In the Supreme Court of British Columbia

No. 0843
Smithers Registry

Smithers, B. C.
December 15, 1988

BETWEEN:

DELGAMUUKW, also know as KEN MULDOE, suing on his own behalf and on behalf of all other members of the HOUSE OF DELGAMUUKW, and others,

Plaintiffs;

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA and THE ATTORNEY-GENERAL FOR CANADA,

Defendants.

CROSS-EXAMINATION ON AFFIDAVIT
OF
ERNEST HYZIMS

UNITED REPORTING

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CROSS-EXAMINATION ON AFFIDAVIT
OF
ERNEST HYZIMS

M. Adams, Esq.	appearing for the Plaintiffs
Ms. T. Sigurdson	appearing for Her Majesty the Queen in Right of the Province of British Columbia
J.A. Macaulay, Esq.	appearing for the Attorney General of Canada

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1 SMITHERS, B.C.
2 December 15, 1988
3
4 ERNEST HYZIMS, a witness called on
5 behalf of the Plaintiffs, having
6 been duly sworn, testifies as
7 follows:
8
9 S. HOWARD: Interpreter previously
10 sworn.
11
12 CROSS-EXAMINATION BY MS. SIGURDSON:
13 Q Mr. Hyzims, my name is Thora Sigurdson, I'm a lawyer
14 for the province. I would like to ask you a few
15 questions. I'm showing you an affidavit that has
16 been marked Exhibit 608 at trial and ask if that's
17 your signature on page 5.
18 A Yes, that's mine.
19 Q Do you read English, Mr. Hyzims?
20 A A little bit, not too much. He can read a little
21 bit, not too much and he doesn't have his glasses.
22 Q Was the affidavit read to you when you signed it?
23 A Yes, they read everything.
24 Q And who read it to you, please?
25 A He can't remember whether it was at the Tribal
26 Council office, but he remembers signing it.
27 Q Okay. Can you recall who read the affidavit to you?
28 A He can't remember, but he remembers that Neil was
29 there.
30 Q That's Neil John Sterritt?
31 A Yes, but he can't remember exactly who read it to
32 him.
33 Q Okay. What language was the affidavit read to you
34 in, Gitksan or English?
35 A It was read in English and done in Gitksan.
36 Q Could you understand it all in English?
37 A Yes. I can understand English, but I can't read it
38 if I have to.
39 Q You hold the chief's name Gwagl'lo?
40 A Yes.
41 Q And you are the head chief of the house of Gwagl'lo?
42 A Yes.
43 Q You belong to the Lax seel or Frog Clan?
44 A Yes.
45 Q From the village of Gitsegukla?
46 A Yes.
47 Q You also speak for the house of Duubisxw?

1 A Yes, all what is written on that page I can
2 understand all clan, the Frog Clan. It is all
3 written on that page. Because my nephew has written
4 his name on the sheet and all my sisters, sons and
5 daughters. It is on that page. They have got some
6 other page somewhere.
7 Q Are you referring to your interrogatories? I'm
8 showing you another affidavit you swore on February
9 6, 1987. Is that your signature as well?
10 A Yes, that's mine. That's my writing.
11 MS. SIGURDSON: Well, perhaps at this time I will mark extracts
12 from the affidavit of Mr. Hyzims. I am tendering as
13 an exhibit the affidavit to the interrogatories
14 response of Mr. Hyzims sworn February 6, 1987,
15 schedule A which is referred to in 24, questions 32,
16 33, 34, 59C and 62. Could that be marked.
17
18 (EXHIBIT 1: Interrogatory Response sworn
19 February 6, 1987)
20
21 MS. SIGURDSON:
22 Q I should say also with the exhibit copy the map
23 attached to question 59C is also included.
24 A His feet are aching.
25 Q Mr. Hyzims, I understand you are not feeling well.
26 Would you like to stop for a moment?
27 A We will keep on going.
28 Q Please tell me when you want to stop.
29 A It just comes on for a short time and goes off for
30 awhile.
31 Q I'm showing you schedule A to the interrogatories
32 response which is referred to in question 24 where
33 you were asked what are the names, places of
34 residence, ages and occupations of the members of
35 your house. Is that the list you were referring to?
36 A Yeah, that's mine and my sister Violet and Roddy
37 Sampare, Anna. And what's this?
38 THE INTERPRETER: Jeffrey Johnson, Marcia, Roxanne, Sandra,
39 Roderick, Dale, Don.
40 THE WITNESS: Yes.
41 THE INTERPRETER: Winnie, Larry, Evelyn and Selma.
42 THE WITNESS: Yes, all of them. That's all in the same house.
43 MS. SIGURDSON:
44 Q And that's the house of Gwagl'lo?
45 A Yeah.
46 Q Is Evelyn Johnson who is the second to last person
47 on the list, is she the person who holds the name

