Vancouver, B. C.
February 1, 1990.

THE REGISTRAR: In the Supreme Court of British Columbia, this 1st day of February, 1990. Delgamuukw versus Her Majesty the Queen at bar, my lord.

THE COURT: Thank you. May I review the bidding for my time, very briefly? I have had to make some changes. While we were together earlier this week I was in error with regard to my future committments in the Court of Appeal and I will not be available on Monday morning. I don't think we planned to sit then anyway.

MR. RUSH: No.

THE COURT: But I will be available Monday afternoon if, in view of what I am about to say, counsel think we should. And I will be available Tuesday and Wednesday. I am not leaving for the east until Thursday now. As we are presently scheduled, I think we are to resume on Tuesday morning?

MR. RUSH: Yes.

THE COURT: How long do you think we might be?

MR. RUSH: Well, if we proceed at that time, my lord, it will be a matter of introducing documents and tying up some loose ends.

THE COURT: So we should be able to do it in two days?

MR. RUSH: Yes, definitely. Hopefully, one.

THE COURT: So there is no reason to move forward to Monday afternoon?

MR. RUSH: None that I can see, my lord.

THE COURT: All right.

Secondly, do counsel have a view of how long we are likely to be today?

MR. RUSH: For my part, I can advise that I am going to be about ten minutes. I have some introductory questions of Mr. Atkinson and that's my length of time.

MS. KOENIGSBERG: My cross-examination, if any, would be extremely brief. I have some submissions to make about the affidavit itself.

THE COURT: All right. Mr. Plant?

MR. PLANT: Depending on how the events fall out, I don't expect that at the moment I am going to be more than half an hour or so in cross-examination.

THE COURT: I have a commitment that I would like to meet, if possible, to go to Victoria sometime around, I think it's at 1 o'clock. But I can continue tomorrow. I will be coming back so I can continue tomorrow, if necessary.

MR. RUSH: My lord, it sounds to me as if we can finish for you to make that commitment and to finish today and I would very much like to try to do that, if I can proceed now.
THE COURT: Thank you.
MR. RUSH: The first order of business, my lord, is the tendering of the collection of plaintiffs' --
THE COURT: Excuse me again, before you start.
MR. RUSH: In view of your lordship's problems on vision, perhaps I should wait.
THE COURT: Foresight.
MR. RUSH: Or maybe I should turn it all into an oral submission.
THE COURT: Foreseeability.
MR. RUSH: I seek to tender the plaintiffs' documents extracted from the estate files. Now, this was the matter that I sought to tender last day and I now revisit the question.

I simply wish to advise you that Mr. Macaulay, at Volume 309, in the course of a submission on December 19th, said: "We have agreed that any document in any one of the 160 files can be put in as evidence by the plaintiffs and Mr. Grant is currently piling up a very large pile of those documents."

I think Mr. Macaulay agreed last day that there was agreement. He wanted to review them. I would like to now tender those documents as the next exhibit.

MS. KOENIGSBERG: Yes. That agreement still stands but that agreement was, as I understood it, confined to an agreement that any documents that came out of the estate files which were relevant could be put forward. And we have now had an opportunity to review all these documents and there are a number of documents in these -- in this collection, which do not come from the estate files.

The first document is tab 50, and although in the index it is referred to as coming from file 3988, which from a quick check, was indeed --
THE COURT: Tab 50 you said?
MS. KOENIGSBERG: Tab 50. Tab 50 is a letter from Ralph Michell to Fish & Wildlife, attention Rick Marshall, and it's dated January 18th, 1988. I reviewed our copy of file number 3988, which is the file to which this document is attributed. On its face, it is not an estate file document and it is not in fact in our copy of that file, nor is it in -- we had one other copy or one other file that in fact had to do with Sam Jones, and

it is Sam Jones's trapline that is the subject of this letter.

I would note also that this has a stamp on it and it's not a DIA stamp, it's a Ministry of the Environment stamp. I don't think it's a relevant document and it certainly doesn't come within our agreement and, in my submission, it should not form part of this collection.

The next area --

THE COURT: Can we deal with them one at a time? Mr. Rush?

MS. KOENIGSBERG: Yes.

THE COURT: Mr. Rush?

MR. RUSH: I am not in a position to advise you. What I would suggest doing, however, is, with regard to these documents, the volume be marked subject to my friend's comments and I will consult with Mr. Grant. I did not put this collection together, Mr. Grant did, and I am assuming they came from the files. If they didn't I would be happy to put them in.

THE COURT: Do you have a number of these?

MS. KOENIGSBERG: We have a larger tab, it's a bit confusing. Actually, in my copy it's at tab 83 but in the index it's not tab 83. The description is not tab 83, but in my copy it's tab 83. And it's an entire -- well, it's a large collection of documents from a file, which is -- I believe it's our number 10808, but it's traplines general, a traplines general file. These documents are indeed documents relevant to trapline registration, from the traplines general file and, in my submission, they are not estate documents and they don't relate to the estate files.

THE COURT: All right.

MS. KOENIGSBERG: And should not form part of this collection. Other than that, we have no objections.

THE COURT: Subject to those two documents being revisited in due course by Mr. Rush, these books of documents can now be marked. They haven't been marked yet?

MR. RUSH: No, my lord.

THE COURT: We just agreed to.

MR. RUSH: Yes. If these could be marked as the next exhibit, subject to my clarification of those two documents.

(EXHIBIT 1252: PLAINTIFFS' DOCUMENTS EXTRACTED FROM ESTATE FILES)

MR. PLANT: My lord, it's a matter of interest to me that the document at tab 50 is a letter headed "without

prejudice." And I assume that by filing it the plaintiffs are waiving that privilege. But, again, I look forward to Mr. Grant's explanation of how this document can be adduced into evidence.

MR. RUSH: So do I, my lord.

THE COURT: All right.

MR. RUSH: Now, I would like to call our next witness, Mr. Atkinson, please. Would you come to the witness stand?

ROBERT MARION ATKINSON, a witness called on behalf of the plaintiffs, after first being duly sworn, testified as follows:

THE REGISTRAR: Will you state your fall name, please, and spell your last name?

THE WITNESS: Robert Marion Atkinson, A-T-K-I-N-S-O-N.

EXAMINED IN CHIEF BY MR. RUSH:

MR. RUSH:

Q Mr. Atkinson, I am showing you a document which is entitled "affidavit" in the style of cause of these proceedings. I wonder if you can identify your signature on that document?

A That's mine.

Q Is that your signature?

A Yes.

Q And that is your affidavit?

A That's my affidavit.

MR. RUSH: I would like that marked as the next exhibit, my lord.

MS. KOENIGSBERG: Excuse me, my lord, before it's marked I have some objections to it.

