JANUARY 20, 1988
VANCOUVER, B.C.

THE REGISTRAR: Calling Delgamuukw against Her Majesty the Queen.
MR. PLANT: Before I continue my cross-examination, there was one extremely brief matter that I was going to ask my friend -- my colleague, Mr. MacKenzie, speak to.
THE COURT: Yes, Mr. MacKenzie.
MR. MACKENZIE: Thank you, My Lord. As Your Lordship will recall, on January 7 the plaintiffs made an application for -- that the crown provincial pay costs for the original trial transcripts, and Mr. Rush raised that question the day before yesterday. And we understand that Your Lordship is now taking that matter under consideration.

That application appears in the trial transcript, Volume 36, starting at page 2315, My Lord. And at page 2318 at line 23 Mr. Goldie responded to the application generally, saying, at line 23, that there was some basis for belief on our part that there was an understanding that there would be an one-third, one-third, one-third division. What I have to hand up to Your Lordship now are two letters in November relating to that agreement, really setting forth the basis of the agreement, as mentioned by Mr. Goldie, for Your Lordship's assistance. One is a letter of November 9 from the -- Mr. Roy of United Reporting Service to Russell & Dumoulin, and the second is a letter of November 13, 1987 from me to Mr. Roy in response, setting out our agreement to share on the one-third billing basis.
THE COURT: Do these add anything to what Mr. Goldie said?
MR. MACKENZIE: My Lord, Mr. Goldie has requested that we -- and I advised my friend Mr. Rush that we will provide them to Your Lordship for Your Lordship's assistance, as an indication of Mr. Goldie's point that there was some basis for agreement, and also to give Your Lordship the context of the dates at which these things were discussed.
THE COURT: All right. Thank you. Anything else you want to say, Mr. Rush?
MR. RUSH: Only that you will note that this letter is from Mr. MacKenzie to Mr. Roy setting out Mr. MacKenzie's views of things and Mr. Roy's letter in response. My understanding is that Mr. Grant, subsequent to this letter exchange, then wrote to Mr. Roy, copied to Mr.

MacKenzie and Mr. Goldie, setting out what it was that Mr. Grant's view of the situation was, and you don't have the correspondence of Mr. Grant. If this is going to be presented to you as -- and form part of your consideration on the argument, then I would like you to have Mr. Grant's correspondence as well.

THE COURT: Well, I understood Mr. Grant and Mr. Goldie both agreed before me that there was an one-third allocation arrangement in place.

MR. RUSH: On certain items. I don't think that there had ever been any agreement with regard to trial transcripts for the recommencement of the trial.

THE COURT: All right. Well, then, I should see what Mr. Grant has said in reply to this.

MR. RUSH: Yes.

THE COURT: I haven't reviewed this -- these passages in the evidence, which I hope to do in the next day or so, but can you get me that letter as soon as you can?

MR. RUSH: Yes.

THE COURT: Yes. Gentlemen, I am sorry that I have to tell you that I have a -- I was going to say a request, but it might sound like a citation to appear at the Law Society at 12 o'clock today for a meeting they are having in connection with the Deputy Attorney General's Justice Reform Committee Survey, and I'll have to leave here today at 12 o'clock. Thank you. All right. I haven't yet agreed that they would cite me, but they apparently want to talk me, and I have to go and have lunch with them.

MR. PLANT: I hope you will be back in the afternoon.

THE COURT: I hope I am.

CROSS EXAMINATION BY MR. PLANT, Continued:

Q Mrs. Alfred, have you ever heard of a place called Blunt Creek, B-l-u-n-t?

A No.

Q Do you know where Sylvester William used to trap?

A I know he was trapping over there, but I don't know the name of the place.

Q When you say "over there", where are you talking about?

A That would be north of K'aaz kwe. Used to go with his grandfather who was Gilseyhu.

MR. PLANT: Does Your Lord have the spelling, K'aaz kwe and Gilseyhu?

THE COURT: Yes. I wonder if counsel agrees, k-w-u-n -- or is

it "h", as shown on this map? Is that the equivalent of k-w-e? It's Exhibit 84.

MR. PLANT: Yes, I have been taking that as another way of spelling that word.

MR. RUSH: Yes, k-w-e, which means creek.

THE COURT: Yes, that's what I thought. Thank you.

MR. PLANT:

Q Mrs. Alfred, you told us that Kun g'it t'ukw was a place to pick huckleberries? And my spelling for that is K-u-n, g'-i-t, t-'u-k-w.

A Yes.

Q Can you tell me where that place is in relation to Moricetown, please?

A It's sticking -- sticking up above Moricetown.

Q Is it on the village side of the river?

A Yes.

Q Is it right near Moricetown?

A Yes.

Q Are you able to say if it's north or west or south of the village?

A It would be in a westerly direction.

Q Is it just behind the village?

A It would be a more southerly direction behind Moricetown.

Q Is that a place where all of the people of Moricetown are permitted to go and pick huckleberries?

A Yes. Even a long time ago all the villagers used to go and pick berries there.

Q You told us that sometimes you go to pick berries at a further area towards Chapman Lake.

A There is a barn out there where we used to pick berries.

Q Have you been out there recently to pick berries?

A Yes, we've been picking up berries up there sometimes.

Q In the last -- excuse me.

A Just recently.

Q Is that in an area where logging has taken place?

A Yes, where there is some huckleberry bushes growing there.

Q The huckleberry bushes grow in the area that's being logged off and burned?

A Yes.

Q You have talked about helping your mother dry berries with a wild cabbage leaf that you get near Cow Hill. And I believe the Wet'suwet'en name for Cow Hill is Hag'il tzil yiih. And rather than spell it, I'll ask if there is a number. My spelling is h-a-g'-i-l,

t-z-i-l, y-i-i-h. My question for you, Mrs. Alfred, is Cow Hill near Moricetown?
A Yes.
Q Is it on the village side of the Bulkley River?
A Yes.
Q And is it north or west or south of the village?
A Yes, Cow Hill would be south, and that's a place called Hag'il tzil yiih.
Q Hag'il tzil yiih is the name in Wet'suwet'en for Cow Hill?
A Yes.
MR. RUSH: Is there a number for that, Mr. Mitchell?
THE INTERPRETER: Yes, 496.
MR. PLANT:
Q Mrs. Alfred, do you know where the railroad siding at Doughty is? I'm sorry, the railroad -- do you know the station at Doughty, the place where the train used to stop?
A Yes, there used to be a station there, but it's not there anymore.
Q Where is Cow Hill in relation to Doughty?
A There is a hill that's just before -- close to Moricetown. Would be south of Moricetown. It would be closer to Moricetown rather than Doughty.
Q Is Cow Hill a place where all the people of Moricetown could go to pick wild cabbage leaf?
A Yes.
Q You told us about a plant called devil's club which had the name Whuus, W-h-u-u-s. I think that has a number.
THE INTERPRETER: What is the right spelling?
MR. PLANT: I took that spelling from page 2659 of the transcript.
Q Devil's club grows around the village of Moricetown?
A Yes. It would be up towards the hills. It grows all around the village in Moricetown.
Q Do all of the people who live in Moricetown, are they all allowed to go up and pick devil's club from the hills around Moricetown?
A Yes.
Q Does it matter which clan they belong to?
A Yes, because it is used for medicine, which they would -- sometimes they would burn it and have -- they would let the smell from that -- aroma from that rise in a house for medicine reasons.
Q Let me ask this. Do the villagers from all of the different clans in Moricetown go to pick devil's club

in the hills around the village?
A Devil's club, they grow all over the place. They not only get it from around Moricetown, they go out on their own territories sometimes to get the devil's club.
Q Sometimes people from different clans take their devil's club from the hills around Moricetown; is that correct?
A Yes. If they are in the village in the summertime, they would get it from around the village where it's handy.
Q Now, there is a lake behind Moricetown that has a name Tats'ekex, something to that effect.
THE INTERPRETER: 369.
THE COURT: Sorry?
THE INTERPRETER: 369.
THE COURT: Thank you.
MR. PLANT:
Q Is that lake close to Moricetown on the village side of the river?
A Yes, it's almost right beside it.
Q Do people from Moricetown use that lake?
A Yes, they use it. The children go swimming there.
Q Do all the children of the village have the right to go swimming there?
A Yes, they all go there.
Q Do the people from Moricetown do anything else at that lake?
A No.
Q Now, on the other side of the river there is a lake called Duck Wing Lake on the government maps. Have you ever heard of Duck Wing Lake, Mrs. Alfred?
A Yes, I know that lake. It's the one Wet'suwet'en called Duh deek'etsa k'uk.
MR. PLANT: Is that number 370, Mr. Mitchell?
THE INTERPRETER: No. Duh deek'etsa k'uk. D-u-h, d-e-e-k'e-t-s-a, k'-u-k.
MR. PLANT:
Q Is that lake across the Bulkley from the village?
A It's across the village from the village.
Q Across the river from the village?
A Yes.
Q I understand that there are two or three little lakes across the village -- across the river from the village?
A Yes.
Q Do the people from Moricetown use those lakes?

