the two matters are linked; and B, even if there was some relationship between them, then I suggest that if my friends wished to exercise a right to cross-examine some custodian of documents up north, then they should make that election known today, not the end of the week. And in any event, My Lord, even if there was some nexus conceptually between these things, why can't the argument proceed in the absence of the evidence of this custodian? In fact it will be of some assistance to my friend, because the argument which he says is related will then yield from Your Lordship some statement of principle which will be applicable to the particular case of the district officer custodian. It may even alleviate the need to call that individual.

THE COURT: Well, what have you scheduled for this week, Mr. Plant? How do you see the rest of the week being used up now?

MR. PLANT: Well, I see the rest of the week being used up in this way. I have four more witnesses to call, who will be giving evidence in respect of their affidavits. Three today, one tomorrow morning. There are a number of other affidavits, which I propose to tender, and as I say, I would also like to have the whole bundle marked.

Now, once that's done, Mr. Goldie is planning to attend to lead historical documents that have been described in certain letters to my friends. And based on a very rough estimate which my friend, Mr. Guenther, I think, gave me yesterday, which I certainly don't hold him to, he expects that the cross-examination of the three witnesses set for today will be finished by noon. Should that be the case, I have Mr. Goldie on-call, as it were, to be here this afternoon to begin the process of reading the documents, which would then occupy the balance of Wednesday and Thursday. That, I am now reminded by Ms. Sigurdson, takes us to Friday. And Friday has been set aside again for some time for what I think are called housekeeping matters. A number of aspects of the plaintiffs' case which remain outstanding when they closed their case, some other points that require argument. So Friday was going to be set aside for this housekeeping stuff anyway.

THE COURT: Yes. All right.

MS. RUSSELL: I just add our comments to those of the Province,

and that is that if the issue of business records is now crystallized, we don't understand why it can't be argued shortly.

THE COURT: Well, is it reasonable and feasible to set it for Friday morning?

MR. PLANT: I would be happy to argue it Friday morning.

MS. RUSSELL: Fine. Thank you, My Lord.

THE COURT: Mr. Adams?

MR. ADAMS: My only comment is that the basis on which the schedule is set up and on which that argument was deferred was that it was appropriate for it to follow any further cross-examinations on trapline materials. And it is possible that something will arise from that, that should be included as part of that argument, and on that basis I am still seeking to have it in the course that appeared to have been agreed upon last week.

THE COURT: Well, it doesn't seem to me, Mr. Adams, that we are going to use this week. We are going to be down for part of the week if we don't get on with it, aren't we?

MR. ADAMS: Well, My Lord, I don't think there is any difficulty with filling Friday with what has been described as housekeeping for the plaintiffs. As far as the balance of this week, there remains a difficulty, in that Mr. Willms had indicated last week that -- well, first of all we had indicated that there was some difficulty in making available appropriate counsel to deal with the arguments Mr. Goldie wanted to deal with. Mr. Willms comment was well, tell us who it is, and we'll accommodate his schedule. My friends have now been advised that, I believe, Mr. Rush is responsible for those documents, and he is available as of Thursday morning, but not tomorrow, and yet, if I understand my friend correctly, Mr. Goldie will come anyway and do that tomorrow.

THE COURT: He said this afternoon.

MR. ADAMS: Or even this afternoon. So my submission there will be that Mr. Rush's schedule wasn't accommodated at all, and it was simply announced that this begin. And we are in the same difficulty, that we can't have Mr. Rush in court before Thursday morning.

MR. PLANT: I am advised that there has been no suggestion that Mr. Rush was unavailable Wednesday.

MR. ADAMS: There was simply no enquiry, no communication.

MR. PLANT: Well, this is a matter of some importance. As far as I am aware, there has been timely notification of

the way in which we intended to prove our case. Frankly, if I may so with respect, it's not our problem that there seems to be some negotiation as to who appears when. As of last week the plaintiffs hadn't even decided which lawyer was going to be given the task of sitting here listening to the historical information. And I am anxious not to have down time. I am anxious to use the time which has been set aside, recognizing, in particular, that we have estimated for Your Lordship the completion of the Province's case by, I believe, something like the end of October.

THE COURT: October 23rd.

MR. PLANT: Well, the end of the third week, presumably, of sitting in October. Well, if that's the case, then I am anxious that we do what we can to achieve that goal.

MR. ADAMS: Well, My Lord, if I can speak to that briefly. What was said in Volume 262 at page 19400 by Mr. Willms in this connection was that:

> "If it's another counsel, and what would be most helpful if we knew who it was, we will make sure that we organize when we do present it with that counsel's schedule. Maybe my friend could tell me which counsel will deal with it and then we'll know."

What followed from that is advice that Mr. Rush would have to deal with those documents, which we didn't know anything about until the end of last week.

THE COURT: Well, then, will it bring matters to some state of certainty if we fix the argument on the matter Mr. Goldie wants to pursue for Thursday morning?

MR. ADAMS: That would be fine.

THE COURT: Is Mr. Goldie available then? If counsel can't work these things out, I am in a position where the defendants can call it in whichever order they want to. I would like to see as much accommodation as possible, but if it can't be worked out, then the party calling evidence is entitled to proceed as it wishes.

MR. PLANT: I am not sure what Your Lordship's proposal was.

THE COURT: Thursday morning.

MR. PLANT: For what?

THE COURT: For these historical documents.

MR. PLANT: So Mr. Goldie would not appear until Thursday morning?

THE COURT: Well, if that's the part he is going to be looking after, and that's the part Mr. Rush would be looking after. If that's convenient.
MR. PLANT: At the moment, My Lord, that means in all likelihood that we wouldn't be sitting this afternoon or after about 11 o'clock tomorrow morning.
THE COURT: Is there nothing else that can be done?
MR. PLANT: Well, I assume that my friend will raise the same objection as he has -- My Lord, the objection with respect to the underlying documents for this is that Mr. Grant is going to be making some motion or something to that effect. That was what I understood yesterday, and he is not here. Now we are hearing that we can't produce or read in another kind of evidence because Mr. Rush isn't available. Well, at the moment --
THE COURT: What about the housekeeping matters that Mr. Adams is suggesting could take most of Friday?
MR. PLANT: Well, I am at a loss at the moment for inspiration as to how we can fill the time that's available.
THE COURT: Well, I just suggested what about these housekeeping matters the plaintiffs are talking about.
MR. PLANT: I'm sorry, I'll listen with interest to my friend on that point.
MR. ADAMS: Those of them I can speak to, My Lord, we will be pressed to be ready on Friday. I should say, My Lord, that we are not off schedule. We are simply finishing things.
THE COURT: It doesn't seem to me -- well, will we be on schedule if we have the argument Thursday morning, and if the plaintiffs clean up their various -- clean up their case -- that sounds almost critical -- clean up these matters on Friday?
MR. PLANT: We'll be on schedule if by the end of Friday all of this is proven had been tendered, if Mr. Goldie has had an opportunity to read documents for a day, if all of the matters set for Friday, the plaintiffs' outstanding matters, which we are making time available in our case to allow them to finish their unfinished business, if those are dealt with, and I think that that's it. If we can call the next witness on Monday.
And we should have this argument on business records. But frankly if the argument on the alienations project is finished, then my friends can conduct their cross-examination, and if they can find some opportune moment to make whatever particular

submission they have to make about that particular cross-examination, then we are happy to see if arrangements to that effect can be made. That doesn't have to be made by Friday.