THE COURT: All right.

MS. KOENIGSBERG: My objections, my lord, relate to, I suppose, some significant parts of this affidavit, in my submission, are inadmissible.

There are two grounds on which I would advance the proposition of inadmissibility of this affidavit. One is that this witness, according to the affidavit, was employed in the district for two years, 1985 to 1987, after the commencement of these proceedings. It is not in every instance that that would be fatal, in my submission, but where the affidavit or his evidence

purports to speak of practices in the district while he was there, and which purport to demonstrate something that the plaintiffs say is going on or that he says was going on, in my submission, is inadmissible for being, at best, self-serving evidence.

The second area that I think is a problem of admissibility is that this witness, from time to time, in various paragraphs, points to correspondence of other people, usually Indian agents or Indian superintendents, from long before this witness arrived and then interprets that correspondence and tells us what, in his view, it means.

Now, in a few exceptional cases it is so obvious on the face of the document and in fact what the witness is saying is simply copying what is said on the document, that I don't think that it matters, and I am not objecting to that. But where he does interpret or say, this is an example of a practice or this is what this really means, in my submission, that is inadmissible. It is not for this witness to say what it means. And it is no more than legal argument. These documents are admissible. If the plaintiff wishes to put them in, and if they are not already in, there would be, of course, no objection to that. They are clearly business records. And the plaintiffs' counsel are at liberty to argue what they say these documents support. But it is not, in my submission, appropriate for that to go in as evidence from this witness.

And there is one minor area of what, in my submission, is inadmissible hearsay. There is other hearsay that I think might be admissible, but there is -- that's just in paragraph 11 where this witness purports to say what happened before, a couple of years before he arrived in the district, and then describes a structure or a meaning about something, about the hereditary chiefs, and I will just read it out. He says in paragraph 11: "The departmental practice of accomodating..."

THE COURT: I have read it.

MS. KOENIGSBERG: The part that I would say is inadmissible hearsay would be in the first line where he says that "the practice also implemented by the transference of all administration of the trapline registrations to the Gitksan and Wet'suwet'en Tribal Council which, at that time, represented the Gitksan and Wet'suwet'en

hereditary chiefs on certain matters."

In my submission, this witness, on the evidence before you, could only know that as a matter of hearsay.

THE COURT: Well, it could be -- he could have said, could he not, "which appeared to me to represent"?

MS. KOENIGSBERG: Well, in my submission, he wasn't there at the time. He didn't arrive until three years after.

THE COURT: Well, he could say, "which appeared to me at the time I was there, represented..." or something of that kind.

MS. KOENIGSBERG: If the meaning of that line could be rendered flexible to when he arrived, I suppose he could say that. I didn't take it -- the objection really goes to this, my lord, if we take that as an example, there has been considerable evidence in this trial, in examination in chief and cross-examination, on the role, if you will, of the Tribal Council, of the hereditary chiefs' role in relation to the Tribal Council, of the timing of actions of them, and it is a matter of some controversy if differences in the evidence of witnesses on that is an example of controversy or demonstrates controversy. In my submission, for that kind of statement to come into an affidavit of this kind, it falls on the line of inadmissible hearsay.

I can advise your lordship of the paragraphs which, in my submission, are offensive under the headings I have listed. Paragraph 6 is the first in which the witness says what the practice was "...of avoiding, wherever possible, conflict between tribal laws and the law under the Indian Act with respect to wills and estates."

To the extent that that is what he observed when he was there, in my submission, it is self-serving evidence. When he then goes on and refers to a document in 19 -- in that letter, although it's not in the affidavit proper, is 1968, that's argument.

Also paragraph 9, to the extent that he is saying Gitksan-Wet'suwet'en feasts which he attended between '85 and '87.

Paragraph 10, again, "The the practice of accomodation of Gitksan and Wet'suwet'en laws of succession was implemented..." and it's really the last part there, "in cases where the funeral or burial expenses were paid while I was District Manager of Hazelton District, this was utilized by departmental

staff..." in a certain way.
Paragraph 14, to the extent that he is speaking while he was there, anything that happened while he was there at that time.
And paragraph 16.
Paragraph 15 is another example of inadmissibility for being legal argument, as it is primarily a reference to earlier correspondence and what this witness says that earlier correspondence -- how it should be interpreted.

THE COURT: Yes. All right.

MS. KOENIGSBERG: Paragraphs 6, 7 and 16 also contain the correspondence, the earlier correspondence, interpretation problem. And I say those parts, in my submission, should not form part of this affidavit.

THE COURT: You don't suggest that the correspondence itself is not admissible?

MS. KOENIGSBERG: It's absolutely admissible. And if it's not already in evidence -- I believe some of it is, I believe some of it are in the collection. I can check that. A couple of them I noted as I was going through the estates material that has just been marked. If it's not and my friend wants to put it in, they have no objection from me.

THE COURT: Well, I think that I am disposed to tender -- to admit the affidavit into evidence, subject to Miss Koenigsberg's observations, and if it's satisfactory to counsel, I am not disposed to rewrite it or to divide or subdivide it. I think the objections are ones of law and if they are valid then I will have to deal with the material on that, on whatever basis is proper, after hearing and deciding what the use -- what use counsel seek to make of them. Seems to me that there are possible grounds of objection and, in part, but they may not go to the extent of rejecting the paragraph. For example, it may be that the paragraph can be read as indicating what the practice was at the time the witness arrived in the Hazelton office and from that an inference can be drawn as to the continuation of the practice, at least for some time, backwards in time, and I think these things can be worked out, subject to what use can be made of the affidavit. But I am in counsels' hands at the moment. What I have just said is that is how I propose this matter should be resolved.

MR. RUSH: Thank you, my lord. I will have this affidavit marked.

(EXHIBIT 1253: AFFIDAVIT OF ROBERT MARION ATKINSON DATED JANUARY 26, 1990)

MR. RUSH: Now, could a copy of the affidavit be placed before Mr. Atkinson?

A Thank you.

Q Mr. Atkinson, you presently hold the position of Deputy Regional Director General of Veterans' Affairs and you are located in Winnipeg, Manitoba?

A Yes.

Q Were you subpoenaed to give testimony here?

A Yes, I was.

Q And in your affidavit, on page one, you make reference to the District Office of the Department of Indian Affairs in Hazelton, and you also make reference to the northwest office or Northwest Coast Office, in Terrace. I wonder if you could just explain the relationship of the Hazelton District Office and, I am sorry, I mis-stated it, the Northwest District Office in Terrace.