A No.
Q You have told us about a plant that is used for making tea, and my reading of it would be Le dii mis giik'. I don't have a number for it. I do have the spelling from page 2660 of the transcript.
THE INTERPRETER: 497.
THE WITNESS: Yes, that's it.
MR. PLANT:
Q And I think you said that you usually get that plant from a swamp from Bii yis Ghees Niinlii?
A Yes.
Q And that's a creek?
A Yes.
Q That's a creek on the territory of Wahtah k'eght. Have you ever heard that creek referred to as Meed Creek, M-e-e-d?
A Yes. It flows in from a swamp.
Q And the tea grows in the swamp, is that correct, the tea plant?
A Yes.
Q And that creek is several miles south of Moricetown on the Telkwa High Rode?
A Yes, it would be on the other side of Hudson Bay Ranch on the Telkwa High Road. That's a place called Whuus C'oo wenii.
THE INTERPRETER: 517.
MR. PLANT: I don't have a list.
MR. RUSH: I have been derelict. Mr. Mitchell provided me with the next list of words, 516 to 533, and I have been intending to hand them up. Sorry.
THE COURT: Thank you.
THE INTERPRETER: 517 should be "WH".
THE COURT: W-h-u-u-s?
THE INTERPRETER: Yes.
THE COURT: Thank you.
MR. PLANT:
Q Is Whuus C'oo wenii the name of a place?
A Yes, Whuus C'oo wenii would be south of there, Biiyis Ghees Niinlii.
Q I didn't hear what it is that would be south of there.
A Biiyis Ghees Niinlii. That's where we make the tea.
THE INTERPRETER: 386.
THE COURT: Where we get tea or where we make tea?
THE WITNESS: We get the tea from a long time ago. We would dry it, use it for tea.
THE COURT: Thank you.
MR. PLANT:

Q Are all of the villagers of Moricetown permitted to go and pick the plant that the tea is made from at the swamp that you have described?

A Some people know -- may know about the area, but what I do remember is my mother and them used to harvest that out there. They used to make sacks of it, and they would bring it in -- maybe approximately 20 pounds of it -- and then they would share it and give it to the villagers, because that also has -- is used for medicine also.

Q Would I be correct, then, in assuming that you haven't seen anybody other than your mother pick that tea plant from that place?

A Yes, of course. That's their own territory. That's why they would be the only ones that go in there.

Q When you say "their own territory", you are referring to the territory of Wahtah k'eght?

A Yes.

Q I want to move onto another subject now, Mrs. Alfred. You have told us that Peter Bazil registered a trapline. Do you remember telling us that?

A Yes.

Q And do you know when this trapline was first registered?

A No.

Q My understanding is that the trapline was registered -- or let me be more precise. That there was an application to register the trapline by Peter Bazil in 1926.

A That could be.

Q I also understand that in 1931, which would be the year that you were married, Peter Bazil applied to change the registration from registration just for him to a registration for himself and others called a trapline company. Do you know anything about that, Mrs. Alfred?

A Yes, that's right.

Q And some of the people that were registered on the trapline with Peter Bazil included Arthur Michell, Bazil Michell and Tommy Michell. Do you know that?

A Yes. The one you would be talking about is the one that Bazil holds now. They were registered on that area.

Q Actually I am talking about the trapline that Henry Alfred holds now.

A Yes, the whole area was one at one time, but since he gave that area that Bazil got to him at that time,

since then we have been on the other side of the river.

Q Do you have any knowledge of whether Peter Bazil applied to have Tommy and Arthur and Bazil Michell registered on his trapline, which is on the east side of the Bulkley?

A I wouldn't know about that transaction or anything about it. The only thing I knew was the west side where Bazil is on now, I knew when he was being registered on there.

Q My understanding is that Bazil was registered on the west side where he applied for -- or he applied for registration on the west side as early as 1928. Do you know that to be the case?

A Yes, that would be about the time when the Wahtah k'eght gave him that end of the territory.

Q Bazil Michell that end of the territory?

A Yes.

THE COURT: That's the west side of the territory, is it?

MR. PLANT:

Q That's the west side of the territory, is it?

A Yes.

Q Arthur Michell was the father of Bazil and Tommy Michell?

A Yes.

Q And Arthur Michell was sometimes called lame Arthur Michell?

A Yes.

Q He held the name Hagwilnegh at one time?

A Yes.

Q I wanted to read a letter to Mrs. Alfred, and then I want to ask her some questions about the letter.

THE COURT: Before you do that, Mr. Plant, I have been wondering about this for several days. I might have missed it, but can somebody tell me what the relationship is between the witness and Bazil Michell?

MR. PLANT: I don't know what it is either. I would be happy to ask.

THE COURT: His name has featured so prominently throughout all of her evidence, and I don't think he is on the genealogy. He obviously would be a member of a different house or a clan. Are they related at all?

MR. PLANT: I'm quite happy to find out --

THE COURT: Would you please.

MR. PLANT: -- what her evidence is on that, My Lord.

THE COURT: Thank you so much.

MR. PLANT:

1 Q You told me yesterday, Mrs. Alfred, that Bazil Michell
2 was -- is Laksilyu?
3 A Yes.
4 Q And that's the same clan that you are from?
5 A Yes. Yes, we -- all of the same clan, but we are from
6 different houses.
7 Q Bazil was born into the House of Many Eyes?
8 A Yes.
9 Q And that house -- the chief of that house of
10 Hagwilnegh?
11 A Yes.
12 Q And you are in the House on a Flat Rock, and the chief
13 of that house is Henry Alfred?
14 A Yes.
15 Q Do you know what the relationship is, if any, between
16 you and Bazil Michell? Let me ask you this. Are you
17 related to Bazil Michell?
18 MR. RUSH: Do you mean a blood relationship?
19 MR. PLANT: I will --
20 MR. RUSH: Okay.
21 THE WITNESS: He would be the same as a brother because my
22 brother adopted him.
23 MR. PLANT:
24 Q Do you know if there is any blood relationship between
25 you and Bazil Michell?
26 A No. The only reason he was close is because my
27 brother adopted him as a brother, because always work
28 very closely together.
29 THE COURT: And again when you say brother, you mean Peter
30 Bazil?
31 THE WITNESS: Yes.
32 THE COURT: Thank you.
33 MR. PLANT:
34 Q And when you say "very close", when you say that Bazil
35 Michell and Peter Bazil were very close, you mean that
36 they were good friends?
37 A Yes, the Laksilyu are all of one clan, and they all
38 sit together on one side of the hall. In your case
39 what would be your situation?
40 Q I'm sorry, I didn't hear the last sentence.
41 THE COURT: I think it was a rhetorical, Mr. Plant.
42 MR. PLANT: Right.
43 THE COURT: If I may just ask you, is Bazil Michell still alive
44 today?
45 THE WITNESS: Yes.
46 THE COURT: Thank you.
47 MR. RUSH: Mr. Bazil Michell was commissioned, My Lord.