MS. RUSSELL: My Lord, we will accommodate as best we can. We would like to have it done and out of the way.

THE COURT: I am disposed to suggest, Ms. Russell, that we clear these other matters away, and if necessary we have the business record argument at 4 o'clock some afternoon next week.

MS. RUSSELL: That's fine.

THE COURT: Well, its been wisely said that there is worse things that can be done than judges sitting in their Chambers twiddling their thumbs, and if that has to be the situation, and if we are not falling off schedule, then that's the way we will proceed. Mr. Goldie's historical argument or tendering of documents will proceed Thursday, and the plaintiffs will have Friday for --

MS. RUSSELL: If I might also ask if we could have a date from the plaintiffs, a date for the Morrell argument, if it's going to take place.

THE COURT: Yes.

MR. PLANT: And I am not sure whether -- I am still confused about this so-called business records' argument as distinct from this. Your Lordship's contemplation is that we will be dealing with the admissibility of the alienations project materials some time Friday as part of the matters then?

THE COURT: Yes. Well, you will have your share of -- your opportunity to see if you can clean up the alienations project as well, if it's still outstanding at that time. It will be, of course.

MR. PLANT: It will be as matters stand, yes.

THE COURT: All right. Thank you.

MR. PLANT: There being no other business, My Lord, my next witness will be Mr. Derek Thompson. He will speak to two maps in the series. The maps have numbers within the series of maps 8 and 26. Map 8 is the Parks' map. Map 26 is a map of one ecological reserve. Mr. Thompson's affidavit is Tab no. 5 in the black binder of alienations affidavits. That reminds me, My Lord. I have an updated index -- an updated index for Your Lordship's copy and one for my friends. And I'll put that in.

THE COURT: Well, the affidavit can be Exhibit 1129, and I'll just substitute it for the index.

MR. PLANT: I'll provide Your Lordship with an updated index -- a further updated index tomorrow morning. And I can provide the Registrar with the original of the affidavit.
THE REGISTRAR: Exhibit 1129.

(EXHIBIT NO. 1129 - AFFIDAVIT OF DEREK THOMPSON)

MR. PLANT: And I would call Mr. Thompson to the stand please. Perhaps I could ask whether trial Exhibits 45B and 55B for Identification, are they before Your Lordship? Your Lordship already has them. They are the supporting documents for maps 8 and 26. Map 8, the Parks' map itself is trial Exhibit 45A. The ecological reserve map is trial Exhibit 55A for Identification.

DEREK THOMPSON, a witness called on behalf of the defendants, having been duly sworn, testifies as follows:

THE REGISTRAR: Would you state your full name for us, sir.
THE WITNESS: Derek Thompson.
THE REGISTRAR: Please be seated.

EXAMINATION IN CHIEF BY MR. PLANT:

Q Are you the director of the Planning and Conservation Branch of the Ministry of Parks?
A That's correct.
Q And if I could ask you to look at Exhibit 1129 for a moment, which -- I'll just give you the photocopy here.
A Okay.
Q If you could turn to page 4. Is that a photocopy of your signature there above your name?
A That's correct.
Q Are the statements in this affidavit true?
A To the best of my knowledge, yes, they are true.
Q Mr. Thompson, I understand that you have worked for what is now the Ministry of Parks since 1973?
A That's correct.
Q Could you briefly describe your duties as director of the Planning and Conservation Services Branch, with particular reference to the record-keeping aspect of that branch's work.

A I am responsible for the creation of all new provincial parks and all new ecological reserves, for the proposal of those. I am responsible for the management planning for all of the parks in the system. And as part of that duty I and my staff are responsible to keep in headquarters in Victoria the records on the land holdings and the tenures in the park system and the ecological reserve system as well.
Q I understand that prior to April of this year you held the post of manager of the Planning and -- manager of Planning and Ecological Reserves?
A That's correct.
Q Could you briefly describe what is a ecological reserve?
A An ecological reserve is an area that's been set aside for its scientific value as a benchmark, a gene pool for the future, and to provide opportunities for scientific research.
Q Just to put the evidence that is depicted on maps 8 and 26 in some context. How many ecological reserves are there now in British Columbia?
A There are 123 as of this week.
Q And how many parks are there?
A There are 385.
Q Thank you very much, Mr. Thompson. I have no other questions for you.

CROSS-EXAMINATION BY BY MR. GUENTHER:

Q Sir, you're familiar with the process whereby an ecological reserve in particular is established?
A Yes, I believe so, yes.
Q And included in the materials in the supporting documentation, Exhibit 55B, are documents that relate to an ecological reserve at Morice River. That's the one that is established and existing within the land claim territory; is that correct?
A That's correct.
Q And there are also documents with respect to another seven; is that correct?
A You are referring to --
Q Yes, the page and contents --
A On the contents page, yes, that's correct.
Q All right. Now, with respect to those -- the one that is established, the ecological reserve established that exists within the land claim area, I take it that that was proposed in 1974. And I am referring here to

Tab 1 after Tab B of that volume.
A Okay.
Q Second page.
A It's the page which -- the page which has "1" in the right-hand corner, report 204.
Q Page 3 in the middle of the page?
A Yes.
Q And the next page is page 4, which I take it was the information that amounted to an application to set this aside as an ecological reserve; is that correct?
A It's not correct to say that it's an application. It is the material that was used in the programmes assessed there, the International Biological Programme.
Q All right. Who in fact suggested that this reserve be established?
A I am sorry, I don't have that information.
Q All right. The International Biological Programme that's documented throughout, what is that programme?
A The International Biological Programme is a programme of which Canada is a joint signatory, which in 1971 undertook inventories throughout Canada and throughout British Columbia.
Q For what purpose?
A To identify sites of ecological value.
Q Would you look at page 1 at Tab 1, page 3 numbered in the middle top of the page. That's signed by Mr. Krajina, who appears to be involved in all of these proposed reserves. And that document is headed application, correct?
A Yes.
Q And is Mr. Krajina holding a position with the International Biological Programme?
A I wouldn't say that he holds a position.
Q Can you explain --
A I understand to hold a position.
Q Can you explain what his role in this was?
A Yes. Dr. Krajina is an internationally renowned biologist who was a professor at U.B.C., and who was instrumental in the public proposal to have the province become involved in the International Biological Programme.
Q All right. It appears to me, and correct me if I'm wrong, that he was involved in the fieldwork, if I can put it that way, with respect to both the one established ecological reserve and the seven proposed that are documented here; is that correct?