A When I first started in -- with Indian Affairs, there were three districts across the north of B. C.: there was the Northwest District, which had its main office in Terrace and had a sub office in Prince Rupert called the Northwest Coast Service Centre. Then there was a separate district originally called the Gitksan-Carrier District, which was later changed to the Hazelton District. And then further to the east was the Prince George District. Now, I was the service centre manager in Prince Rupert, then I went to Hazelton as the district manager, and then as the department downsized and reorganized, the Hazelton District was merged with Northwest District and I became the District Manager of northwest and Terrace.

Q And was your office at the time of the merger, was that office in Terrace?

A Yes.

Q Now, what's the relationship of the District Office to the Regional Office?

A I reported to the Director of Indian Services in Vancouver at the regional office. The regional office also had the functional specialists that advised us in specific programme content in the district, such as lands, revenues and estates, education and so on.

Q Was the regional office the Province of British Columbia?

A Yes.

Q What was the relationship, if any, to the regional office in the province to the national office of the Department of Indian and Northern Affairs?
A The regional office received its provincial budget, the budget for the entire region, the province, from Ottawa. Also policy came down from Ottawa to region and then the region disseminated that through the districts.
Q And among your predecessors in office, was there a Mr. Simon Muldoe?
A Yes.
Q And immediately prior to your taking up your office as District Manager in the District of Hazelton, was Mr. Muldoe the district manager?
A Not immediately.
Q Who preceded you immediately?
A Immediately was a person acting in the position, he wasn't designated as district manager, but Al Dafoe was there as an interregnum between Victor Robinson, who was the District Manager, and myself.
Q So before you was Mr. Dafoe and before Mr. Dafoe was Mr. Robinson?
A Yes, and then Mr. Muldoe.
Q And then Mr. Muldoe. Has Mr. Muldoe passed on?
A Yes, he has.
Q Prior to Mr. Muldoe, who was in the office, to your recollection?
A I believe it was Mr. McFarlane, who still lives in the area.
Q Prior to Mr. McFarlane?
A I think it was Allan Fry.
Q Mr. Fry?
A Yes.

MR. PLANT: Excuse me, did he say that he believed Mr. McFarlane still lived in the area?

A Yes.

MR. RUSH:

Q Now, Mr. Atkinson, do you know is Mr. Fry -- is he still living or has he passed on?
A I don't know.
Q Now, you know Pat Simons?
A Yes.
Q And while you were District Manager in Hazelton and Northwest District Manager, what post, if any, did Ms. Simons hold in the district?
A She was the -- she started out as the lands, revenue and trust clerk. She succeeded in a competition to

the position of lands, revenue and trust officer, which she maintained through my tenure in Hazelton. When it was reorganized, she became an officer reporting to Terrace.

Q And did she report directly to you?

A While I was in Hazelton, yes. When I moved to Terrace she reported to the superintendent of lands, revenue and trust in Terrace.

Q Now, your affidavit sets out your duties, if you refer to paragraphs 4 and 5, sets out your duties there, do you see that?

A Yes.

Q And as District Manager in the Hazelton District and later in the Northwest Coast District, did you have a duty to carry out those responsibilities?

A Oh, yes.

Q And did you have a duty to carry out the policies and practices of the department?

A Yes, I did.

Q Did you in fact do that?

A Yes. We were mandated to provide services and undertake the responsibilities of the minister in whatever fair and equitable way we could with the communities.

Q Upon your coming to the district office in Hazelton, by what means did you come to the knowledge of previous practices or policies in the district?

A Well, there were a number of means. I had the responsibility of determining whether certain practices would continue or not. First, I had to research files to determine what those practices were in the past. These were in response to problems. I didn't go in and start researching all the files to determine what all the practices were. As things came up and problems were brought to me, then I had to determine, all right, what's been the standard practice here? Is it something we want to continue or is it something that needs to be changed in response to changing conditions in the communities? Researching files was the basic way of finding out what had gone on. Then, also, people telling me what had gone on. One of the first things I did when I went to Hazelton, and any of my other new jobs, the first thing was I met with each of the staff who briefed me on what the situation, current situation was in the office, and what the current problems were. Then I also met with each band council, and

particularly the chief councillor, to find out what the situation was from their perspective and what the problems were, what things they wanted to see changed or where there were problems, putting that together with my file research, then I would frequently phone the previous district managers, Mr. Muldoe and Mr. Robinson, and get their perspective on it, and then I would discuss it with my boss, say okay, here is what we have been doing here, I think some of these might need to be changed or we might need to continue or whatever the case is, and get his advice on it. And then we would proceed.

Q Thank you. Now, Mr. Atkinson, were you called by Mr. Plant on the evening of January 30th and asked a number of questions about your evidence?

A Yes, I was.

Q Did you answer those questions?

A Of course.

THE COURT: This year?

MR. RUSH: Yes.

A Yes.

MR. RUSH: Thank you. Would you answer the questions, please, of the Province or Canada?

MR. PLANT: Mr. Plant has some more questions.

CROSS-EXAMINATION BY MR. PLANT:

MR. PLANT:

Q Now, Mr. Atkinson, I understand from reading your affidavit that from March, 1985 to November of 1987, you were the district manager of the Hazelton district office of the Department of Indian and Northern Affairs; is that correct?

A From March of '85 to -- yes, about November of '87.

Q Before that did you work in Prince Rupert?

A Yes, I was service centre manager and then prior to that I was local government advisor in Prince Rupert.

Q And so your nine-and-a-half year career with the Department of Indian and Northern Affairs was spent entirely in northern British Columbia; is that correct?

A Yes.

Q Prior to your arrival in the Hazelton district in March of 1985, did you have any official responsibilities for the bands in the Hazelton district?

A Partially. There was a fair amount of commerce up and

down the river, that is people in Hazelton came to the coast as commercial fishermen and so the north coast service centre became a convenient walk-in office for them requesting to do business. For example, they would come in and ask advice on matters dealing with land transfers, for example, because in Prince Rupert we had a lands revenue and trust clerk that reported to Terrace but was able to provide advice to people walking in.

Q Now, referring to paragraph 4, if I might just for a moment, you there say that there are six Gitksan and two Wet'suwet'en bands within the Hazelton district, and you identify the Wet'suwet'en bands. Could you identify the six Gitksan bands?

A Kitwancool, Kitwanga, Gitsegukla, Kispiox, Glen Vowell and Gitaanmax.

Q Thank you. Now, in paragraph two of your affidavit, I think it's in the third sentence, you say that you became knowledgeable about the traditional laws of the Coastal Tsimshian, Nisga'a and Haida, which includes succession based on matrilineality. Then you say in paragraph 3, "I was aware that both the Gitksan and Wet'suwet'en had similar rules of succession on a matrilineal basis." Now you're not trained as a lawyer, are you, Mr. Atkinson?

A No.

Q You're not trained as an anthropologist either?

A No.