THE COURT: Oh, I see. Thank you.
MR. PLANT:
Q And I think you told us yesterday that he is sick?
A Yes.
THE COURT: Thank you, Mr. Plant. I'm sorry to interrupt you.
THE WITNESS: In the hospital very sick now.
MR. PLANT:
Q Has he been in hospital very long?
A Yes, he went in the hospital after we had to come down for this court.
THE COURT: One last question, if I may. How old is he, please?
MR. RUSH: He's 89.
THE COURT: Thank you, Mr. Rush. 89.
THE WITNESS: I don't know his age, but he would be older than my husband.
THE COURT: Thank you.
MR. PLANT:
Q Now, I am producing a letter which comes from the Attorney General of Canada, document number 4505. I don't have the original. I am going to ask the witness some questions about the letter, but I think I should read the letter to her first. And I'm providing it to Mr. Holland for assistance in attempting to translate it.
MR. RUSH: I want to advise Your Lordship that this document is out of sequence in the file.
THE COURT: Yes. Thank you.
MR. PLANT: That's correct, My Lord. The letter is dated January 24, 1934, and it is -- it purports to be a letter from the Game Warden, Mr. Muirhead, M-u-i-r-h-e-a-d, to Mr. Mortimer as the Indian agent in Hazelton B.C. The letter says -- and I'll read it, Mr. Holland, and then ask you to translate it to the witness:

> "There has been considerable correspondence during the winter between the game department and two white men, one, Ben Nelson and one, C.G. Harvey, both are residents at Driftwood Creek and their address is Smithers, B.C. It is claimed by these two white men, and rightly so, that Indians during the past few years have seldom trapped on Driftwood Creek and that lame Michell and his family to whom this section belongs have not trapped there for the past two years. Consequently these two men have asked and even demand under Section 16

(1) of the Game Act to be allowed to trap and to register Driftwood Creek and tributaries from lot 13 to its source. As it is well-known that lame Michell and his family are more deeply interested in taking out ties and telephone poles, et cetera, than they are in trapping and thereby are encroaching on the white man's way of making a living, it has been suggested that the required part of the Peter Bazil registration be cancelled and handed over to these two white men. I would be pleased to have your views on this matter for submission to headquarters."

A I don't know. I have never known it to be like that.
Q Thank you. Was lane Arthur Michell sometimes called lame Michell?
A Yes.
Q To your knowledge did lame Arthur Michell and his children ever have the right to trap along Driftwood Creek?
A I didn't know of the arrangements that was -- that they had there at that time, but I only knew of arrangements -- I only knew of arrangements for the Moricetown side.
Q I take it, then, that you can't say whether or not lame Arthur Michell or Tommy or Bazil ever actually trapped on Driftwood Creek?
A I didn't know about that.
Q Did not know?
A I did not know about that. Might have been before me.
Q To your knowledge did lame Arthur Mitchell and Bazil Michell and Tommy Michell work in pole cutting camps?
A Yes, they worked for a person by the name of Hansen. They -- what I know of it is they may have worked for two years. I know they didn't work there that long -- for any length of time.
Q Thank you. Those are the questions I have on that letter.

Well, My Lord, I would ask this be marked as an exhibit for identification at the present time, but I want to check and see whether this has come from an archival file. It would only be to have the piece of paper and the record -- we already have the contents read on the record --

MR. RUSH: My friend can read any document he likes on the

1 record, it doesn't make it a document in the
2 proceedings.
3 THE COURT: Is it not a business record?
4 MR. PLANT: It is, but --
5 THE COURT: If it's not an archival document --
6 MR. PLANT: We haven't crossed that threshold yet in the
7 documentary problems that have arisen. Our position
8 will be in due course that documents of this nature
9 are business records and are admissible.
10 THE COURT: All right. Well, you are only asking it be marked
11 for identification this time?
12 MR. PLANT: That's all that I -- and I do make that request.
13 MR. RUSH: Well, my position is that this document doesn't even
14 rise to the level of any other piece of paper on this
15 table as to why it should become part of this
16 proceeding. As far as I can see, it's not appropriate
17 that this be marked as an exhibit for identification
18 or an exhibit or anything. It's a document that was
19 read to the witness and that's all.
20 THE COURT: Well, the only advantage of marking it for
21 identification would be to put it in the proper
22 numerical sequence, if it later does become an
23 exhibit, so it could be related to in evidence that
24 way.
25 MR. RUSH: But it has no relation to the evidence. That's my
26 point.
27 THE COURT: The witness has confirmed some of the things that
28 are said in the letter.
29 MR. RUSH: What?
30 THE COURT: That they cut poles for maybe two years.
31 MR. RUSH: Was that in '34 and '54 and '84?
32 THE COURT: I don't know.
33 MR. RUSH: I don't think it has any relevance whatsoever.
34 THE COURT: Well, all right. I don't think there is any magic
35 in it. I think that because it may be convenient to
36 have it in the numerical sequence that I mentioned --
37 the next exhibit number please?
38 THE REGISTRAR: 149.
39 THE COURT: 149. Well, I will just reserve the number, 149, for
40 it, if it later becomes evidence. We merely reserve
41 the number.
42 MR. PLANT:
43 Q Miss Alfred, I want to show you another letter,
44 another photocopy of a letter.
45 THE COURT: Would it be more convenient to take the adjournment
46 now, than five minutes from now?
47 MR. PLANT: I would be happy to -- in the circumstances, My

Lord, this might be as convenient a time as any to break.

THE COURT: We'll take the morning adjournment.

(PROCEEDINGS ADJOURNED FOR A 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.

_____

LORI OXLEY
OFFICIAL REPORTER
UNITED REPORTING SERVICE LTD.

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

THE REGISTRAR: Order in court.
MR. PLANT: I have another letter which I would like you to look at, Mrs. Alfred. It comes from the same Attorney General of Canada document number 4505. I have a copy of this letter for your lordship.
THE COURT: Thank you.
MR. PLANT: Mrs. Alfred, would you please look at this document and tell me if you recognize it?
MR. RUSH: The witness has said she can't read.
THE WITNESS: Yes.
MR. PLANT:
Q I beg your pardon? She does recognize it?
A Yes.
Q And what do you know that document to be?
A This letter was written when they were talking about the territory.
Q Which territory were they talking about?
A Yes, that's Wah Tah K'eght's territory.
THE COURT: I'm sorry?
THE INTERPRETER: Wah Tah K'eght's territory.
THE COURT: Oh, I see.
MR. PLANT:
Q Was this letter written to transfer your name from Bazil Michell's line on the west side of the Bulkley across the river to the Henry Alfred trapline on the east side of the river?
A Yes.
Q Did you personally write this letter, Mrs. Alfred?
A No.
Q Did someone write this letter on your behalf?
A Yes.
Q Do you know who wrote the letter on your behalf?
A I forgot who wrote the letter out for me.
Q From time to time did you ask people in Moricetown to write letters on your behalf?
A I -- I just want to know about this letter. Is this letter about the time when my brother was transferring the territory over to us?
Q When you speak of your brother, you're speaking of Peter Bazil?
A Yes.
MR. PLANT: And Peter Bazil transferred the territory --
MR. RUSH: No, that was a question. I think that was a question that was asked of you, Mr. Plant.
MR. PLANT:

1 Q I was about to try and see if I could answer it
2 because I don't want to put words in Mrs. Alfred's
3 mouth.
4 This letter was written -- let me put it this way.
5 The letter is dated November, 1962. Do you recall
6 that in or about 1962 you asked to have your name
7 taken off Bazil's trapline, Bazil Michell's trapline,
8 and put onto the trapline on the east side of the
9 Bulkley River?
10 A Yes, I -- I know of that.
11 Q And as I understand it, Peter Bazil transferred the
12 registration of the trapline to your son Henry at
13 about that time?
14 A Yes. Yes, he transferred it over to three of us,
15 Henry, Cecil, and myself.
16 MR. PLANT: And you wrote the letter which we've been looking at
17 to be sure that your name would appear on the new
18 registration that was going to be given to Henry?
19 MR. RUSH: She said --
20 MR. PLANT: I'm sorry.
21 MR. RUSH: She said that she didn't write the letter. Somebody
22 wrote it on her behalf.
23 MR. PLANT:
24 Q I'm sorry. I certainly didn't mean to imply that she
25 had written it.
26 You caused this letter to be written to ensure
27 that your name would be on Henry Alfred's registered
28 trapline; is that right?
29 A Yes.
30 MR. PLANT: I ask that this letter be marked as the next
31 exhibit, my lord.
32 THE COURT: Yes.
33 THE WITNESS: When was this letter written, again?
34 MR. PLANT:
35 Q The date on it is November 8th, 1962.
36 A This -- yes, this letter was written about that time
37 when he -- he himself transferred to -- transferred it
38 to Henry and myself because he was getting weak at
39 that time.
40 Q He was getting too old to trap, this is Peter Bazil?
41 A Yes.
42 MR. PLANT: And --
43 THE COURT: I'm sorry.
44 MR. PLANT: -- a few years after that --
45 THE COURT: Did you mean Peter Bazil?
46 MR. PLANT:
47 Q Yes. Peter Bazil was getting too old to trap by 1962;

is that the reason that he transferred the registered trapline to Henry and to Cecil and to yourself?