Duubisxw?
A Yes. When Wilfred Waiget died Evelyn took over the name Duubisxw and Roddy has the name Sanoss.
Q Is Duubisxw a separate house from Gwagl'lo?
A The same -- the same house.
Q They are the same house?
A Mh'm. The same clan, the same tribe.
Q Did Duubisxw and Gwagl'lo share the same territory as well?
A Yes. It was Wilfred who went with me when we went out to fight the people when my uncle Alec Brown died.
Q Are these people on schedule A of Exhibit 1 all the members of the house of Gwagl'lo and the house of Duubisxw?
A Yes, all of them. The rest of them -- -- he said his grandchildren, the rest are on the end of the paper.
Q Those are excluding Selma Milton and Evelyn Johnson, the last names are your grandchildren?
A Right there. He said Evelyn and Selma and Roddy are in with Duubisxw.
Q All right.
A Yeah. And it is all in my house.
THE INTERPRETER: And these are all in his house Gwagl'lo.
MS. SIGURDSON:
Q Okay. Let me go back a bit because I'm not sure if I have this straight. These on schedule A with the exception of Evelyn Johnson and Selma Milton are members of the house of Gwagl'lo?
A Yes.
Q Are these members also members of the house of Duubisxw?
A Winnie is one of his nieces and Larry Pierre is Winnie's son.
Q Is Winnie Pierre a member of the house of Gwagl'lo?
A Mh'm.
Q Is Winnie Pierre also a member of the house of Duubisxw?
A Mh'm. Right. These are all the people in the Lax seel house in Gwagl'lo and Duubisxw. And when we raise the pole all those people will be there to give their support.
Q Do you know if there are any other members of the house of Gwagl'lo and the house of Duubisxw that are not listed here?
A That's all.

Q Could you tell me the jobs you have held since you were a young man?
A Yeah. He worked for the C.N.R. as a section man the first time.
Q How long did you do that for?
A Five years.
Q Can you remember when you started doing that?
A 1941 when I start on C.N.R.
Q And what other jobs have you held, Mr. Hyzims?
A Change the ties on the C.N.R. track.
Q Is that in the same five years you just told me?
A Yes, all same five years. They don't let me off until I get real tired. And I worked after I finished on the C.N.R. and I work in the school for another five years as a janitor work in Gitsegukla.
Q Could you tell me the years you worked as a janitor?
A 1966.
Q And how many years was that?
A Five.
Q Between the time you work for the C.N.R. and the time you worked as a janitor, did you hold other jobs?
A From the C.N.R. I went to the school. And in between I just worked around at home and did some fishing and cutting wood.
Q Have you ever fished at the coast, Mr. Hyzims?
A Yes, 1936.
Q You were a young man, you were born in 1922?
A 1922. Fishing with Fred Howard that time in 1936 at the coast. We went around to Vancouver after the flood. And after I fishing with Freddy and hired me to work on a net, mending net for five years.
Q And where did you do that?
A Mending net.
Q Yes.
A Down at the cannery when the fishermen get snagged they call me down to put a patch on it and they went right out and catch some more salmon. And in my younger days I would go out trapping, that's why I didn't learn enough to go to school. All I know how to skin squirrel and weasel. But I pick up everything when I am working on somewhere else and I questioned him, that's why I understand everything. And I do the plumbing too for water.
Q Yes.
A Bathroom, everything, hot water tank, bathtub, wash basin.

1 MS. SIGURDSON: When was the last time you trapped on the
2 territory of Gwagl'lo?
3 MR. ADAMS: Which one? There are two territories covered in his
4 affidavit.
5 MS. SIGURDSON:
6 Q Miinhl Dekwit?
7 A 1947.
8 Q 1947?
9 A 1947.
10 Q When was the last time you trapped on the --
11 A That's the last time we go there. And the heavy
12 snow before we were going back to check the trapping
13 we get no snowshoes and the snow was covered all our
14 traps and that's the last time I went out there in
15 1947. And I couldn't get into it after that. I was
16 having arthritis, that's why I didn't go out.
17 MS. SIGURDSON: And I asked that about the Miinhl Dekwit the
18 territory. When was the last time that you trapped
19 at the Deep Canyon Creek or Xsi noon?
20 MR. ADAMS: Maybe you could have your question translated fully.
21 THE WITNESS: I didn't go to Xsi noon. That's not my trapline.
22 Different trap, different tribe.
23 MS. SIGURDSON:
24 Q Whose tribe is that?
25 A What's his name? It is quite a long time.
26 Q Yes.
27 A That's not my territory.
28 Q I see.
29 A So it is way out where my trapline is.
30 Q Xsi noon is not Gwagl'lo's?
31 A It is not on the trapline area. It is not in my
32 name. Some of them made a mistake on telling the
33 story on that, that's why it is all different, the
34 same as on the map too.
35 Q Oh, I see. Who does trap at the Deep Canyon Creek?
36 A Henry Wilson and Albert Wilson. That was where
37 Mathias had his sawmill and that's Xsi wii luu
38 hlobit.
39 MS. SIGURDSON: Just wait for a moment until I get the spelling
40 of this, please.
41 THE INTERPRETER: Xsi wii luu hlobit.
42 MS. SIGURDSON: You have met with Neil John Sterritt on a
43 number --
44 MR. ADAMS: Sorry, can we just go off the record for a second?
45 MS. SIGURDSON: Yes, we may.
46
47 (DISCUSSION OFF THE RECORD)