Q So when you speak of native laws as opposed to rules, you're not intending to offer an opinion here about whether certain practices or customs ought properly to be called laws as opposed to something else?

A No, I am not.

Q Is it fair to say that you have got what might be called a layman's knowledge of the customs and practices of the Indians of, I guess firstly, those serviced in the north coast district and then secondly in the Hazelton district?

A Yes. I would call it an informed layman's opinion though.

Q And what you know is based for the most part on what other people have told you?

A No.

Q In what respect am I incorrect then?

A It's based on my direct experience with those tribal groups. I lived in Kincolith for two years so I became -- which is a community of 300 people and it's

isolated so that it was not easily accessible from the outside. So I was immersed, if you will, in Nisga'a culture, so I have that direct experience to draw on. I also travelled extensively up and down the coast, the north coast, and the Queen Charlotte Islands, which is a fairly isolated communities, and I would get stuck in communities and when there is bugger-all to do in a community of 250,000 and there is a feast going on, you go. And, so, in one sense people would tell me because, yes, I did not speak the local language, but there were always people available to tell me what was going on in the feasts, to interpret for me, if they thought that was necessary, or simply to explain the procedures.

Q Thank you.

A Also -- when I say also, I worked with local native people in the offices and it became necessary for them to explain to us non-Indians what the systems were so that we understood the clientele we were dealing with.

Q Right. And so that you would turn to the Indians in the community as the resource people for this kind of information?

A Hm-hmm.

Q Is that a fair way of putting it?

A Yeah, I think so.

Q Now, I want to ask you about a couple of words you use in this affidavit, and you will recall this from our discussion on the telephone, the telephone discussion we had earlier this week. The words are policy and practice, sometimes you use the word policy, and one example of that is in paragraph 8 where you speak of the policy of the department, and other times you use the word practice. In fact, I think you use that word more frequently, you use that word at least three times in paragraph 6 and when you speak about the practice carried out by you and by your predecessor in the Hazelton district office and so on. And I want to be sure that I understand or that our understanding of what policy and practice is the same. I understand a policy to be something like a direction to the effect, this is how you should deal with such and such a matter, and often policies are expressed in writing, fair enough?

A Yes.

Q And by contrast a practice is simply what is done?

A Hm-hmm.

Q You agree with me there?

A Yes.
Q Now, you told the court in answer to Mr. Rush's questions about how you came to acquire your knowledge of the practices that had been followed in the Hazelton District Office upon your arrival. And I think that it comes down to informing yourself from others, and informing yourself from your reading of the files, is that a fair summary?
A Reading of the files, yeah.
Q So you would -- you were informed by the people who were in the office when you got there, firstly; and then, secondly, by your own reading and study of the files?
A And by the people in the communities.
Q And, yes, right. Although -- did you go to the people in the community to ask about the practices followed in the office?
A No, no.
Q You went to find out what the problems were that needed to be addressed by you?
A That's right.
Q And when you came to Hazelton, I understand that the district office at that time had a staff of about 38 employees?
A Yes.
Q And somewhere between half and three quarters of those persons were local native Indians?
A Yes, it varied but it was easily 50 percent, most of the time. There was also that percentage in Terrace and Prince Rupert.
Q So, having that high a percentage, if -- that's not if -- that's not an unfair of way of putting it, it's not -- it isn't that unusual, that's your point?
A No, the communities themselves have an even higher percentage. We were a little bit rednecked in that sense.
Q Now, from my reading of this affidavit, the main subject of discussion here is the administration of estates, would you agree with that as a starting point?
A Yes.
Q Now, paragraph 6 is an example of this, you speak in the first sentence of the practice of the department to avoid conflict between tribal laws and the law under the Indian Act with respect to wills and estates. And then the letter that is attached as Exhibit "A" is clearly a letter that deals with an

estate, but then the next sentence causes me a little bit of problem because it could be read much more broadly and I am not sure whether I should read it that way. You say: "I was aware of the practice that wherever possible there should not be a conflict between Gitksan or Wet'suwet'en law and the law under the Indian Act."

I want to suggest a couple of things to you, that firstly, what you're describing here is that it could be expressed in this way, upon your arrival in Hazelton, informing yourself as you did by the means that you described, you became aware of practices that existed in relation to the administration of estates and it concerned the relationship between local Gitksan and Wet'suwet'en law and Indian Act rules and regulations?

A Hm-hmm.

Q Is that a fair statement?

A Yes.

Q Now, paragraph 10, you talk about payment of expenses for funerals and burials, and you describe the activities of your district staff in that regard. My understanding is that in cases where the deceased spouse or family would come to your office, your office would offer advice as to how funeral expenses could be recovered or paid for and that the advice included whatever options there were to apply for funds under the Indian Act administration, or alternatively, to seek recompense through the feast system?

A We offered advice but we also refused to accept expenses from people, if on the rare occasions where they wanted us to pay the bills, unless we knew that the family was destitute and we refused to accept expenses for things like headstones and whatnot, because the community at large had very clearly told us to keep our nose out of that, that was the business of the traditional system and it would be handled through the traditional system. We were chastised a couple of times by band councils.

Q For interfering?

A For interfering in local, in the local custom.

Q So if someone came to you for advice, and I don't mean you, I suppose I mean the staff in the office, it would be your practice then to say, well look, you have got this other, so do it this other way, you should go through the feast system and get payment for

these expenses this way?
A We would -- we wouldn't say you should, we would simply say no, we won't pay it, because you have this other means available. There was one case while I was there where we did, through mistaken information, assume that the family needed money and we went ahead and paid it and we caught royal hell from a lot of people over it.
Q Well, now I want to move on to paragraph 11, and this is the paragraph that talks about transferring administration over trapline registration. About half way through that paragraph, you say: "Our trapline files were transferred to the Gitksan and Wet'suwet'en Tribal Council in approximately 1982."
Now that was before you got there?
A Yes, they were gone when I arrived there.
Q Right. I haven't seen any documents that -- seen any documents that refer to a transfer taking place in 1982, but I do have a letter here, I suppose it could be characterized as an interdepartmental memorandum, and I would like you to have a look at this. The letter is the 19th of September, 1980, and it's addressed to Mr. L. R. Jones, director of finance and administration of the British Columbia Region, and it appears to be signed by Simon Muldoe, do you see that on the second page?
A Yes, I see that.
Q Now, this refers to the possibility of "transferring all old trapline files presently stored in our basement to the Gitksan-Carrier Tribal Council land research section." Do you see that in the first paragraph?
A Yes.
Q Is this the transfer that you are referring to in this letter when you speak of the transfer of trapline registrations?
A This looks like the beginning of it.
Q By all means look at the rest of the letter.
A Yes.
Q This is the first stage in that transfer?
A I would think so. I would think so. I haven't seen this letter, by the way, before.
Q How did you inform yourself about the reasons for the -- for this transfer of administration --
A Discussion with Pat Simon, with Victor Robinson, my boss, Milor Saville in Vancouver, and then after I found out the department's side of the story, I then

discussed it with Don Ryan.

