FEBRUARY 3, 1988
VANCOUVER, B.C.

THE REGISTRAR: In the Supreme Court of British Columbia, this Wednesday, February 3, 1988. Calling Delgamuukw versus her Majesty The Queen at bar, My Lord.
MR. PLANT: I have two preliminary matters, My Lord. The first is there is an articling student from my office, John Esson, here with me today, and I would ask leave to have him sit at the counsel table.
THE COURT: Yes, certainly. Thank you.
MR. PLANT: The second matter is I, in the early part of last week, had occasion to request officials in the Surveys and Mapping Branch of the Department of Lands to prepare an overlay map, series of overlays depicting the boundaries of the territory of the House of Wah Tah K'eght as those boundaries are depicted on two other maps and described by Madeline Alfred in her evidence. And I am not proposing to examine this witness on this map, because it's not prepared by him, but much as my friends did, as long ago as the witness, Olive Ryan, I am proposing to offer this map to Your Lordship as a convenience, to see the relationship between the three boundaries as they appear in three different places. If necessary, I am quite prepared to tender an affidavit disclosing the names by which the map was produced, but I am not proposing that the map be tendered as an exhibit. Merely for convenience in assisting Your Lordship in a general way, and seeing the relationship between the boundaries, rather than trying to follow them as we have and did yesterday on three separate maps.
THE COURT: What are the three maps from which this overlay was prepared?
MR. PLANT: Exhibit 84.
THE COURT: Yes.
MR. PLANT: Trial Exhibit 5, which is the internal boundaries map, and the third source of information is the interpretation of the affidavit of Madeline Alfred, which the -- an official in the Surveys and Mapping Branch has -- he has read the affidavit --
THE COURT: Yes.
MR. PLANT: -- metes and bounds description and given his best shot at drawing the line.
THE COURT: And all three are different, I suppose, from 164?
MR. PLANT: No.
THE COURT: Yes, 164 conforms with the metes and bounds

description, I think.
MR. PLANT: In the affidavit, yes, My Lord. There may be minor discrepancies, but within the limits of cartographic reproduction, I think they are the same.
THE COURT: All right. Have you shown this to your learned friends?
MR. PLANT: Yes, I provided them with a copy last week.
MS. MANDELL: For the purpose my friend proposes, I have -- there is no objection to him doing so. I might say we have had an opportunity ourselves of going through the map, and it is a rough sketch. It is our view that there are points within the drawings of the lines that don't precisely conform to the exhibits. They are close, but they are not totally accurate, and I think it's -- if it's accepted by you as that, then I think there is no problem.
THE COURT: All right. Thank you. Mr. Macaulay?
MR. MACAULAY: My Lord, I have no objection, but I take the opportunity of asking again if the miniature series might be addressed.
THE COURT: Well, I am reluctant to do that, Mr. Macaulay, when we are under a time constraint with this particular witness, but I would be glad to hear from you about that at the next convenient moment.
MR. MACAULAY: Yes.
THE COURT: Thank you.
MR. PLANT: I have a copy of the map.
THE COURT: Thank you.
MR. PLANT: Actually I have an extra copy for my friends, although I am not going to ask him questions on it today. Another reason why I was concerned to provide Your Lordship with this map was that some time ago, I think it was during the examination of Mrs. Alfred, Your Lordship asked counsel certain questions about whether the boundary -- the eastern boundary as depicted on the Exhibit 84 map was the eastern boundary as it is today, and I answered that question incorrectly. But if I might briefly give Your Lordship -- I think the maps are self-explanatory. It's the same scale as the Exhibit 5 map. The first overlay is an attempt to reproduce the line as shown on Exhibit 84.
THE COURT: I'm sorry, the first overlay?
MR. PLANT: That's the overlay at the bottom with the green line.
THE COURT: The green line. That's not an overlay at all, is it? I suppose it is, yes. All right, what -- the map

at the bottom, that is what?
MR. PLANT: A composite of one or more, I think, at least two national topographic system maps that have been pasted together to try and minimize the size of the map necessary to contain the territory of this witness.
THE COURT: What is the green line parallel to and just east of the west bank of Babine Lake?
MR. PLANT: A road.
THE COURT: That's a road?
MR. PLANT: Yes, I think so, My Lord.
THE COURT: All right. I don't recall that road in my travels.
MR. PLANT: No, I don't either. I was about to say the Smithers and Smithers Landing Road, but the Smithers Landing Road appears on this map, so it must be the road to Old Fort, the north end of Babine Lake.
THE COURT: All right.
MR. PLANT: I doubt very much whether it starts in the middle of the wilderness, as it appears, but --
THE COURT: Well, obviously it's a composite, so --
MR. PLANT: The dotted line across there at the middle of the map is the point at which the two maps meet.
THE COURT: All right. Well, I'm sorry, I suppose if one is driving from Smithers to Smithers Landing, one wouldn't intersect that green line road, and so it may well be there.
MR. PLANT: There may be a turn off in the area of Chapman Lake. I'm not sure.
THE COURT: All right. Yes. Thank you. And then the --
MR. PLANT: The second overlay, the overlay with the blue line, purports to represent the boundary of the Wah Tah K'eght territory as it appears on Trial Exhibit 5. The description is incorrect. It says: "As attached to the Amended Statement of Claim filed May 11, 1985". In fact the map attached to the Amended Statement of Claim filed May 11, 1987 did not have internal boundaries, but on the same day my friends delivered to us a map showing the internal boundaries which is the same as Trial Exhibit 5. The top overlay, the red line, is the attempt to reproduce the description contained in Mrs. Alfred's affidavit.
THE COURT: Yes.
MR. PLANT: And Your Lordship will see, among other things, that it follows K'aaz Kwe Creek.
THE COURT: Yes. All right. Thank you.
THE REGISTRAR: Mr. Alfred and Mr. Holland, you are still under oath.

MR. PLANT:

Q Mr. Alfred, yesterday I was asking you some questions about goat hunting, and I had not asked you about the area in the south eastern part of your territory, as shown on Exhibit 164, which is the area around the Hudson Bay Mountain range. Do you see the area in the lower left-hand part of that map?

A Yes.

Q And my understanding -- my recollection from your evidence is that you have said that you went hunting for goats there with Alfred Mitchell; is that correct?

A Yes.

Q And I take it that this was the only trip that you have made to this part of the territory for goat hunting?

A Yes.

Q Do you remember when that trip was?

A Be early fifties. I can't remember exactly.

Q The early 1950's?

A Right.

THE COURT: I'm sorry, Mr. Alfred, does your answer imply that you have made just one trip there or just one trip there for goat hunting purposes?

THE WITNESS: Just one trip.

THE COURT: Thank you.

MR. PLANT:

Q And what season of year was this trip?

A I believe it was late September.

Q Do you recall what season of the year you made your trip to the -- well, the Porphry Creek area, the area in the upper left-hand corner of Exhibit 164 with Dan Michell. Do you remember what time of year it was that you went with Dan Michell to hunt for goats up here?

A Before my dad died. That would be about '85 I would say.

Q Do you remember whether you made the trip in the winter, spring, summer, fall?

A That's late in fall too.

Q So about the same time of year that you made the trip to Hudson Bay Mountain area with Alfred Mitchell, same season?

A About the same season, yes.

Q When you made the trip to the area near Two Bridge Lake with Victor Jim, what season was that?

A That was late in fall too, but I can't remember what -- late September, I believe it was.

Q Now, coming back again to the trip that you made to the Hudson Bay Mountain area with Alfred Mitchell in the early 1950's. Did you kill anything, any goats on that trip?
A I didn't.
Q Do you recall whether on that trip you checked to see if it was open season for goat hunting on Hudson Bay Mountain?
A No, I never myself never checked at all, but I went along at that time to familiarize myself with the area and learn of goat hunting methods, because at that time it was -- Peter Bazil was Wah Tah K'eght.
Q You told us that you invited Dan Michell to come with you when you went hunting goats up in the northern part of the territory. Do you remember telling us that?
A Uh-huh.
Q Did you ask Bazil Michell's permission before you left on that trip?
A Any time when there is a hunting party going out, there is always some sort of meeting, and then he, of course, would be advised of it. And just a note of correction there. Yesterday I said it was -- a correction there. I said -- when we went up in that area, I had said that it was for my father's funeral feast, but I had made a mistake there. It was for my brother's funeral feast.
Q Is that your brother Andrew?
A That's right.

THE COURT: Was that the goat hunting trip to the area of Two Bridge Lake?

THE WITNESS: No.

THE COURT: It's the one to Porphry Creek?

THE WITNESS: The area is where Dan and myself had been, and it would be up in the headwaters of Sde Kep.

MR. PLANT:

Q Did you on this occasion, the occasion of the trip to the headwaters of Sde Kep with Dan Michell, did you in fact ask Bazil Michell for permission to travel there?
A Like I said before, we have a meeting and then I myself selected the party that was to accompany me, and I selected Dan and Cecil, and of course Bazil is also advised of our activities.
Q Was Bazil at that meeting?
A My sister is married to one of his sons, and who is aware of these meetings, and then he in turn advises his father of what is being said, because Bazil is

sometimes weak and old. He doesn't get around all that much now.

Q Which of your sisters is married to one of Bazil's sons?

A Helen.

THE COURT: I'm sorry?

MR. PLANT: Helen.

THE COURT: Thank you.

MR. PLANT:

Q And so Helen's husband went to advise Bazil that this hunting trip was going to take place; is that a fair statement?

A Sometimes my mother would send word over there to him to advise him of our activities, and then Roy is always taking care of his father, and he in turn would also advise him of our -- what our plans would be.

Q Is Roy the husband of Helen?

A Yes.

Q Do you know if Roy told Bazil Michell about this hunting trip, the hunting trip with Dan Michell to the headwaters of Sde Kep?

A I'm not sure if he had told him of this or not. But one thing is for sure, that he would know, when he goes to the feast, where the meat for this animal are mentioned at the feast, and he would be -- he would be certain to know of it then.

Q Under Wet'suwet'en law, Mr. Alfred, is Bazil Michell the owner of the territory on the west side of the Bulkley?

A Like I told you before, Bazil -- Peter Bazil had given this territory to Bazil Michell for his lifetime, in appreciation for the help he had received from Bazil Michell.

Q Does that make him the owner of the territory for his lifetime?

A All of the territory belongs to Wah Tah K'eght, but Bazil Michell was caretaking that particular area with -- for his lifetime.

Q Mr. Alfred, I would like to put another affidavit in front of you. It's the second interrogatories affidavit. Could you turn to the second page and tell me if that's your signature there.

A Yes.

Q Above the words "Wah Tah K'eght" and then in brackets "(Henry Alfred)", do you recall being required to answer or give another set of answers to the interrogatories that had been sent to you?

A I am not sure if you're saying that you sent us two sets, one after another, but I do know that I only signed one affidavit.

Q Well, Mr. Alfred, yesterday I showed you an affidavit dated July 31, 1986, and I think you told me that you had signed that on page 2. I put that in front of you now, and do you see your signature on the affidavit that has the July, 1986 date?

A I always thought that I made only -- I signed only one set of affidavits, and I -- at this time I couldn't recall.

Q All right. Well, let's just look at this second one which has the date -- actually it says "January 11, 1986", but I think Miss Mandell and I agree that that date should be January 11, 1987. And -- well, you have stated that that's your signature on page 2 of this affidavit, I think, but if you haven't, can you identify that as your signature above the name Wah Tah K'eght on the right-hand side about two-thirds of the way down the page? Is that your signature?

