10 February 1988
Vancouver, B.C

THE REGISTRAR: Order in court. My apologies for the late start. As counsel may know, I had to preside at a ceremony for Mr. Justice Ruttan this morning and I wasn't unable to get away quite on time but I am sure at the pace we are going, Ms. Mandell, we will quickly make up the time.

THE REGISTRAR: In the Supreme Court of British Columbia, Wednesday, February 10, 1988; Delgamuukw versus Her Majesty the Queen. Caution Mr. Mitchell and Mr. Holland, you are still under oath.

ALFRED MITCHELL, Resumed:

MS. MANDELL: Could the witness be shown tab 20, please? Mr. Mitchell, do you recognize yourself in that photograph?

THE COURT: I am sorry, Miss Mandell.

MS. MANDELL: Tab 20. You have got a photocopy.

THE COURT: No, no, it is a very good likeness.

MS. MANDELL:

Q Mr. Mitchell, do you recognize yourself in the photograph?

A Yeah. This good looking guy is me.

Q And can you identify where it is that that photograph was taken?

A This was taken just about Neenlii, Neenlii wek'ut. That's boundary, that's where it is taken.

Q I notice a number of animals in the photograph. What animals are there?

A Behind me there is a beaver. I couldn't see it but it's there. Right there we are having lunch, me and my wife.

Q I am sorry, can you remember when the photograph was taken?

A Eighty-two.

THE COURT: I am sorry?

THE WITNESS: Around '82.

THE COURT: Thank you.

MS. MANDELL:

Q And do you recall when that photograph was taken, where it is that you were then hunting for beaver?

A We are trapping beaver along that Neel dzii teezdlii kwe, along the river right up to the lake this time.

Q Do we need a --

A This was taken first week of May.
MS. MANDELL: Okay.
THE SPELLER: Do you want the spelling?
MS. MANDELL: Yes.
THE SPELLER: N-e-l-l -- I am sorry. N-e-e-l-underline-d-z-i-i t-e-e-z-d-l-i-i k-w-e.
MS. MANDELL:
Q And is that a creek which runs into the Sam Goosley Lake?
A This creek is running from Sam Goosley Lake.
Q From Sam Goosley Lake?
A From Sam Goosley Lake.
Q On the southern part of the territory?
A It runs northerly direction to Neelnii.
MS. MANDELL: Okay. I'd ask that that photograph be marked as the next exhibit?
THE REGISTRAR: Exhibit 212, tab 20.

(EXHIBIT 212 tab 20 - PHOTOGRAPH)

MS. MANDELL:
Q Yesterday when you were speaking about the beaver places from Exhibit 184, you identified the main river systems in the north and the south portions of the territory. I'd like to ask you whether or not the small lakes which are marked in black in the southern end of the territory below Neel dzii teezdlii kwe, are those lakes also lakes where there is beaver trapping on Namox's territory?
A Yes.
THE SPELLER: Excuse me, what was that word?
MS. MANDELL:
Q Pardon? Neel dzii teezdlii kwe.
A Neel dzii teezdlii kwe.
MS. MANDELL:
Q Can you advise when the last time was when you were to Namox's territory to trap for beaver?
A About two years ago.
Q Could the witness be shown Exhibit 211? Have you trapped for beaver in Caspit's territory?
A Yes.
Q And who have you trapped there with?
A I trapped there with Late Sylvester William, Joe Namox, Warner William, Sylvester son, he was a kid that time.
Q And where within Caspit's territory did you go to trap beaver?

A All along this X'aas kwe, X'aas kwe. We camp along the creek going downstream. First camp where we find the beaver, we stay there for a night. Then just little ways, maybe mile apart, then we go down to this fork here. That's our main camp here. This Lots' wenii teezdlii between this two creeks as our main camp. From there, there is a meadow up a ways for about a mile or so. We go right up to this L ots' wenii ben. That's where we camped. We camp there about three days.

Q My lord, I am going to indicate on the exhibit with a pen the beaver locations identified by the witness by marking the words "beaver" along the river systems and the meadow systems that he spoke about, and I am going to indicate the location of the main camp --

A Main camp here and one --

MS. MANDELL: -- with the letter D.

THE COURT: Is it on X'aas kwe Creek?

MS. MANDELL: Yes. It is at the point of interception between the two creeks.

THE COURT: To X'aas kwe?

MS. MANDELL: Yes.

THE COURT: How are you marking it, please?

MS. MANDELL:

Q I am going to mark it with a C. I am sorry, it is going to be marked with a D, and the place where the camp is at the end of the river system near L ots' wenii?

A L ots' wenii.

Q L ots' wenii, the lake, I am going to mark with an E, which is the second camping spot.

Can you tell us whether or not you would trap in Caspit's territory for beaver? Have you gone in in your lifetime on more than one occasion?

A I went to this about four times -- four times.

Q And on each occasion when you went in, did you stay for longer than a night?

A At this time we stayed about two weeks, me, John, Warner and Late Sylvester William.

Q When you trapped for beaver on Caspit's territory, did you give any or all of the beaver meat to Sylvester Williams?

A Most of it to Sylvester Williams.

Q And did he use that meat at feasts to your knowledge?

A He uses it at the feasts.

Q And would you keep some of the beaver meat for yourself?
A I keep some for myself.
Q And what would you usually use that meat for?
A I use for myself to eat it.
Q Okay. Now, I'd like to take you now into Woos' territory. Have you been to Woos' territory to trap beaver?
A Yes.
Q And could you indicate where the beaver were trapped and can be found on Woos' territory?
A Okay. There is the little lake right here. That's right here at that little lake. We camp -- our main camp is right by that lake and another camp is just -- where the creek runs down about half ways down where -- it is hardly marked on here. That's where it is marked.
Q Is the beaver along --
A All the way down to this boundary.
MS. MANDELL: I am going to mark the area identified as "beaver area". My lord, it follows Harold Price Creek from approximately the place where we have marked -- it is terrible when you can't read your own writing, the letter A which is the main camp.
THE COURT: The letter A was where the river changes direction or the water flow changes direction, was it not?
MS. MANDELL: I don't think so. I think that that's the red barred line just to the south of that.
THE COURT: Oh, all right. Yes.
MS. MANDELL: The letter A was the camp.
THE COURT: Yes, all right.
MS. MANDELL: And the beaver activity is from the letter A to the boundary along what's in English referred to as Harold Price Creek.
THE COURT: Yes, all right.
MS. MANDELL:
Q When you trapped beaver on Woos' territory, did you go there to do so more than on one occasion?
A I went first trip there was Dick Naziel and me and Allan Naziel, Dick's son. Second trip we went, Dick came, the same party trip, Allan, me, Dick.
Q And when you went out there to Woos' territory for both those trips which you have just described, would you stay longer than a night?
A Oh, the most we stayed there was four nights.
Q Okay. And did you make another trip to Woos' territory for beaver?