Q They were the people that told you, A, what had occurred and, B, why it had occurred?

A Hm-hmm.

Q Here we see -- and that was of course their view why it occurred. A Yes.

Q Here we see Mr. Muldoe speaking now in effect to request the first stage of this process, he says: "I am attaching a band council resolution wherein they request a transfer or approve the transfer of the trapline files which include the related maps. You play recall that I had indicated that I certainly had no objection to this and I still feel the same. At one time traplines were an integral part of our administration but about 1960 we shed the shackles of paternalism and this then became a responsibility of provincial authorities. Since the establishment of the land claims office under the auspices of the Gitksan-Carrier Tribal Council, they have been much more active in this area than we have been. This is one of the major reasons why it would seem logical to transfer these files to that office rather than retaining them here."

So, if I read this document correctly, Mr. Muldoe is describing or seeking authorization for what we have now agreed is really the first stage of this process. As part of the overall process of "shedding the shackles of paternalism", is that a fair way of putting it?

A Yes, there was a considerable ambivalence within the department as to what traplines, where they should fit into our administration, if at all.

Q If at all, yes.

A If at all. And -- well, he says they were integral up to about 1960, there was still a period for about 20 years where we really didn't know what to do with them. Right now, even though we now say that that's a provincial responsibility, it's a provincial licence, has nothing to do with us, we still ask on our estates forms if there is a trapline, you see. Well, it's none of our damn business. But we still ask the questions. So that kind of ambivalence has been going on for a long time. So there were discussions in the department, some saying that, yes, let's get rid of it, it's not our responsibility, others saying well, we have a responsibility here. So it took quite a while for that to get settled out.

Q I think, just to add to what you have said, what I take to be now your explanation on why and how this process of transfer took place, I think I better -- we better just read a little bit further here. In the same paragraph, following from where I left off: "As you are probably aware, Tribal Council is establishing a resource centre through which they are amassing a great wealth of information as part of their overall objective to achieve just resolution of land claims and aboriginal rights issues of the Gitksan and Carrier people. The application of the trapline files then provided yet another added dimension from a historical point of view to the resource centre."
Stopping there, if I could say that that adds to your explanation the additional fact that there was information in these files which would be of assistance to those within the Tribal Council who were researching land claims, fair enough?

A Yes.

MR. PLANT: My lord, may this be the next Exhibit?

THE COURT: How would you describe it again?

MR. PLANT: I should say this was the subject of a notice to admit some time ago.

THE COURT: All right.

(EXHIBIT 1254: LETTER DATED SEPTEMBER 19, 1980 RE TRANSFER OF TRAPLINE FILES)

THE COURT: A letter from W. S. Muldoe to the director of finance and administration of the Department of Indian and Northern Affairs dated September 19th, 1980.

MR. PLANT: And it has attached to it a band council resolution of the Gitksan-Carrier Tribal Council, dated the 27th of November, 1979.

THE COURT: Thank you. They can both be the next exhibit.

THE REGISTRAR: 1254, my lord.

MR. PLANT:

Q Now I would like to ask you about paragraph 16 of your affidavit. First, an extremely minor matter, although I should give you an opportunity to read this because I am going to ask you a few questions about it. We are talking here -- you're talking here about the acceptance by departmental officials of transfers of traditional property to the proper successor in the feast hall, notwithstanding the fact that the property may have been referred in a will to going to another person. And when you say in the last sentence,

"examples of earlier occurrences of this are shown by the correspondence which is attached as Exhibit "J". I only have one item as Exhibit "J", so I think when you say examples, you mean an example?

A An example, yes.

Q Now, I do want to talk to you or ask you some questions about the practice that was followed in this regard while you were in the Hazelton district office. I understood that Mrs. Pat Simon -- and I should stop here, how is her surname spelled?

A S-I-M-O-N.

Q Thank you. I understood that she was the estates administration officer?

A That was one of our duties, yes.

Q So under the heading, under her position that you gave earlier, she had as her duties the administration of estates?

A She had the administration of lands, membership and estates.

Q Would it be fair to say that routine estate administration was not a matter that would directly involve you?

A Not the routine stuff, no.

Q But if there were some problems that came to your attention?

A Yes, if there was, if there was a problem it would come to my attention. If there was differences in interpretation locally within the office and what regional office was advising us, that would come to my attention.

Q Now, when you say in the second and third line here of paragraph 16, you speak of the acceptance by departmental officials, are you referring there to the officials in the Hazelton District Office of the department?

A Yes. This was common right across the north, it wasn't peculiar just to Hazelton, where property would be transferred in the feast hall and then we would assist in accomodating that within our legal system.

Q All right. But insofar as the practice in the Hazelton district is concerned, we are talking about the officials or the employees within that district?

A Yes.

Q And I --

A Unless there was a legal problem, it would be accepted by the people in Vancouver as well.

Q I see. The practice, coming back to our earlier

discussion of practice as opposed to policy, this is a practice, something that was done as opposed to a policy expressed in writing?

A Yes.

Q Now, I want to take the situation then where you had property left in a will to certain people. And I understand that from time to time it would come to the attention of your staff or yourself that there were others who claimed an interest in that property through the crest system, as it is sometimes called, or the feast system, are you with me?

A Okay.

Q So you have the possibility, at least in theory, of two different sets of claimants, at least in theory?

A In theory.

Q The will says one thing but you understand that, independent of the will, there is another claim to that property?

A Hm-hmm.

Q You're nodding, I take it that means yes, am I right?

A We would find that out because the family would tell us. We would -- the one, one of the distinguishing things about the Hazelton district was that traditional property, however you want to define that, did not show up in any of our records prior to the family identifying it for us. In the other areas, we assisted bands, band members in putting the -- putting property into our Indian Act legal system, with certificates of possession and such. In the Hazelton area, none of that occurred. It was all informal, from our point of view, informal, unwritten and when someone died and the estates or an officer was meeting with the family, the family might say, yes, oh, yeah, uncle Joe had a fishing station over in such and such but that goes to so and so. So that's how we would find out about property transferred under the traditional system. So, in other words, the immediate family would say, yes, my dad had a fishing station, a hunting ground, a berry patch, but it's not ours.

Q All right. Well, my understanding of your practice in these situations is this: That if the various interested parties agreed on what should be done with the property, then you or your department or your office, would give effect to that agreement?

A Yes.

Q And Exhibit "J", although it precedes your time, appears to be an example of that?