A I believe so.
Q And it appears that his fieldwork occurred mostly in 1973 and 1974, correct? If you look at the second page of each tab, there is a date that a check sheet was completed in any event.
A Yes, I would say -- I don't know when his fieldwork was, but when he filled out the form was in '74 certainly.
Q That certainly would be when he reported in a way?
A Yes.
Q And the ecological reserve at Morice River which was established, was so established in 1977; is that correct?
A I believe so. Forgive me if I am not instantly --
Q Sorry, look at Tab 9 of that book. There is an Order-in-Council.
A Yes, 1977.
Q All right. And no action has been taken by the government with respect to designation of the other seven sites listed; is that correct?
A That's correct.
Q And the map and the documentation produced tell us nothing -- provide no information as to what activities may or may not have occurred in that designated ecological reserve since designation; is that correct?
A The map you referred to --
Q Yes.
A That's correct.
Q The Exhibit 55A. You were involved in your position in the creation -- in the creation process with respect to Provincial Parks; is that correct?
A That's correct.
Q How does that process work, in general?
A In general. Well, in general -- have to summarize it tersely and not be bureaucratic. The areas of the Province that have Provincial Parks value will be surveyed by a staff, by members of the public, as we have seen with ecological reserves.
Q I don't want to stop you, but just to take you back a step, I think. How are areas indicated that might be potential? Before --
A Okay. As we do it now, we recognize that the province has -- is made up of some 57, what we call natural landscapes, which are breakdowns of the geologic, the biologic, the climatic variety of British Columbia, and the government has identified that there would be

parks in each of these landscapes. I have also identified that there are natural features of provincial conservation and recreation value, which of themselves are of such significance that we should be protecting places like the Adams River fish run, Helmeken Falls. We also identified that there are recreational roles that the province follows, in terms of providing travel corridor opportunities, destination recreation opportunities and regional recreation opportunities to serve specific markets. So we are looking in those what we call five goal areas for parks and province.

And our staff, from their experience from previous history from so many sources, know of many of the areas that have significance for these areas. So they would complete studies of the area, following direction derived from myself and the Assistant Deputy Minister, and prepare for the Minister to take to the cabinet committee the boundary proposals and an Order-in-Council for passage to create the park.

Q What involvement does the Ministry then have in parks that are established? Let me go back one question. Parks are designated as such as in different class; is that correct?

A That's correct.

Q They are not -- these are not strictly speaking alienations of the property, they are simply designations which then provide your Ministry with authority to regulate those areas; is that fair to say?

A Yes.

Q All right. Once designated, I take it that your Ministry will not have a great deal of on the ground involvement in some areas of these parks; is that fair to say?

A Yes --

Q If we look, for instance, at Tweedsmuir Park, that's a fairly rugged area in place in which there will not be much activity on the part of either anyone from your Ministry or generally members of the public; is that correct?

A I believe that's correct.

Q And if you refer to some of the areas as shown on the map, Exhibit 45A. You're familiar with that map, I take it?

A Yes, this is 45A here.

Q And referring you to the document book, map 8. Do you

have that in front of you? Sorry, I have taken you to another one. Exhibit 45B. I will refer you to Tab B, which contains page 3. That's a listing of eight park areas for which there are supporting documents included, and as well in addition to those eight there is a mapping of the Spatsizi Plateau Park included in these documents. Let me just ask you about a number of those. The Spatsizi map, I believe, is at Tab D at the end of that book.

A All right.

Q The Spatsizi Plateau Park in fact falls almost entirely outside of the land claim area; is that correct?

A That's correct.

Q And in fact of the other parts listed, two of the largest ones -- well, the two largest -- in fact for the most part fall outside of the land claim area. I am referring to Tatlatui and Tweedsmuir.

A For the most part those park areas lie outside of the land claim area.

Q And with respect to the Babine Mountain recreation area in particular, can you describe the area, the terrain of that particular recreation area?

A Well, yes, it's situated close to Smithers, and when you are in Smithers and you are looking north, on the left-hand side you see Hudson Bay Mountain, which rises as a severe peak. On the right on the other hand is the Babine. And the Babines are largely -- the boundary composes largely the higher elevation land in there, and got some broad open alpine meadow areas, steep precipitous cliffs. Quite a dangerous area, for example, snowmobiling, numerous accidents in there over the years. The area generally represents that mountain system in the park system.

Q Were you involved in the process whereby recommendation was made that -- to have that area designated a recreation area?

A No, I wasn't personally.

Q Are you familiar with the reasons why your Ministry recommended that that area be so designated?

A Yes.

Q What are those reasons?

A In the late 1970's local groups wanted to see better management of motorized all-terrain vehicle use in the area, and a series of government studies by various ministries concluded, with a recommendation to cabinet, that one of the best ways to undertake

management of the area would be to designate it as a recreation area, to recognize that all-terrain vehicle use, and also to recognize the pre-existence of mineral claims in the area.

Q And that recreation area of some -- in excess of 32,000 hectares was established in 1984; is that correct?

A That's --

Q I am referring now to Tab 4.

A Correct. April the 5th, 1984.

Q Does your Ministry maintain records of any historic Indian sites in any of the parks?

A Do you mean do we maintain records of archaeologic sites?

Q That's one aspect in particular. If you can answer that.

A Where the -- our other Ministry of Municipal Affairs Heritage and Culture have completed inventories and have identified areas, we will have a copy of those in our files, yes.

Q Are there any such sites in the land claim area? Do you know?

A Off the top of my head I am sure that there must be, but I know specifically of none.

Q The Ministry of Parks undertakes to, in some of the parks and recreation areas, undertakes to inform the public users of those parks of some of the history of the area, I take it?

A That's correct.

Q Does it -- to your knowledge does any of that involve advice as to any Indian involvement historically in the areas?

A In these particular parks?

Q In any particular parks in the province.

A Oh, certainly in many parks.

Q Can you describe some of that?

A Well --

Q That you are aware of.

A It's so extensive.

Q By way of example.

A As an example. You really are testing me. Shuswap Lake Park in the interior we have an exhibit that talks about the early occupancy of the lake, Kulee Pit House. Now you are going to test me how to spell it. K-U-L, I think, E-E. But I may be wrong. Anyway, a pit house and exhibit similar to the one that's in the Provincial Museum.

Q Is there any similar projects or examples within the land claim territory that you are aware of?
A Not that I am absolutely sure of, no.
Q You have worked for the Parks and predecessors since 1973, I think you indicated?
A Yes.
Q And prior to that?
A I was at university.
Q Since 1973 when -- since you have been involved in the Ministry and predecessors, have you been aware of any particular areas, and I particularly refer you to the land claim area here, that have been reserved or set aside in any way in respect of potential land claim settlements or negotiations?
A None that I am aware of, no.
Q You have -- do you have any knowledge of something called the Kitwancool territorial reserve?
A No.
Q You have never heard of that?
A I don't believe so.
Q Just a quick question remaining. Mr. Moffatt on your understanding prepared the map that led to the preparation of the exhibit tendered here, 45A?
A That's correct.
Q And were you involved in instructing Mr. Moffatt?
A No, Mr. Moffatt was not working for me at that time.
Q Were you involved at that time in the direction that led to the production of the map and the collection of the materials?
A No.
Q Are you aware of who it was in the Ministry who directed the preparation of the map -- directed and supervised preparation of the map and the supporting documents?
A At that time Mr. Moffatt was my, if you like, predecessor in position, and his supervisor at that time was Mr. Jake Masselink.