A Last trip we make was in the early 70's when Dick was pretty sick and he told us to go over and check it out. There was me, Allan Naziel and Roy Naziel, Dick's sons.
Q And did you trap beaver on that occasion?
A Yes, we trapped beaver.
Q And did you -- what did you do with the beaver which you were able to trap on that occasion?
A Well, what we did -- what we caught, we didn't catch too much that time. When we got back to Dick's at my father-in-law, we gave him some beaver and with some meat.
Q When you are packing beaver out of the territory, do you prepare the beaver in any way for to make it lighter to pack?
A Yes.
Q What do you do to make the beaver lighter?
A Like reminds me of first day, we prepared Tsa k'ayh. We dry it for about a week and get pretty light. We catch two big beaver fresh and that's all they can pack. They are heavy but once it's dried, you can pack about six beavers, Tsa k'ayh, maybe more.
MS. MANDELL: Mr. Mitchell, can we have that spelling again?
THE SPELLER: Tsa k'ayh, T-s-a-k-'-a-y-h.
THE COURT: A-y-h?
THE SPELLER: A-y-h.
MS. MANDELL:
Q Is the drying of beaver meat the way that you have just described to make it light for packing, is that a practise common to the Wet'suwet'en who are on the territories generally?
A Yes. All the trappers do that.
Q And when Dick Naziel sent you to his territory for beaver when he was unable to go there himself and you brought him back beaver from his territory, is that a practise common to Wet'suwet'en generally on their territories?
A Yes.
Q And is it also common among the Wet'suwet'en that when you trap for beaver you will go into the territory for several days and pitch a camp and trap beaver from that camp?
A Yes.
MS. MANDELL: Now, I'd like to ask you about Knedebeas' territory and perhaps we can get a number for that.
THE SPELLER: 105.
MS. MANDELL:

Q 105. Dealing first with the portion of the territory around the Morice River, have you ever trapped beaver in that territory?
A Yes.
Q And can you advise when you were first on this territory to trap beaver?
A It was in 1961, Sylvester and wife, make my first trip in that area.
Q And by what right did Sylvester have to be in that area?
A Sylvester wife is Christine Holland's daughter.
Q And Christine Holland was Knedebeas at that time?
A Knedebeas.
Q And you mentioned earlier in your evidence that Christine Holland announced that you would have a permanent invitation to her territory. Did that include the right to trap for beaver there?
A Yes.
MS. MANDELL: When you went in in 1981, can you advise where you stayed?
THE COURT: I am sorry, did he say 1981?
MS. MANDELL:
Q I am sorry, 1961. Can you advise where you stayed?
A Oh, we -- we pull the canoe up the river and we stayed in most Gosnell River where it runs into Morice River. There is a cabin there. Sylvester told me that the cabin was built by himself, Late Jim Holland, Late Joe Holland.
MS. MANDELL: And how long did you stay in that cabin hunting -- trapping for beaver on that occasion?
MR. MACKENZIE: My lord, may I interrupt my learned friend on this line of questioning? My lord, on January 6, 1988, as I mentioned to your lordship yesterday, we received a summary of evidence of this witness and in that evidence we were advised that this witness would be speaking about the Goosley Lake territory, the Blunt Creek territory, and Tac'etsol'een territory, which is Poplar Lake. Now, that is another territory of Knedebeas down south. What the witness is talking about now is the Gosnell Creek territory, and our understanding was that Sarah Layton would be speaking about that or speaking about this generally so we are not really -- we weren't prepared for this witness discussing the Gosnell Creek territory of Knedebeas.
MS. MANDELL: My lord, I don't have the summary with me but I do recall that we identified in the summary that he

1 would be speaking about his trapping in other areas
2 as well as the three main territories which we
3 identified that he'd be describing the boundaries on
4 which are -- we say that -- under topic, "Further
5 Territories Where He's Hunted and Trapped", after we
6 identified the three main territories whose
7 boundaries he would identify, we say that although
8 hunting and trapping has taken place within the
9 Wet'suwet'en territories mentioned above, he will
10 testify that there are other territories where he's
11 hunted and trapped and he will describe those
12 locations. With respect to each of those
13 territories, he will describe his rights to be on
14 the territory, with whom he travelled, the resources
15 taken and the way of life on the territories, and
16 we'd expected to include this evidence and other
17 territories.
18 THE COURT: You are not asking this witness about the boundaries
19 of the --
20 MS. MANDELL: No, he is not proving the boundaries of this
21 territory.
22 MR. MACKENZIE: Fine, my lord. I agree we were advised that
23 there would be general evidence about other
24 territories, as long as that's clear that we are not
25 going to be getting evidence about the boundaries of
26 this new territory.
27 THE COURT: All right. You seem to be on common ground then.
28 MS. MANDELL: Unusual.
29 MR. MACKENZIE: Yes. My lord, again this is a disclosure
30 problem. It would have assisted us if my friends
31 had been able to tell me which other territories Mr.
32 Mitchell is going to be speaking about.
33 MS. MANDELL: We weren't asked and, if we had been, I am sure we
34 could have provided the detail we could. There is
35 more than one territory that we are going to be
36 touching upon in this general description of other
37 territories.
38 THE COURT: I don't think the useful procedure of exchanging
39 particulars of evidence goes so far, Mr. Mackenzie,
40 that one should be held to them. I think the main
41 purpose was the boundaries. I am sure you are right
42 when you say it would have helped if you would have
43 been given that information. It would have been
44 right if you had -- might have been better if you
45 asked which ones and would have been better still if
46 they answered, including this one, but I can't do
47 anything about that now. I don't see any basis

which I can stop Ms. Mandell from producing this evidence. You may proceed.

MS. MANDELL:

Q Thank you. We were talking about your trip into the Morice River territory around 1961, and I'd like to canvas with you how long it was that you stayed in the territory to trap beaver on that time?

A We stayed there just little over three weeks.

Q And do you recall who you were with?