1
2 MS. SIGURDSON:
3 Q Mr. Hyzims, you have met with Neil John Sterritt on
4 a number of occasions, have you not?
5 A Yes, he comes to my house sometimes.
6 Q And you discuss the territory claimed by Gwagl'lo?
7 A Yes, we went out for a ride one time.
8 Q You went out for a ride with Neil John Sterritt and
9 Stanley William's territory?
10 A Yes.
11 Q That was in 1983; is that correct?
12 A Yes.
13 Q Do you recall meeting longer ago than that on
14 January 4, 1977?
15 A Yes.
16 Q And that was a meeting to discuss the territories of
17 the Gitsegukla chiefs, do you recall?
18 A Yes.
19 Q And at that meeting there was an effort made to
20 resolve the boundaries of Gitsegukla, but there was
21 no success?
22 A Yes.
23 Q I would like to turn again to your interrogatories.
24 And in your interrogatories you were asked on
25 question 59C: "What are the boundaries of your
26 house's territory?" Do you recall being asked that
27 question and providing an answer?
28 A I told him the boundaries and where the fishing
29 sites were.
30 Q All right. We were given a map -- or pardon me, the
31 answer in the interrogatories is: "The approximate
32 boundaries of my territory are included in the map
33 which is set out in schedule C except for my fishing
34 sites." This is the map we are provided as schedule
35 C and which we are told are the approximate
36 boundaries of your house. I'll show you the map and
37 ask if this is -- if you recall seeing this map when
38 you signed the interrogatories?
39 THE INTERPRETER: He wants to know if the same Gwagl'lo is on
40 this map.
41 MS. SIGURDSON: This was added later, but this was here before
42 there is a handwritten note that says Gwagl'lo.
43 MR. ADAMS: Did you want to put your question again about
44 whether he had seen it?
45 MS. SIGURDSON: Yes, I was waiting for him to finish reviewing
46 the map.
47 MR. MACAULAY: Is that a photocopy? Perhaps it would be easier

to use the original.
MS. SIGURDSON: That would be very helpful.
MR. MACAULAY: Sometimes the photocopies look quite different.
MS. SIGURDSON:
Q Mr. Macaulay has provided an original of the same map. Could you look that, Mr. Hyzims?
A All the maps I saw them. If it is not right on the map I wouldn't sign.
Q All right. Does this map accurately show the boundaries of the house of Gwagl'lo?
A Yes.
Q Does Gwagl'lo claim any other territory other than that is shown within the dark boundary on this map?
A Just this one. No one else has.
Q Up at the very top there is a creek and the only mark here is Noon, N-O-O-N. Now, I would suggest that that's Xsi noon.
A Xsi noon, that's Hanamuxw's trapline. Is this territory also the territory of Duubisxw?
A They are all the same on the map.
Q They are all the same. So this dark boundary?
A Duubisxw a little farther off where my trapline goes. Duubisxw owns territories on part of the territory of Gwagl'lo.
MS. SIGURDSON: Is all of Duubisxw's territory within the black line shown on this map?
MR. ADAMS: I wonder if you can determine whether the witness has any facility in reading maps?
MS. SIGURDSON: Well, he seems to be having no problem reading the map, Mr. Adams.
MR. ADAMS: It seems to me he is asking for assistance in locating places, and I am concerned that he may not know where the features are. The questions as to the boundaries and features may not be of any value.
MS. SIGURDSON:
Q Mr. Hyzims, can you read maps?
A I can make it out a little bit.
Q And you know that the dark line here is a boundary line?
A Yes. He wants to know where Gitsegukla Lake is.
Q There is Dam Giist here in the territory below the name Guxsan. Is that the lake?
A Yeah, that's the one. He says it starts at Wii Dekwit.
Q This side going towards Dam Giist?
A Dam Giist, yeah, right.
Q Does Gwagl'lo's territory cross Xsi Siiyuun which I