MR. PLANT: Thank you. Those are my questions.
THE COURT: Thank you. Ms. Russell?
MS. RUSSELL: I have no questions. Thank you, My Lord.
MR. PLANT: I have no re-examination, My Lord.
THE COURT: Thank you, Mr. Thompson. You are excused, if you wish.
THE WITNESS: Thank you, My Lord.
MR. PLANT: On the basis of Mr. Thompson's evidence, I would, but for my friend's blanket objection, be tendering what is now exhibits -- what are now Exhibits 45A for

Identification, 45B for Identification, 55A and 55B for Identification as exhibits proper.

THE COURT: All right. Thank you.

MR. PLANT: The next witness will be Raymond Halladay, My Lord, H-A-L-L-A-D-A-Y. His affidavit appears at Tab 6 of the black binder of affidavits. Perhaps I could give Madam Registrar the original of that affidavit, which would become Exhibit 1130.

THE REGISTRAR: Yes.

THE COURT: Yes.

(EXHIBIT NO. 1130 - AFFIDAVIT OF MR. HALLADAY)

MR. PLANT: And Mr. Halladay will be giving evidence with respect to guide and outfitters' boundaries. The map for that is Exhibit 55C for Identification. Also called it map 13. And the source documentation is Exhibit 55D for Identification. Does Your Lordship have a copy of the guiding outfitters' source documentation book?

THE COURT: Yes.

MR. PLANT: I would call Mr. Halladay to the stand please.

DELBERT RAYMOND HALLADAY, a witness called on behalf of the Province, having been duly sworn, testifies as follows:

THE REGISTRAR: Would you state your full name please, sir.

THE WITNESS: My name is Delbert Raymond Halladay.

THE REGISTRAR: Thank you, sir. Please be seated.

EXAMINATION IN CHIEF BY MR. PLANT:

Q Mr. Halladay, are you the Deputy Director of the Wildlife Branch of the Ministry of Environment of the government of British Columbia?

A I am.

Q Could I ask you to turn to Tab 6 of the black binder of documents, the affidavit, and you see there your name on the first page. And if you could turn, please, to page 3. Recognizing that this is a photocopy, is that your signature above your name in the lower right-hand corner?

A It is.

Q And are the statements in this affidavit true, Mr. Halladay?

A They are.
Q I understand, sir, that you have been employed by the Wildlife Branch since 1970, and as Deputy Director since 1984?
A That is correct.
Q I understand that before that you worked for some time for the Canadian Wildlife Service?
A I did.
Q I do have one or two specific questions about your affidavit. And in particular I could ask Your Lordship to read paragraph three. I'll read it for the record.

"I have been informed by Mr. ..."

THE COURT: You don't need to read it in, Mr. Plant.
MR. PLANT: Thank you. It's really the last sentence where Mr. Halladay deposes that Mr. Bone reported to him at that time that his duties included the preparation of guide outfitter territory maps.
THE COURT: Yes.
MR. PLANT:
Q In addition to preparing such maps, Mr. Halladay, did Mr. Bone also have duties in relation to preparing metes and bounds descriptions of guide outfitter territories?
A He did.
Q Well, I may have overestimated the number of questions I have to ask you. Those are all the questions I have.
THE COURT: Thank you. Mr. Guenther.
MR. GUENTHER: Thank you, My Lord.

CROSS-EXAMINATION BY MR. GUENTHER:

Q Generally, Mr. Halladay, for what periods of time are guide outfitters' licences and certificates issued for?
A A guide outfitter's licence is an annual licence. Guide outfitter certificates have varied as to the term of them, depending on the statute provisions. We have recently enacted a new provision allowing for a ten year term.
Q All right. You're familiar, I take it, with the guide outfitter territories delineated on that -- on the map referred to, map 13?
A I am.

Q What's the general term issued with respect to those certificates? It's a range. Maybe if you could just indicate the range.
A It does vary, and I'm not certain of the term in that case.
Q All right.
A If you are referring to the period of 1984, which I believe is the date, October of '84.
Q I am just referring to a number of the guide outfitter certificates which are contained at the numbered tabs in the document book entitled map 13. I wonder whether my friend's assistance --

MR. PLANT: And what in particular?

MR. GUENTHER: Well, in particular to Tab 1 of that document book is the guide outfitter's certificate issued to Mr. Blackwell, and that Mr. Halladay apparently issued in 1975. Is that correct?

MR. PLANT: I see.

MR. GUENTHER:

Q On the indenture -- this indenture --
A Uh-huh.
Q And it was for a period ending March 31, 1987. Is that correct? And the number I am referring to, three paragraphs down, prior to the general conditions and application.
A Yes.
Q That would be a 12 year term?
A Yes.
Q And is that -- and the next one at Tab 2. Apparently the date of issue is 1980 for a term ending March 31, 1987; is that correct?
A That is correct.
Q Is that -- that would be a term of about seven years? Is that a common range, seven to twelve years for the issue of guide outfitter certificates?
A I believe the statute position at the time was about eleven years, but yes, that's typical of some of the terms.
Q And are you familiar with the prior history of these particular guide outfitter boundaries?
A In general terms.
Q Can you advise the Court, please, in general how these particular guide outfitter areas were developed?
A I can't in this particular case tell you how these were developed, but in general terms I can make reference to how they are developed province-wide.
Q Could you do that please.

A There's been an evolution in the development of guide areas in this province, and beginning with some use as guiding areas in the -- I believe it was in the 1920's was the first recorded formalized guiding activity, and up through and including the fifties and sixties these areas were more progressively formalized, so that there in fact were clear boundaries depicting them more and more as the country was taken up with guiding activity. In some earlier times individual guides had very large areas. As time went on additional guides were given authority to guide in an area. They had imperfect boundaries between their individual areas. Still other guides were added to the scene, or as those individual guides wished it, formality was added to the boundaries, and they were -- generally they were mapped, and the map was prepared as part of the file on the guide area.

Q I take it you referred to the 1920's as being the first activities of the Province in actively regulating or commencing to regulate the guide outfitting business?

A My recall is that it was about that time that they began to regulate.

Q And --

A It may have pre-dated that by some time, but I am not certain of the time.

Q And I take it, from your evidence, that that regulation became more formal generally through the decades following, particularly into the 1950's and sixties; is that correct?

A That is correct.

Q I take it the real intensification of that occurring in the fifties and sixties?

A Yes.