A Late Sylvester William, Late Sam Seymour, Late Ben Holland, Warner William and me.

MS. MANDELL: Okay. Could the witness be shown tab 12, please?

THE COURT: While you are looking at that, can you tell me what is the name of the river, please, where you camped which runs -- where it runs into the Morice River?

THE WITNESS: Gosnell River.

MS. MANDELL: Gosnell.

THE COURT: As in Jim?

THE WITNESS: Call that river Taal biits kwe.

THE COURT: I will need a spelling for that.

THE SPELLER: T-a-a-l b-i-i-t-s k-w-e.

THE COURT: I am sorry, i-i?

THE SPELLER: B-i-i-t-s k-w-e.

THE COURT: Thank you.

MS. MANDELL:

Q I am looking at the picture at tab 12, and I would ask you first to look at the small, older cabin on the left -- on my left -- is it yours, too?

A Yes.

Q The left-hand side of the picture, and I'd ask whether or not you could identify that cabin?

A That's -- Late Sylvester William build us that cabin, he's -- when he's trapping marten.

Q Do you know where that cabin is located?

A This cabin is located just south side of Morice River.

Q And when you spoke to us earlier about the cabin where you stayed in 1961, which you indicated that Sylvester William and the Late Joe Holland and the Late Jim Holland had built, can you help us place where that older cabin is in relationship to this one that we see in the picture?

A Okay. From this cabin here, go down river maybe three miles, that will be flowing north, flowing north -- north-east or something. About three miles from this, that's where the Gosnell River is.

Q The witness is indicating off the picture to the

1 right about three miles. And do you know when it
2 was that Sylvester Williams built this small cabin
3 that you have pointed out on this picture?
4 A In early 80's.
5 Q And when you've been to the Morice River to trap
6 beaver, have you ever stayed in that cabin to do
7 that?
8 A No. We stayed in the Gosnell River. This one here
9 is when he was trapping marten, that's the time he
10 stayed here.
11 Q And the little cabin to the right of it, the newer
12 cabin, do you know first of all who built that
13 cabin?
14 A Warner started. Warner and his brother, Gerry, and
15 me, we started building it, and they went up there
16 to work on it just on weekends and it is not
17 finished yet.
18 Q Okay.
19 A I was supposed to be there May in cabin for marten
20 trapping.
21 MS. MANDELL: Okay. I'd ask that that photograph be marked as
22 the next exhibit?
23 THE COURT: Yes.
24 THE REGISTRAR: 213 tab 12.
25
26 (EXHIBIT 213 tab 12 - PHOTOGRAPH)
27
28 THE COURT: When would you say this picture was taken?
29 THE WITNESS: This picture was taken '87.
30 THE COURT: Thank you.
31 MS. MANDELL:
32 Q You have mentioned the trip in 1981 when you were on
33 the Morice River and the Gosnell River area to trap
34 beaver. Did you return any other times to trap
35 beaver in that territory?
36 A Yes.
37 Q And can you recall when it was that you then
38 returned?
39 A The next year we went back, that will be me, Sam
40 Seymour -- Late Sam Seymour, Late Ben Holland and
41 Warner William, four of us that time.
42 Q And do you recall at that time how long you stayed
43 in the territory to trap beaver?
44 A We stayed there less than -- little less than three
45 weeks.
46 Q And do you recall at that time where your main camp
47 was?

A We were at the main camp, the same cabin as Gosnell river.
Q Did you return again to trap beaver for a third time?
A Few years later, quite a few years later, there was me, Kenny Mitchell and Sylvester William, we travelled up the river with small boat, 14 foot outboard motor. We stayed in that cabin, not in that cabin. It was -- by that time, it was rotted down. This was in the 70's.
Q Which cabin did you stay in?
A That Gosnell River cabin.
Q Was that -- was the Gosnell River cabin rotted down in the 70's?
A Yeah. That time it was -- the roof was caved in.
Q Where did you stay during that trip?
A We had a tent. We stayed in a tent.
Q Was it during that trip that you took your two sons, Darwin and Norman?
A That was in the 80's.
Q Okay, it is another trip. And how long did you stay in the -- in to trap beaver the time when you went in with Sylvester and Kenny which you have just described?
A We stayed with them by the river along the highway for two weeks. We stayed in a tent.
Q And the time that you went in with your two young boys in the 1980's, was that the next time that you went in to trap beaver?
A Yeah. Next time I went with Sylvester William. He invited us there.
Q And who else was with you during that trip?
A That trip was Kenny Mitchell, Roger Michell, Francis Holland, me and my wife, Charlotte, and my two little boys, Francis Holland.
Q And do you recall where you stayed on that occasion?
A Where we stayed?
Q Yes?
A Yeah. We stayed along the road under a tent.
Q How long were you in the territory to trap at that time?
A At that time Sylvester stayed there longer than us. He came to me where the truck, and asked me, said, you want to go up and trap beaver with me for a while. Sure. So we went. That time we stayed with Sylvester for two weeks.
Q Okay. And was that the last time that you were on

the territory trapping beaver?
A Yes.
MS. MANDELL: Could the witness be shown Exhibit 183? I think it is at --
THE REGISTRAR: Tab 19.
MS. MANDELL:
Q Yes, tab 19. Was this photograph taken at the Morice River area the last time when you were there trapping beaver?
A Yes.
Q Okay. When you trapped beaver in the Morice River area, how did the beaver meat which was trapped, how was that meat distributed among the people who were doing the trapping?
A That first trip we made in Gosnell River, we dried all the meat, whatever meat we can dry. After, we take it down to Houston, Christine Holland. We go in her house who was give all -- most of the meat to her, and we'd give her some beaver.
Q Okay.
A Beaver pelt.
Q And to your knowledge, was the meat which you gave to Christine Holland distributed at the feast?
A Yes.
Q And how would you distribute the furs, the beaver pelts that were trapped?
A Well, it would be five of us. If there is 20 beaver we have -- we each have four. It is just like that.
Q Now, there is also a territory around Pack Lake and Poplar Lake which is also Knedebeas' territory; is that correct?
A Yes.
Q And have you been to that territory to trap beaver?
A Yes.
Q Can you describe where the beaver trapping which you did there is done in that Pack Lake and Poplar Lake area?
A Start in Pack Lake, it is a lot of beaver along Nadina River.
THE COURT: Is that P-a-c-k?
MS. MANDELL:
Q Yes.
A Right in Pack Lake there is a little creek runs out from Pack Lake. There is beaver dam all the way down to the river where we trap beaver. All along the road the Nadina River, we go out a ways to the river, set traps. Our main camp would be in