1 understand is Kitsuns Creek?
2 A It is pretty close to the trapline. It takes us
3 four days to travel the trapline. Is it correct
4 that Gwagl'lo's trapline starts at Miinhl Dekwit and
5 it goes close to Xsi Siiyuun?
6 A It is Xsi Siiyuun.
7 Q That's my pronunciation there.
8 A It goes further up.
9 Q It goes further up --
10 A Mh'm.
11 Q Up which rivers?
12 A It comes from the mountain and that is where the
13 creek comes from.
14 Q Is the mountain Miinhl Dekwit that it comes from?
15 A Xsi noon is a glacier.
16 Q All right.
17 A And that's where the Gitsegukla River drains out of.
18 Q I see. Do you know a glacier called Sganis'
19 Mehlasxw? Perhaps Madam Interpreter you could
20 pronounce that.
21 A It's in a completely different area.
22 Q All right.
23 A It's far away from Miinhl Dekwit.
24 Q Yes. Your --
25 A Somebody made a map they take everything together,
26 and it is all separated.
27 Q It is all separated?
28 A Yeah.
29 MS. SIGURDSON: Your trapping area doesn't go close to Sganis'
30 Mehlasxw?
31 MR. ADAMS: Can we make sure you are talking about a trapping
32 line or registered trapping area.
33 MS. SIGURDSON: I said trapping area.
34 MR. ADAMS: Well, it is not clear to me. One is a registered
35 trapline and one is a house territory, and I am
36 concerned it may not be clear to the witness either.
37 MS. SIGURDSON:
38 Q The area where you trapped or you used to trap
39 before 1947 --
40 A Trapline.
41 Q And the area that you trapped before 1947, that was
42 the area that was shown to you by Dan Guxsan and
43 Jacob Milton and Alec Brown?
44 A I was young at the time, but I still remember. That
45 old man is blind and he knows where the trail goes
46 through the lake in the spring time.
47 Q Dan Guxsan died in 1939?

A Mh'm.
Q And he had been blind for a few years before that?
A He is really blind, but he knows everything. He tells me where my uncle's trapline is by the time we get to Miinhl Dekwit on this side of the road and Dam Giist.
Q When I talk about trapping area, I am talking about the area that Dan Guxsan showed you?
A It is way farther up.
Q Okay. Perhaps you could explain to me where farther up it is. Is that the trapping grounds that starts at Miinhl Dekwit?
A That's starting at Miinhl Dekwit and the trapline that goes all the way up to Dam Giist.
Q And that's Gitsegukla Lake?
A Mh'm. Yeah.
Q And that trapping area that Dan Guxsan taught you goes --
A They have another territory, hunting territory close to the lake.
Q Dam Giist Lake?
A Yes.
Q Do you know a mountain area called in English the Nipples?
A That's the bottom of Gitsegukla and the mountain go through there and flipped right over that's why they are called that.
Q Is that mountain in the area that Dan Guxsan taught you about?
A Yes.
Q Did Dan Guxsan tell you about the Miinhl Dekwit and Xsi noon territory?
A Yes. We went all the way. We walked four days from our village to get up Xsi noon and it is quite a ways.
Q Did you go to a mountain called Sganis' Mehlasxw on that trip?
A We are not supposed to go over there, we trespass.
Q Can you go close to Sganis' Mehlasxw or do you stay --
A We only go as far as our boundary and we can't go over or we would be trespassing.
Q Is the boundary Xsi Siiyuun?
A Yes.
Q Does Gwagl'lo still claim Dam Spaidat which in English I understand is Sandstone Lake?
A It is part of Duubisxw. That's a different area.

1 Q All right. Does Gwagl'lo claim Hankin Lake or Lax
2 ditax?
3 A No, there is no lake on our territory.
4 Q There is no lake on your territory?
5 A No lake, just a creek and a meadow.
6 Q Do you know who claims Lax ditax or Hankin Lake?
7 A That is a part of Duubisxw's. There is another lake
8 called Sdoosdahl tax.
9 MS. SIGURDSON: Could I have the spelling for that, please.
10 MR. ADAMS: Just while you are waiting for the spelling, I am
11 instructed that Hankin Lake is not Lax ditax but Dam
12 duusil.
13 MS. SIGURDSON: Do you know a name called Dam duusil?
14 MR. ADAMS: Just wait until the interpreter is back with us.
15 THE INTERPRETER: A lake called what?
16 MS. SIGURDSON: Dam duusil?
17 THE INTERPRETER: Which lake were you --
18 MS. SIGURDSON:
19 Q Dam duusil, and the spelling I have is D-A-M space
20 D-U-U-S-I-L.
21 A I am not exactly sure where Dam duusil is, but I
22 know Sdoosdahl tax, Spaidat and ditax.
23 MS. SIGURDSON: I would like to change the topic for a moment.
24 THE INTERPRETER: He is asking if there is more coffee here.
25 MS. SIGURDSON: Would you ask him if he would like to take a
26 break?
27 THE WITNESS: Yes.
28 MS. SIGURDSON: Perhaps we can take a 15 minute break now.
29
30 (BRIEF ADJOURNMENT)
31
32 MR. ADAMS: For the record, I've advised my friends after a
33 break that I have inquired into the state of Mr.
34 Hyzims' health through the translator and have been
35 advised that he is not well and that he is in pain
36 and in increasing pain from his arthritis. He has
37 medication for that at home and that he has left it
38 there in Gitsegukla. He has expressed to me through
39 the translator that he is not thinking straight.
40 MS. SIGURDSON: Perhaps we can ask Mr. Hyzims that tomorrow, but
41 I don't know if that's appropriate.
42 MR. ADAMS: Well, I am setting out on the record what I've been
43 advised through the translator, that's the best I
44 can do. I have been advised that he is not thinking
45 straight as a consequence of the pain and the
46 proposal that I have made and my friends have
47 accepted is that we attempt to continue with him