Q And that process then led to the current boundaries and the current regulatory regime; is that fair to say?

A In general, yes.

Q How is it determined who will be issued a guide outfitter's certificate?

A There is an application by an individual. The individual has to qualify as a guide outfitter. Part of that qualification is his period of time as an assistant guide, which is two years. In addition to that we require that he take an examination to show his proficiency in being aware of the regulations that relate to the guiding activity, including those

relating to hunting. And if he has obtained a pass mark in the examination, he can be granted a licence.

Q What --

A If he applies for a certificate, he can then as well, once licenced, be granted a certificate.

Q What's determined as to whom a certificate is issued in a particular area?

A The licensed guide outfitter is the one who can apply for a certificate, and the only one.

Q And what determines who will be licensed in a particular area then?

A Again the person who has applied, if it's a new area, and that is it's not a transfer of an area from a previous guide -- my comments previously were largely relating to a transfer situation -- but if it's a new area, we now tender the certificate or the guide area for auction, and then the successful bidder, if he is qualified to be a guide outfitter under the provisions of the Wildlife Act, he can be granted the licence, and then he can apply for the area to be certificated to him.

Q And once a guide outfitter holds a certificate for a particular area, then even if there is a termination date, as there is on the guide outfitter's certificates, your Ministry used that person as being the person who would be re-licensed if application is made by that person upon termination of their current guide outfitter's certificate; is that correct?

A If he was regarded as having adequately complied with the provisions of his licence and certificate, yes.

Q If regarded as having not grossly breached any conditions, such as to disqualify?

A That is correct.

Q And the regime of regulation by your Ministry of these people is conducted in what manner? How do you determine what a particular guide outfitter is doing in a particular area?

A A guide outfitter is required by law to pay a royalty on the game animals that he has harvested under his licence, or that his clients have harvested.

Q So what you're saying is that the monitoring of the activities of the guide outfitters by your Ministry is conducted by review of the reports that those guide outfitters are required by statute to submit to the Ministry; is that correct?

A In general, yes.

Q And the regime of regulation of the guide outfitters

certainly is not intended to cover any activity other than guiding for hire; is that correct?

A That's correct, basically, yes.

Q I take it, going back to a reference that you made about the issuance of guide outfitters' certificates and licences, that the boundaries of some of the areas will change from time to time?

A Yes.

Q But I take it -- well, tell us, if you can, are there what you would refer to as new areas within the land claims territory?

A I am not certain that there are new areas or unallocated areas. I believe that's what you are referring to. There may be.

Q Does there -- is there any -- in your experience is there competition of any sort for the issuance of a guide outfitter certificate for an area not a new area?

A If there is, it would mean qualified persons coming to the existing guide and indicating to that existing licensed guide that they both had more than two, if there were more than two, had an interest in that area, would be interested in buying his business assets and seeking permission from the Crown to have the area transferred to them.

Q All right.

A That might be competition.

Q All right. What I am getting at, and I take it you would agree then, that once a guide outfitter is licensed and a certificate issued for a particular area with boundaries, then that person, subject to not being re-issued a certificate because of breaches, is the -- is considered to be the owner of that guide outfitter -- and I use owner in a general sense, as entitled to renewal?

A He has the privilege to guide in the area. We regard him as having the opportunity to renew.

Q And the boundaries, once fixed, will not be altered, unless with the consent or through consultation with the guide outfitter's territory involved; is that correct?

A We try to achieve any boundary shifts through consultation. There is provision, however, for the regional manager to change a boundary, if he finds necessary to do so, with or without the permission of the licensee.

Q Under what circumstances?

A It would probably be a very significant need associated with the conservation of the resource. It perhaps could as well be the imposition of another tenure on the land, such as a mine development area or such, but even that is quite rare. It has to be quite an exceptional circumstance for such an amendment.
Q And do you know when the particular guide outfitter territory boundaries shown on the map here were in fact developed?
A I can say that the -- as indicated in the affidavit, and as indicated by Mr. Bone, that the boundaries are accurate as of that date shown.
Q Yes.
A But as to when those boundaries may have been set originally, I cannot confirm. I don't know. That would require a search of the records on my part.

MR. GUENTHER: Sorry, My Lord. If I might just have a moment. Okay. Those are my questions, My Lord.

THE COURT: Ms. Russell?

MS. RUSSELL: I have no questions, My Lord.

MR. PLANT: I have no re-examination, My Lord.

THE COURT: All right. Thank you. Thank you, Mr. Halladay.

MR. PLANT: Thank you, Mr. Halladay.

THE COURT: What are you tendering?

MR. PLANT: My Lord, but for my friend's blanket objection at this juncture, I would tender Exhibit 55C, which has in part been marked for limited purposes during the evidence of Igor Steciw. And I won't attempt to spell his last name. I would tender it as an exhibit for all purposes. And likewise I would tender the source documentation, Exhibit 55D, which is presently an exhibit for identification, as an exhibit for all purposes.

THE COURT: All right. Thank you. You have one more witness, Mr. Plant?

MR. PLANT: I do, My Lord.

THE COURT: Would it be more convenient to adjourn now?

MR. PLANT: Yes, My Lord.

THE COURT: All right. We will take the morning adjournment now.

THE REGISTRAR: Order in court. Court stands adjourned for a short recess.

(PROCEEDINGS ADJOURNED FOR A BRIEF RECESS)

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

_____

LORI OXLEY
OFFICIAL REPORTER
UNITED REPORTING SERVICE LTD.

(PROCEEDINGS RECONVENED AT 11:30 A.M.)

THE REGISTRAR: Order in court.
THE COURT: Mr. Plant.
MR. PLANT: My lord, my next witness will be Mr. Peter Downs. Before I call him, I have, in relation to his evidence, the map. Mr. Downs will be speaking to the question of forest service roads and sites, and if your lordship turns to tab 7 of the black binder of alienations affidavits, the bottom of the first page under the reference -- or associated with that is the Exhibit No. 55-E for identification for the map. My lord, that number was reserved but the exhibit itself -- or the map itself has not been marked until now, and I would ask that it be marked as Exhibit 55-E for identification.
THE COURT: All right.

(EXHIBIT 55-E FOR IDENTIFICATION - Map of Forest Service Roads and Sites)

MR. PLANT: And with respect to the source documentation of which there is one volume, I've got the volume here, it's also unmarked and it should be Exhibit 55-F for identification.
THE COURT: All right.
THE REGISTRAR: That's E and F for identification.

(EXHIBIT 55-F FOR IDENTIFICATION - Source Material)

MR. PLANT: I also have Mr. Downs' affidavit which I ask to be marked.
THE COURT: Yes, all right. That will be Exhibit 1131.
THE REGISTRAR: Yes, my lord.

(EXHIBIT 1131 - Affidavit of Mr. Downs dd. July 28, 1989)

MR. PLANT: I now ask Mr. Downs to come to the stand, please.