A Yes.
Q Here you have -- it's stated: "The heirs in the will wish to have the property held in trust by Walter Harris for clan members as needed"?
A Like I say, this was a common practice right across the north, in Hazelton, among the Nisga'a and on the coast, Tsimshian.
Q But if the parties did not agree on what should be done, then my understanding is that the practice in your district was simply to do nothing until the matter was resolved by them?
A Yes, if there was no agreement of heirs as to how the property should be disposed of, then we tried to reach a consensus and it wasn't that we did nothing, we would have many, many meetings with the family members to discuss this. But if you are familiar with the consensus-making process of decisions, it's a very time-consuming, lengthy process.
Q In which you would not force the issue one way or the other?
A On, my, no, no. That would be a surefire way of bringing the wrath of the community down on you.
Q Now, there was no time limit in administering estates?
A No.
Q So while you were either trying to reach consensus or waiting while the community reached that consensus, the file would be in abeyance?
A Yes.
Q That would explain, would it not, your statement in paragraph 18 that you have seen in your experience, lots of files that were closed, lots of estate files that were closed, without ever being concluded in the formal sense?
A Yes, that was one of the reasons, yes.
Q Waiting around for agreement?
A Part of the problem was, you would have a turnover in staff and so the previous estates officer who had been working on this and trying to bring consensus within a family would move on, a new estates officer would come in and gradually it would be forgotten and simply closed and put away on the shelf and their property situation never resolved.
Q And there was certainly a prospect of difficulty down the line?
A Oh, yes. There was the difficulties down the line.
Q People would be occupying lots that they didn't have certificates of possession for?

A Yes, our -- I suppose you might say our oversight in not more actively pursuing the resolution of these created a number of difficulties within the community, with overlapping lots and people living in, you know, ill-defined boundaries and all that.

Q Now, could you look at the first sentence of paragraph 16 again. And here you say: "A further recognition of the Gitksan and Wet'suwet'en laws by our department was the acceptance by departmental officials of transfers of traditional property to the proper successor in the feast hall notwithstanding the fact that the property may have been referred in a will as going to another person."

My first point, then, is this: That the transfers that you speak of here, the transfers of traditional property, they would only be accepted if the persons who were apparently entitled under the will, consented?

A Yes, which they did.

Q But not in every case, because in some cases you have government files lying around for 10, 20, 30 years waiting for the parties to agree?

A Yes, and there is always all sorts of reasons why that agreement may not be reached. It may be that the family members have spread.

Q That's fine. Probably we should ask those who were unable to reach agreement about that. But now coming back, if I might, to, I suppose, my second point here. When you are speaking of traditional property, you earlier, in answer to one of my questions, said "however, that may be defined." Make sure I have got the right words, "traditional property, however you may define it." I suppose my point here is that you didn't participate in the definition of what was and what was not traditional property?

A No, we did not.

Q And you're not holding yourself out here today as someone who could make or offer an opinion about what was traditional or not traditional property?

A No, I can tell you what we accepted as traditional property in our dealings.

Q And I would be interested in knowing the basis upon which you made the decision to accept that. In other words, you say there were certain kinds of property which you were prepared to accept as traditional property?

A Yes.

Q How did you reach that point where you could say, this is -- we are going to accept this as traditional property or not traditional property?
A A variety of ways. First, discussing it with -- if it was real estate, discussing it with the band council that was involved, and they could usually refer us to an elder or a chief who had personal knowledge of the situation and the estates officer would meet and discuss that. Also, simply researching the files, where we could, to see if there was any trace of references to the property.
Q To that particular piece of property?
A To that particular piece, yes.
Q As being traditional property or non-traditional property?
A Yes. And usually by talking to a wide variety of sources, you get a common description of what is traditional property and what is not.
Q But not always?
A Pretty well.
Q Well, I may come back to that.

I think that exhausts the questions I wanted to ask you about paragraph 16.

But I want to come back now to paragraph 15, because in paragraph 15 you speak of the practice with respect to whether certain property was not to be considered as part of the deceased's estate. You begin by saying: "The practice both before my arrival in Hazelton and subsequent to my term as the District Manager of the Hazelton district..." read literally that means that you are not trying to describe what the practice was when you were there?
A Well, okay.
Q Was that your intention?
A No.
Q All right.
A It was a continuum, things didn't change.
Q That was my interest, that's what I was interested in finding out. But the other thing I am interested in finding out is, you say here that "...house properties or, as it was sometimes called, 'crest property'." I want to come back again to be sure that you're not suggesting here that you have the expertise to decide definitively whether something is house property or crest property?
A No, but there were certain properties which we automatically accepted as being traditional property

that was outside of the concerns of the estate.
Q Well, let me -- maybe I could accomplish what I am interested in accomplishing here by saying, you use the word traditional property, is that the word that you are more comfortable with?
A Yes, traditional or crest, yes.
Q Thank you.
Q Now, I think that exhausts all the questions I have of you, Mr. Atkinson.
My lord, I have prepared a small binder that augments the documents that are -- some of the documents that are appended to Mr. Atkinson's affidavit. And I propose filing this binder as the next exhibit. It has three tabs, they are documents that come from three estate files and they are estate files from which documents which are exhibited to Mr. Atkinson's affidavit, have come. And, in my submission, they put the documents which are exhibited to Mr. Atkinson's affidavit, in a larger context. I have got copies.
THE COURT: Have you seen these, Mr. Rush?
MR. RUSH: No, I haven't seen them, my lord, and I would like to take a moment to reflect on what my view is on this.
THE COURT: All right. Thank you. Well, you can hand it in but we won't mark it until we hear from Mr. Rush. Mr. Rush wants to look at the documents.
MR. PLANT: Yes, that's fine.
THE COURT: We won't mark it yet.
MR. PLANT: If I could just have one moment before I leave off.
Q Mr. Atkinson, there are a number of documents exhibited to your affidavit, were you personally responsible for the selection of these documents?
A Not these specific documents. I told the solicitor, Peter Grant, what some of the situations were and where he could look for stuff and he came up with the specific ones and in some cases I sent some back and said if you look in such and such a place you might find some better ones.
Q And I think it follows from what you have said that in preparing this affidavit you personally didn't have access to Department of Indian and Northern Affairs files?
A At that time?
Q Yes, I agree, at the time of preparing the affidavit?
A However, I was familiar with them and could direct him as to where to look.
MR. PLANT: Well, I would tender this and I await my friend's