Tac'etsol'een, that's Poplar Lake.
THE SPELLER: 324.
THE COURT: Sorry?
THE SPELLER: 324.
MS. MANDELL:
Q Could the witness be shown tab 16, please? Can you identify the location where this picture was taken?
A This here is a tent. They are staying under a tent. There is about mile from Pack Lake.
Q And is this the main camping place where those that are trapping beaver stay at Pack Lake?
A That's where Sylvester's main camp here.
Q Okay. And I noticed that in the picture there is some animals that are -- or carcasses of animals that are hanging up to dry on the right-hand side of the picture. Can you identify what those creatures are?
A Those are the beavers that's hanging up.
Q And there is -- it looks like other -- another form of -- well, it looks like there is another kind of animal being --
A There is others.
Q -- stretched just below where the beaver meat is hanging. Do you know what kind of meat that is?
A Musk-rats.
Q Okay. Can you identify the people that are in the picture?
A Start left-hand side looking at me?
Q Yes?
A Doris Michell, Lawrence Michell's wife.
THE COURT: I am sorry?
THE WITNESS: Doris Michell, and the middle with the red shirt on, Helen Mitchell, Kenny Mitchell's wife, and Kenny Mitchell sitting there. That's late Sylvester William's son-in-law.
MS. MANDELL: Okay. Are the two --
THE COURT: I am sorry, I have got four here and I only see three. Doris Mitchell is the one on the left, is she?
THE WITNESS: Doris Michell.
THE COURT: Michell, I am sorry. She is George Michell's wife?
THE WITNESS: That's Lawrence Michell's wife.
THE COURT: But he is not in the picture?
THE WITNESS: He is not in the picture, no.
THE COURT: All right. And then Helen Mitchell?
THE WITNESS: Helen Mitchell.
THE COURT: Is in the red shirt?

THE WITNESS: Yes.
THE COURT: And the gentleman --
THE WITNESS: Ken Mitchell.
THE COURT: Ken Mitchell. Thank you.
MS. MANDELL:
Q Can you estimate how long ago this picture was taken judging from the age of the people there?
A It was probably taken in '85.
MS. MANDELL: Okay. And if you could also -- yes, I'd ask that that be marked as the next exhibit?
THE COURT: Yes.
THE REGISTRAR: 214 tab 16.

(EXHIBIT 214 tab 16 - PHOTOGRAPH)

MS. MANDELL:
Q When you were trapping for beaver at the Pack Lake area, had you also stayed at that same camping spot?
A Last spring me and Kenny was -- set up a tent. We stayed in that same spot.
MS. MANDELL: We'll just get this picture marked.
THE COURT: Is that a sheet of plastic, that tent, or is that canvas or what is it?
THE WITNESS: Oh, yes, that's plastic.
THE COURT: Plastic, thank you.
MS. MANDELL:
Q Is there a tent inside the plastic? Is there a second tent underneath where the plastic tent is?
A That's just plastic wall.
Q Could the witness be shown tab 11, please? Can you identify the place where this picture is taken?
A Yes. That place where we just seen little while ago, that's in the background, you can see that plastic tent.
Q Okay. And can you tell us who the gentleman is in the picture?
A The gentleman standing looking the other way is Dan Michell, and the gentleman that's sitting down kneeling here is stretching the beaver, that's Sylvester William, Late Sylvester William.
MS. MANDELL: I wonder then if that picture could be marked as the next exhibit?
THE COURT: Yes.
THE REGISTRAR: That will be 215 tab 11.

(EXHIBIT 215 tab 11 - PHOTOGRAPH)

MS. MANDELL:
Q Judging from Sylvester's age in the picture, can you identify or estimate when that picture was taken?
A That would be taken about '84, '85.
Q And Sylvester is stretching the beaver skin. Have you yourself stretched skin in the same way that Sylvester is doing?
A Yes.
Q And is that manner of stretching skin common to the Wet'suwet'en people who are in their territories and trapping beaver?
A Nowadays, yes. In older days, I stretch it different.
Q What's the main difference between how the beaver is stretched nowadays and how it was stretched in the olden days?
A In olden days they stretch beaver, they got two willows tied on both ends and spread it, spread it out so wide. And what they do with this beaver skin, drill holes right around it and they put small red willows right around it, maybe two of them, and then they split the stretcher. They use c'el tay to stretch it between that beaver and the stretcher. C'el tay from -- it is from willows.
Q We will just get the spelling.
A It's more work that way but now we got nails and hammer, it is easier.
THE SPELLER: 595.
THE COURT: Sorry, 5 --
THE SPELLER: 95.
MS. MANDELL:
Q Did you go to the Pack Lake/Poplar Lake area to trap beaver on more than one occasion?
A Yes.
Q Can you advise approximately how often it is that you would have gone to that territory to trap for beaver?
A Once we went in there with Christine Holland and her son, me and my wife, Sylvester William and his wife, Late Sam Seymour, Late Dan Holland, Warner William.
Q Okay. And are there other occasions when you have gone into that territory to trap for beaver?
A Yes. Last time I went was last spring, me and Kenny Mitchell, to check on that trapline for Catherine Michell.
Q And did Catherine Michell ask you to go in and check on the territory?

A Yes.
Q And did you report back to her what it is that you found there?
A At that time it was -- cabin was stayed in this camp here. We went in the -- there is a beaver house so we set traps there. That night we caught two. The next day, we were gonna shoot some because it is not a running water. Right by that lake there is a big beaver house so I sat there. I watched, I look out there on the pond. It looks like beaver there. Sure was. Somebody shot that beaver and left it there. So Dan loan us that little portable boat. We took it out there and took the beaver out, and it must have been in there for about two weeks already so that's what Catherine was, that's what Catherine was -- there were poachers.
Q Does Catherine to your knowledge have a chief's name in Knedebeas' house?
A Yes.
Q Do you know what her name is?
A Weeliih.
Q And is the chief holding the name Weeliih traditionally responsible for the Pack Lake and Poplar Lake area?
A Yes.
THE SPELLER: 483.
MS. MANDELL:
Q I'd ask that the witness be shown tab 13? Can you identify the location of the picture?
A Yes. It's right by Pack Lake.
Q And who is the person in the picture?
A Dan Michell.
Q And can you identify what it is that he's standing in front of?
A He's standing in front of graveyard fence.
Q And do you know whose children or grandchildren are buried in that graveyard?
A Late Christine Holland.
MS. MANDELL: I ask that that be marked as the next exhibit?
THE COURT: Yes.
THE REGISTRAR: 216 tab 13.