A Yes, he was also getting too sick, and that's why there was a meeting there at Moricetown in a hall and he had to transfer it over to Cecil, Henry and myself.

Q Was that done in the presence of other Wet'suwet'en witnesses?

A Yes, that was -- that was one of the reasons why it was -- these letters were made at a meeting.

MR. PLANT: Well, I ask that the document be marked now, my lord.

THE COURT: Yes, I think it will be Exhibit 150.

THE REGISTRAR: Exhibit 150.

(EXHIBIT 150 - LETTER DATED NOVEMBER 8, 1962)

THE COURT: I want to say that I'm not -- I think I have grasped what's being said here, but rather than leave me with a false impression, may I state to counsel what I understand the evidence to be, and that is that prior to this time apparently the witness was registered along with Bazil Michell on a trapline on the west side of the territory, and that -- and that was the purpose of this letter. At the same time I understood her to be saying that Wah Tah K'eght, then Peter Bazil, was transferring his trapline on the east side to the witness along with Henry and Cecil because Wah Tah K'eght was getting elderly and unable to trap.

MR. PLANT: He, Peter Bazil, holding the name Wah Tah K'eght --

THE COURT: Yes.

MR. PLANT: -- was getting elderly and unable to trap. That's my understanding of the evidence.

THE COURT: Yes.

MR. RUSH: The only thing I would add to that is that I think the evidence is that prior to this time Henry Alfred was part of the company of Peter Bazil on the east side, and it may well have been that Cecil was too but --

THE COURT: Henry at least.

MR. RUSH: Henry at least.

THE COURT: Was registered along with Peter Bazil on the east side. Yes. All right. Thank you, Mr. Rush.

MR. PLANT:

Q Prior to these events, which you've described, in 1962, were you on -- were you registered on Bazil Michell's trapline on the west side of the Bulkley, Mrs. Alfred?

A Yes. That letter you were showing was drawn up at that meeting. That is when my brother had me transfer it over to -- to the east side along with Henry and Cecil.
Q Your brother being Peter Bazil?
A Yes.
Q Mrs. Alfred, we spoke yesterday about Trout Creek and the Trout Creek Store. Do you remember that?
A Yes.
Q And do you -- have you ever travelled up Trout Creek?
A Yes, I travelled upstream there and -- and also on the stream coming from Toboggan Lake. We trapped beaver and muskrat on there. But we haven't -- we haven't gone back there since being -- the place has been populated by white people.
Q Have you ever travelled up Trout Creek since the time that you spent at Toboggan Lake?
A In my time I didn't hunt or trap up the Trout Creek. I didn't go up the hill. But before my time our ancestors used that territory up that area.
Q And the territory -- the upper part of Trout Creek, does that belong to Wah Tah K'eght?
A Yes.
Q There's a gravel road that goes up there now, isn't there?
A Are you talking about Doughty?
Q Yes. There is a road that leaves near Doughty. It goes all the way up to the top of Trout Creek. Do you know about that road?
A That -- I don't know of any road going up there because the hill is awfully steep. The only roads that I know of is one going up the hill near Doughty. It goes up the hill to logging areas. And then up from Doughty, that's all logged -- that was all logged off, and there's farmers in there now.
Q I want to show you a photograph, Mrs. Alfred. It's at tab 5 of the book of photographs. Actually, that's -- I was going to suggest that that was the road at Doughty, but that is not, is it?
A No, that's -- this -- this bridge is -- goes across Toboggan Creek, and that goes up to where there's a fish hatchery.
Q Is there a fish hatchery on Toboggan Creek nowadays?
A Yes, there is a fish -- fish farm there because we were up there last summer looking at it.
Q Is that fish farm operated by Wet'suwet'en people?
A No, white man.

Q Looking again at the picture of tab 5, which is the bridge crossing Toboggan Creek, is that near Evelyn?
A Yes.
Q And if I turn back to the picture at -- well, before I do that, can you see the railway crossing in that picture, Mrs. Alfred?
A Yes, it's a railroad crossing there, and it's -- down from there is where that fish farm is.
Q Close to where the crossing is?
A Yes, it's just below there.
Q Just turning to the picture at tab 4 for a minute, do you recognize that sign in that picture, Mrs. Alfred?
A I -- that -- that picture is, I think, a field or Storey's field, and that's the sign that's pointing towards fisheries.
Q The fish hatchery?
A Yes.
Q Is Mr. Storey a farmer or a rancher?
A Yes, he's got a farm there.
Q Is he a white man?
A Yes.
MR. PLANT: My lord, perhaps the photograph at tab 5 could be marked as the next exhibit and then the photograph at tab 4 the exhibit after that.
THE COURT: All right. Tab 5 will be Exhibit 151.
THE REGISTRAR: 151.

(EXHIBIT 151 - PHOTOGRAPH)

THE COURT: And tab 4 will be 152.

(EXHIBIT 152 - PHOTOGRAPH)

MR. PLANT:
Q Turning -- while we're on this subject, Mrs. Alfred, just turning to tab 9, I understand or my instructions are that that is a picture of Mr. Storey's farm. Can you recognize that?
A Yes, this picture would be Johnson's farm just north of Storey's.
Q Is Mr. Johnson a white man?
A Yes, they're all white people around that area. There's no Wet'suwet'en whatsoever around there.
MR. PLANT: May that be the next exhibit, my lord?
THE COURT: Yes.
THE REGISTRAR: Exhibit 153. That's tab 9.

(EXHIBIT 153 - PHOTOGRAPH)

MR. PLANT:

Q Thank you, Mrs. Alfred. Is there a boundary of the territory of Wah Tah K'eght up Trout Creek somewhere?

A Yes, a long time ago our ancestors had place names, mountains, creeks, which they used for boundary lines. There was no such thing as lines. They used these place names for boundary lines.

Q Now, dealing with the area around or west of Trout Creek, were you taught about the boundaries of the territory of Wah Tah K'eght in that area?

A Yes, yes, all these -- these mountains, creeks are all mentioned to us, and we -- and that is how it was a long time ago, and that's how we know where our boundaries are.

Q Who was it that mentioned to you, Mrs. Alfred, the boundaries in the area above or to the west of Trout Creek?

A Yes, these boundaries were told us by our -- by our mothers and uncles in much the same way as they had been taught in the past. They teach us the same way.

Q Did your mother, Lucy Pius, teach you about the boundaries?

A Yes, they were the ones that -- some of the people that taught us these boundaries in the areas, and these information that is handed down to us is handed down from generation to generation from way before our time.

Q I want to know who taught you, Mrs. Alfred, about the boundaries in the area to the west of Trout Creek?

A Yes, we travel -- we travel through there hunting and trapping with my mother and my brother, and they taught us the same things that they had been taught before us.

Q When you speak of your brother, you're speaking of Peter Bazil?

A Yes.

Q And you've never been up Trout Creek; is that correct?

A Yes, we've hunted up in that area when we used to have overnight camp at a place you call Trout Creek.

Q At the mouth of Trout Creek, where Trout Creek comes into the Bulkley?

A Yes, we camped at Ta begh Tai, and that's where we used to hunt and trap from.

Q And that's the trail beside Toboggan Lake?

A Yes.

THE TRANSLATOR: That's 489.
THE COURT: 489.
THE TRANSLATOR: 489.
MR. PLANT:
Q You never actually set traps on Trout Creek, did you?
A No.
MR. PLANT: Perhaps this would be a convenient moment to adjourn, my lord.
THE COURT: All right. We'll adjourn.
THE WITNESS: That area you're talking about is too steep for anybody to travel there. That's what I'm talking about.
MR. PLANT: Well -- Trout Creek is too steep to set traps on; is that what you said?
THE COURT: To travel I think she said.
MR. PLANT: I beg your pardon?
THE COURT: To travel.
MR. PLANT:
Q For travel. Oh.
A Yes, at -- at Trout Creek, hey, it's too steep to go up the hill there. Maybe you should try it, going up there yourself.
THE COURT: All right. Two o'clock, please.
THE REGISTRAR: Order in court. Court's adjourned until 2:00.

(PROCEEDINGS ADJOURNED AT 12:00 P.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.

_____

Leanna Smith
Official Reporter
United Reporting Service Ltd.