position.
THE COURT: All right.
MR. RUSH: I think I can state it, my lord. I think it's inappropriate for my friend to tender it in this manner. He is, in effect, offering the documents outside of the context of his cross-examination, and if the witness -- if my friend wants to put the documents to the witness in the context of the cross-examination, then I don't have any problem about that. I do have a difficulty that my friend assumes that he has a right to augment, as he calls it, three of the files that have been led as affidavit exhibits, as part of the affidavit exhibits. I think that that's not appropriate when the witness is here and can be examined on them. And if the witness has something to say or not to say, then I think it turns on that. It isn't a question that my friend can simply feed in documents as he sees fit, short of agreement of the kind that was reached between Mr. Macaulay and Mr. Grant and short of it in some way relating to the cross-examination. So, that's my position on these documents. And I don't think they should be admitted in this manner. If my friend wants to put them to Mr. Atkinson, to allow Mr. Atkinson to look at them and comment one way or another, then I have no objection. I think it comes in through the witness. I am sure -- it looks like each one of these these documents, or files, there are three tabs, and extracts taken from those three, pertain to some of the documents or at least all of the documents appended to Mr. Atkinson's affidavit. And in that sense, in my submission, it ought to be put to the witness.
MR. PLANT: I do have a couple of responses to my friend's submission. The first is a matter of fact. Your lordship should know that none of the documents that are appended to Mr. Atkinson's affidavit were created by him or by anyone in his office during his time at that office. And, secondly, the same can be said of these documents. They are 20, 30 years old, in some cases perhaps older. The second larger point is this, my lord, although I was not asked to state my position, I support my friend, Ms. Koenigsberg's argument that there is nothing that this witness can say about the meaning of documents that were not created by him, created under his supervision, or matters on which he had direct personal knowledge. If there is, in my submission, one point which has been

consistently held or adhered through this trial, is that you do not ask witness A what a document created by person B, means. And I have refrained from cross-examining Mr. Atkinson on the documents exhibited to his affidavit because I don't think he can add anything to what they say themselves. For that reason I don't really think that a cross-examination on those documents or on the ones that I propose to add, would be of any assistance to your lordship.

THE COURT: Well, it may be that when you put the document to him he would be unable to identify it or say anything about it. If that's the case, then it may be a matter of -- for me to determine if the documents are otherwise admissible, whether they are sufficiently connected with the subject matter of the exhibits he has furnished, to make them admissible as part of the context in which the documents he has tendered or has identified it through his affidavit. I don't see any reason why Mr. Rush -- Mr. Rush wants you to go through the exercise, you should put them to him and see if he recognizes them as being part of the collection from which his documents were selected or whether he otherwise knows anything about them. Short of the prohibiting interpretation that you have mentioned.

MR. PLANT: Well, I would be grateful for a moment to consider my position in that regard because --

THE COURT: All right. Ms. Koenigsberg probably has some cross-examination.

MR. RUSH: If I can just respond before the question goes to Ms. Koenigsberg, I take this as an important issue because I take it if my friend doesn't put these documents to the witness, then he is contradicting what Mr. Goldie said on Monday, that the case is closed for the province in terms of the filing of documents. This is an additional filing of documents. And they can have it one way or the other, no documents or put it to the witness and allow him to comment one way or the other. But, in my submission, it's no longer open to my friends to --

THE COURT: Did Mr. Goldie have this affidavit at that time and the documents attached to it?

MR. RUSH: Yes, he did.

THE COURT: I doubt whether he was addressing his mind to this sort of thing was going to arise in the course of evidence that was going to be heard in future.

MR. RUSH: Well, my lord, whether he did or he didn't, I think it is highly -- is not really pertinent to the point I make here. And that is, I urge upon the court not to indulge the defendants here in carrying on a round of document exchanges. Because that's what it inevitably will lead to. And, in my submission, my lord, the defendants have to stop the introduction of the documents and what I would then be pressed to do is go back to the file and to determine whether everything in the file has been admitted.

THE COURT: Well, Mr. Rush, you would be splitting your case, wouldn't you?

MR. RUSH: That's exactly what my friends are doing.

THE COURT: Then they are cross-examining the witness.

MR. RUSH: Then put the documents to the witness.

THE COURT: I think I have decided we should do that. But I am not sure what I will do if the witness says this is 30 years before my time and I don't recognize it or remember it, but I can tell by by looking at it that it's with respect to the same subject matter that he put in the document, then I think I should admit it.

MR. RUSH: Well, again, my lord, I take the same position, that it's a function of cross-examination and that's the proper category, if you will, where this document sits.

THE COURT: I think we have to go to that stage. I am with you so far.

MR. RUSH: And in terms of admissability of other documents, unless the court directs that there be a closure of the filing of some documents, in my submission, the plaintiffs are into a never-ending round of responding to the documents.

THE COURT: I think we are past that, Mr. Rush, but I don't think that closure related to the situation we have now where at the time that discussion took place, we all knew there was a witness going to be called and something might happen in the course of that witness's evidence that would permit more documents to be filed. I don't think it's what's happening now in any way entrenches on that agreement or that understanding. But that matter was open and it was anticipated when we had that discussion on Monday. But I am not sure we are going to have a problem here. Let's find out. Does Ms. Koenigsberg have any cross-examination?

MS. KOENIGSBERG: No, my lord.

THE COURT: All right. Do you want some time to consider your position, Mr. Plant?

MR. PLANT: Yes, if I might, my lord, just three or four minutes would be sufficient.
THE COURT: All right. We will have three or four minutes. Do we have anything else to do after this problem?
MR. RUSH: No.
MR. PLANT: Not on my agenda.

(PROCEEDINGS ADJOURNED FOR SHORT 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.

Wilf Roy
Official Reporter

THE REGISTRAR: Order in court.
THE COURT: Mr. Plant.
MR. PLANT: Yes. I wish to proceed, My Lord, and I ask that -- or I am going to put a copy of this binder of documents before Mr. Atkinson.

Q Now, Mr. Atkinson, could I direct your attention first to Exhibits A, B and C to your affidavit.
A Uh-huh.
Q I ask you to look at those three documents, and I seek your agreement that each of these documents pertains to the estate of Peter John Wale, number 65, Hazelton Band?
A Yes.
Q And in the upper right-hand corner of Exhibit A and C there are file numbers. Do you see those there?
A Yes.
Q Are those file numbers that you're familiar with?
A Yes.
Q They are file numbers used by or within the Department of Indian Affairs at the time that these documents were created?
A Yes. The "971" number designated the Hazelton district.
Q Thank you. Now, if I could direct your attention to the documents at tab 1 of the binder. Keep your thumb, if you don't mind, in the exhibit. Now, at tab 1 there are a number of pieces of paper. I should tell you that the documents at tab 1 come from two separate files produced by the defendant Attorney General of Canada. The two files are separated by a blue sheet of paper. Do you see that?
A Yes.
Q And I should tell you that the first page of each of the two parts of tab 1 is a photocopy of a file cover created by the people who work for the federal government lawyers in this lawsuit.
A Uh-huh.
Q So having eliminated, if I can put it that way, those documents, I now ask you to look at the remaining four items in tab 1, and I seek your agreement that each of these items pertains to the estate of Peter John Wale, number 65 of the Hazelton Band. You can do it one at a time or look at them all if you wish.
A Yes.
Q And in the upper right-hand corner of the first item in this tab, the first letter, which is a letter dated December 18, 1968, I take it you will agree with me