(EXHIBIT 216 tab 13 - PHOTOGRAPH)

THE COURT: That is at what lake? Is that Pack Lake?
THE WITNESS: Pack Lake, yes.
MS. MANDELL:

Q Could the witness be shown tab 22? Can you identify the location where this picture is taken?
A This picture is taken Telkwa River?
Q And who's in the picture?
A That's Winnie Joseph. That's Ellen Michell's daughter and Joe Joe, Winnie's husband.
THE COURT: His name again, please?
THE WITNESS: Winnie Joseph and Joe Joe.
MS. MANDELL:
Q What's Joe Joe's full name?
A Joseph Joseph. That's Ellen Michell's son-in-law.
Q Were you present when this picture was taken?
A I took that picture in the 80's. We were moose hunting that time.
Q And in this Telkwa River area, have you trapped for beaver in that territory?
A Well, one first -- first went up there was with Late Little Tommy and his wife and this Joe Joe and his wife, me, my brother Billy who went up there with Late Little Tommy; my first trip up there beaver trapping. Of course Little Tommy ask me to go with them.
THE COURT: When was that, please?
THE WITNESS: In -- this will be in the early 70's when we trapped beaver there.
MS. MANDELL:
Q Was your first trip into the territory in the early 70's or was it earlier than that?
A No, it is earlier than that.
Q When was your first trip trapping beaver in that territory?
A Of course when I first -- when they first build the road right in that area.
Q Have you been to that territory on more than one occasion to trap beaver?
A Well, trapping beaver again, they went with Little Tommy and his wife, Winnie Joseph and his husband, Joe Joe, my brother Billy -- oh, yeah, and my brother, Billy, and my other brother, Lawrence Michell, my half brother.
Q And this territory at Telkwa River, did your father at one time have a trapline on that territory?
A He was registered to have that registered at once.
Q And did he have rights under the Wet'suwet'en law to be there at the time when he had a registered trapline?
A He was Neg'edeld'es when the Fishing Wildlife

having -- registered him -- that trapline to him.
Q And did he then turn that territory back at the feast hall to the proper owner?
A Yes.
Q And who at that time was the proper owner that he turned it back to?
A Little Tommy.
Q And do you know Little Tommy's clan?
A Laksilyu.
Q And do you know when the territory was turned back to Little Tommy at the feast approximately what year?
A In the 50's, mid 50's, somewhere around there.
MS. MANDELL: I think there is some names that we should get.
THE SPELLER: Neg'edeld'es, 192; Laksilyu, 134.
MS. MANDELL: And, my lord, at this time if I could mark the photo at tab 22 as an exhibit?
THE REGISTRAR: 217 tab 22.

(EXHIBIT 217 tab 22 - PHOTOGRAPH)

MS. MANDELL:
Q And speaking about the people with whom you have trapped beaver on Namox's territory, Caspit, Woos and Knedebeas' territory for those people who you have mentioned, are they all regular hunters of beaver?
A They are all regular hunters --
Q Okay.
A -- and trappers.
Q And the practises which you describe when you were discussing your hunting and trapping for beaver in those territories, are those practises relating to beaver common to the Wet'suwet'en people in other parts of the Wet'suwet'en territory?
A It is common, yes.
Q I ask you to turn now to tab 17? Can you identify the people in the picture?
A Yes. Starting on left-hand side sitting down, that's Ken Mitchell, and standing in the middle, that's Late Sylvester William, and by the window is Lucy William.
Q Okay.
A What Sylvester is holding here is a bunch of martens.
Q Judging from the age of Sylvester and Lucy in the photograph, can you estimate when this photograph

was taken?
A That probably in '83 or '84.
Q Okay. And you mentioned yesterday that some marten were more valuable than others depending on their -- the colour of their pelt. Looking at the marten which Sylvester has in the picture, are these the marten which are the forest marten of more value or are they the ones which have less value?
A This one he's holding there, it look pretty good, that dark brown, very good marten. And what you get in -- in our territories some species like that, and lighter jackpine area, they are pale. They are pretty near half the price as this.
Q And --
A When you get into a bigger timber, they are dark, they get more money for them.
Q Do you know approximately how much one of the pelts of marten would be worth which is being held by Sylvester there, just one of them?
A Right now, big one would be 125.
MS. MANDELL: I'd ask that that photograph be marked as the next exhibit?
THE REGISTRAR: 218 tab 17.

(EXHIBIT 218 tab 17 - PHOTOGRAPH)

MS. MANDELL:
Q For the marten where the pelts are lighter in colour, how much would one of those pelts be worth to your knowledge at this point?
A One he is holding there, it -- that's a large marten they are holding there. Like I say, it all depends on the colour. If it is pale, this one would be about $80, 75.
Q I'd ask that the witness be shown tab 15? Can you identify where this picture was taken?
A That's on Dennis Mountain.
Q And is that on Wah tah k'eght's territory?
A Yes.
Q And can you identify the people that are in the picture, or some of them?
A Starting left-hand side, sitting down is Brian Michell, Dan's son; Roger Michell, Dan's son; Warner William, Late Sylvester's son; I don't know that little boys; and the next to Warner William is Percy Michell -- Dan, his son, and the end here in red soldier jacket is Victor Jim; and these boys here,

left-hand side, it will be Warner William's son. I couldn't place these other two little kids.

MS. MANDELL: I'd ask that that photograph be marked as the next exhibit?

THE REGISTRAR: 219 tab 15.

(EXHIBIT 219 tab 15 - PHOTOGRAPH)

MS. MANDELL:

Q Perhaps the witness could be shown Exhibit 164? Can you identify approximately where within the territory Dennis Mountain is located?

A It is not on this map. It's behind this Hudson Bay Mountain here.

Q So it is outside of Wah tah k'eght's territory?

A Yes, behind that.

MS. MANDELL: Okay. My lord, the witness has indicated that it is north of Ts'ed eek'aay, north of Hudson Bay Mountain pointing west -- north-west of Hudson Bay Mountain.

THE COURT: Thank you. Would that be in the drainage area that flows down to the Skeena?

THE WITNESS: No. That's -- that flows into Telkwa River.

THE COURT: Telkwa River?