(PROCEEDINGS RECOMMENCED AFTER LUNCHEON RECESS)

THE COURT: Mr. Plant.
MR. PLANT:
Q Mrs. Alfred, when we broke for lunch I was asking you about Trout Creek.
Does My Lord have the map, Exhibit 84?
THE COURT: Yes.
MR. PLANT: Does Your Lordship have the location of Trout Creek on that map?
THE COURT: No, I do not.
MR. PLANT: Well, there is a creek marked about halfway between where Moricetown Indian reserve number 1 and Toboggan Lake, and the creek flows into the Bulkley and flows in from the west. The line up the creek is horizontal, roughly speaking, on the map.
THE COURT: It's not marked.
MR. PLANT: And on the creek is printed the words -- or above the creek is printed the words D-l-a-a-t-e, K-w-a-h.
THE COURT: Yes, I have the creek.
MR. PLANT: K-w-a-h, I think its been agreed, is a reference to creek.
THE COURT: Yes, right.
MR. PLANT: And I think D-l-a-a-t-e may be another spelling for -- or another way to spell the sound which has been given here as T-l'e-e-t.
THE COURT: Yes.
MR. PLANT: And that's --
THE COURT: I have never found Toboggan Lake on this map. Is it here?
MR. PLANT: Excuse me, My Lord?
THE COURT: I have never found Toboggan Lake on the map. Is it here?
MR. PLANT: Toboggan Lake is down near the southern part of the area depicted on the map above the dark black line which I take to be the representation of the outline of the territory.
THE COURT: Yes.
MR. PLANT: And there is a lake in the area marked with the word T-a-b-e-g-h-t-e-y.
THE COURT: Yes, I have that.
MR. PLANT: Well, on my copy of this map there is a little lake there, and that's, according to my understanding, that is Toboggan Lake.
THE COURT: East of the highway?
MR. PLANT: It's right beside the highway and beside the railroad. I'm sorry, it's west of the highway, and

the railroad passes on the east --
THE COURT: Yes.
MR. PLANT: -- side.
THE COURT: Does the t-e-y intrude into the lake?
MR. PLANT: No, the --
THE COURT: I can't tell the difference between a lake and a contour on this map.
MR. PLANT: No. And the reason that I can is I marked up my copy with a pen. My understanding is that the lake is below the t-a-b-e.
THE COURT: Oh, all right.
MR. PLANT: And that's -- it's between the t-a-b-e-g-h and the CNR.
THE COURT: Yes, I have got it.
MR. PLANT: It's in that area. And there may not --
THE COURT: That's close enough, Mr. Plant.
MR. RUSH: I perhaps needn't remind Your Lordship about this, but the Tabegh Tai is not the name of the lake, as you know, and it's very difficult to see. I can't discern it on my copy as to what is the lake.
THE COURT: I have now identified Trout Lake, Mr. Plant.
MR. PLANT:
Q Mrs. Alfred, would you please describe for me the boundary of the territory of Wahtah k'eght, as you have been taught it, in the area west of Trout Creek?
A The boundary would go along the top of the mountain, half a mountain above Trout Creek, and would go to Tsee K'ez iitai and what you would call C'ellee nee ben dil taan. The boundary goes down to C'ellee nee ben dil taan. There is a hill there, Yen laleediin t'aay, and then it would go from there across the river.
Q If I could stop you there. The river that you are talking about is the Bulkley River?
A Yes, that's the one.
Q Now, I heard three places that I don't have spellings for.
THE INTERPRETER: T-s-e-e, k'-e-z, i-i-t'a-i. C'elle nee ben dil taan, C'e-l-l-e-e, n-e-e, b-e-n, d-i-l, t-a-a-n. Yen laleediin t'aay.
THE COURT: New word?
THE INTERPRETER: Yes.
THE COURT: Start again, please.
THE INTERPRETER: Y-e-n, l-a-l, underline, e-e-d-i-i-n'i-a (sic).
MR. PLANT:
Q The first name that you gave us, Tsee k'ez iit'ai, is that a hill or a -- what kind of feature is it?

A There is a trail going up -- it's a mountain. There is a trial going up to where they went. And Tsee k'ez iit'ai, it is a corner in the boundary.
Q Corner in the mountain or boundary?
A In the boundary.
Q I didn't hear you.
A In the boundary.
Q Thank you. And the second place that you gave us, C'ellee nee ben dil taan, what is that?
A That was a lake, but that lake was drained by Storey and made into a field.
Q Storey is the white rancher or farmer that you told us about earlier?
A Yes.
Q Was that lake close to the Bulkley or was it further back way up in the mountains?
A That lake would have been south of Ta begh Tai. They were not too far apart.
Q So am I correct in assuming that the lake was not too far from the trail that goes by Toboggan Lake?
A Yes, it would have been a trail along the lake that is not too far from the hill.
THE COURT: Are we on a blind chase here, Mr. Plant? We started out to find out where the boundary was west of Trout Creek, and now we are way down on the south boundary.
MR. PLANT: Yes. Well, I'm -- yes, we are at the moment on a blind trail, My Lord, but I'll see if I can try and find some way of getting back to someplace.
THE COURT: Go ahead.
MR. PLANT:
Q I don't know why we are talking about a hill in the last answer, Mrs. Alfred. C'ellee nee ben dil taan, you told me that was a lake that was drained by Mr. Storey?
A Yes.
Q And the place --
A There is a big field there now.
Q And the place that used to be the lake is south of Toboggan Lake -- where Toboggan Lake is?
A It's south of Toboggan Lake, and it's not too far from Toboggan Lake.
Q Is it close to Adam's igloo?
A Are you talking about a place on top of the hill?
Q I want to refer you to a photograph. I am referring you to Tab 2 of the book of photographs. Do you recognize that building?
A Yes, I recognize that place in the picture, and that

would be -- this Yen laleediint'aay would be a hill just a little north of that place in the picture, and C'ellee nee ben dil taan would be at the foot of that, Yen laleediint'aay.

Q Now, you say there is a hill north of Adam's igloo, and that, I believe, is a name that I have not heard before, or at least I don't have the spelling of the hill.

MR. PLANT: Is that Y-e-n-l-a-l-e-e-d-i-i-n-t-a-a-y?

THE INTERPRETER: Yes.

MR. PLANT: That's the third of the three names that we started with. My Lord, I am going to try and get us back to the west of Trout Creek, but before we do that, may the photograph of Adam's igloo be marked as the next exhibit?

THE COURT: Yes, 154.

(EXHIBIT 154 - PHOTOGRAPH OF ADAM'S IGLOO - TAB TWO IN THE BOOK OF PHOTOGRAPHS)

Q Could you turn to the photograph at Tab 3 in this book, Mrs. Alfred. My instructions are that that is a photograph taken looking west at the rest area which is just north of the Adam's igloo building. Do you recognize that scene depicted on that photograph?

A Yes, I recognize that picture. That would be from a pull-out there, and that mountain -- the line would come down north of that mountain, but the area pointing at is not in the picture, and the area you are looking at is in Gitdumden's territory.

Q The area shown on the photograph belongs to the Gitdunden clan?

A Yes, that's right. Below there, not too far away, is where the boundary comes down.

Q When you say below, are you talking about the fields down on the bottom of the picture?

A No, that's not showing on the picture, but it's -- it would be north of that picture. The south side is all Gitdumden territory.

Q When you say north, Mrs. Alfred, are you talking about off to the right?

A Yes. The line comes down between the mountains, but this picture is somebody else's territory.

Q And just so I'm absolutely sure of this, the lake that was drained by Mr. Storey and has been turned into a field, is that also off to the right of the photograph at Tab 3?

A Yes, there is a hill that's not in the picture. And when you get to the foot of that hill, that's where that lake used to be.

MR. PLANT: Thank you. May the photograph at Tab 3 be the next exhibit now, My Lord.

THE COURT: Yes, that will be --

THE REGISTRAR: Exhibit 155.

THE COURT: 155. Thank you.

(EXHIBIT NO. 155 - TAB 3 OF THE BOOK OF PHOTOGRAPHS)

MR. PLANT:

Q Now, Mrs. Alfred, you gave us a name, Tsee k'ez iit'ai, and I'm going to have to ask Mr. Mitchell to assist in pronouncing it. It's the first of the three names that were given when I asked for the boundary description.

A Tsee k'ez iit'ai is not in the picture where you see the glacier. It would be north of where that picture is, and that is where they go up in the mountains. There is a trail up there, and that's where the boundary is.