that that is the same file number which appears in the upper right-hand corner of Exhibit A to your affidavit?
A Uh-huh.
Q Yes?
A Yes.
Q And you are accustomed to seeing the signature of Mr. McFarlane on documents in files which you have looked at?
A Uh-huh.
Q And you see it there?
A I do.
Q You are nodding?
A Yes, I do.
Q And the second item of substance in the tab, which is -- doesn't have a file number on it, but in the upper right-hand corner says "Hazelton, B.C., October 29, 1968". There is Mr. McFarlane's signature there as witness twice on that page?
A Yes.
Q You recognize that?
A Yes.
Q And just lastly within this tab you see on the last page a copy of what appears to be some form of receipt or claim item dated May 28th, 1963. At the bottom of that document is the stamp of the Babine Indian Agency received June 19th, 1968, Hazelton, B.C. You're familiar with that stamp?
A Yes.
Q Now, if I can turn, then, to the next tab, which is tab 2. We have the same situation here that -- I think there is a blue piece of paper separating two parts of the documents in this tab. Can I just ask you to bear with me while we sort that -- sort out what this is first. In your copy of the binders is there a blue page about halfway through tab 2? And now, as was the case with tab 1, the documents in this binder at tab 2 come from two different sources, and in the first page of each tab, I am telling you this again, is simply the copy of the file cover in which these documents are kept by the Attorney General of Canada as part of this lawsuit. So here we are dealing with the estate of Abel Oakes, and that requires that I direct your attention to Exhibit G in your affidavit, which also pertains to the estate of Abel Oakes, O-A-K-E-S, number 44, Hazelton Band. Do you see that?

A Yes.
Q And the documents that are in what is tab 2 also pertain to the estate of Abel Oakes and -- well, I'll stop there. Have a look at them and satisfy yourself that my suggestion is incorrect -- or is correct.

THE COURT: Which one?

MR. PLANT:

Q I hate to suggest something incorrect. You have dealt with the first half. I want you to -- I would like to impose on you, and I would like you to go through the second half of that tab.
A All right.
Q You will agree with me, then, that all of the documents that you've seen at tab 2 of this book pertain to the estate of Abel Oakes?
A Yes, they do.
Q Just take one example, say, the very last document in tab 2. This is an inter-departmental memorandum of December 14, 1959. And I would just like to seek your agreement that the file numbers there are the same as those given, or the same as those which appear on Exhibit G.
A Yes, they are.
Q Turning now to the last tab, tab 3 in this binder. This is the -- this consists of extracts from the estate file of the estate of Selina, S-E-L-I-N-A, Johnson. Again the first page at tab 3 is a photocopy of the federal defendants lawyers' file cover, and this relates to Exhibit J of your affidavit.
A Uh-huh.
Q And I would like you to confirm for me that the documents in -- at tab 3 pertain to the estate of Selina Johnson, and they come from departmental files.
A Yes, they are.
Q Just before we leave that particular tab. We earlier looked -- I asked you to look at Exhibit J, and we made particular reference to the statement:

> "The errors in the will wished the property be held in trust by Walter Harris for clan members as needed".

The second document in this collection appears to be the actual agreement in that respect. Would you agree?
A Uh-huh.
Q I'm sorry?

A Yes.
Q Speaking now of the documents in this binder. As they are also -- they are part of the files from which some of your exhibits were extracted, would I be correct in assuming that they would also be documents -- the documents in this book would also be the documents that you would have looked at during the course of your term as district manager in Hazelton, in order to inform yourself about the practise which had been carried on in that office prior to your arrival?
A That's correct, I would have reviewed these.

MR. PLANT: Thank you very much. Then I do now tender the book of documents.

THE COURT: Mr. Rush.

MR. RUSH: I think my friend has done what I think he should have, and I take no objection.

THE COURT: All right. The book will be the next exhibit, which will be 1255.

THE REGISTRAR: Yes, My Lord, 1255.

(EXHIBIT 1255 - DOCUMENT BINDER FILED BY PROVINCIAL DEFENDANT)

MR. PLANT: And those are all the questions I have for you, Mr. Atkinson. Thank you very much.

THE COURT: Mr. Rush.

RE-EXAMINATION IN CHIEF BY MR. RUSH:

Q Mr. Atkinson, the document binder filed by the provincial defendant here, which is now Exhibit 1255, have you had an opportunity of looking at these documents as you have been referred to them by Mr. Plant?
A You mean right now?
Q Yes.
A I just quickly skimmed through them.
Q All right.
A But I had some familiarity with them before, and it's starting to trigger some things in my memory.
Q All right. So you're familiar -- the skimming through the documents has triggered a familiarity, a recognition of a familiarity that you have with these documents previously?
A If you're going to ask me some specific questions on specific things in here, I would like a chance to read these, just to refresh myself.

Q The question that I am going to ask you is this: Based on the reading that you have done now up to this point -- or if you feel that you need to do a further reading of these documents, please tell me upon hearing my question. My question, however, is based on your present reading of the documents. Is there anything to which you have been referred in these documents which alters your testimony given in your affidavit or in your oral evidence today?

A No. These documents show, number one, the difficulty the department had in describing property and in handling property that was vaguely described, and secondly, in getting an agreement of errors. And I see nothing there that would cause me to change my assessment of that.

Q Okay. Is there anything here that causes you to change any of your previous testimony?

A No, sir.

MR. RUSH: Thank you. Those are my questions.

THE COURT: All right. Thank you, Mr. Atkinson. Anything else?

MR. RUSH: Not from my side, My Lord.

THE COURT: All right. Then nothing else?

MR. PLANT: There are some matters still circulating out in the woods so-to-speak, but none that need to be addressed today, My Lord.

THE COURT: All right. Well, then, we'll adjourn until Tuesday at -- I prefer 10:00 o'clock. We won't be more than a day?

MR. RUSH: I shouldn't think so, My Lord, but we had scheduled 9:30, but 10:00 o'clock is convenient as well.

THE COURT: I would prefer 10:00 o'clock. We are not too pressed for time. All right. Thank you.

THE REGISTRAR: Order in court. Court stands adjourned until 10:00 o'clock on Tuesday.

(PROCEEDINGS ADJOURNED AT 11:40 A.M.)

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

_____

LORI OXLEY
OFFICIAL REPORTER
UNITED REPORTING SERVICE LTD.