tomorrow, Friday, after Mr. Fred Wale has completed his examination. Fred Wale is presently scheduled to begin at 9:30 tomorrow morning and what we have agreed is that we will try to continue with Mr. Hyzims when he completes.

MS. SIGURDSON: And that's agreeable with me.

MR. MACAULAY: Perhaps you can ask whoever is bringing his medication up from Gitsegukla to bring his glasses as well because he didn't have them here this morning.

(PROCEEDINGS ADJOURNED)

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

ERNEST HYZIMS, resumed:

MR. ADAMS: Let me just say one thing before you start. When we adjourned this morning Mr. Hyzims said that he had left his medication in Gitsegukla. We are coming back after an adjournment since this morning at 4:50 p.m. In the interval counsel for the plaintiffs have been in touch with his doctor in Terrace and have obtained medication for him in Smithers and he has now taken that and tells us that he is feeling better.

CROSS-EXAMINATION BY MS. SIGURDSON:

Q Thank you for coming back, Mr. Hyzims. I have just a few more questions. Alec, the former Gwagl'lo died in 1943?

A Yes, a train hit him.

Q And when did Jacob Milton pass away?

A It was a long time after Alec died that Jacob died. I can't recall the exact year, but he died in the village of Gitsegukla.

Q Would that be in the 1960's or 1950's?

A I think maybe it was in the sixties.

Q And Jacob Milton held the chief's name Taa Guut Gwisaat?

A Yes, that's the name that he held.

Q Is that a name in the house of Gwagl'lo or a name in the house of Moolxan?

A It is in the house of Moolxan.

Q Is the house of Moolxan empty now?

A Yes, it was, but now there are people that are taking some of the names in Moolxan's house like Joe's son, he has one of the names.

Q Could you tell me Joe's last name?

A Xsgogimlaxha.

Q And when did your mother Elizabeth Hyzims pass away?

A 1947.

Q I would like to ask you about when you signed your affidavit, that is Exhibit 608. Madam Interpreter is showing you a copy of that affidavit. When were you first asked if you would sign an affidavit about the territory of Gwagl'lo?

A It was a long time ago. It was quite a while back and I can't remember the exact date. Is there a

1 date on it?
2 Q Well, there is a date on the affidavit of June 8,
3 1988. Were you asked before then?
4 A No.
5 Q Can you recall who asked you to sign an affidavit
6 describing the territory of Gwagl'lo?
7 A That is a hard part for me to say because I can't
8 exactly recall who.
9 Q All right.
10 A That's one of the symptoms that I have that every
11 now and again I just can't seem to recall anything.
12 Q In the past few years you have met with Mr. Neil
13 Sterritt on a number of occasions?
14 A Yes.
15 Q Often Stanley Williams was with you as well?
16 A That was a time we went up with Neil and we took a
17 drive up, but we got stuck at Miinhl Dekwit so we
18 had to turn around.
19 Q And you have met with Mr. Sterritt and Mr. Williams
20 on other occasions as well, have you not?
21 A No.
22 Q Do you recall meeting with Mr. Williams and Mr.
23 Sterritt on March or April of 1988?
24 A That may be the meeting that was held at the health
25 station in Gitsegukla, but by the time I got over
26 there it was pretty well over.
27 Q Can you recall at this time who was present when you
28 signed your affidavit?
29 A It's really hard for me to say because it's been
30 quite a while ago.
31 Q That's fine. Even longer ago on February 6, 1987
32 you swore another affidavit answering questions and
33 that's when you included a list of your house
34 members. Do you recall that?
35 A He says the list should have him, Violet, Anna,
36 Roddy and all of Anna's children and Sandra's.
37 Q In another question, question 62 you were asked:
38 "Does your house possess any documentary evidence of
39 ownership of this territory." Could you translate
40 that, please? And the answer you gave was: "Yes,
41 there is a trapline registration in my name and my
42 songs, regalia, pole and adaawk."
43 A Yes.
44 Q When you mention the trapline registration, were you
45 talking about the trapline registered to Joseph
46 Wesley of which you are a member?
47 A The one that you are probably talking about is one