A It's just coming back to me now. I believe Louise came and I signed that in January.

Q By Louise you are referring to Louise Mandell?

A Yes.

Q So that's your signature there on page 2 of the affidavit of January -- it should be January, 1987?

A Yes.

Q Paragraph three of that affidavit you say:

> "The answers that are attached to this Exhibit A to this my affidavit are true to the best of my knowledge except where stated to be upon information and belief, and where so stated I verily believe them to be true."

And that statement was true at the time you made it, Mr. Alfred?

A Yes.

Q Mr. Alfred, could you turn to page 2 of Exhibit A to this affidavit, and at the bottom of the page there is a question and then an answer on the next page, which I want to ask you about. At the bottom of the page question 59E reads:

> "Have there been any changes in the boundaries of your House's territory since the date of the first contact between the Gitksan and ..."

I think that should be the "Wet'suwet'en".

"... and representatives of any European nations?"

Do you see that question?

A Yes.

Q And then the answer on the next page is as follows:

"At one time the territory incorporated the area north and south of the Bulkley River. Now it is just north. Jake Uetz apparently now claims ownership around Evelyn and up towards the Kitsegukla territory. I do not know how he got this. Bazil Michell owns this side. Peter Bazil at one time let Bazil look after it."

That's the end of the quotation. Now, that answer was true when you gave it?

A Yes.

Q And when you say in the first sentence, "north and south of the Bulkley River", are you referring to the -- what we would also say west and east of the Bulkley, that is to say the territory on both sides of the Bulkley River?

A At the time when -- I myself called it north and south at the time, but since, as of late, I have been corrected on it, and I am aware it is now east and west.

Q When you say in the second sentence of your answer, "now it is just north", you mean the east side of the Bulkley; is that correct? That's the side across from the village?

A Yes, at the moment it is across the river. And that's the area that I am looking after. And the west side is the side that Bazil is caretaking, although the whole area is Wah Tah K'eght territory.

THE COURT: Could I have the name again said to be the claimant in the Evelyn area.

MR. PLANT: Excuse me?

THE COURT: Could I have the name of the gentleman mentioned as the claimant of the Evelyn area.

MR. PLANT: Yes, I was about to ask a question about it. Jake Uetz, U-e-t-z, as it is spelled here.

MR. PLANT:

Q Mr. Alfred, is Jake Uetz a Wet'suwet'en person?
A No.
Q He's a white man?
A Yes.
Q Does he have a farm? Did he used to have a farm near Evelyn?
A I didn't know anything about him at all before.
Q What you know is that he apparently now claims ownership around Evelyn and up towards Kitsegukla territory; is that correct?
A At the time when Peter Bazil turned over the territory to me, he also advised me of the -- of this person having -- he advised me that this person, white person here, had papers for trapping and further in the lower part of that area, and that is when I was made aware of it. And then later on just recently I found out that he was -- his trapping -- trapline -- I heard that he has been hunting up in that area. I am not aware of his traplines yet.
Q Thank you, Mr. Alfred. I don't have anymore questions on the interrogatory at this time.
Mr. Alfred, is Kitsegukla Lake -- is any part of Kitsegukla Lake in Wah Tah K'eght's territory? Let me stop first. Do you know where Kitsegukla Lake is?
A Yes.
Q Is any part of that lake within the territory of Wah Tah K'eght?
A Kitsegukla Lake is outside Wah Tah K'eght boundary line.
Q I am going to show you a document which is an affidavit of Bazil Michell. I have a copy for Your Lordship. The affidavit is dated December 11, 1987, and on the second page of this, in paragraph three, Bazil says: "I have obtained permission from Wah Tah K'eght". Do you see that at the very top line of the affidavit of the second page, Mr. Alfred?
A Yes.
Q "I have obtained permission from Wah Tah K'eght, Henry Alfred, a plaintiff in this action, to describe and speak about the Tabegh Tai",

T-a-b-e-g-h, new word, T-a-i,

"territory owned by the House of Wah Tah K'eght. This territory is located in the valley of the Wed'zen Kwe,"

W-e-d'z-e-n, K-w-e.

"(Bulkley River) around the village of K'ayah Wig'et"

K'a-y-a-h, W-i-g'e-t,

"Moricetown."

Mr. Alfred, have you ever heard of any part of the territory of the House of Wah Tah K'eght described as the Tabegh Tai territory?

A Tabegh Tai is a road going by a lake. It's different from the area you are talking about in Kitsegukla.

Q Sorry, it's different from Kitsegukla?

A Different from the area you are talking about -- when you are talking about Kitsegukla.

Q But the road going by the lake is within the territory of Wah Tah K'eght; is that correct?

A Peter Bazil and Bazil Michell, they all travel the trail by the lake when they went up trapping in that area, and that is all within Wah Tah K'eght's territory.

Q Thank you. When did you give permission to Bazil Michell to describe and speak about the territory owned by the House of Wah Tah K'eght?

A At the time Bazil was still able to walk, when we -- he approached me at a feast and he asked me about having to do his -- this affidavit. We discussed it at that time, and I had told him that it seemed like we were both going to be doing affidavits on this, so they both agreed on it. And he was given permission to go ahead with this at that time.

Q So you discussed it with Bazil. Is this quite recently with Bazil Michell?

A That would be early '80's. Not exactly the -- that's probably around early '80's. I'm not sure exactly what year or month it was.

Q In paragraph four of the affidavit Bazil Michell says:

"On August 8th, 1983 I drove to the Kitsegukla Lake area with Gisdaywa (Alfred Joseph). During this trip I identified the western boundaries of the Wah Tah K'eght territory."

Then in paragraph 5 he says:

"Kitsegukla Lake is a boundary. On its east side is the territory of Wah Tah K'eght and on its west side the territory belongs to Guxsan,"

G-u-x-s-a-n.

"A Gitksan chief. I pointed out to Alfred Joseph the cabin site of the Wet'suwet'en chief at the east end of the lake and Guxsan's cabin site at the west end of the lake."

Now, Mr. Alfred, I take it that your understanding of the information -- of the location of the boundary on the western end of the Wah Tah K'eght territory is different from Bazil Michell?

THE COURT: Mr. Plant, is there any advantage in having the --

MR. PLANT: Excuse me?

THE COURT: -- having this witness discuss discrepancies between his evidence and someone elses? Surely this affidavit has been sworn by someone else who may or may not be a witness. If admissible as an admission or as a statement put forward by the plaintiff, stands for itself, and the witness's evidence stands for itself. Is there any point in having the witness discuss the evidence of someone else?

MR. PLANT: Well, My Lord, I won't pursue it.

THE COURT: The distinction, it seems to me, to be a narrow one. They are a few miles apart, but there is a distinction. It speaks for itself, I think.

MR. PLANT: I won't pursue the matter, My Lord.

Q Mr. Alfred, would you agree with me that your understanding, so far as you know, Bazil Michell has been trapping in the area west of the Bulkley River since before you were born?

A Yes, my -- Bazil has trapped up in that area before I was born, along with my mother, who was also up there in the early -- before my -- I was born. And they all -- mother was using different lines and Bazil was also using a different line, and they were the ones that had told me about that.

MR. PLANT: Thank you. I would tender the next affidavit as the next exhibit. I might say in that connection, My Lord, that this affidavit was delivered to us on the 6th of January, 1987. As I understood it, it arose by virtue of a ruling made by Your Lordship during the

course of the evidence of Alfred Joseph that -- where Mr. Joseph had given certain evidence of statements made to him by others. That evidence -- the admissibility of that evidence depended on the production of affidavits by his informants, and it was in that context that this affidavit was delivered to us as the statement -- as the evidence of Bazil Michell, who I will also say has given evidence on commission during this action, and his transcript of his commission evidence have been filed as Exhibit 71.

MS. MANDELL: My Lord, the affidavit hasn't been identified by this witness, and the condition upon which Mr. Joseph's evidence would be accepted on this point would be that there would be an affidavit filed of the informant. Now, it's still the option of the plaintiffs whether or not we seek to rely upon that evidence, and it's our position that if we chose to rely upon that evidence of Mr. Joseph, then the affidavit must go in with it, and its been delivered to my friend. But the plaintiffs haven't yet chosen to bring it in as part of their case. It's our position that it certainly can't go in now, based on what's been tendered here in court. And if we chose to rely upon that evidence of Mr. Joseph on this point, then would go in as part of the plaintiff's case in due course.

THE COURT: I don't recall that you were given the option, Miss Mandell. It may be right that you could call evidence and then decide later whether you were going to rely on it. I thought you tendered the evidence, or Mr. Rush did, of Alfred -- of Mr. Joseph, and said that you would support its admissibility by an affidavit. I didn't understand you were conditionally tendering the evidence of Mr. Joseph.

MR. RUSH: Perhaps I should speak to it.

THE COURT: This is an unusual enough order I made in the first place, but it would be even more unusual that you can tender evidence subject to supporting it with an affidavit, and then decide not to bother.

MR. RUSH: Well, I think Your Lordship in fact commented on the fact that you wished you hadn't made the order.

THE COURT: I very much wish I hadn't made the order. I would have to look at the transcript to see if I went this far as has now been suggested.

MR. RUSH: My recollection was that if we had sought to rely upon Mr. Joseph's evidence, where he had been informed by witnesses who were still living, then we had to

support that by bringing forward an affidavit of those living witnesses.

THE COURT: All right. Well --

MR. RUSH: And so it was up to the plaintiffs as to determine whether or not they sought to rely on Mr. Joseph's evidence, as given in his testimony, and to support that evidence by an affidavit of one of the persons who was his informant, and we have not made that election in respect of this evidence.

THE COURT: Can your friend not tender this affidavit as an admission that you have made, whether you chose to advance it or not?

MR. RUSH: Well, I don't see how. Your Lordship created certain specific terms upon which the evidence would be led, and my understanding of your order was that if we were going to rely on Mr. Joseph, it was really going back to Mr. Joseph's evidence in -- ultimately.

THE COURT: But are you not taken to be relying on Mr. Joseph's evidence by tendering the affidavit to your friend?

MR. RUSH: I don't think so.

THE COURT: I presume -- has this been filed in court?

MR. RUSH: No.

THE COURT: Well, I would like to review the dialogue or the discussion which I wish hadn't happened before I deal with this matter. Do you have any further cross-examination on this material, Mr. Plant?

MR. PLANT: No, I am happy to proceed with that.

THE COURT: I think it should be marked for identification only. We will review this interesting discussion some other time.

MR. PLANT: The position taken by my friend is an odd one, is to offer evidence -- tender evidence without any expression as to whether the evidence is conditional or not, then to be told that the evidence will only be admissible if an affidavit is tendered, and then to offer that affidavit and take a position that somehow that is not a statement by a witness which might be offered as evidence at this time is a strange position.

THE COURT: I have already commented on that.

MR. MACAULAY: When do we find out whether the evidence is evidence or is not evidence?

THE COURT: Well, I'll be glad to hear counsel on it as soon as we finish this witness, if you wish. The next exhibit number please.

THE REGISTRAR: Marked 178 for ID only.

THE COURT: Yes, this would be 178 for Identification.

(EXHIBIT NO. 178 FOR IDENTIFICATION - AFFIDAVIT OF BAZIL MICHELL)

MR. PLANT:

Q Mr. Alfred, I want to move onto another subject now. Is there a word in Wet'suwet'en for family?