Q Could you turn to the picture at Tab 5, which is the bridge across Toboggan Creek. There are mountains in the background of that photograph, Mrs. Alfred. Can you find the place that we have been talking about on that photograph?

A This mountain peak that is standing up, and there is a pass between this and the other mountains, and then there is a pass between. There is a creek coming out of there, and that's where that boundary comes down. Why do you ask so many questions? Are you going to go up there?

Q I wanted to find out where your boundary is, Mrs. Alfred. Turning back for a minute to Tab 3. Would I be correct in saying that the boundary that we are talking about --

A The pass between that mountain on this picture and the other one, that's where the boundary comes down.

Q So the boundary is to the right of the mountain on the right of the photograph at Tab 3, and it is to the left of the mountain on the left of the photograph at Tab 5?

A Yes.

Q The place, Tsee k'ez iit'ai, which I can't pronounce, is it shown on the photograph on Tab 5, or is that in the area that is not shown on either of those

photographs?
A No, it doesn't show on there. That picture you got there is the outflow of Tobbogan Lake, and it's north of the Tobbogan Lake, and that's where the road to the fish farm.
Q Is Tsee k'ez iit'ai on the left or the right of the photograph at Tab 5?
A That would be towards Smithers on the left-hand side.
Q Now, Tl'eet Kwe or Trout Creek is some distance north of these two photographs that we have been looking at, Tab 3 and Tab 5 of the book of photographs?
THE INTERPRETER: It's 531.
A You are travelling back north again. But I already told you about that area before. That Trout Creek you talking about and that Toboggan Creek, they both come into the river almost at the same place.
Q Mrs. Alfred, have you ever heard of a lake known as Taltzen Ben, T-a-l-t-z-e-n B-e-n? There may be a number for it.
A No, I don't know that lake.
Q To be sure that we are not relying on my pronounciation, I was going to ask Mr. Mitchell to look at page three of Exhibit 120A, and on the right-hand column underneath the word lakes, the last word is T-a-l-t-z-e-n, B-e-n. Could you pronounce that, Mr. Mitchell?
THE INTERPRETER: Taltzen Ben.
MR. PLANT:
Q Do you know that lake, Mrs. Alfred?
A No, I don't know that lake.
Q Have you ever heard of Kitsegukla Lake?
A Kitsegukla Lake, I think, is on boundary on that lake. The other half, I think, belongs to Old Dennis, although all Laksilyu, but the other half belongs to Old Dennis, and the area that you are talking about is Teeteet.
THE INTERPRETER: T-e-t-e-t (sic).
THE COURT: I'm sorry, t-e --
THE INTERPRETER: It's 373.
MR. PLANT:
Q Is Teeteet the name of a lake or an area or perhaps both?
A It would be a name of an area in the territory.
Q Whose territory?
A Old Dennis used to travel up there. He might be from Keel We niits.
THE INTERPRETER: 228.

THE COURT: Thank you.
MR. PLANT:
Q Was Old Dennis Laksilyu?
A Yes, Laksilyu.
Q And was he -- what was his House?
A He was from the Keel We niits Wet'en, but I don't know the connection to the House.
Q Was Johnny David also from Keel We niits?
A Yes.
Q So when we talk about the area Teeteet, is that a place where Johnny David used to trap?
A He -- Johnny and Old Dennis, they hunted and trapped in that area because he was married to -- of the same clan, but he was married to Old Dennis's daughter.
Q Johnny David was Laksilyu also?
A Yes.
Q This area, Teeteet, does that belong to Wahtah k'eght?
A Yes, Teeteet is where the boundary would be going through Wahtah k'eght's territory, would be on the side of the river, the east side, and Old Dennis would be on the other side of Wahtah k'eght's territory.
Q Was Teeteet the boundary?
A Yes, it would go through the middle.
Q And when you say it is an area, what is it? Is it a meadow? Is it a hill?
A I'm not too familiar with that territory, so I just know that the boundary goes through Ooniin'aay.
THE INTERPRETER: 225.
MR. PLANT:
Q The boundary goes from Ooniin'aay?
A I don't travel in Old Dennis's territory, so I don't know anything about it, but the boundary goes through -- that's all I was told about, was that the boundary goes from Ts'ee Ggexw towards Ts'e dee Kai.
THE COURT: I don't know what boundary it is we are talking about, Mr. Plant.
MR. PLANT: I -- well, I thought I knew approximately where we were a minute ago. I just heard two new words. My Lord, I was going to try and orient us again, but if Your Lordship follows the line of Trout Creek through the west through the heavy black line on the left of the heavy black line underneath the lot marked 3394, there is a black area.
THE COURT: Yes.
MR. PLANT: That is, to my understanding -- to the best of my understanding it corresponds with the location of what is described on government maps as Kitsegukla Lake. I

1 don't know yet where the area Teeteet is.
2 THE COURT: All right. Thank you.
3 MR. PLANT: May I have the spelling of the last two names that
4 were mentioned?
5 THE INTERPRETER: T-s'e-e, g-g-e-x-w.
6 THE COURT: Can I have the spelling again, Mr. Mitchell, please?
7 THE INTERPRETER: T-s-'e-e, g-g-e-x-w.
8 THE COURT: Thank you.
9 MR. RUSH: It's on page three under mountains, My Lord. It is
10 the -- one, two, three, fourth mountain there.
11 MR. PLANT: My page three of the affidavit of --
12 MR. RUSH: And it's a ridge east of Teeh skaak wenii.
13 MR. RUSH: That is on page three, Teeh skaak wenii.
14 MR. PLANT: The last thing I wanted at the moment is another
15 Wet'suwet'en name of a place I can't find on a map,
16 but I guess we better get the spelling of what -- on
17 page three of the affidavit, the name which my friend
18 just uttered is spelt T-e-e-h S-k-a-a-k W-e-n-i-i.
19 Q Mrs. Alfred, do you know -- Mrs. Alfred, did you just
20 mention the name Ts'e dee k'ai?
21 MR. PLANT: The spelling of the word I just tried to say is on
22 page 5 of the affidavit as S-a-a-y-k'e-e-t-a-y (sic).
23 THE INTERPRETER: T-s'e, d-e-e, k'a-i.
24 MR. PLANT:
25 Q Mrs. Alfred, have you ever heard Kitsegukla Lake
26 described as Guxsan, G-u-x-s-a-n, Lake?
27 A Yes, I know of that lake, Guxsan Lake. And beyond
28 that lake is Gitksan territory.
29 Q And is Guxsan Lake, in your mind, the same place as
30 Kitsegukla Lake?
31 A Kitsegukla Lake is further down forwards the village.
32 We were just told about these lakes when we travelled
33 up there during the summertime.
34 Q You say further down towards the village. Do you mean
35 further east?
36 A It would be further away from the Doughty area. It is
37 quite a ways in there.
38 Q Quite a ways in the mountains?
39 A Yes.
40 THE COURT: Mr. Plant, I have lost track of what's further away
41 from what.
42 MR. PLANT: So have I, and I -- every time I think I am getting
43 closer, I get farther away. I don't know -- I am in
44 Your Lordship's hands as to whether it would be a
45 convenient --
46 THE COURT: We'll take the afternoon adjournment.
47 THE REGISTRAR: Order in court. Court adjourns briefly.

(PROCEEDINGS ADJOURNED FOR A 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.

_____

LORI OXLEY
OFFICIAL REPORTER
UNITED REPORTING SERVICE LTD.

(PROCEEDINGS RECONVENED AT 3:17 P.M.)

THE REGISTRAR: Order in court.
THE COURT: Mr. Plant.
MR. PLANT:
Q Mrs. Alfred, before we broke, a few questions before we broke you told the Court about travelling up there in the summertime. Do you remember saying that?
A Yes.
Q When was this trip?
A What area are you talking about?
Q Well, Mrs. Alfred, you told me a few minutes ago, you told the Court about a trip that you made, and the note that I have of your answer was, "We were just told about these lakes when we travelled up there in the summertime," and that's when we were talking about Kitsegukla Lake. Can you remember that trip?
A Yes, we were up there on a picnic trip.
Q A picnic trip? I'm sorry, I didn't hear what the word was.
A Yes, we were up there on a Sunday when our children went up there and had lunch at a picnic ground.
Q Was this last summer?
A We didn't go up there last summer but the year before, when my -- when my husband was still able to walk.
Q Did you go with your husband and your children?
A Yes, we just went up there on a Sunday trip. We had lunch up there.
Q And it was your husband and your children that went with you?
A Yes, we went on a one-day trip up there.
Q Did you go with anyone other than the members of your family?
A Yes, it was just the family. We went on a Sunday picnic trip.
Q And did you have your picnic lunch at a campground by a lake?
A Yes, there was a picnic camp there where we had lunch.
Q And did you drive up there on a gravel road?
A Yes, there's a -- there's a road up there almost like a highway. It's farmers, and there was picnic sites set up there.
Q Does that road leave the Yellowhead Highway near Doughty?
A Yes.
Q Mrs. Alfred, do you know people in Moricetown who have traplines near Houston and Topley?
A I don't go around there, so I don't know anybody.