1 that was taken out a long time ago. And what we did
2 was we went to the Indian office and we were given
3 little cards or permits. Joseph trapped on one part
4 of the territory and we trapped on another part.
5 Q All right. I'm showing you an application for
6 registration of a trapline of Joseph Wesley and ask
7 if you've seen that before?
8 A No.
9 MS. SIGURDSON: On the second page which would be the back of
10 the original it lists the members. And the members
11 are Joseph Wesley, Ernest Hyzims, Joseph Wright and
12 Andrew Sampare. Are those the people who are on the
13 trapline, the registered trapline?
14 MR. ADAMS: Sorry, just a second. On which registered trapline
15 because he has never seen this before.
16 MS. SIGURDSON:
17 Q Of Joseph Wesley and Company?
18 A A long time ago.
19 Q I suggest the line was registered -- before the line
20 was registered to Joseph Wesley, do you know who the
21 line was registered to before Joseph Wesley?
22 A No. They never really had anything to do with the
23 territory before, but they only use it through our
24 grandfather.
25 Q Was Joseph Wesley a member of the house of Nikateen?
26 A Yes.
27 MS. SIGURDSON: I have a note here of Mr. Sterritt's -- pardon
28 me, I have a note that Mr. Sterritt took of a
29 conversation with you and Stanley Williams on March
30 3, 1988. And he writes: "Gwagl'lo's territory went
31 up Xsi Giist from Dekwit until Joseph Wesley, wilps
32 Nikateen came down."
33 THE INTERPRETER: Which part were you reading?
34 MS. SIGURDSON
35 Q This.
36 A Joseph Wesley came right from the village of
37 Gitsegukla and it was my uncle who brought them into
38 the house. It wasn't me who did it, it was my
39 uncle. He was like a brother to Joseph Wesley.
40 MS. SIGURDSON: Those are all my questions. Thank you, Mr.
41 Hyzims.
42 MR. MACAULAY: Are you going to mark that?
43 MS. SIGURDSON: I would like to take care of two matters. One
44 is that on Exhibit 1 the question in brackett C:
45 "What are the boundaries of your house's territory?"
46 The question number was not included on the
47 photocopy and that should be 59C. I assume you have

no objection to that being on the record. The second matter is that Mr. Hyzims looked at an original of the map of Gwagl'lo that was attached to the interrogatory response and also I understand has been marked as 692 for identification at trial. I suggest this map either replace or be added to the affidavit copy as this is the map he looked at.

MR. ADAMS: I am happy to have it replace it. So the original map will now become part of Exhibit 1 in his cross-examination.

CROSS-EXAMINATION BY MR. MACAULAY:

Q Mr. Hyzims, did you know John Wesley who used to live at Gitsegukla?

A Yes. Yes, I knew him. His house used to be where Norman Wright has his house now on the old Highway 16.

Q And what were his house and his clan?

A Nikateen.

Q And what clan is that?

A Ganada.

Q Do you remember that John Wesley made a will in which he left his trapline to Joe Wright?

A No.

Q Did you know Joe Brown who used to live at Gitsegukla?

A Yes.

Q And what was his house?

A That's the Gisgaast head chief Xsgogimlaxha.

Q Did Joe Brown ever go trapping on the -- on your territory?

A No.

Q Did your house have a longhouse at Gitsegukla?

A No.

Q During your lifetime did anyone who had the name Gwagl'lo put up a pole?

A There is one in Gitsegukla now and I have one that has been carved. I have a copy that has been carved of it now.

Q The one that is in Gitsegukla now, when was it put up?

A You know where the old village of Gitsegukla used to be down by the river, and that was where all the totem poles were. And one -- another totem pole fell over and it hit Gwagl'lo's pole and it went over too. It almost floated down the river. That was when we took it and we pulled it up to the

1 present village. It is laying by my house now.
2 Q But who was the chief who first put that pole up?
3 A It was Alec Brown when he was still strong.
4 Q So that is the chief who died in 1943?
5 A Yes.
6 Q And do you remember when he put that pole up for the
7 first time?
8 A I was very small at the time and my mother also told
9 me about it. My mother's name was Elizabeth.
10 Q Was it after you were born or was it before you were
11 born that that pole was first carved and put up by
12 Alec Brown?
13 A I wasn't born yet. But my mother told me all about
14 it.
15 Q Do you remember when the old village was damaged by
16 a flood?
17 A Yes, 1936. And some of the poles drifted away.
18 Q Was that the year that you went down to Vancouver by
19 train in order to get up to Prince Rupert for
20 commercial fishing?
21 A That was the year I went fishing with Freddy.
22 Q Did you take the train to Vancouver and then a ship
23 to the fishing grounds?
24 A Yes.
25 Q And did most of the men and women in Gitsegukla go
26 down on that train to Vancouver that year?
27 A Yes, some of them came from Kispiox and some from
28 Hazelton.
29 Q Did the children go -- that year, did children also
30 go to the fishing grounds with their parents?
31 A Down the coast?
32 MR. MACAULAY: To the cannery. Did the children also go out to
33 the canneries when their parents went to the fishing
34 grounds?
35 MR. ADAMS: Are you asking about that year still?
36 MR. MACAULAY:
37 Q That year.
38 A Yes, they all went.
39 Q And up to the time that the war started, was it --
40 was that the custom for the children to go with
41 their parents to the canneries?
42 A Yes, because there was no one else to look after
43 them at home.
44 MR. MACAULAY: What members of your house go out on the trapline
45 and Miinhl Dekwit territory with you.
46 MR. ADAMS: Are you asking about the house territory that is
47 described in the affidavit?