A It's right at the tip of my tongue, and I couldn't say it just yet.

THE COURT: Well, lead him, perhaps, if you can.

MR. PLANT: Excuse me, I don't know what the word is, so this is one of those --

MS. MANDELL: It's a kind of difficult situation where my friend asks the interpreter to interpret for Mr. Joseph whether or not there is a word which the interpreter is going to have to himself express in order to convey the meaning. I can't really --

THE COURT: No -- with respect, the interpreter doesn't have to use the word. He can repeat the question. Is there a word --

MS. MANDELL: Word for -- what is he going to say?

MR. PLANT: The fact is, My Lord, that this witness does speak English, and I don't think, with respect, that the question was conceptually difficult.

THE COURT: Well, this is just one of the difficulties of using an interpreter, and if he has to use the word, he has to use the word. The witness may say that's a word I don't recognize.

MR. PLANT: My desire is simply to find out what the word is. It appears that --

THE COURT: I think the interpreter can interpret the question in such a way as he thinks appropriate for interpretation or translation, and the witness can say yes or no to that, or he can say I don't recognize the word.

MR. PLANT: Well, it may be then that the question should be re-asked by Mr. Holland.

THE COURT: Yes please. Ask the witness, please, Mr. Holland, if there is a Wet'suwet'en word for family.

THE WITNESS: It's a very difficult one. It's Elah Gisk'ak'.

MR. PLANT: Do you have the spelling for that, Mr. Mitchell?

THE TRANSLATOR: E-l-a-h, G-i-s-k'a-k'.

MR. PLANT: Thank you.

Q May I have the blue book of photographs placed before Mr. Alfred. And I am moving to another subject, Mr. Alfred. Tab 15, which I think is Exhibit 160. It's a picture. Do you recognize that building, Mr. Alfred?

A Yes.
Q And can you tell the Court what's in it?
A Moricetown store.
Q That's a store just off the highway just north of Moricetown?
A That's right.
Q Is that store owned by a Wet'suwet'en person?
A No.
Q Is that store there with the permission of Wah Tah K'eght, to your knowledge?
A That store was there at the time -- it was put there at the time when Bazil was -- Peter Bazil was Wah Tah K'eght, and there was no permission sought from him at that time. All of a sudden that store was there. That establishment -- the store was down at the foot of that hill at one time, but then they moved it up above.
Q Did people from Moricetown shop at the store or buy gas there from time to time to your knowledge?
A I don't go there myself, so I wouldn't be able to say, because I go to a store elsewhere myself.
Q Where do you go to do your shopping, Mr. Alfred?
A We go shopping at a bigger store in Smithers.
Q Do you ask Gordon Hall for permission every time you go shopping at the store in Smithers?
A Do the people who have stores there ask Gordon Hall's permission? Well, I am much the same way.
Q That's sort of a silly question, isn't it? You wouldn't think of asking Gordon Hall for permission to shop at a store in Smithers, would you?
A Now, if Gordon Hall had a store within his territory, traditionally I would ask permission to go there.
Q I want to turn your attention now to Exhibit 162, which is a photograph at Tab 18 of this book. Do you recognize this -- what this photo shows, Mr. Alfred?
A It looks like a sawmill.
Q There is a sawmill on the highway near Moricetown. Does that photograph look like that sawmill to you?
A Yes.
Q Is that sawmill there with the permission of Wah Tah K'eght?
A No.
Q To your knowledge do people from Moricetown work at that sawmill?
A I don't think so, because there doesn't seem like there is anybody from the village working there.
Q Do you know if people at Moricetown have worked at

that mill in the past?
A I don't know whether they did or not. They may have.
MR. PLANT: I am going to change materials now. If I might have Exhibit 164 for a minute.
THE REGISTRAR: The map, My Lord.
MR. PLANT: Thank you, Madam Registrar.
Q When Miss Mandell was asking you about the logging of the Moricetown Band, she marked some areas with an "x" which are west of Moricetown, which you have identified as places where the Moricetown Band Council had done some logging. Do you recall that?
A Yes.
Q My understanding, Mr. Alfred, is that there is now more logging being done by the Moricetown Band, since the date of this map, further up the hill west of Moricetown. Can you confirm that for me?
A Yes.
Q As Wah Tah K'eght are you receiving any compensation for the use -- for this use of your territory by the Moricetown Band?
A They don't pay me for the use of the territory, but they -- I can -- the family and myself can make a living off that.
Q Because you have -- you yourself have a job driving truck, as I understand it, as part of this operation?
A Yes, I make a living as a truck driver, and that is one way of compensating me.
Q Have you ever heard of something called the mountain pine beetle?
A Yes, I have heard of it.
Q My understanding is that much of the logging in the Bulkley Valley is being done because there is a problem with the mountain pine beetle in the Bulkley Valley.
A I have heard of the pine beetle, but not within that area there, but further north along the highway they had a small patch of problem there, which -- where they had the problem with the pine needles. It was cut out.
Q Is that within your territory?
A Yes, where they had -- where they had beetle problem there, white people cut that out.
Q I would just like to know where that is a little better than I do now.
A It would be along Highway 16 just a little north of the village.
Q Of course if the trees aren't cut, then the beetle

just spreads everywhere; is that your understanding?
A That I don't know about. I don't know the beetles' activities at all.
Q Thank you. I don't need Exhibit 164 anymore. I am going to change the subject again, Mr. Alfred. You told us a few -- well, quite a few days ago that your first kill is a coyote. Do you remember telling us that?
A Yes.
Q And as I understand it, the coyote was caught in one of your grandmother's traps?
A Yes.
Q And it was still alive when you came on it?
A Yes.
Q Was it a leg hold trap?
A Yes.
Q You told us that you worked as a section foreman for the CNR for 13 years. Where did you do that work?
A We went away where they took us. I was at Telkwa, then down towards Prince George, a place called the Beadnesti.
MR. PLANT: I don't know that place. Do you have that?
THE TRANSLATOR: B-e-a-d-n-e-s-t-i.
MR. PLANT:
Q Well, let's use that as our spelling for now. Is that place near Prince George, Mr. Alfred?
A Yes.
Q What does a section foreman do?
A A section foreman has co-workers, and we go to fix mud holes, and if there is a broken rail, you replace it.
Q You fix the track?
A Yes.
Q Did you work around the track to clean out culverts?
A Yes, we cleaned out any debris that should float into the culverts.
Q You then, as I understand it, you worked for the Department of Highways for 15 years?
A Yes.
Q Was that a full-time job?
A Yes.
Q All year round?
A Yes.
Q And that's the Provincial Department of Highways? If that causes you trouble, that's fine. I'm not aware of any other Department of Highways. Well, maybe I better make sure of that. Where did you work?
A In Smithers.

Q You have an office in Smithers or a place to go to everyday?
A I didn't have an office there, but a white man had an office there who I worked for, and there was a lot of other white men worked in there. We all went there everyday.
Q Did you do work maintaining the highways?
A My job was to haul gravel and fill in pot-holes, and in the winter months plowing the roads.
Q And was that on the highways in the area of Smithers?
A Yes.
Q Up as far north as Moricetown?
A Yes.
Q Farther than Moricetown?
A No.
Q And how far south?
A To Wakefield.
Q Wakefield?
A Wakefield.
Q Working on Yellowhead office, the Telkwa High Road?
A Yes.
Q Some of the other roads in the area?
A Me, I was mainly on the highway. Just go through the high road and then onto the highway. That was on the return trip.
Q I have some more questions about your interrogatories.

THE COURT: Are you changing the subject -- are you changing subjects now?

MR. PLANT: I am, My Lord, and it would be convenient.

THE COURT: We will take the adjournment now.

(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 RESUMED AT 11:15)

THE REGISTRAR: Order in court.
THE COURT: Mr. Plant.
THE REGISTRAR: Ready to proceed, my Lord.
MR. PLANT:

Q Before I ask you some questions about the interrogatories, Mr. Alfred, do you know what the Wet'suwet'en word for caretaker is, and I'm thinking about the context you told us that Bazil Michell was the caretaker of the territory?

A Waghuntii.

MR. PLANT: Can I have the spelling, please?
THE TRANSLATOR: Waghuntii, W-a-g-h-u-n-t-i-i.
MR. PLANT:

Q Thank you. Now, Mr. Alfred, I'm going to ask you to look again at the interrogatories. This is the second set, the one that was dated January 1987, and perhaps you could look at the first page of Exhibit A, question 2. Exhibit A I think is the attachment to the affidavit, and question 2 reads: "Where were you born", and your answer was "Moricetown". That's correct, is it, Mr. Alfred?

A That's right.

Q And then there's a word in brackets that's spelled as follows: T-s-a d-a-a-s d-h-u-k. Do you recognize that word, Mr. Alfred? My question, firstly, is simply do you recognize that word?

A That's not K'ayah Wig'et, is it?

Q No. The K'ayah Wig'et is the usual term for Moricetown, isn't it?

A I can't -- I can't recognize that word. Maybe you can pronounce it for me.

MR. PLANT: I'm not going to try, because I don't think my pronunciation would assist you, but I wonder if Mr. Mitchell can pronounce it? I can show you the page on which it's written, if that would help.
THE TRANSLATOR: Looks like Tsa daas dhuk.
MR. PLANT:

Q Having heard Mr. Mitchell give it his best, does that recall anything to mind?

A The place where I was born is called Ts'e tes t'uk.

Q Is that the name of the house in which you were born?

A The name of the place where I was born is Ts'e tes t'uk.

MR. PLANT: Do we have a spelling for that, Mr. Mitchell?
THE COURT: That's marked on Exhibit 84, is it not, just north

of Moricetown?
MR. PLANT: Is it marked on Exhibit 84, my Lord?
THE COURT: Yes.
MR. PLANT: Yes, it is. There is one spelling of it, if you want, Mr. Mitchell. It's different from the spelling in the interrogatory.
THE COURT: Is that how you would spell it, Mr. Mitchell?
THE TRANSLATOR: Ts'e tes t'uk, T-s-'-e t-e-s d'u-k(sic).
MR. PLANT: You say that's the place where you were born -- excuse me, Mr. Holland, were you explaining something to the witness?
THE INTERPRETER: No. I wasn't explaining anything.
MR. PLANT:
Q That place, Ts'e tes t'uk, you say that's the place where you were born, Mr. Alfred?
A It was a place of residence where we were living is where I was born, a place called Ts'e tes t'uk.
Q Was it a building?
A Yes. It was a house built on the place called Ts'e tes t'uk, is -- it was on top of the hill.
Q Is that hill in Moricetown, Mr. Alfred?
A Yes.
THE TRANSLATOR: Excuse me, Mr. Plant.
MR. PLANT: I wanted to -- I'm sorry.
THE TRANSLATOR: There's a correction on that. It's number 522, Ts'e tes t'uk, it's on the list.
MR. PLANT: Thank you.
THE COURT: Spelled the same way or differently?
THE TRANSLATOR: With a T.
THE COURT: Yes, thank you.
MR. PLANT:
Q Now, turning now to page -- question number 6, Mr. Alfred, the question is:

"Of what church if any are you a member?"

And the answer is:

"Holy Rosary Catholic Church, Moricetown."