THE WITNESS: Yeah, that corner. That's head of Pine Creek.

THE COURT: Which direction is the camera facing here, can you tell me that?

THE WITNESS: That camera is facing south-east.

THE COURT: South-east towards Telkwa?

THE WITNESS: Yeah. Okay, yes, south-east.

THE COURT: All right, thank you.

MS. MANDELL:

Q Judging from the age of the people in the photograph, can you estimate approximately when this photograph was taken?

A About a year ago maybe, year or two. According to this little boy here, Warner's son, I'd say about two years ago.

Q And have you yourself hunted moose in that territory?

A We go up in this area just to picnic around. We never did hunt around. The road is right up in this area.

THE COURT: Pretty high for moose, isn't it?

THE WITNESS: Too high for moose. Some groundhogs there but --

MS. MANDELL:

Q Have you hunted for groundhogs much in that

territory?
A I tried to shoot one. I miss them. It is few, not very many, because there is lot of travellers, tourists, and even tourists, they drive up there.
THE COURT: This is above the timber line?
THE WITNESS: That's right on the mountain this one here.
MS. MANDELL:
Q I notice that a lot of the children in the picture are there hunting with their fathers. Have you ever sent your children, or any of them, out to hunt for you?
A I have my children with me sometimes in this area, showed them what's life is like. Even in Sam Goosley, take them out.
Q I am sorry.
A Now, what we like to do is now is show them how to trap and in trapping season. Trouble is, they go to school September and that's the time we start trapping and we can't take them out.
Q Have you ever sent any of your children out to hunt for you when you have been unable yourself to go?
A Yes. Fern, always hunt moose, Fern Mitchell.
THE COURT: Shall we take the morning adjournment, Miss Mandell?
MS. MANDELL: Sure.
THE REGISTRAR: Order in court.

(MORNING ADJOURNMENT AT 11:15 A.M.)

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

TANNIS DEFOE, Official Reporter
United Reporting Service Ltd.

(PROCEEDINGS RECONVENED AT 11:35 A.M.)

THE REGISTRAR: Order in court. Ready to proceed, my lord.
MS. MANDELL:
Q Thank you. Mr. Mitchell, just prior to the break you were talking about the -- the taking out of the children into the territory, and you mentioned that it's -- the children now go to school. In spite of the fact that the children go to school, are they still taken out into the territory by the Wet'suwet'en to be trained?
A Yes.
Q We had also been talking about the children being sent to the territory by their parents to hunt. Have you ever sent your -- your children to hunt for you?
A My son Vern. When I was -- I had a car accident in '82 somewhere. Yeah, in '82. Him and my brother Billy, I loan them my pick-up. They went -- they went hunting for me.
Q Is -- did you -- is your son Vern and your son John the same people or are they two different people?
A Son Vern and John two different people.
Q And have you ever sent your son John out to the territory to hunt for you?
A Once in '82 -- '83 I sent John out to hunt for me.
Q And was that also at the time when you had been in an accident?
A I had an accident in '82, fall.
Q And when John was sent into the territory by you, do you recall whether or not you got a sustenance permit for him at that time?
A Yes.
Q And why did you do that?
A Because I was -- in that accident I had seven ribs broken, and I can't hunt for myself, so I sent John out to hunt moose for me. I had to get him a permit to shoot one moose.
Q And you testified, though, that when you go out hunting you don't get permits; is that correct?
A No.
Q What was your thinking in -- in having John get a permit?
A In that area there was two, in the winter, conservation officers always was watching, so I play it safe for him if I get him a permit. That's why I got this permit for him.
Q I'm going to show to you a letter, which is dated July

8th, 1957, and it's a letter which I wonder whether or not you're able to identify?

A Yes, we had a meeting in Moricetown. Thought it's in the -- in the fall. I mean, that's somewhere north -- I don't know what building. But anyway, we had a meeting about the chiefs elder -- elders -- the elders, their having problem with that fish ladder. The fish are depleting, and they wanted some fish. That's what they were meeting about. At that time -- before that ladder was put in they had a meeting with Fisheries. They promised them fish from the coast if they're not getting any fish from this fish ladder. And another thing they promised them is that they'd brought that ladder and that keeps them fish out of there, and that didn't happen. That's what this meeting was about. And in the later years they brought some fish from the coast. They said it was no good. I wasn't there at the time, but they said it's no good.

And then going down to this poisoning wolves, I know myself they are poisoning wolves. Dumping baits on the lakes with airplane, and along the river dumping baits, poison baits. I know there was a lot of wolves that year. At that time once my father was working the pole camp, Beament, hunting moose. He went up the river on the bank. He was coming down along the river. There's a canyon, big canyon like this, and he seen one fox sitting there, just wobbling around. He says he looks like he's drunk, he says. Here there's bait along the river, poison bait just for the wolves. And that fox ate that bait, and my father didn't want to do anything with it, so he just said left that fox the way it was. You see, that's -- that's when we start talking about this poison -- throwing them poison baits in the lakes. That might affect some fish too. That was the concern of the -- our elders in Moricetown.

Q And so then did you express those concerns along with Mr. Williams and Peter Alfred in a letter to Mr. Jones, the Indian Commissioner in 1957?

A Yes, we was councillors that time.

MS. MANDELL: Okay. I'd ask that this letter be tendered as the next exhibit.

MS. KOENIGSBERG: I wonder if my friend would have a copy of that letter for us.

MS. MANDELL: I don't have a copy. We got it from the federal

government, my lord.
MS. KOENIGSBERG: The federal government has thousands of documents. I wasn't aware she was going to use this one, and that's fine. I just would appreciate a copy.
MS. MANDELL: We could make a copy at lunch.
THE COURT: All right.
THE REGISTRAR: Exhibit number 220.
THE COURT: I suppose, strictly speaking, it's evidence that only affects the federal government and not the --
MS. MANDELL: Provincial.
THE COURT: -- Provincial Attorney General.
MS. MANDELL: Well, except to the extent that the bait might have been a provincial concern.
MR. MACKENZIE: Nobody says that, my lord.
THE COURT: A letter written to somebody else wouldn't prove anything against the Provincial Attorney General, but it can be marked for that limited purpose.
MR. MACKENZIE: I haven't had a chance to see that letter either, my lord.
THE COURT: Well, it doesn't affect you.
MR. MACKENZIE: No. Thank you, my lord.
THE COURT: That will be Exhibit 220.
THE REGISTRAR: 220, my lord.
THE COURT: Yes.