1 MR. MACAULAY: There is a house territory described as Miinhl
2 Dekwit.
3 MR. ADAMS: But it is the one in paragraph 5 of the affidavit
4 that you are asking about? This is the whole
5 problem of the difference between a registered
6 trapline and the house territory, and I just want it
7 to be clear what you are asking him.
8 MR. MACAULAY:
9 Q Yes, the one described in paragraph 5.
10 A At the time of this affidavit or --
11 Q Yes, at the time of this affidavit?
12 A Violet and them used to go out with me I think maybe
13 around '48. The last time I remember going out on
14 there was 1947 with Godfrey Wesley.
15 Q Did you stop trapping after the 1947 season?
16 A That was last time I was able to go out there before
17 I got sick. But since I've been sick I have not
18 been able to go out.
19 Q And since you got sick and were unable to go out to
20 that territory, which members of your family have
21 been out trapping?
22 A No one.
23 Q No one?
24 A No one.
25 Q Is there any member of Wii Lo'op, your house, that
26 has been using that territory since you stopped
27 going out there?
28 A No one used it, but it has been logged off and there
29 is really nothing out there.
30 Q When was it logged off?
31 A I can't remember the time they started logging it
32 off.
33 Q Did the logging start a long time ago, ten years ago
34 or 20 years ago?
35 A Ever since they've started logging up in that area
36 they have put in roads whereas before there used to
37 be just a trail that we would go up to. And they
38 have taken all the trees out and there is really
39 nothing on the territory, and there are no animals
40 even to hunt for food.
41 Q In your lifetime, has any house at Gitsegukla given
42 a hunting or trapping territory to another house as
43 compensation?
44 A No.
45 Q Did your mother tell you that it used to be the law
46 that in certain circumstances one house would give
47 territory as compensation to another house for some

wrongdoing?
A Yes, that was -- that is the laws of our people. And that is what happened when Abraham -- when the gun went off and hit Walter and that was David Wells and them did. They gave part of their territory to them.
Q Was David Wells a member of your house?
A No, he comes from the Eagle Clan.
Q But it was the Eagle Clan who gave territory in compensation?
A All of my children belong to the Eagle Clan.
Q How long ago was it that that territory was given in compensation?
A It was a long time ago. That was when Abraham was still young and when he himself was hurt.
Q Was it more than 30 years ago?
A It's been quite a while back. Abraham was born in 1948, and he is passed away too.
Q Is any member of your house a halyat?
A What do you mean?
Q Well, halyat was a -- do you understand -- do you understand what the term halyat means?
A Do you mean a doctor?
Q Yes.
A My father Paul Hyzims was. He was a doctor before doctoring comes around.
Q But your father is no longer alive?
A He died in 1931.
Q Since then is there any -- in Wii Lo'op has there been any halyat?
A No.
Q Do you know of any halyat in Gitsegukla, in other houses?
A They have all gone.
Q Is there any secret society now in Gitsegukla?
A No.
Q Do you remember when there was -- there were secret societies or either one or more secret societies?
A No, they have all died.
Q Do you remember grave houses being built in your lifetime?
A Yes, I saw one where we have our smokehouse now where Alec Brown's wife was buried.
Q And she was a chief?
A Yes.
Q And is it your understanding it was the custom to put up a grave house whenever a chief was buried?

A Yes, that was what they used to do when somebody died a long time ago. You can still see some of them like the graveyard in Gitsegukla now.
Q Has any grave house been built since you became the head chief of your house?
A No, they just use a fence now and they put up a headstone.
Q So that customs has changed since the old days?
A Yes.
MR. MACAULAY: Those are my questions. Thank you, Mr. Hyzims.

RE-EXAMINATION BY MR. ADAMS:
Q Mr. Hyzims, I just have two or three questions for you that come out of things that you were asked this morning and this afternoon by Miss Sigurdson and Mr. Macaulay. Miss Sigurdson this morning and Mr. Macaulay this afternoon have asked you about fishing at the coast, and particularily they referred to 1936. My question is have you fished at any time on the Skeena River?
A I fished there in the early spring and right through the summer.
Q And where is there when you say you fished there?
A There are three fishing sites right down below where the smokehouse is. There is one for spring, one for sockeye and one for coho. There is three sites.
Q Can you say where the smokehouse is in relation to the village of Gitsegukla?
A The smokehouse stands right up on top of where the spring salmon fishing site is. And that is where the grave is right in front of where the smokehouse is standing now. That is a hereditary land. It was passed on from the previous holders of Gwagl'lo. There used to be a house there and when they put the highway through they took part of that territory. The same thing happened to where my mother used to live right on the corner they took a good chunk of that territory off when they put the highway in.
MR. ADAMS: You mentioned three fishing sites for different kinds of fish. Did those sites have names?
MS. SIGURDSON: I object. That's quite far afield from the cross-examination. I think the original question did you fish on the Skeena is on the line, but further detail isn't part of the cross-examination.
MR. ADAMS: Well, the issue of fishing is opened by both cross-examinations and I am asking about fishing. There is no warrant to confining it to salt water