PETER HAMILTON DOWNS, a witness called on behalf of the Province, having first been duly sworn, testifies as follows:

THE REGISTRAR: Would you state your full name, please?
THE WITNESS: Peter Hamilton Downs.

THE REGISTRAR: Thank you, sir. Please be seated.

EXAMINATION IN CHIEF BY MR. PLANT:

Q Mr. Downs, are you the manager of the Property Services Section of the Timber Harvesting Branch of the Ministry of Forests?

A I am.

Q Could I ask you, please, sir, to turn to the document at tab 7 in the binder in front of you. That purports to be a photocopy of your affidavit. Could you turn to page 3 of that document and confirm for me that that's a photocopy of your signature above your name?

A Yes, that is.

Q And are the statements in this affidavit true?

A To the best of my knowledge, yes.

Q Mr. Downs, I have one or two questions for you. I understand that, under various titles, you've held what is in substance your present position since about 1975?

A That is correct.

Q And I understand that as far as -- well, I'll put it this way: Directing your attention to the map of forest service roads and sites and the supporting documentation. Was this material prepared by you personally or by people working under your supervision?

A By people working under my supervision.

Q Can you just briefly indicate for his lordship what a forest service road is?

A Well, a forest service road is defined under the definitions in the Forest Act, but it could be said to be a road built on Crown land with appropriations from the Ministry's funds.

Q By "Ministry" you mean the Ministry of Forests?

A Ministry of Forests, sorry, yes.

Q And approximately how many such roads are there in British Columbia?

A 2500 or something.

Q Could you -- well, perhaps I could just pause for a moment and ask your lordship to refer to the booklet which is now Exhibit 55-F for identification. And page 5 and page 6, Mr. Downs, if I could just ask you to confirm that this is a list of the forest service roads within the land claim area that are depicted on the map?

A That is correct.

Q And if I could turn your attention to page 7 and then

page 8. What is listed here?
A Those are the list of forest service sites.
Q What, generally speaking, is a forest service site?
A Well, forest service sites are acquired for the Ministry's -- for purposes consistent with the Forest Act. Should I elaborate on that?
Q Well, if you could give some examples of the kinds of things that --
A Well, we would look at sites for protection to observe when fires start, and repeater sites for communication establishments, patrol cabins -- although they are not needed very often now -- administration sites, seed orchards, nurseries, marine bases, suppression camps.
Q That's fine, thank you.
A Air tanker bases.
Q On pages seven and eight where there is a capital L and a stroke and then a capital O --
A That means lookout abbreviation.
Q Approximately how many of these such sites are there in British Columbia?
A Approximately a thousand throughout the province.
Q Now, if you carry on in the book, following tab C-1 and thereafter to the end of the book, I understand these are samples of files taken from your Ministry's files?
A That is correct.
Q Does the Ministry keep similar files for all forest service roads and sites?
A Yes, it does.

MR. PLANT: Those are all my questions of you, Mr. Downs.

THE COURT: Thank you. Mr. Guenther.

CROSS-EXAMINATION BY MR. GUENTHER:

Q Thank you, my lord.
Sir, the information shown on the map is as of May the 6th, 1987; is that correct?
A That is correct.
Q And was the status of these roads and sites different in 1987 than in October 1984? Was there any change in status of any of these roads and sites?
A Well, there may have been some roads added from 1984 to 1987. I am not too sure. We may have acquired sites in the period of '84 to '87, but I am not sure which ones.
Q The documents reproduced after tab C of that book that my friend referred you to, relate to -- correct me if I'm wrong, but my reading of them is that they relate

to one of the forest service roads, being the Binta Lake forest service road, being one of the 34 listed in the list of roads; is that correct?
A That is right.
Q And that is at tabs 1, 2, 3 and 4; is that correct?
A That is correct.
Q All those relate to that one forest service road?
A Right.
Q And at tab 5 are documents that relate to only one of the forest service sites being the -- I take it the Telkwa administration site?
A That is right.
Q The Telkwa administration site, I take it to be a permanent administration office; is that correct?
A It was. I think it has now been sold off in the time period.
Q In which time period?
A Probably since '87 to '89.
Q With respect to the forest service roads that are mapped as lying within the land claim area, are you familiar with any of the history of those roadways?
A Not really, no.
Q All right. Are you knowledgeable at all about whether those particular forest service roads were constructed over old roadways or old trails at all?
A Not really, no.
Q Are you familiar with whether it is -- not the policy -- but the practical and convenient method for constructing such roads to follow a pre-existing trail where one exists?
A That's quite possible, yes.
Q Possible but you don't know, I take it, from your answers?
A That's right.
Q And I take it other than that documentation contained in the booklet with respect to the Binta Lake forest service road, that the materials and the map do not provide any information as to the history of any of the other forest service roads listed and mapped; is that correct?
A That is correct.
Q And can you tell us whether the forest service roads that are mapped are mappings of actual roadways or whether the mappings may include rights-of-way held by the Ministry but over which an actual roadway has not been constructed?
A To the best of my knowledge all those roads have been

constructed.
Q Do you know that to be so?
A Not absolutely positive, no.
Q Have you compared the mapping to the Ministry documents at all yourself?
A I am not quite sure what --
Q Have you compared the mapping of the roads, that is the map now marked as Exhibit 55-E, I believe, which is that large map?
A Yeah. I did not compare each project road with each file myself, no, I did not.
Q Did you compare any of those roads mapped with any project files?
A I just looked over the Binta.
Q Just the Binta file?
A Right.
Q Which is the one produced in these documents?
A Right.
Q With respect to the forest service sites that are marked, you've indicated that there are a number of different types; one being lookouts. The lookouts are manned for part of the year only; is that correct?
A That is my understanding.
Q And generally manned by one person?
A Again, that is my understanding that it is one person.
Q Yes. And the period of the year that that would be manned would be which months?
A During the fire season. I think it starts May the 15th to October the 15th.
Q All right. The repeater stations that you referred to are unmanned; is that correct?
A That is correct.
Q Once constructed they are there?
A They are automatic, I think.
Q They are automatic. And the only time that any employees of the Ministry would --
A For maintenance.
Q -- go to those areas is for maintenance or for inspection, I take it; is that correct?
A That's right.
Q The patrol cabins that you mentioned, I only see one on the list, that being at Maurice Lake. But I take it that that's an unmanned cabin that is there for occasional patrols -- for the use of occasional patrols; is that correct?
A That is my understanding. I think they are very old. Part of the history of the forest service.

Q And the suppression camp that is listed on page 8 under item number 37, is that -- is that an ongoing staffed operation?
A I don't know.
Q What about the Sunset Lake marine base?
A Again, I'm afraid I don't know.
Q And you indicated that the Telkwa administration site, to your knowledge -- or to the best of your information had been sold off. Is that also true of the Telkwa nursery?
A I'm getting confused here. The Telkwa Nursery has definitely been sold off, it's been privatized. The Telkwa administration site might have transferred over to B.C.B.C. I'm not quite sure what the status of that is.
Q Just going back to the forest service roadways that are mapped, I take it that you cannot tell us the degree of use of those roadways?
A No.
Q I take it from your general information, however, those roadways, again, would be, to the extent that any of them would be used, would be used during the fire season mostly. Is that fair to say?
A They would be used primarily for the extraction of timber.
Q I see. They are also used for --
A For fire protection and silviculture.
Q -- for fire protection?
A Correct.
Q And they are used for the extraction of timber by the timber companies that may hold cutting permits in areas accessed by those roads?
A That is correct.