Is that correct?
A That's right.
Q Now, if I might ask you to turn to question 18, that question reads:

"To the extent that your recollection permits, state the names, places, and dates of birth of

your grandparents, children and grandchildren, the places where each of these individuals has lived, and where appropriate, now lives, the name of the Indian band to which each of these individuals has belonged or now belongs, and the name of their Wet'suwet'en clan and house."

You see that question, Mr. Alfred?

A Yes.

Q My Lord, I should advise you that in interrogatory proceedings before Mr. Justice Locke certain parts of that question were ordered not necessary to answer. The answer that appears in the interrogatories begins in the first paragraph: "My mother's mother was Lucy Pius", I think it should be. That's the name of your grandmother, Mr. Alfred, Lucy Pius?

A Yes.

Q

"She was born in Moricetown, I don't know the date. Her clan was Laksilyu and her house is" --

And then there's a word that is spelled as follows: T-z-a-k-h-a-l-w-a-h-t-a-h. Your grandmother's house, what was your grandmother's house, Mr. Alfred?

A You almost mentioned that name of that house, but you stopped. I would like you to mention the name of that house, and then in turn I will tell you whether you're correct or not.

Q All right. My reading of this word is Tsakhalwahtah. Is that the name of your mother's mother's house?

A You almost had it right there. It could very well be Tsee k'al way yex or Tsee k'al wet'en.

MR. PLANT: I think those are both new words.

MR. RUSH: It's 398.

THE TRANSLATOR: Tsee k'al wa yex.

THE COURT: Is that 398?

THE TRANSLATOR: No, it isn't. T-s-e-e k'-a-l w-a y-e-x, and Tsee k'al wet'en, T-s-e-e k'-a-l w-e-t'-e-n.

THE COURT: What is the last letter?

MR. PLANT: N.

THE COURT: N?

MR. PLANT:

Q The second name that you mentioned, Mr. Alfred, Tsee k'al wet'en, does that mean "People of the flat rock"?

A Yes. It's "people of the flat rock", or "From the flat rock".

Q So with that explanation, the first part of your

answer to question 18 is true; the part that I read a minute or so as --

A Yes.

Q Your answer continues, I quote:

> "My mother's father was Jimmy Mule, I don't know when he was born or the date. I was told by my" --

And I think the word should be "mother":

> That he was a non-Indian and had no clan or house."

Was that part of your answer correct?

A Yes. My grandmother had told me of this, and when my -- when my mother was -- grandmother was still pregnant with my mother this person had passed on, and my mother had never seen the father.

Q Thank you. The next part of your answer:

> "I don't know who my father's father was. My father's mother was Christine Alfred. She was born in Moricetown, I don't know the date. Her house was Grizzly and her clan I do not know."

Can you tell me, please, simply whether that answer is correct, that part of your answer is correct?

A Yes. At the time when that question was put to me I mentioned Cassyex, and then I knew my father was Gitdumden, so the mother would be Gitdumden also.

Q Is Cassyex also known as the Grizzly House?

A Yes.

Q There was a part of your answer about your mother which I don't have to ask you about, but the last part of your answer reads:

> "My children were all born in Smithers and live in Moricetown. Dolores Alfred is 27, Ricky Alfred is 25, Tony Alfred is 22, Margie Alfred is 20. Their clan is Gilseyhu, and the chief of this house is Namox."

And recognizing that your children are a year older now, was that answer correct at the time you gave it?

A Yeah. There was one child missing on there, and the clan is Tsayu.

Q So the clan is wrong in the answer?
A I didn't give that answer Laksamshu, it's Tsayu. The mistake could have been that Laksamshu and Tsayu are almost as one, that's where that mistake could have stemmed from.
THE COURT: Can I have the name of the spelling of the clan, please.
MR. PLANT: Tsayu?
THE COURT: Yes.
MR. PLANT: T-s-a-y-u.
THE COURT: Thank you.
MR. PLANT: And I believe he's now used the name of another clan, Laksamshu.
THE TRANSLATOR: 133.
THE COURT: Thank you.
MR. PLANT: I used the word Gilseyhu.
THE TRANSLATOR: 132.
THE COURT: 132?
THE TRANSLATOR: Yes.
THE COURT: Thank you.
MR. PLANT:
Q And the name that's given in the answer here is Gilseyhu. Do you see that, Mr. Alfred? It's on the last line of the answer.
A Yes.
Q Thank you. Could you turn to question 28, which is on page 7, and that question reads:

> "What do you understand the word Wet'suwet'en to mean or describe as used in paragraphs 51, 52 and 53 and so on of the further amended statement of claim?"

Your answer is:

> "Wet'suwet'en means 'The people of the first place and where the water receded.'"

You see that?
A Yes.
Q And that answer was correct at the time that you gave it?
A Yes.
MR. PLANT: Question 32 you were asked about chiefs of the Wet'suwet'en who were not plaintiffs in the action, and you told us in the answer at the top of page 8 who the other chiefs in your house are, and --

THE COURT: Sorry, of your house?
MR. PLANT: Who the other chiefs in your house are.
THE COURT: Oh, in your house, yes, all right.
MR. PLANT:
Q And that part of your answer reads:

"The other chiefs in my house are Cecil Alfred, Dorothy (Alfred) George, Irene Brown, Janet George, Christine William, and Warren William."

Do you see that answer?
A Yes.
Q Now, your mother is also one of the chiefs in your house, isn't she?
A Yes.
Q Now, how old is Warren William, or perhaps I should ask you: Is Warren William one of the chiefs in your house?
A Yes.
Q Do you know how old he is?
A He could be older than ten, somewhere between ten and twelve.
Q He's still a boy?
A Yes.
THE COURT: I'm sorry, Mr. Plant, but I'm not following this precisely, because I thought you said that question 32 asked for the chiefs of the Wet'suwet'en, not plaintiffs in the action. It seems to me --
MR. PLANT: Yes. I was trying to summarize the question that had been asked in the interrogatory.
THE COURT: We've jumped now to the chiefs of the house.
MR. PLANT: Yes. Question 31 in the interrogatories reads:

"Do you know of any hereditary chiefs of the Wet'suwet'en who are not plaintiffs in this action?"

And question 32 was:

"If you do, identify them and state why to your knowledge these hereditary chiefs of the Wet'suwet'en are not plaintiffs?"

THE COURT: All right.
MR. PLANT: And the --
THE COURT: What was the --
MR. PLANT: The answer began with, and I'll read the full answer

now to the witness, it might assist your Lordship, at the top of page 8.

THE COURT: It would help me better and I would have much more confidence in what I am understanding if I knew the answer to question 31.

MR. PLANT: Oh, the answer to question 31 was "Please see answer to question 29", which is going to take us back to an entirely different question, my Lord. I was trying to in the interests of time short circuit. The problem is that -- or not the problem, the issue was whether or not all of the chiefs of the Wet'suwet'en were named as plaintiffs. That was what a number of questions in the interrogatories were directed at, and it has appeared since then, not just in the answer to these interrogatories but throughout all of the evidence, that there are a number of chiefs of the Wet'suwet'en who are not plaintiffs. Those include the people who are sub-chiefs in a house.

THE COURT: Yes. I understand that.

MR. PLANT: And as part of the answer to question 32 Mr. Alfred was naming the sub-chiefs, as I understood it, in his house.

THE COURT: Yes. We've got those now.

MR. PLANT: And I've then read the names as he had given them to us.

THE COURT: Yes.

MR. PLANT: And asked the witness whether his mother was also a sub-chief.

THE COURT: Yes.

MR. PLANT: And perhaps I should do this. Mr. Alfred --

MS. MANDELL: Excuse me, my Lord, just if I could assist, when the question "Do you know of any hereditary chiefs of the Wet'suwet'en" -- "Do you know of any hereditary chiefs of the Wet'suwet'en who are not plaintiffs in the action", to that question the answer was referred back to question 29, and the answer is "No". This refers to the principal chiefs of the Wet'suwet'en who represent the Wet'suwet'en clans. There are holders of other chief's names who are considered chiefs but are not properly represented in this court action by another Wet'suwet'en but are properly -- I'm sorry -- there are holders of other chief's names who are considered chiefs but are properly represented in this court action by another named Wet'suwet'en chief, and now my friend is asking with respect to the chiefs of his house, who are they, but the initial answer is that everyone's represented and some are represented

by chiefs -- by other high chiefs.

THE COURT: Well, I'm sorry to be so difficult, but I -- the way the evidence has been led, now I am being asked to attribute chiefs of houses to chiefs of clans. The question was who -- or what Wet'suwet'en chiefs are not plaintiffs, and the answer I've been given is sub-chiefs of the house. Now, perhaps I haven't heard the whole answer.

MS. MANDELL: No. I believe that on the question about whether or not he knows of any hereditary chiefs of the Wet'suwet'en who are not plaintiffs in the action, the answer was given in a question and answer that my friend didn't refer you to, and that is that all the chiefs are represented in the action.

THE COURT: Yes. Well, can I be given the wording of question 32 again, please?

MR. PLANT: 31.

THE COURT: No, 32. That's what I wrote down.

MR. PLANT: 32 is -- well, 31:

> "Do you know of any hereditary chiefs of the Wet'suwet'en who are not plaintiffs in this action?"

THE COURT: Yes.

MR. PLANT: The answer given is "Please see answer to question 29".

THE COURT: What is question 32 again?

MR. PLANT: The question 32 is:

> "If you do know of any hereditary chiefs who are not plaintiffs in the action" --

I'm interpolating those words:

> "Identify them and state why to your knowledge these hereditary chiefs of the Wet'suwet'en are not plaintiffs."

THE COURT: That's a completely different question from the one when I -- the one I think you put in the first place to the witness.

MR. PLANT: My Lord, the question -- the only reason for putting the question to the witness was because as part of that answer he had stated who the other chiefs in his house are, and I was not interested in raising the matters that were --

THE COURT: I'm just sitting up here in the dark, Mr. Plant. I don't even know now what the question is.
MR. PLANT: Yes.
THE COURT: Because the question put first was:

> "Name the chiefs of the Wet'suwet'en who are not plaintiffs in the action."

And that's of course what we were -- If I had the questions and answers in front of me I would be able to follow them.
MR. PLANT: I would be happy to provide them to you.
THE COURT: That might solve the problem.
MR. PLANT: Yes. I had a much narrower purpose in mind. In fact, the question I had asked Mr. Alfred was simply the question of whether he had properly stated the names of the other chiefs of his house.
THE COURT: No, no. The question you put to him was the other chiefs of the Wet'suwet'en.
MR. PLANT: Yes. I --
THE COURT: At least that's what I wrote down.
MR. PLANT: Well, perhaps over the lunch-hour, my Lord, I will arrange to have a copy made.
THE COURT: You don't need to do that. You can start over again, if you want. I'm at the moment quite uncertain first what the question was, secondly what the answer is in relation to it, and I'm sure it's all very very simple.
MR. PLANT: Well --
THE COURT: Why don't you start again.
MR. PLANT:

Q Mr. Alfred, in your answer to question 32 of the interrogatories, in part of your answer you say, and I'm quoting:

> "The other chiefs in my house are Cecil Alfred, Dorothy (Alfred) George, Irene Brown, Janet George, Christine William, and Warren William."

That's the end of the quote. Now, Mr. Alfred, you are the head chief of your house; is that correct?
A Right.
Q And there are other chiefs in your house; is that correct?
A That's right.
Q And have you correctly stated the names of the other chiefs in your house in your answer to question 32?