Q I understand that you used to go out to Buck Flats with your husband to trap?
A Yes.
Q And there are other Wet'suwet'en people who have traplines in that area?
A Yes.
Q Do the people who live in Moricetown who trap out there have permission to travel through Wah Tah K'eght's territory to get to their traplines?
A They -- yes, a long time ago they -- they probably did things like that, but now there is a big highway going through, and just anybody uses it.
Q Anybody uses the highway?
A Yes.
Q The people from Moricetown just drive up and down the highway?
A Yes. And white men also, too, use that highway.
Q Clara Morris held the name Heywon?
A Yes.
Q Is she still alive?
A She's still alive, yeah.
Q She must be very old?
A Yes, she's getting really old.
Q Your daughter Irene has a daughter named Virginia?
A Yes.
Q And as I understand it, she married Ed Dewitt, D-e-w-i-t-t, who's not an Indian?
A Yes.
Q And Virginia lives in Toronto with her children?
A Yes, they -- they working up there for -- for short period of time, and they'll be coming back.
Q How long have they lived in Toronto?
A Yeah, they -- they went there last year.
Q Irene also has a daughter named Sharon, who lives in Toronto?
A Yes.
Q And her husband is a white man?
A Yes.
Q Your father, Mrs. Alfred, was he a white man?
A Yes.
Q And Irene has a son named Terry, who lives in Burns Lake?
A Yes.
THE COURT: Sorry, Terry is the daughter of Irene?
MR. PLANT: Terry is the son of Irene, or a son.
THE COURT: Thank you.
MR. PLANT:

Q As I understand it, your daughter Janet, your daughter Janet lives in Telkwa with her family?
A Yes.
Q And is she married to Thomas George?
A Leonard George.
Q Leonard George.
A The other one is the father-in-law.
THE COURT: Mr. Plant, you asked the witness about somebody's father was a white man.
MR. PLANT: I beg your pardon? The witness's father is a white man.
THE COURT: Sorry.
MR. PLANT: The witness's father is a white man. I'm not sure if that's responsive to your lordship's comments.
THE COURT: Yes, yes, that's what I was asking. All right. Thank you. Yes, thank you.
MR. PLANT: Sorry for the mistake there about Janet's --
THE COURT: That's the way I had it down in my notes, and I just wanted to make sure I was right.
MR. PLANT:
Q Well, I don't know where I got the idea that Janet was married to Thomas George. Janet is married to Leonard George, and they live in Telkwa?
A Yes.
Q Do you know if Janet and her family went to the big barbecue in Telkwa last summer in honour of the late Felix George?
A Me and Janet, we didn't go, but the family went.
Q To the barbecue in Telkwa?
A Yes.
MR. PLANT: Could I have the photograph at tab 5 of the Plaintiffs' book of documents, Exhibit 122, placed in front of the witness?
THE COURT: Was that produced during the evidence of Mr. Joseph?
MR. PLANT: No, produced during Mrs. Alfred's examination by my friend, Mr. Rush. It's in the Madeline Alfred document book.
THE COURT: All right. Yes, I have it.
MR. PLANT: At tab 5, my lord.
THE COURT: Okay.
MR. PLANT:
Q And you've told us that this was a picture of Louis Tommy's fish trap; is that correct?
A Yes.
Q And you've seen that fish trap in your lifetime?
A Yes.
Q Was it still there when you were married to the late

Peter Alfred?
A That fish trap was always there before, but -- but -- but time when I was married and then the fish trap was -- the place where -- the fish traps were destroyed when the fish ladder went in.
Q Was the fish trap there until the fish ladders were destroyed -- I'm sorry -- until the fish ladder was built?
A Yes.
Q Do you remember telling us that you used to go out to Buck Flats with your husband, Peter Alfred? And I think what you've said was -- or rather it went this way: Mr. Rush asked you, "You would go to Kanoots' territory every two years," and you said, "Yes." Do you remember giving that evidence?
A Yes, that's right, that's where it was.
Q Was there ever a time when you stopped trapping because the prices for fur were too low?
A We always leave it alone for one year so as the animal in the territory would multiply and then --
Q Sometimes -- sorry.
A And then we would go again after that.
Q Sometimes would you leave it alone for more than one year?
A No.
MR. PLANT: Mrs. Alfred, I have three documents here. They are entitled "Return of Registered Trapline Holder."
MR. RUSH: Could you show them to me first, please?
MR. PLANT: Yes. And, in fact, I would add to that a fourth document, which is -- was marked as Exhibit 10 For Identification on the commission evidence of Lucy Bazil and is also a Return of Registered Trapline Holder.
Mrs. Alfred --
MR. RUSH: Just a moment. I just want to be sure. I haven't seen these documents before. Have these been disclosed in --
MR. PLANT: Yes.
MR. RUSH: What number --
MR. PLANT: I don't know.
MR. RUSH: -- on the list?
MR. PLANT: They were either in document -- the A.G.B.C. document 1276 or in the documents which I provided to you I believe it was early last week. And, of course, Exhibit 10 For Identification on the Lucy Bazil commission was marked as an exhibit on that commission. I -- they may come from -- the three

original returns may come from another document number, but to the best of my understanding they come from the Province's document number 1276.

MR. RUSH: Well, my lord, I haven't seen these documents before, and I have a problem with this, and it arises out of the description of document number 1276, which, if I could put my hand on it in this handy little volume the Province has produced to me, would tell me that the documents disclosed in that document number are trapline files in the Smithers' Wildlife -- Game and Wildlife Office. And, of course, I thought that we had everything there was to receive from that file, but on the 14th of this month I received a letter from Mr. Plant, and it says,

> "It has come to my attention that certain documents contained in the trapline files located in the Ministy of Environment's offices in Smithers were not provided to us at the time that we requested the documents which were disclosed as our document No. 1276. Some of the documents did not exist at the time the files constituting document No. 1276 were produced to us."

And I take it to mean by implication that others were.

> "I have asked for production of all documents in the files of traplines which appear to be situated in the area claimed by Wah Tah K'eght on Trial Exhibit 5.
>
> Copies of the unlisted documents in those files are enclosed.
>
> The originals are available in our offices for your inspection."

Now, I went through the documents that were passed on to me that I took to be in relation to those of Mr. Peter Alfred under 1276, and I didn't -- I don't recall seeing these documents there. Now, we have asked for the production of all documents that are in this file since having received this letter. Now, I'm very concerned about this because, again, I'm in the position of having to deal with documents that are coming to me before I've had an opportunity of reviewing those documents with the witness.

MR. PLANT: I can reassure the Court that, with respect to the

three documents that I'm talking about right here, they were produced in a document list that was delivered to my friend on the 5th of February or dated the 5th of February, 1987. They do not fall within the description of the documents which were the subject matter of the letter that my friend's made reference to. So he's had almost a year to look at these documents. And indeed, my instructions are that a request was made for copies of documents on the list that those documents appear on and that an agent of my friend attended at our offices and inspected the actual documents which constitute our document 1276. And I might go on to say this, that included with those documents and available to my friend's agent, so far as I am aware, was an index of the trapline files that constituted document 1276. And so that's the response in respect of these three particular file documents. There is a problem that I attempted to deal with by writing the letter to my friend, and if my friend wants to deal with that now, I'm happy to, but that doesn't apply, in my submission, to these three documents.

MR. RUSH: Well, I for sure want to see every document that's in the Smithers' file. I want to see everything that's going to be put to a witness. And my friend says that I was supposed to have received these. Well, I --

THE COURT: No, he didn't say you received them. He said they were disclosed to an agent from your office.