MR. GUENTHER: Thank you. Those are my questions, my lord.
THE COURT: Thank you. Ms. Russell?
MS. RUSSELL: No, thank you.
MR. PLANT: I do have one question on re-examination, my lord.

RE-EXAMINATION BY MR. PLANT:

Q Do members of the public have the right of access to forest service roads, Mr. Downs?
A Yes, they do.

MR. PLANT: Thank you very much.
THE COURT: All right. What are you tendering, Mr. Plant?
MR. PLANT: I have no further need for the witness, my lord, but subject to my friend's blanket objection, I would be at this juncture tendering Exhibit 55-E for all

purposes. Likewise, Exhibit 55-F.
THE COURT: And what did you do about the map? It was marked, was it?
MR. PLANT: No. We just marked it now for the first time.
THE COURT: All right. So 55 -- the map is 55-C?
MR. PLANT: The map is 55-E for identification.
THE COURT: Oh.
MR. PLANT: That number, my lord, was reserved back in May of 1987.
THE COURT: Yes, all right. And F is this book, is it?
MR. PLANT: And the book should be 55-F.
THE COURT: Yes. They are both for identification now then.
MR. PLANT: Yes. As a result of my friend's objection.
THE COURT: All right. Thank you, Mr. Downs, you are excused.
THE WITNESS: Thank you.
(WITNESS EXCUSED)
THE COURT: And we have nothing more to do today?
MR. PLANT: No, I do have another item.
THE COURT: All right.
MR. GUENTHER: I should say, however, that I have indicated to my friend, my lord, that we will not now require the witness schedule for tomorrow morning for cross-examination.
THE COURT: All right. Thank you.
MR. PLANT: And as a result of my friend's helpful statement in that regard, I wish to turn your lordship to page 2 of the index of the binder of affidavits, and what I want to do is to tender the affidavits, at least up to tab 16 of that book.
THE COURT: So --
MR. PLANT: Tab A will be the affidavit of Donald W. Russell and I would tender that -- expect that to be exhibit number 1132.
THE COURT: Yes.
MR. PLANT: And I have the original of that for the Registrar.
THE REGISTRAR: Thank you.

(EXHIBIT 1132 - Affidavit of Mr. Russell dd. August 17, 1989)

MR. PLANT: The next item in sequence -- oh, well yes, in that -- sorry, in connection with the affidavit of Donald Russell, I would wish to tender for all purposes the documents which are presently Exhibits 54-A for identification and 54-B.
THE COURT: All right. That those will be exhibits now.
MR. PLANT: Mr. Russell's evidence is in relation to grazing

permits.
THE COURT: All right.
THE REGISTRAR: Are they exhibits for identification or are they exhibits proper?
THE COURT: Yes, they become exhibits now. Mr. Guenther will let me know if there are any of these that should not now be marked for -- as exhibits.
MR. PLANT: They are already marked as exhibits for identification.
THE COURT: Yes.
THE REGISTRAR: Are they to be exhibits proper?
MR. PLANT: I am going to be making that submission in due course but the plaintiffs have an objection which applies to them also.
THE COURT: Yes, all right.
MR. PLANT: I should say, I am only making reference to them so that anyone reading the transcript would know that documents 54-A and 54-B go along with Exhibit No. 1132.
THE COURT: Yes.
MR. PLANT: Now, for your lordship's assistance, at tab 9 is the affidavit of Dr. Bandy. That affidavit is already an exhibit at trial, it is Exhibit 1114, and your lordship may wish to make a note -- or your lordship doesn't have to because I'll provide you with an updated index. But Dr. Bandy has been cross-examined out of court on that affidavit, and the transcript of his examination will be given the number 1114-A. I'm told it has been given that number.
THE COURT: Yes, all right. And you are tendering -- --
MR. PLANT: Now there are some more affidavits in the binder.
THE COURT: All right. No books of documents that go with Exhibit 1114 or are they already in?
MR. PLANT: The documents that go with Exhibit 1114 have been marked as exhibits proper 24-A and 24-B. They were marked last week.
THE COURT: All right. Thank you.
MR. PLANT: Now at tab -- now the next item down the list will be at tab 10 of the black binder. This is a second affidavit sworn by Dr. Bandy, it deals with the subject of water licences, and I don't have the original of that affidavit in my binder, but perhaps --
THE COURT: Well, this one can be marked.
MR. PLANT: Right. It's part of a series of affidavits which I am now coming to that were all sworn in 1987 and they were filed in court sometime ago. So the original is

already in the court files somewhere.
THE COURT: And what number was it?
MR. PLANT: And it doesn't have an exhibit number yet.
THE COURT: It doesn't. Well then, it should be Exhibit 1133.
MR. PLANT: Yes.

(EXHIBIT 1133 - Affidavit of Dr. Bandy dd. July 13, 1987)

THE COURT: All right.
MR. PLANT: And in that connection, it will be my submission that Exhibits 38-A through G, all of which are water licence maps or supporting documentation, and all of which are currently exhibits for identification --
THE COURT: Yes.
MR. PLANT: -- that they should be marked as exhibits proper, and that is subject to my friend's objection at the moment.

The next item in the list is an affidavit of Donald A. Duffy and this affidavit speaks to the map number three which deals with areas designated for recreation use and enjoyment of the public. This affidavit was also filed in 1987 and so it's -- the original is in the court file and I ask that it be given --
THE COURT: 1134.
MR. PLANT: -- the exhibit number 1134.
THE COURT: Yes.

(EXHIBIT 1134 - Affidavit of Mr. Duffy dd. July 13, 1987)

MR. PLANT: In that connection, I would seek to tender as exhibits proper the exhibits which are currently numbered for identification, 36-A, 36-B and 36-C.
THE COURT: All right.
MR. PLANT: Now, I should say that my friends had cross-examined Dr. Bandy on the water licences affidavit. They have also cross-examined Mr. Duffy on this affidavit and I assumed that they will want to tender the transcripts of those cross-examinations.
THE COURT: Well, they can do that now or when the exhibits are finally marked, with such indication.
MR. GUENTHER: Yes, my lord, we do wish to tender them, and perhaps we could reserve the numbers because we don't have them with us.
THE COURT: Well, they will be given a sequence. I think the

affidavits would be given the same exhibit number as the affidavit with a prefix or a suffix.

MR. GUENTHER: Thank you.

MR. PLANT: I am told that there may almost be something like a practice in this regard, so that Dr. Bandy's affidavit which is now Exhibit 1133 might have a transcript number 1133-A.