A Yes. The answer there, I just put down my mother and my sisters, and they're in the immediate family, but in the feast hall there are others that have names that I didn't put down in the answer.
Q And those others are also chiefs in your house?
A Yes. There's others in my house that are of the -- members of the house that are also chiefs.
Q And actually in the answer to question 32 you -- your mother's name doesn't appear; is that correct?
A No.
Q So you left her name off when you were answering this question; is that correct?
A Yes. I -- I forgot to put my mother's name on there and others, I just simply forgot in time. I just managed to put my sister's and brother's name on there.
Q Do you know Thomas Holland?
A Yes.
Q And does he have a chief's name?
A Yes. I -- he has -- also has a name, and I forget at the moment.
Q Is he a chief in your house, Mr. Alfred?
A Yes.
Q Thank you. I'm going to change the subject now, Mr. Alfred. Were you a band councillor of the Moricetown Band at one time?
A I forget at the moment, but sometime back I believe I was in for one term or one season.
Q I'm going to show you a document and ask you if you've seen it before. It's a three-page document. I have a copy for your Lordship. The -- on the third page at near the bottom can you tell me if that's your signature, the words "Henry Alfred"?
A Yes.
Q My understanding is that this is a by-law made by the Moricetown Indian Band in 1962 which related to fishing on the Indian Reserve. Do you recall that?
A Yes. I remember that.
Q And that's a copy of the by-law that is there in front of you?
A I don't know the front page, but where I put my signature, I recognize that.
Q And how about the second page? I guess the by-law begins on the second page; is that correct?
A I recognize this by-law, but just wondered how come you have two dates on there, one August and then July also.

Q Well, Mr. Alfred, can you recall why that would be there?
A I couldn't recall why it would be there, but that's 1962, 25 years ago.
Q It's hard to remember things that happened 25 years ago, is it?
A Yes. Sometimes I find it hard to remember.
Q But you can recognize the last two pages of this three-page document as the Moricetown Band Fishing By-law from 1962?
A Yes.
Q My Lord, I would ask that the -- well, let me ask you this, Mr. Alfred, before I do that: Do you know if the D.I.A. approved this by-law, Mr. Alfred?
A This by-law was given to D.I.A., and I don't recall whether it was approved or not. What they did with it I do not know, and this is the first time I seen that document since.
Q My Lord, the three pages were taken or comprise Exhibit A from an affidavit of Victor Jim, which was filed by the plaintiffs or filed by -- yes, the plaintiffs in another capacity perhaps in another proceeding, and it's the Supreme Court action number A861548.

THE COURT: Well, let's --
MR. PLANT: I'm going to tender --
THE COURT: Let's see if there's any objection.
MS. MANDELL: There's no objection.
MR. PLANT: I was going to tender the three pages.
THE COURT: Yes, all right, no objection.
THE REGISTRAR: Exhibit 179.
THE COURT: Thank you.

EXHIBIT 179 - 1962 Moricetown Band Fishing By-law, three-page document

MR. PLANT:

Q Now, Mr. Alfred, you've given us some evidence about fishing at Moricetown. I want to read to you from an affidavit of Victor Jim first. Did you know Victor Jim, Mr. Alfred?
A Yes.
Q Is he a Wet'suwet'en person?
A Yes.
Q And he lives at Moricetown?
A Yes.
Q I want to see if I can secure your agreement to the --

to two of the statements in this affidavit. In -- well, I'll provide you with a copy of the paragraphs. It's paragraph 5, Victor Jim says:

> "The Moricetown band is located at a prime fishing location, and we are in the process of developing a commercial campground for the convenience of sports fishermen who visit our reserve. We have had thousands of sports fishermen fishing from our reserve and purchasing fishing permits over the years."

I'm going to stop there and ask you if that part of what Victor Jim has said is true?

A Yes.

Q Now, I want to read to you from paragraph 6:

> "As a result of by-law number 1" --

And I should stop there. By-law number 1 is the name of the 1962 fishing by-law, isn't it, Mr. Alfred? Do you recall that?

MS. MANDELL: Excuse me, my Lord, I would suggest if my friend is going to read a paragraph to the witness he read the whole paragraph. He stopped dead flight in the middle of the sentence, and I think the whole thing should go in.

THE COURT: Is the remaining portion connected with the part that has been read?

MR. PLANT: It's unrelated to the --

MS. MANDELL: I think it is.

MR. PLANT: Sorry.

MS. MANDELL: I think it's completely related. It's in the same sentence.

THE COURT: You say it is, Miss Mandell, and Mr. Plant says it isn't.

MR. PLANT: Well, I'm quite happy to tender the affidavit for your Lordship to review. The balance of the sentence has to do with whether there has ever been a challenge by the plaintiffs against their right to issue permits, which is not the reason I'm asking the witness for the confirmation of the other part of the statement.

MS. MANDELL: Well, the first part of the paragraph suggests that there's been a flood of sports fishermen fishing on the reserve purchasing permits over the years. It's unclear whose jurisdiction it was to issue the

permits and under whose authority this whole visiting of the area by sports fishermen was conducted, and I think it's left very ambiguous, which is a kind way of stating it, as to what is to be drawn from the statement itself.

MR. PLANT: Well, I can assure my friend that the only interest I have at this point is expediting the proceeding. The problem with --

THE COURT: Do you object to reading the other part?

MR. PLANT: No, I don't.

THE COURT: All right, let's.

MR. PLANT:

Q It gets us back to the same old problem of the interrogatories, because it may lead us to other things, and I don't object to any part of it, it's just not a necessary expenditure of time. Mr. Alfred, could you turn back to paragraph 5 on page 3 of Mr. Jim's affidavit, and I want to read you the whole of the sentence that I only read part of a minute ago. It begins at the top of page three:

> "We have had thousands of sports fishermen fishing from our reserve and purchasing fishing permits over the years, and there has never been a challenge by the plaintiffs herein or any other sports fishing organization against our rights to issue permits prior to the application that went in on June 13th."

Is that statement true, Mr. Alfred?

A Yes.

THE COURT: Now, who are the plaintiffs?

MR. PLANT: The plaintiffs in the proceeding in which this affidavit was sworn are the Attorney General of British Columbia on the -- and then there's a number of associations: The B.C. Wildlife Federation, Sports Fishermen Coalition, and so on.

THE COURT: Yes, thank you.

MR. PLANT:

Q Mr. Alfred, as part of that fishing by-law of 1962 there were permits issued to sports fishermen to fish from the -- to fish within the Moricetown Reserve; is that correct?

A It don't seem like it at that time, but recently we have been.

Q Did the Moricetown Band receive income from the sale of those permits?

A This -- I don't know the business of the band at all, you shouldn't be asking me about that, maybe somebody that knows the band business, like Dan, you might ask.

MR. PLANT: Well, you were on the band council for a year when this by-law was enacted, and the idea was the permits would be sold to white sports fishermen, correct?

MS. MANDELL: Well, there's two questions in that, perhaps he can --

MR. PLANT: I would be happy to. I thought it was already understood that the answer to the first question was yes. You were on the Moricetown Indian Band Council at the time that this by-law was issued, Mr. Alfred?

THE COURT: Surely we have that answer already.

MR. PLANT: Yes, all right. Was it your understanding -- well, that's fine, I don't need to ask that. The by-law speaks for itself. I'm going to produce another document for you, Mr. Alfred. Have you seen that document before?

MS. MANDELL: I haven't seen it.

A I never seen anything like that.

MR. PLANT:

Q My reading of this is it's a questionnaire about Moricetown fishing. Did you ever answer any questionnaire about Moricetown fishing?

A I know that within the K'ayah Wig'et that different clans have different fishing sites that I know. Is that -- is this paper referring to that?

Q In a way it does, but it -- but it also asks questions such as whether anyone in the family fishes or whether smokehouses should be rebuilt in the canyon and so on. Were you ever asked those questions within the last year or two by someone as part of a questionnaire?

A Yes. In regards to rebuilding smokehouses, we had a meeting, we talked about it -- about rebuilding smokehouses, and also the use of the fishing site, fishing sites that we should -- whether we use the fishing sites, the chiefs of the -- holders of fishing sites should be -- should have the fish from that area first before they are distributed.

MR. PLANT: Thank you, Mr. Alfred. My Lord, I'm in a difficult position at the moment. On July 31st your Lordship directed that certain documents be produced, including a questionnaire that was referred to in plaintiff's document 3339. We haven't had production of any of those documents yet, and I at that point, or because of that, that sort of stops my questioning in this area. I should say, I believe a demand was -- another

demand was made by Miss Sigurdson on the 25th of January for production of these documents, and to my knowledge we haven't had a reply to that demand. I don't know if the documents exist or not, but proceeding on the assumption that they do, because the questionnaire is attached to Mr. Jim's affidavit, my cross-examination can't proceed beyond the point that it has on this issue.

THE COURT: What, are you asking your friend if there are questionnaires, or if there is a questionnaire signed by the -- or responsive questionnaire signed by the witness?

MR. PLANT: I want them all, and if that includes one signed by the witness, and it may or may not, I don't know, then I'm obviously particularly interested in that.

THE COURT: Miss Mandell, do you have some questionnaires for your friend?

MS. MANDELL: Excuse me, my Lord. Well, my Lord, with respect to this questionnaire, the witness can't identify it, so I don't know what further leads may be drawn from it. With respect to the other requests, I don't have any up-to-date knowledge as to where the -- where the production of those documents at this moment will lead. I do know that there is somebody who's been involved in looking after that request, and I don't know what the state of it is.

MR. PLANT: I'll proceed. If something comes to light later then --

THE COURT: All right.

MR. PLANT: I will govern myself accordingly.

THE COURT: Thank you.

MR. PLANT:

Q Mr. Alfred, I'm going to change the subject again. Is there a picnic site at Taltzen Lake?

A Yeah. There is one at Taltzen, but --

MR. PLANT: Oh, perhaps we should wait until we get the number of the word.

THE COURT: Well, we had it before.

MR. PLANT:

Q And there are picnic tables there by the lake?

A Yes.

Q And is that within the territory of Wah tah k'eght?

A Yes.

Q And did Wah tah k'eght -- or was Wah tah k'eght responsible for the building of that picnic site?

A No.

Q There's a road that goes up to Taltzen lake from

Highway 16 called the Kitsegukla Lake Road. Are you familiar with that road?

A Yes.

Q And was that road constructed by the House of Wah tah k'eght?

A No.

Q My understanding is that that road or a trail has been there since before you were born. Are you aware of that?

A I didn't know where exactly the foot trails were in there, but the only ones I knew was the ones going to Ta begh tai.

Q There's been a road up to Kitsegukla Lake though for as long as you can remember?

A I never been in that Kitsegukla area at all, but I -- all I knew is the boundaries between Kitsegukla Lake and Ta begh tai, and as long as I can remember it was -- there was a road leading into the area.

THE COURT: Does that road go up the Trout Creek Valley, or is it the same road that goes by MacDonald Lake?

A No. That's not the same road. There's a different road going into MacDonald Lake.

MR. PLANT:

Q But the road up to Kitsegukla Lake, does it go up to Trout Creek Valley?

A Yes. There's a road in there, but it goes towards -- there's a road going towards Tsee Ggexw on the foot of the mountain.

THE COURT: What's that word, please?

THE TRANSLATOR: Tsee Ggexw, 533.

MR. PLANT:

Q Mr. Alfred, did you vote in the last provincial election?

A Yes, I did, at Moricetown.