1 and there is no --
2 MS. SIGURDSON: I object. It is improper cross-examination, but
3 my objection is on the record and we can deal with
4 it later.
5 MR. ADAMS: So you are agreeable to have him answer the question
6 and subject to argument later?
7 MS. SIGURDSON: Yes.
8 MR. ADAMS:
9 Q I asked him about three fishing sites and I have
10 asked him the names of those?
11 A Gwin lo ga lo'op is the name of spring salmon site.
12 Anx tsidixs for the sockeye. And for the coho site
13 An guus ga sgii is the name of it because there is a
14 rock that goes down through the middle of the river
15 and it goes sideways, right across the river sort of
16 sideways. A long time ago it used to go straight
17 across the river, but when the steam boats came up
18 the river they blew a part of it off, that's why you
19 only see a small part of it today.
20 Q Whose fishing sites are those?
21 A It's ours.
22 Q Who is the our that you are referring to when you
23 say "it's ours"?
24 A That's Gwagl'lo's, Wii Lo'op and that would be where
25 Winnie and them will be fishing when I go this
26 coming season. We just go by how high the water is
27 when we go -- when we start fishing. We don't go by
28 what the fisheries tell us.
29 Q All right. Mr. Macaulay asked you a question just a
30 few minutes ago and he was asking about the giving
31 of territories as compensation for wrongdoing. And
32 you can translate that far and then I will ask him a
33 question. And then your evidence was my mother told
34 me it used to be the law to give territory in
35 compensation.
36 A Yes, that is Gitksan law, but no one has done it in
37 our house.
38 Q My question is is that still the law in the right
39 circumstances?
40 A That is the law.
41 Q One more question. I want to show you again the
42 map. Maybe I could have the original of the map
43 that is attached to Exhibit 1. This is the map that
44 Miss Sigurdson showed you this morning, and you were
45 asked a number of questions about places on that map
46 and boundaries shown on that map. And I just want
47 to ask you this, quite apart from the map, are you

1 familiar with a place called Tsim an makhl?
2 A I don't think I can see it on this map.
3 Q My question first was apart from the map, are you
4 familiar with a place by that name?
5 A If we go up there we could go by car I could show
6 you where it is.
7 Q Would you show me on the map where it is, please?
8 A Where is Miinhl Dekwit?
9 Q Are you able to show me where as Tsim an makhl is?
10 A No, I can't.
11 MS. SIGURDSON: I think I should say for the record here that I
12 would refer in the transcript to page 7824, lines 16
13 to 23 where Mr. Sterritt explains that that feature
14 is mislocated on the map and I think that should be
15 on the record at the same time.
16 MR. ADAMS: Fine. I didn't hear the answer to my own question
17 which was can you show me on the map?
18 THE INTERPRETER: He says he can't see it.
19 MR. ADAMS:
20 Q I would like to ask you without the map about
21 another place and tell me whether you are familiar
22 with this place and that is Tax gii gyoot?
23 A That's where you hunt mountain goat.
24 Q Okay.
25 A The same as Wii Lo'op, it is right next to that. We
26 stop right on top of Wii Lo'op by helicopter you can
27 locate everything.
28 MR. ADAMS: Sorry, I'm not quite finished with the map. I just
29 want to ask the parallel question about those
30 places.
31 MR. MACAULAY: Sorry.
32 MR. ADAMS:
33 Q I wonder if you could show me on the map where Tax
34 gii gyoot and Wii L'op are?
35 A It's close behind what we call Dekwit going out
36 towards Gitsegukla. I can ride in a car and show
37 you. If we go up there we go by car I could show
38 you where these places are.
39 MR. GRANT: It was by Deep Creek is what he said, Mr. Macaulay.
40 MR. MACAULAY: Agreed.
41 MR. ADAMS:
42 Q Can you show me on the map where Wii Lo'op is?
43 A No, he doesn't -- what is this?
44 Q For the record, the witness is pointing to the part
45 of the map that says Miinhl Dekwit.
46 A He thinks that if Miinhl Dekwit is here then Wii
47 Lo'op should be behind it somewhere.

MR. GRANT: He said something about it being far apart.
MR. ADAMS: Those are all the questions that I have, thank you.
(PROCEEDINGS CONCLUDED)

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

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