THE COURT: Yes. But Mr. Guenther won't want to do that until -- perhaps won't want to do that until he sees whether these documents go in, or maybe he wants to put it in anyway. He hasn't got them here anyway so there is no point trying to decide how that will be done.

MR. PLANT: That's fine.

MR. GUENTHER: I prefer to reserve the decision on that, my lord.

THE COURT: Yes, thank you.

MR. PLANT: It's simply a question of what number they will get and I'm happy to leave that.

THE COURT: All right.

MR. PLANT: The next item then will be the item at tab 12 of the black binder of alienations custodial affidavits, and that is another affidavit of Donald Duffy filed in July of 1987. It deals with the subject of surveyed district lots which is map 12 in the alienations series, and I would ask that that be given the exhibit number 1135.

THE COURT: Yes.

(EXHIBIT 1135 - Affidavit of Mr. Duffy dd. July 13, 1987)

MR. PLANT: In connection with that affidavit, I would seek to tender the map and supporting documentation which are now marked for identification as exhibits 39-A, 39-B and 39-C. I would seek to tender those as exhibits proper subject, of course, to my friend's objection.

THE COURT: All right.

MR. PLANT: The next item is a further affidavit of Donald Duffy, but before I proceed to that, I should say that my friends have cross-examined Dr. Duffy on all three of the affidavits which are referred to on this index.

THE COURT: Yes.

MR. PLANT: And there is one transcript in respect of all three.

THE COURT: Yes.

MR. PLANT: So dealing --

THE COURT: This affidavit will be 1136.

MR. PLANT: The school district boundaries affidavit at tab 13 should be 1136, my lord.
THE COURT: Yes.

(EXHIBIT 1136 - Affidavit of Mr. Duffy dd. August 14, 1989)

MR. PLANT: The exhibit numbers are 47-A-1, 47-A-2, and 47-B. What I've said before applies to them.
Then at tab 14, Mr. Clancy's affidavit which deals with mineral, placer and coal tenures, may that be 1137?
THE COURT: Yes. I'm sorry, it deals with what?
MR. PLANT: Mineral, placer and coal tenures. There are a number --
THE COURT: I'm sorry, I didn't get a note of what tab 13, Mr. Duffy -- I think you said -- later you mentioned it had something to do with school districts?
MR. PLANT: Yes. School district boundaries.
THE COURT: All right.
MR. PLANT: Then Mr. Clancy's affidavit at tab 14, mineral, placer and coal tenures, the map itself is marked as Exhibit 37-A for identification and then there is a variety of source documentation. I'll just read the numbers as they are given on the index. 37-B, 37-C, 37-C-1, 37-D, 37-E, and 37-F. Mr. Clancy has been cross-examined out of court on his affidavit. His affidavit was filed in 1987, the originals should be in the court file already.
THE COURT: All right. That will be, 1137.

(EXHIBIT 1137 - Affidavit of Mr. Clancy dd. July 6, 1987)

MR. PLANT: Now at tab 15 of the book of affidavits I have the affidavit of Robert May. I have the original of that affidavit. That's one of the affidavits on which my friends have waived their right of cross-examination.
THE COURT: That will be 1138.
MR. PLANT: Very good, my lord.

(EXHIBIT 1138 - Affidavit of Mr. May dd. August 8, 1989)

MR. PLANT: And that affidavit speaks only to the source documentation booklet marked Exhibit 47-B for identification which is concerned with school district

boundaries.

And the next affidavit is the affidavit of Harry Goldberg, and I have the original of that affidavit which is tab 16 of the book.

THE COURT: 1139.

(EXHIBIT 1139 - Affidavit of Mr. Goldberg dd. July 28, 1989)

MR. PLANT: Mr. Goldberg's affidavit deals with the electoral districts map and source documentation. The map is Exhibit 46-A for identification and the source documentation is Exhibit 46-B for identification. My friends have waived their right of cross-examination of Mr. Goldberg.

The affidavit of Mr. McKinnon filed May 6th, 1987, is in the court file and I won't recite the many exhibit numbers that it speaks to. Mr. McKinnon, as you may recall, was the person in charge of taking the Ministry return maps and producing the series of maps for courtroom use.

THE COURT: Yes.

MR. PLANT: I would ask that his affidavit be given the number 1140.

THE COURT: Yes.

(EXHIBIT 1140 - Affidavit of Mr. McKinnon dd. May 6, 1987)

THE COURT: I'm sorry that I -- you've lost me. Which maps did he prepare?

MR. PLANT: Mr. McKinnon works for Public Service Canada. He is a --

MR. MACKENZIE: Department.

MS. RUSSELL: Department of Public Works.

MR. PLANT: Department of Public Works, thank you.

THE COURT: Yes.

MR. PLANT: His job was to take the original maps prepared by each of the provincial ministries and then to prepare a set of 12 maps for courtroom use. So he took whatever it was that had been prepared by the Ministry, and in some cases reproduced them and mounted them on foam-cork backing, and in other cases added some colour and that sort of thing.

THE COURT: All right.

MR. PLANT: I think the phrase that he uses in his affidavit is "technical assistance". In any rate, that's what he

did.

Lastly, there is a further affidavit, a supplementary affidavit of Mr. McKinnon dated July 27th, 1989. I have that affidavit here and I would ask that it be given exhibit number 1141.

THE COURT: Yes.

(EXHIBIT 1141 - Supplemental Affidavit of Mr. McKinnon dd. July 27, 1989)

MR. PLANT: There he sets out the process whereby the court copies of two further maps were prepared, the maps for guide and outfitters' boundaries and forest service roads. But again, it's the issue of technical assistance.

THE COURT: These maps to which Mr. McKinnon deposes, they are all included in other clutches of exhibits, are they?

MR. PLANT: Yes. The -- well, the maps which Mr. McKinnon deposes to are all the original from which he worked, and are all -- have all -- all being the subject of the other affidavits.

THE COURT: Yes, all right.

MR. PLANT: If I might just take a moment to ask my colleagues what mistakes I've made.

THE COURT: Yes, thank you.

MR. PLANT: My lord, it may be of some assistance if I hand up to Madam Registrar copies of one or two of the affidavits that are in the court file. But perhaps rather than take time to do that now, we will do that at another juncture.

I did want to be sure that I had mentioned that Mr. Clancy, the mineral, placer and coal tenures person was cross-examined on his affidavit. And I think that that's all that I have to do in that connection right now.

THE COURT: Yes, all right.

MR. PLANT: I have no other business at the moment, my lord.

THE COURT: Thank you. And you won't need to reconvene tomorrow, but we will resume on Thursday morning.

MR. PLANT: Very good.

THE COURT: All right. Thank you.

THE REGISTRAR: Order in court. Court stands adjourned until ten o'clock on Thursday.

(PROCEEDINGS ADJOURNED AT 12:10 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.

Toni Kerekes, O.R.
United Reporting Service Ltd.