(EXHIBIT 220 - LETTER TO COLONEL A.M. JONES FROM ALFRED MICHELL, G. WILLIAMS AND PETER ALFRED DATED JULY 8, 1957)

MS. MANDELL: You testified yesterday that since 1952, approximately, you haven't been trapping marten regularly in the Namox's territory. Have you --
THE COURT: What year did you say?
MS. MANDELL: I had identified 1952.
THE COURT: Yes.
MS. MANDELL:
Q Since that time have you been earning money from logging?
A Yes.
Q And did your father and grandfather too earn money from logging?
A My grandfather, he started a pole camp at Beament. That's for Hansen. That's when he started at pole camp, cedar poles. And in later years, in -- in mid '35, later years --
THE COURT: In mid '75?

THE WITNESS: Yes. My father took over the pole camp, taking out poles.
MS. MANDELL:
Q Was that mid -- I'm sorry, let me get the year.
A Mid '35.
MS. MANDELL: Mid '35.
THE COURT: Oh, thank you.
THE WITNESS: They were taking out poles pret near every winter. Sometimes in summer, not all the time. Now, why they take out poles in winter is they haul the poles across the river on the ice with team of horses. I did that too myself in later years, in the late 50's. My last time in there was taken out poles there for Bell Pole in the summer of '61, my last year. Never been back there since.
MS. MANDELL:
Q Do you today work with the Moricetown Indian Band on the logging which the band is doing?
A Yes.
THE COURT: I'm sorry, I didn't hear that question.
MS. MANDELL: The question was whether today he is employed by the Moricetown Indian Band with their logging?
THE COURT: Thank you.
MS. MANDELL:
Q I'd like to canvass with you now some of the ways that the Wet'suwet'en conserve the animals which they harvest. And you've mentioned quite a number of different ways in your evidence already, but if I could direct your attention now to moose, and probably earlier the same rule would apply with caribou. Is there any way that the Wet'suwet'en -- are there any practices which the Wet'suwet'en teach to their hunters which you yourself have practised where the colour of the animal is used to identify which animal ought to be shot?
A My father taught us -- taught me that any time of year, camping season, hunting season, you'll notice that there's one dark moose that's standing there. He says that's a good moose. It's not calfing. There was one grey moose in spring times, very grey, that's calfing or will have a calf. That dark moose I'm talking about has got no horn and dark. That's dry cow we call him. Same thing goes with bull moose. Bull moose, we call them Hadaa. And another thing they taught us when we were hunting, make sure it's a moose before you shoot it, deer, bear. Said never shoot through a leaf or else you'll shoot

1 somebody.
2 THE TRANSLATOR: Hadaa, H-a-d-a-a.
3 MS. MANDELL:
4 Q Do the beaver and marten return to the same spot year
5 after year?
6 A Trapping them, no, not every -- if you -- if we trap
7 for beaver one pond, next year we move out.
8 Q Okay. I want to ask you the question again. Do -- do
9 the beaver and the marten, did they themselves stay
10 in the same spot every year?
11 A Yes.
12 Q And so now you've told us that the Wet'suwet'en then
13 trap in a way that you move out every year and don't
14 trap in the same place? Is that what you --
15 A Yes.
16 Q -- said?
17 A Yes.
18 Q How do you know -- how do the Wet'suwet'en keep track
19 of who is trapping beaver or marten each year in the
20 particular spot that they are in order to know to
21 move out the following year?
22 A Okay. Right now Billy's trapping that area. He'll
23 tell us where he trapped. He trapped on topside
24 before Christmas. Dan moved him down by the new
25 cabin. That's where he's staying now.
26 Q This is on Namox's territory?
27 A Namox's territory, yes.
28 Q And what authority does Dan Michell have to move Billy
29 from the area where he was trapping last year?
30 A Presently Dan holds a government registered trapline,
31 and also he has authority to look after the
32 territory because the traditional caretaker, Lucy,
33 who is Namox, is -- is too old to be out there
34 taking care of it.
35 Q Is the practice of the Wet'suwet'en hunters and
36 trappers to talk among themselves to explain where
37 they've trapped marten and beaver common among all
38 of the Wet'suwet'en who are trapping and hunting in
39 their territories?
40 A Yes.
41 Q And is the authority of the chief or the caretaker to
42 tell the hunters and trappers where they can trap,
43 is that common to the Wet'suwet'en in their
44 territories?
45 A Yes.
46 Q Are there any common Wet'suwet'en practices with
47 respect to the conservation of the beaver apart from

the one that you've just described to us?

A I was taught by my father that beaver trapping -- we see a small beaver house, say about two, three feet high, little over, something like that. He said there's only two in there, so leave them there, don't kill them. There's just two. Okay. Bigger house, little bigger house, medium-size house, maybe there would be about six in there. Just get two in there, two big ones, and never to set trap right by the beaver house. If you set trap right by that beaver house, you catch them small ones, so you have to set the trap way out. And bigger house, there's about 10 or 12 in there. Then you kill about six in that beaver house. That's how -- that's how we look after them. Our ancestors, they been doing that for years. My father's father teach them that, he teached me, now I'm going to teach my sons.

Q Can you estimate what portion of your diet today is comprised of food which you get from the territories or from the rivers at Moricetown, bush food?

A My diet would be right now around in Moricetown, it would be some dry salmon, salt salmon, canned salmon. Sometimes I eat seafood which we trade with the Tsimshian people. Tsimshian.

Q And is your diet also comprised of moose and deer and beaver and bear meat?

A Moose, deer, bear, beaver.

Q And is it comprised also of berries and wild vegetables?

A Berries, yes.

Q And if you were to say how much of your diet is bush food as opposed to store-bought food, what would you today say would be the approximate balance between the two types of food?

A Well, I'd eat right now bush food three times a week. T-bone steak maybe once a week, white man's steak.

THE COURT: I'm sorry.

MS. MANDELL: A white man's steak about once a week.

THE COURT: Yes. He said I eat bush food how many days?

MS. MANDELL: About three times a week.

THE COURT: Three times a week.

MS. MANDELL:

Q When you're on the territories, is the percentage of bush food you eat there higher?

A Oh, yes, way higher. I eat them every day when I'm trapping.

Q Okay. Is that common among the Wet'suwet'en trappers?