MR. RUSH: They were -- yes, he says they were. That's right. He says they were disclosed.

THE COURT: Yes.

MR. RUSH: Well, I can only say to that that if they were disclosed, presumably -- and they are not part of the other documents that are enclosed in this group of documents that are still in Smithers, then I don't know about that. But I do know that I have received a number of -- I had, I thought, and it is my recollection that we ordered a photocopying of everything in 1276.

MR. PLANT: Well, if my friend --

MR. RUSH: And I don't -- I don't see those documents in 1276.

THE COURT: Well, I don't know whether I need to go that far. Mr. Plant is cross-examining. He wants to put some documents to a witness that he says were disclosed and were inspected in February of 1987, and it's difficult for me to see how I could refuse him leave to do that. It seems to me the other matters you mentioned, Mr.

Rush, are of a different nature. Is there any other reason why you say your friend shouldn't put the documents to the witness, if they were disclosed and inspected nearly a year ago?

MR. RUSH: Well, I'm not going to say that we didn't do that. I can't remember if our --

THE COURT: Well, I can't either.

MR. RUSH: If we can adjourn, I'm sure that I could go out and check with my agent to see if we looked at these documents. I'm not prepared to say that didn't happen. The other reason, of course, is that -- well, I think the documents should be put to the witness. You'll find that her name isn't on them.

THE COURT: It may not -- it may not turn much, but my view in these matters is that I have to accept the statements of counsel in matters of this kind. If Mr. Plant says they were disclosed and inspected, at least disclosed, it would be sufficient then, and the cross-examination may continue.

MR. RUSH: Well, I want it put on the record now that I want all the documents in this file.

THE COURT: In this file?

MR. RUSH: In the 1276 file, whatever that is supposed to include, because the file is generally described.

THE COURT: Yes.

MR. RUSH: It contains -- it's a document list that contains a number of files, and it is impossible to determine from the description given in the document list or, I dare say, in the index that's provided to it what's in the files.

THE COURT: All right. Well, your friend has notice that that is your request.

MR. PLANT: I already had. My friend's associate wrote to me a letter, which he sent at 10:00 p.m. on Sunday night, dealing with that concern, and I'm certainly prepared to address that problem. The --

THE COURT: I'm not sure that I know what that means.

MR. PLANT: I beg your pardon?

THE COURT: I'm not sure I know what you mean when you say you're prepared to address the problem. I've never understood what that expression means.

MR. PLANT: No. Well -- documents, documents.

THE COURT: Yes. I don't think this is the time to argue the question of the production of documents in file 1276 or whatever it is. I rule that you may put the documents to the witness.

MR. PLANT:

Q Thank you. Mrs. Alfred, the four documents that I put in front of you purport to be a return -- or four returns filed by registered trapline holders, in this case filed by your husband, Peter Alfred, your late husband, Peter Alfred. Did your late husband, Peter Alfred, have a registered trapline in the area of Buck Flats?

A Yes, I think he did.

Q My lord, the copy of the application form is Exhibit 95A.

Do you recall that one of your late husband's obligations as a registered trapper was to file a return every year showing the number of furs that he had caught in the past trapping season?

A I don't read, so I don't know about that.

Q Did you ever discuss with your husband the fact that he was sending forms showing how many furs he had caught to the game warden's office?

A No.

MR. PLANT: Was it your habit to discuss trapping activity with your late husband, Peter Alfred?

THE INTERPRETER: Can you ask that question again, please?

MR. PLANT:

Q Was it your habit -- well, let me ask it this way: You talked about trapping with Peter Alfred, your late husband?

A Yes, yes, I went with him.

Q Yes, you did. And you'd talk about the trapping that you were doing out on the Buck Flats area?

A Yes.

Q And he never told you that he was sending forms to the Government to tell how many furs he'd caught?

A I forget myself, but he may have done that.

Q He may have done that?

A Maybe.

Q Now, Exhibit 10 For Identification on the commission examination of Lucy Bazil indicates, on my reading of it, that for the season 1949 to 1950 Peter Alfred did not trap. Do you have any knowledge of that, Mrs. Alfred?

A Yes, it could have been because they always take time out from trapping.

Q And I'm talking about the year now that your daughter Vina was born. Do you remember if you went trapping that year?

A Yes, I can remember that. There was times when he was involved in other work and then he didn't go out, but

then when -- when he wasn't working, he would be out there and go out to the territories.

Q Your daughter Edna, was she born in March of 1951?

A Yes.

Q Do you know if your husband, Peter Alfred, went trapping in the winter before your daughter Edna was born?

A No. When Jim was alive, that is when we trapped for him for two winters, and after that we never went out trapping in the winter, but only in the -- in the summer months.

Q Is that Mooseskin Jim?

A Yes.

Q And when you go out in the summer, do you trap for beaver?

A Yes.

Q Do you recall now if your husband, Peter Alfred, went trapping in the 1950-'51 trapping season?

A He wasn't trapping at that time because he had other business at home.

Q What was his other business?

A Yes. I was wondering if you were talking about when he -- when you say work, if you're talking about when he was a church chief, and also at that time he was involved with council work, and that's why he didn't go out on the territory.

Q I didn't hear that word. Household?

A Council work.

Q Council work. Is that band council?

A And that is one of the reasons why we -- we went out only in the springtime to hunt and trap beaver.

Q Well, do you recall if you went out in the springtime -- if your husband went out in the springtime of 1951? That would be around or about the time your daughter Edna was born.

A I just finished -- I just finished telling you that sometimes you don't go out on the territory for two years, and then at that same time George and Peter were out there. And you've already shown me the pictures. Them are the pictures that were taken some time back. The picture of Neenlii with George and Peter and them all standing there, that was taken about that time period. And they went -- they went out there for either every year or every other two years.

Q Neenlii is the waterfall?

THE TRANSLATOR: 153.

A Yes.
Q Mrs. Alfred, I have fur returns of your husband Peter for the seasons 1951-'52, 1952-'53, 1953-'54, all of which say that -- either that your -- that Peter Alfred did not trap or that no furs were caught. Do you have any knowledge of whether or not your husband Peter trapped during those three seasons?
A I -- I don't know.
Q Is it possible that your husband did not trap on the Buck Flats territory at all during those three years?
A That -- that could very well be, but they are -- they don't use the territory for -- for about two years so as the animals will multiply, but they always go out there to check.
MR. PLANT: My lord, I tender the three trapline returns as exhibits.
THE COURT: Mr. Rush?
MR. RUSH: Well, again, they haven't been identified in any way. I don't see any basis for tendering them on any basis.
THE COURT: Well, Mr. Plant, they can only be admissible, if at all, as business records or do you have some other suggestion for grounds of admissibility? They weren't actually put to the witness. You were just suggesting to her what they say, and she said that may very well be. They weren't put to the witness, and she wasn't asked to identify a signature or anything.
MR. PLANT: Yes. Well, I'll see if she can do that.
THE COURT: You may do that.
MR. PLANT:
Q Mrs. Alfred, would you recognize your husband's signature if you saw it?
A How could I recognize it when I can't even read?
Q Did you ever see your husband sign documents?
A No.
MR. PLANT: Well, my lord, I would like to give some consideration to the question of whether --
THE COURT: Yes. All right.
MR. PLANT: -- these documents may be admissible on some basis other than business records.
THE COURT: All right.
MR. PLANT: As your lordship will appreciate, Mr. Alfred's not available --
THE COURT: No.
MR. PLANT: -- to --
THE COURT: Well, there's -- I think I have this right, that there is some privity of registration between the witness and her husband in this connection, is there

not?
MR. PLANT: No, we're referring to a trapline which --
THE COURT: It's a different one.
MR. PLANT: -- this witness was not a member of the registered company.
THE COURT: All right. Well then --
MR. PLANT: According to the Plaintiffs' construction of their rights, the witness had privity of right as wife of the person who held the name.
THE COURT: Yes.
MR. PLANT: Which was --
THE COURT: I'll be glad to hear you on it. At the moment I'm not satisfied that any of the tests of admissibility that have been put forward have been satisfied, but you may certainly renew your application when you're ready to do so. All right. Thank you. We'll adjourn until ten o'clock tomorrow morning.
THE REGISTRAR: Order in court. Court's adjourned until ten o'clock tomorrow.

(PROCEEDINGS ADJOURNED AT 4:00 P.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.

Leanna Smith
Official Reporter
United Reporting Service Ltd.