THE COURT: Shall we adjourn for lunch?

MR. PLANT: Yes, my Lord.

THE COURT: Thank you.

(PROCEEDINGS ADJOURNED AT 12:35)

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

Graham D. Parker
Official Reporter
United Reporting Service Ltd.

(PROCEEDINGS RECOMMENCED AFTER LUNCHEON RECESS)

THE REGISTRAR: Order in court. Calling Delgamuukw against Her Majesty The Queen at bar, My Lord.
THE COURT: Mr. Plant.
MR. PLANT:

Q Mr. Alfred, I place before you Tab 1 of the blue book of photographs. More accurately, I have put the photograph that is at Tab 1 of that book in front of you. Do you recognize what is shown in that photograph, Mr. Alfred? My understanding is that's a sign on the Yellowhead Highway either within -- in the southern part of your territory or just outside it. Does that refresh or enable you to identify this picture?

A It seems like I can't recognize that. I have never seen anything like that before.

Q Are you aware -- have you ever heard of an individual named Ben Ridennoure or Ridennoure? And my spelling is R-i-d-e-n-n-o-u-r-e.

A The name that you mentioned sounds like there is somebody living down by Adam's Igloo, but that person is out of the boundaries of our territory.

Q Adam's Igloo is a place on the Yellowhead Highway, Mr. Alfred?

A Yes.

Q Is that inside or outside your territory?

A Outside territory.

Q My instructions are that Ben Ridennoure or Ridennoure has a license to act as a hunting guide in the area on the west side of the Bulkley between Telkwa and Trout Creek up into the mountains, Hudson Bay Mountain area. Do you have any knowledge of that?

A No.

Q On the other side of the Bulkley, in the area where you told us that your traplines are.

THE COURT: I'm sorry, Mr. Plant, was there an answer to that about the guide license from Telkwa to --
MR. PLANT: Yes. It was no.
THE COURT: You don't know about that?
THE WITNESS: No.
THE COURT: All right. Thank you. Thank you. I'm sorry.
MR. PLANT:

Q On the other side of the Bulkley, Mr. Alfred, that's to say the east side in the area where you have told us that your traplines are, my instructions are that

Mr. Chaplan has a license to act as a hunting guide in that area. Do you have any knowledge about that?
A No.
Q I do have a question about something that's on Exhibit 164. I've finished with these photographs. There is a place on the east side of the Bulkley on this map marked in red, IR number 3. Do you see that, Mr. Alfred?
A Yes.
Q Can you tell me what that is please?
A That's a reserve with a place called Whuus C'oo wenii.
THE TRANSLATOR: 517.
MR. PLANT: 517, My Lord.
THE COURT: Thank you.
MR. PLANT:
Q What is that reserve used for, if anything, Mr. Alfred?
A At one time my uncle had lived there, when he used to go out into the traplines in the territory when he was living there, but there is also other people had lived in the same area. I forget who they all were or how many they were.
Q When you speak of your uncle, are you speaking of Peter Bazil?
A That's right.
Q And you don't know who the other people were who had lived there?
A No.
Q Is that area used for anything today to your knowledge?
A George Naziel's wife, whose father was there, and since George Naziel and his wife looked after the place, but I don't know -- they used to make hay there also. But since George Naziel died, I don't know what the activities are out there.
Q Did George Naziel or Naziel hold the name Madeek?
A That's right.
THE COURT: Is that N-o-z or N-e-z?
MR. PLANT: N-a-z-i-e-l.
THE COURT: Thank you.
MR. PLANT:
Q And do you know the name of George Naziel's wife's father?
A That's my uncle, Peter Bazil.
Q Do you regard the place which is IR number 3 as part of the territory of Wah Tah K'eght?
A That reserve is right in the territory of Wah Tah

K'eght, but being a reserve, satisfied as reserve, it is the responsibility of council and D.I.A. I look after the territory of Wah Tah K'eght.

Q I wanted to ask you about another subject.

THE COURT: Before you leave that, I'm not sure I have got this right. George Naziel's wife and her father lived there for a time. Her father's name is Peter Bazil and he was Madeek?

MR. PLANT: No. My understanding was that George Naziel's wife's father was there. That person is Peter -- or was Peter Bazil.

THE COURT: Yes.

MR. PLANT: After that time or perhaps at the same time George Naziel and his wife looked after the area.

THE COURT: Yes.

MR. PLANT: And George Naziel has deceased. He held the name Madeek.

THE COURT: So it's George Naziel that was Madeek?

MR. PLANT: Yes.

THE COURT: All right. Thank you.

MR. PLANT:

Q Mr. Alfred, I understand that the Moricetown Band has a license from the Provincial Government to take water from Korea Creek and John Brown Creek. Do you agree that that is the case?

A Yes, we agree with that, because the water from that -- from creeks will be used by all the people living in the village.

Q You told us a little bit about mining. I want to ask you some other questions about mining. Do you know where Mount Cronin is?

A That place would be way out of our territory further away from the boundary.

Q My understanding is that Mount --

A Way past Haneec'etgehw.

THE COURT: Cronin was way past?

MR. PLANT: I didn't quite hear the last part of the answer, so I was going to ask -- you think that Mount Cronin is way past Haneec'etgehw?

A It would be on the other side of Haneec'etgehw. I don't know of any mine this side of Haneec'etgehw.

Q Do you know of mines on the other side of Haneec'etgehw?

A Yes.

Q And to your knowledge has there been mining going on there for a long time?

A I don't know anything about or have knowledge of how

long that mine has been in operation or anything about it, because it's out towards Chapman Lake way, and I don't know anything about that.

Q It's outside your territory?

A That's right.

Q Do you know where the Silver King Basin is?

A I believe Silver King is east of where Driftwood Creek starts, and it's further south from where our territory is, and our boundary is north of that area.

Q Does your boundary follow Driftwood Creek?

A Yes.

Q Do you know if there has been any mining work, like prospecting or exploration in the mountains around Two Bridge Lake?

A I don't know.

Q Do you know if there has been any mining exploration or prospecting in the Hudson Bay Mountain area that's in -- within your territory?

A Where the boundary comes down the mountain, I believe there was some mining activities there, but it's just on the outside of my boundary.

Q When I asked you about Cronin Mountain, I wanted to be sure that we are talking about the place that -- the same place. And at number 232 there is a word that I don't want to try and pronounce. Could you assist, Mr. Mitchell.

THE TRANSLATOR: Holiits T'sel dzez.

A There is this place called Holiits T'sel dzez. The mine would be further east in relation to that mountain.

Q Is that mountain, Holiits T'sel dzez, on your territory?

A I think the boundary goes along -- it would be between Haneec'etgehw and Nee Biil dilyee.

Q Looking at the map, which is Exhibit 164, which has Nee Biil dilyee and Haneec'etgehw printed on it, is it your evidence that you think that the place named 232 is on the line somewhere between the other two places? And I may have to get assistance with the pronounciation of 232 again.

A At this point you are naming different places, and I'm confused at this time. I just couldn't pinpoint exactly where Holiits T'sel dzez is. I would have to consult with my mother to be sure exactly where it is.

Q Mr. Alfred, I want to ask you some questions now about the traplines.

THE COURT: Before we leave that, Mr. Plant, I am more confused

than the witness is, but perhaps I could ask you this, Mr. Alfred. Do you know Debenture Peak?
THE WITNESS: I have heard of Debenture Peak, and it would be outside my territory, so I don't know exactly where it would be.
THE COURT: Well, I'm told that Debenture Peak is 242, and perhaps Mr. Mitchell could pronounce that name for me.
THE TRANSLATOR: Haneec'etgehw.
THE COURT: Not Debenture Creek, Debenture Peak.
THE WITNESS: That would be part of the boundary, the corner.
THE COURT: Of your territory?
THE WITNESS: Yes.
THE COURT: All right. Is Cronin Peak further to the east?
THE WITNESS: On Cronin there is three peaks and one right after the other.
THE COURT: Yes.
THE WITNESS: And the furthest peak, the third peak in there, somewhere where the mine is.
THE COURT: And are those three peaks east of Debenture Peak?
THE WITNESS: Three peaks east from Debenture Peak, and then after that it turns into a mountain range.
THE COURT: Well, is Two Bridge Lake close to Debenture Peak?
THE WITNESS: There is another mountain peak between, west of Debenture, and then you come to Two Bridge Lake.
THE COURT: All right. All right. Well, I'm not sure about some things that perhaps I shouldn't be worried about, but -- you see, the map Mr. Plant gave me this morning seems to put Cronin Mountain where the witness says Debenture Creek is. I merely state it so that counsel know that I have a question mark in my mind about all of this.
MR. MACAULAY: It seems to be south of Debenture Creek, My Lord, so it may be slightly east.
THE COURT: Well, this map shows Cronin to be right on the boundary, as described in Madeline Alfred's metes and bounds.
MR. MACAULAY: But they appear to be -- both Debenture Creek and Mount Cronin to be on or near the western frontier of -- eastern frontier.
THE COURT: Eastern frontier.
MR. MACAULAY: One being more or less south of the other.
THE COURT: Well, this particular map doesn't have --
MR. MACAULAY: Debenture -- has Debenture Creek.
THE COURT: Which is a little farther north. As I say, it doesn't really matter. It may all be made clear at some other point. I just don't like to leave the subject with a worthy question mark in my mind. If

counsel are not worried about that, I am not going to lose any sleep over it.

You see, if you look at Exhibit 84, there aren't very many peaks east of Two Bridge Lake. You are on the downhill -- once you get past Two Bridge Lake and the peaks around it, you are going downhill towards Babine Lake, and --

MR. PLANT: Two Bridge Lake is incorrectly identified on Exhibit 84, My Lord.

THE COURT: 84. You think it is?

MR. PLANT: Yes. There is a lake an inch or two to the left of the lake marked as Tedeltl'ets.

THE COURT: Yes.

MR. PLANT: The lake on the left is in fact Two Bridge Lake.

THE COURT: I see. Well then, that might explain it.

MR. PLANT: I should say that I take that from my reading of Exhibit 164, which has as Two Bridge Lake the first lake at the head of Riester Creek.

THE COURT: Yes. All right. Let's press on.

MR. PLANT:

Q Mr. Alfred, are you able to describe where the boundary of Wah Tah K'eght's territory goes from the top of Driftwood Creek?

A From Driftwood Creek, where Driftwood Creek starts, it goes over the mountain towards -- there is a mountain peak behind Tedeltl'ets, and the second creek is Haneec'etgehw. It goes right over -- the boundary goes over the -- goes over Haneec'etgehw, and from there it follows a ridge and then towards Nee Biil dilyee, and from Nee Biil dilyee it goes to the headwaters of K'aaz Kwe and down towards Wed'zen Kwe.

Q Would it be fair to say, Mr. Alfred, that you are more comfortable referring to the names of these mountains by their Wet'suwet'en name than by their English name?

A All my -- my grandmother and my uncle who taught me these areas, was all done in Wet'suwet'en, so I would be more comfortable in Wet'suwet'en, and I don't get so easily confused then.

MR. PLANT: My Lord, I was going to move to the subject of traplines.

THE COURT: Yes, go ahead.

MR. PLANT:

Q Mr. Alfred, is there a Wet'suwet'en word for trapline?

A Called it G'oh nediist'uk. The old traditional word is G'oh nediist'uk.

THE TRANSLATOR: G'o-h, n-e-d-i-i-s-t'u-k.

MR. PLANT:

Q Do you have a map of your registered trapline, Mr. Alfred?
A Yes, I have one, and I have it at home in my house.
Q Have you provided a copy of it to your lawyers?
A No, I didn't give them a copy. I didn't give them the one that I had anyway.
Q Well, I ask for its production. And I ask you, Mr. Alfred, to provide it to your lawyers, and in turn I ask for a copy from them. To my knowledge there is no such map on the plaintiffs' list of documents, but I certainly stand to be corrected on that.
A I guess if you're asking for it, I can give it to you.
Q Well, I'm asking for it now, this document.

THE COURT: Miss Mandell.

MS. MANDELL: My Lord, I don't see the relevance of it. It's certainly not part of the plaintiffs' case, that the trapline map is anything to do with the ownership of the territory. My friend has produced to us voluminous volumes of maps and traplines and trapline files and trapline maps, some of which have to do with Henry Alfred's trapline as it is stored with the government. It's really a document within their possession and control. They think it's relevant, they have listed it on their documents, and they can do with it what they want, but I don't really see why it's to us to produce it now as part of documents in the possession of this witness. I don't see its relevance to our case.

THE COURT: Well, do you have a copy of it, Mr. Plant?

MR. PLANT: I don't know. I have never seen the witness's map. The witness has a map that purports to show the boundary of his registered trapline. At least that's how I heard the witness's evidence. The issue --

THE COURT: Surely, Miss Mandell, it's a document that might be relevant, is it not?

MS. MANDELL: Well, My Lord --

THE COURT: You asked -- well, I shouldn't say you. It seems to me that Mr. Rush examined Madeline Alfred quite extensively about the registered traplines, did he not?

MS. MANDELL: This is -- I don't really know. I can't recall exactly that portion of the evidence. But my friend has delivered to us a trapline map which appears to be accompanying some form of application within Mr. Alfred's trapline file. Now, why doesn't he put that map to Mr. Alfred and ask if it's the same one that he has. If it's different, then we'll go to the trouble

of arguing or eventually producing what may be in Mr. Alfred's possession, but it seems to me that this is -- it's inappropriate at this time that the trapline map be seen as part of our case, and that Mr. Alfred should be asked to produce it. That's our opinion.

Now, it may be that the matter can be simply solved by my friend taking documents in his possession, which he's listed, which he has distributed, which he has put to us to review, and have him put it to the witness.

THE COURT: I have no doubt that your friend intends to do that. It just seems to me that trapline licenses have occupied a fair amount of my time in this trial. It seems to me they may be relevant. It seems to me that in connection with the use and care of the property, a trapline license may be relevant. That's sufficient to require its disclosure. But it's not here, and we can't do anything about it. Its production has been requested. The witness has agreed that he can do so.

It seems to me that we ought to get on now and see what Mr. Plant wants to do next.

I have often wondered why lawyers ask witnesses to produce something, when the request should be made of your learned friend, to call upon her to produce it, such as you wish.

MR. PLANT: Yes.

MS. MANDELL: I just wanted to point out that on the defendant's supplement list of documents, number 18, which is received February 2nd, number 3116, is the Ministry of Environment Smithers' office file, Henry Alfred trapline number 608T019, which would appear to be what he's asking for.

THE COURT: Yes, but Mr. Plant is entitled to say I want to make sure that what the witness has is the same as what I have, and I think that that may be relevant. I have always thought that he was wrong in making production as wide as that. The rule should require people to produce what is relevant. This is a general practice that goes back into last century, and I don't think I will change it at this moment. Mr. Plant, go ahead please.

MR. PLANT: Just so that my own sense of uncertainty about where we are at at the moment is resolved. I hear my friend, Miss Mandell, objecting to production of the document, and I think I hear Your Lordship, in a manner of words, ruling against her on that objection,

at least to the extent of seeing what the document shows, and --

THE COURT: You haven't asked her for it yet, Mr. Plant.

MR. PLANT: I asked my friend for relevant documents an awful long time ago. I haven't got this one yet, and I am asking her for it now.

THE COURT: Is there any problem with that, Miss Mandell?

MS. MANDELL: Not any that I haven't already seen or heard.

THE COURT: Well, I think it should be produced as being a document that may be relevant.

MR. PLANT: My Lord, I have a number of questions for this witness about traplines. I have prepared an overlay which is -- shows the relationship between the boundary of the Wah Tah K'eght territory, as it's depicted on Trial Exhibit 5, and the boundaries of the traplines that are in the -- in this general area. I think it would be of some assistance to Your Lordship in following the evidence if you had a copy of this. I don't offer it as anything more than an assistance to Your Lordship. I provided a copy of it to my friends a few days ago.

THE COURT: Yes.

MR. PLANT:

Q The first trapline I wish to ask you about, Mr. Alfred, is your own trapline, and by that I mean registered trapline.

My understanding, My Lord, is that is the trapline that has the number 0608T019, which is below the words Wah Tah K'eght, as they are printed across the centre of that.

THE COURT: Yes.

MR. PLANT:

Q Mr. Alfred, I want to show you a document from Provincial Government files, and it's a blue piece of paper with a white piece of paper attached to it. Could you lift up the white paper and tell me if you recognize your signature at the bottom of the blue page?

A Yes.

Q And is that the application form which you signed to have the trapline that used to be registered to Peter Bazil registered to you?

A Yes.

MR. PLANT: I would ask that that be marked as the next exhibit, My Lord. And in the circumstances, I -- I was going to say I am tendering the original.

MS. MANDELL: Excuse me, the witness is still --

MR. PLANT: I know.
THE WITNESS: 23rd February, '55, 19th January, '60. It's beyond -- Peter Bazil signed -- somebody made a mistake with the date and months and years. '63 is the time that Peter Bazil transferred to me.
MR. PLANT:
Q So your evidence is that the transfer occurred in 1963?
A '63.
Q Transfer of the trapline?
A '63.
Q If I were to suggest to you -- well, I do suggest to you, Mr. Alfred, that your -- that you signed this application form originally in 1955. Do you accept that?
A No.
Q I'm sorry --
A How could I sign documents in 1955 and 1960? Which ones are you talking about now?
Q Well, do you have any recollection that perhaps the first time you signed the -- an application for this trapline was as long ago as 1955, if you think back?
A I can distinctly remember 1963, when Peter Bazil went up into the territory with me, and I never -- that was the first year I trapped. I never trapped before that in that area. That's when it was transferred over to me.
Q Do you have any recollection of whether you applied to have the trapline registered in your name in or about January, 1960, perhaps?
A No, 1963. I remember when it was -- when the process started, when went out on the territory with him.
MR. PLANT: Well, I ask that this document be marked as the next exhibit, My Lord.
THE COURT: Has the witness identified his signature on it?
MS. MANDELL: My Lord, the witness identified his signature, but then challenged the information on the face of the document itself as inaccurate, and specifically he did not confirm that he registered or made application for a registration of trapline, which is the content of the document, on the dates that either were suggested to him and appear to be crossed out on the face of the document, or on the date which is then appeared to be retyped in over the original date, either 1955 or '60; and under the circumstances, given that this is an application to register and the witness is saying that he didn't make application to register on the dates on

the face of the document, I am not -- I object that the document go in for proof of what it says it stands for.

THE COURT: Well, the evidence about the document and its admissibility are two different things, I gather. It seems to me the document can go in. He has said I don't agree that I -- I agree it's my signature, but I don't agree that these dates are correct. Is there any more to it than that?

MS. MANDELL: Well, I don't really know, then, what it is that the document is going in for the purpose of showing, because if it's -- if it's an application and he says that he didn't apply on the dates that are set forward on the face of the document, I don't really fully understand what weight or value or significance it has as an exhibit.

THE COURT: Well, surely a document signed by a witness can't be kept out because the witness questions a fact stated in the document. His denial of the accuracy of the dates is in evidence and can be the subject of argument. It may be that it doesn't prove anything more than that is his signature on an application, the date of which is uncertain.

MS. MANDELL: Well, My Lord, the additional difficulty I have with it is that although he identifies his signature, his signature is found on a blue underslip, and attached over to the blue underslip and glued in some fashion to it is a description of a trapline. Now, we don't know when this overlay was glued on. Was it part of the paper that formed part of the original?

MR. PLANT: We don't know that yet, My Lord, and it may be that one or two questions from the witness might go some distance in answering that problem, and it may be that some questions from some other witnesses in due course may answer that problem. I was proposing to ask this witness some questions about the fact that there is a piece of white paper attached to the piece of blue paper. But my friend's objection is based on the proposition that the dates -- this witness has some difficulty accepting that he signed this document on the dates that are typed on there, doesn't have anything to do with the white piece of paper, because that doesn't have the dates on it.

MS. MANDELL: Are you proposing to put the white paper in as part of the exhibit?

MR. PLANT: Yes.

MS. MANDELL: Because that hasn't been identified by the

witness.
THE COURT: Well, the document bears the signature of the witness. It has attached to it another document. It may be that as a matter of evidence the white paper will or will not be found to be a part of the document. That would depend on evidence. But it wouldn't be appropriate for your friend to tear the white piece off that's pasted on and tender it. He has to put the document forward as he has it. The witness has signed the document, he says it's his signature. It seems to me that's enough to make it evidence, subject to further extrinsic evidence that will explain or make clear whether the other paper is part of it or not. But as long as it's physically a part of the document, surely it has to go in with the document. The effect of it and all the consequences is not a matter that can be determined merely because of the evidence as it stands at the moment, but has to be determined at a later date, when all the evidence is in, or there may be further evidence about this document. But I see no reason why the document should not be admitted as an exhibit at the trial, for whatever purpose it later may be useful -- whatever its usefulness may later be. It may be the next exhibit.
THE REGISTRAR: Exhibit 180, My Lord.
THE COURT: Just a moment. Miss Mandell may have some further submissions.
MR. PLANT: While my friend is conferring with her colleague, I might just ask that if the document does end up being marked, that the exhibit stamp be placed in such a way as to not obscure the information.
THE COURT: Yes.
MS. MANDELL: The only item further, My Lord, is that you will see, when the document is marked, the words on the document itself -- it says:

> "Application is hereby made in quadruplicate for the registration of a trapline as described hereunder and as shown on accompanying sketch."

Now, we don't have the accompanying sketch, and nor is that attached to the document, and I think that if the document is going in, that the whole of the document, which would include the sketch, should be produced, and certainly we should have that all as

part of the same exhibit. We haven't seen the accompanying sketch, by the way.

MR. PLANT: I don't know if I have either. I have provided the document as it came to me, My Lord. I wonder if I might just have a look at the upper left-hand corner for a moment, however.

MS. MANDELL: I might also mention that in the copy that was delivered to us by my friend, we don't have a copy of the document that he now is tendering.

MR. PLANT: My friend says she doesn't have a copy of the document that's now being produced. The document that's now being produced was disclosed on the list -- delivered to the plaintiffs almost a year ago, and so far as I know, the plaintiffs were given the opportunity to inspect the originals, and they exercised that opportunity. If that document is --

THE COURT: Well, it may turn out to be a matter of great importance. My present reaction is I think it's going to be not of the greatest significance. There may be more evidence, there may not. If the evidence is left as it is, the document may not have much evidentiary value. But I think the defendant has tendered it, it qualifies to be marked as an exhibit, and will be so marked. We will take the afternoon adjournment.

THE REGISTRAR: Exhibit 180, My Lord. Order in court.

(EXHIBIT 180 - APPLICATION FOR REGISTRATION OF TRAPLINE)

(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 RESUMED AT 3:20)

THE REGISTRAR: Order in court. Ready to proceed, my Lord.
THE COURT: Mr. Plant, are you going to finish this afternoon?
MR. PLANT: No, my Lord.
THE COURT: You're not? If we were getting close I was going to inquire whether counsel wanted to sit this evening, if it would help. But if it wouldn't do the job there's no point exerting yourselves unnecessarily, is it? We have Mr. Macaulay's cross-examination as well, of course, and I wouldn't think that more than a couple of hours more in the evening would be advisable. If that won't do it I don't see much point in that process. Then maybe there may be some re-examination as well, I suppose.
MR. PLANT: All I can say is this, my Lord, that I'm -- I'm still in the position of being unable to make an estimate of how long I am going to take. I'm definitely making considerable progress.
THE COURT: Well, think about it.
MR. PLANT: I'm prepared to sit late, but I'm concerned the witness might be a little tired. I certainly don't want to --
THE COURT: I can't sit late in the sense that just carry on at four o'clock, I'm committed to something else, but I can come back this evening.
MS. MANDELL: My Lord, I should advise that I've canvassed again the question of time with Mr. Alfred. He does want to get finished before he gets home. He has said that under all the circumstances, and he's made some arrangements through his family, and he would be prepared to stay tomorrow if he had to finish as opposed to --
THE COURT: That sounds proper, I suppose.
MS. MANDELL: It would be very nice if we could get through by noon, and that would at least give him the afternoon.
THE COURT: Well, I'm not going to put a time limit on counsel. That's coming in the future, but we haven't arrived at that -- not in this trial, I mean litigation generally, and we're not at it yet, and therefore I'm not going to start imposing time limits, but we'll -- it sounds from what you're saying, Miss Mandell, that if necessary Mr. Alfred can be here all day tomorrow.
MS. MANDELL: That's right.
THE COURT: That should do it, shouldn't it?
MR. PLANT: I think even the morning shall be ample time for me, my Lord.

THE COURT: All right, thank you.
MR. PLANT:
Q Mr. Alfred, did you ever discuss the boundaries of the registered trapline with Peter Bazil, the registered trapline that you took from him?
A The discussion I had with Peter Bazil when we went up to a point where we can see all landmarks, and he had told me about the boundary lines around C'ede'i kwe, Haneec'et gehw, Nee biil dilyee, K'aaz kwe, Sde kep, Caas wennige'tet, and the side of Tsee Ggexw and Teet eet, and boundary towards Ts'edeek'aay, and that's -- and now when I see this on a map I can identify these places.
Q Have you walked -- I'm sorry, there's quite a few place names.
A Also my -- from the view point where we were at it was like my Uncle Peter Bazil had walked me all the way around the boundaries, around the territory.
Q The trapline that is registered to you is on the east side of the Bulkley; is that correct, Mr. Alfred?
A Yes. On -- this was on the ease side of the river is where the -- my name was on the registry there, and on the west side Bazil was caretaker.
Q Bazil Michell?
A Yes.
Q Have you looked at the map that you have at home to see whether the boundaries of the trapline on that map are the same as the boundaries of the territory that you have on the east side of the Bulkley?
A The map that I have is almost identical to the one I seen. It's not the trapline registry map.
Q I didn't hear the latter part. It's almost identical to what?
A To the map that I seen earlier. It's not the trapline registry map.
Q What is the map that you're talking about when you say the map you've seen earlier?
A If you produce some -- them two maps that were almost -- they were both different in some ways.
THE COURT: I think he's talking about Exhibit 164, but I'm not sure.
MR. PLANT:
Q Well, I ask that Exhibit 164 be put before the witness. Mr. Alfred, can you tell me, is this the map that you meant?
A The map that I have at home shows the boundaries to C'ede'i kwe, Wed'zen kwe, and K'aaz kwe. The map that

I have depicts the boundaries as follows: Wed'zen kwe, K'aaz kwe and C'ede'i kwe.

Q Is the map that you have at home a map that was given to you by someone in the game warden's office?

A I -- the map I believe was sent to me by the game warden somewhere in '64, could be as late as '65.

THE COURT: Well, I suppose I have to understand this, and I'm not sure that I do. Mr. Alfred, are you saying that the map you have at home is almost identical to this one, Exhibit 164, or are you saying it's something different from this?

MR. PLANT: He has said something different from that, my Lord.

THE COURT: Well, that's what I thought.

A The map I have at home is almost identical on the east side.

THE COURT: On the east side? All right, Mr. Plant.

MR. PLANT:

Q Mr. Alfred, I have a map here which I'm going to ask you to look at. It comes from the trapline files in the game warden's office in Smithers. Does that map look like the map that you have at home of your trapline, registered trapline, that is?

A No. This map is different.

MR. PLANT: Is that a translation of everything that the witness said?

THE INTERPRETER: Before that he mentioned just thinking about it, he was trying to figure it out, it looks the same.

MR. PLANT:

Q Well, since you did have a chance to think about it, can you tell me in what way this map is different from the map you have at home, apart from the scotch tape?

A The map -- in comparison with the map I have at home the line on here doesn't go as far as the other one did where the other one goes to Driftwood Creek, and this one here, this -- where the writing Dick Naziel and Company didn't show, it go into -- jog into it as far as this one does, and the other map also followed K'aaz kwe.

Q And this map does not follow K'aaz kwe, correct?

A Yes.

Q And on the east side of this map there is a bulge, I guess you could call it, for -- it has Dick Naziel and Company in it, and you say this map is different from your map at home in that area too? You've told us that there is a difference in that area. I just want to get you to agree that that's on the east side of that territory where that difference is as it's shown

on this map?
A The area marked Dick Naziel is too close, or -- on this map towards Moricetown, whereas on the other map it should be further east.
Q And you also told us about Driftwood Creek, and that's in the southern part of this map; is that correct?
A That's right. Driftwood is right here.
Q And is it your recollection that the map you have at home shows the boundary of your trapline following Driftwood Creek?
A Yes. That's -- it follows Driftwood Creek.
Q Thank you. Did you ever discuss the boundaries of your trapline with Les Cox?
A No. I never talked to no game warden about it, but I discussed this with Bazil, Peter Bazil when he gave -- transferred the territory over to me.
Q Mr. Alfred, I suggest that the boundaries of your registered trapline on the north in fact lie between K'aaz kwe and Kwun kwe; do you accept that?
A When my grandmother and my uncle told me about the boundary being at K'aaz kwe, and that is what I know, and I don't know anything about anything further.
Q I suggest to you, Mr. Alfred, that the boundary of your registered trapline does not go as far south as Driftwood Creek; do you accept that?
A When me and my uncle travelled into Glentanna area and he asked me, "Do you know where Driftwood Creek is", and I said "Yes". Well, he said "Well, that is the boundary". And that is what I know.
Q Well, let me suggest this to you, Mr. Alfred, that the reason that your registered trapline boundary doesn't go as far as Driftwood Creek is because the Fletcher family, including Al Fletcher, have a registered trapline in the Driftwood Creek Valley. Do you accept that?
A When my uncle pointed out the boundary to me to Driftwood Creek is what I know, but the white people, they always give one another land, and that is why they keep pushing north on that.
Q Mr. Alfred, my understanding is that Al Fletcher had a trapline in the Driftwood Creek area as long ago as 1936. Have you ever heard anything of that?
A No. I was only two years old at that time.
Q Your Uncle Peter Bazil never told you about that?
A My Uncle Peter Bazil told me about it, but I always thought it was across the creek, and now I see this on the map here.

Q Your Uncle Peter Bazil did tell you about a trapline that Al Fletcher had, but you thought it was across the creek; is that correct?
A When my uncle told me about the boundary, and I had north side, and I always assumed that other trapline registry was south of C'ede'i kwe.
Q Did he tell you that the other trapline registry which is south of C'ede'i kwe belonged to Al Fletcher?
A When he told me about to watch out for this man, and I assumed that he was across the creek, and I didn't know of this man until recently.
Q Mr. Alfred, when you have gone trapping in recent years have you sold your pelts to the Hudson's Bay Company?
A I have never sold furs to Hudson Bay Company, I sold furs to an outfit in Prince George called Ontario Trappers.
Q When you sell furs to the Ontario Trappers in Prince George, do you keep a record of what you've sold?
A I had records of some previous or earlier, but I've misplaced them and they could be somewhere, but recently I have given them to Victor in the office to keep in a record file.

MR. PLANT: Now, my Lord, I haven't seen such records in the plaintiff's documents. Again I may be mistaken, but I would ask that they be produced, and I make that request of my friend, Miss Mandell.

MS. MANDELL: I don't know if they've been been produced. I'll make a request.

THE COURT: Thank you.

MR. PLANT:

Q Mr. Alfred, do you know who has the registered trapline north of your trapline?
A North of K'aaz kwe is Caspit's territory, and I don't know or I'm not aware of any of their activities.
Q Do you know if Sylvester William had a registered trapline north of K'aaz kwe?
A Sylvester William held that territory for his grandfather's territory, but while he was still alive he transferred it back to the proper ownership, who was Caspit.

MR. PLANT: Do you know how it was that Sylvester William came to have the trapline?

MS. MANDELL: My Lord, I don't think that the witness and Mr. Plant are speaking of the same thing anymore. Mr. Plant asked whether or not Sylvester William had the registered trapline north, and the answer was that he

held his grandfather's territory, and I'm not sure that we're talking -- and then we just heard a description of how that territory was transferred back to Caspit again, and I'm not certain that we're talking -- when Mr. Plant says trapline registered and the witness is answering the territory, that we're talking at all about the same thing.

THE COURT: All right, that may be.

MR. PLANT: I would be happy to try to clarify, my Lord.

THE COURT: Thank you.

MR. PLANT:

Q Put my friend at ease, or at least see if we can. Did Sylvester William have the right to trap north of K'aaz kwe for many years?

A Yes. Sylvester William I believe would have been Neg'edeld'es in that area, and he was taking care of the area I think for his father clan, but soon as Stanley Morris became Caspit he returned that area back to the proper people, who was Caspit, when Stanley became Caspit.

MR. PLANT: Do you have the name?

THE TRANSLATOR: Neg'edeld'es is 192.

MR. PLANT:

Q And the area you're talking about, Mr. Alfred, is the area north of K'aaz kwe?

A Yes.

Q Do you know how it was that Sylvester William came to have the right to use that area?

A I think his grandfather, Sylvester William's grandfather was Caspit, and when he passed on Sylvester was caretaking until such a time as until when Stanley Morris took the name Caspit, and then he returned that area back to Stanley Morris.

Q Do you know how long ago it was that Sylvester William's grandfather died?

A I don't know.

Q Do you know if it happened in your lifetime?

A I don't know that either.

THE COURT: Excuse me. How is Caspit spelled, C or K.

MR. PLANT: C-a-s-p-i-t.

THE COURT: Thank you. Is this a convenient time to adjourn, Mr. Plant?

MR. PLANT: Yes, my Lord.

THE COURT: Just a moment, please. All right, we'll adjourn then until ten o'clock tomorrow morning.

THE REGISTRAR: Order in court.

(PROCEEDINGS ADJOURNED)

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

Graham D. Parker
Official Reporter
United Reporting Service Ltd.