A Yes.
Q And would you estimate whether or not the amount of bush food that you eat right now in Moricetown, is that common among the Wet'suwet'en?
A That's common.
Q Has there been times in your life when you've eaten more bush food living in Moricetown than what you do today?
A I remember when we was kids in the hungry 30's we lived on bush food seven days a week. That was -- at that time there was hardly any jobs around.
Q I'd like to touch upon the contributions which you make to the feast. When your -- when the Tsayu clan hosts a feast, do you contribute to that feast?
A Yes.
Q And in what way do you contribute?
A In money, and I buy some apple, sugar or whatever to help. I remember one -- one time Emma had a feast, late Alec Tiljoe's feast. Me and my dad, we always contributed money. We'd buy sugar. Late Namox we did the same. Even right today we doing the same thing. Even right now, tonight, tonight's feast at Moricetown. Late Johnny Mack is our clan, my clan. I left hundred dollars there, box of apple. We all do that. That's going on always.
Q When Alfred Namox and Alec Tiljoe passed on, did you for those feasts also contribute meat from Namox's territory?
A Yes.
Q If your wife's clan hosts a feast, do you also contribute to that?
A Yes, of course. I'm Andumenuk. We always contribute money to help them out. This last feast, that little girl that died here, that was my wife's clan, Laksilyu. My wife put up money.
Q This was the feast held in Moricetown last week?
A Last Saturday, yeah.
MS. MANDELL: We'll just get the spelling.
THE TRANSLATOR: It's 200.
MS. MANDELL:
Q Sylvester Williams was not from your clan; is that correct?
A No.
Q Will you contribute to Sylvester Williams' headstone feast?
A I'm going to, yes.
Q And are you going to hunt and trap for that feast?

A I'm going to go trapping Gosnell River for that feast.
Q Now, why would you contribute to Sylvester Williams' feast?
A Because he -- I trapped with him in that area lots. Like I say, I -- I was with him for over 40 years. And -- and I also trapped with Warner William. That's his territory. I told Warner already that I'm going out there, that is if I'm still alive.
Q You look like you've got lots in you. Is it common among the Wet'suwet'en for -- for trappers and hunters who have hunted and trapped together all their lives to contribute to the funeral and headstone feasts of their -- of their fellow -- of their friends even if they may not be from the same clan?
A In -- in the late 60's Christine Holland gave permission for me to hunt and trap in their territory, and all the years in the past that I have trapped and hunted with Sylvester within that territory. So that is -- and I have been given permission by this lady, and that is why I am going to go and go trapping in that territory again to help out at the feast, the headstone feast of Sylvester William. And that was -- Sylvester William is Warner William's father.
Q Um hum.
A And Warner William is caretaker of that territory now.
Q I'd like to move on to a discussion of the -- your and other Wet'suwet'en people's belief in the spirits, in the spiritual relationship to the territory. Do you believe that your spirit and the spirit of your ancestors belong to a particular territory?
A Yes.
Q Can you explain to the -- can you explain your belief in this regard?
A Right now every time I go up on Namox territory where we been, where we trap, me and my father, every time I set where he had his traps set I remember him. It's just like he's still with me right today when I'm setting that trap. Even we staying in a camp where we used to camp, me and my father, seems like he's with me all the time. All the things he teached me through that territory, how to trap, how to hunt, all that comes back to me. Even our grandfather, if I go the Namox lower part, I remember what he says. He always telling us stories by the campfire at night. Not only that one night

they teach me this -- all this territory, lakes, peaks, boundaries, they keep telling us year after year. If -- if I don't remember that mountain, I'd ask them again to make sure. Their spirit -- yes, what our ancestors have spoken about in the past and what I believe is that our ancestors are reincarnated or reborn and they come back to the territory, and that is what I believe.

Q Is this belief that your ancestors are reincarnated and come back to the territory, is that a belief shared amongst the other Wet'suwet'en people?

A All the Wet'suwet'en.

Q And according to your belief, would your ancestors then be reincarnated back into the same house?

A Yes.

Q And when you're out on the territory, are there any signs that you identify where your ancestors are speaking to you, and do you feed your ancestors' spirits in any way while you're on the territory?

A I get a very eerie feeling when you ask me this question because when you're out in the territory, if there should be -- if we have a campfire, if there should be a whistling sound or -- or like a whistling sound, that is when the ancestors that have died and gone before you are trying to communicate with you. So at that time you try to please them by giving them food, whatever is available, like smoked salmon or something, and you feed it to -- you try to please them by feeding it to the fire. And these -- this has been a well-known exercise amongst the Wet'suwet'en which has been told to us by our grandfathers and our grandfathers before them and our ancestors.

Q Do you believe that the animals within the territories also have spirits?

A Yes.

Q And according to the Wet'suwet'en belief, are those spirits of the animals connected to the human people?

A Yes. Well, the animal relationship to human life is sort of a communication. Like they can feel what is going to happen to you. For example, when my father was going to die or before his death, I went hunting, and I was unsuccessful. A deer was standing almost right in front of me, and I was unable to shoot it because I missed it, and that to me is a message to me from the animal telling me

1 something is going to happen. And after my father's
2 death, I didn't have any problems shooting the moose
3 after that.
4 Q Is it a commonly shared belief among the Wet'suwet'en
5 that the animals cannot be shot prior to the death
6 of somebody close in the family of the hunter?
7 A Amongst the Wet'suwet'en is what -- they have a name
8 for it called G'ii k'a'as niit'ayh. That is -- and
9 when you're unsuccessful, it -- not only is it just
10 certain animals that this can happen with. It can
11 happen with any animals when you're hunting.
12 Another example is when my father had experienced
13 something like that in the past when he was trapping
14 beaver. He trapped a beaver all right, but he
15 pulled the arm off, and now when I go trapping
16 beaver or hunting beaver, I sometimes come across
17 beaver with no arm, and that is what you call G'ii
18 k'a'as niit'ayh.
19 THE TRANSLATOR: G'ii k'a'as niit'ayh, G-'-i-i k-'a-'-a-s
20 n-i-i-t-'-a-y-h.
21 THE COURT: Was that G-i-i-k?
22 THE WITNESS: G-'-i-i-k.
23 THE COURT: Yes. Thank you.
24 MS. MANDELL:
25 Q Do you and other Wet'suwet'en believe that plants have
26 spirits?
27 A Cass?
28 Q Plants?
29 A Plant, yes.
30 Q And are the spirits of the plants also connected to
31 human beings?
32 A Yes.
33 Q And can you give us any example that you're aware of
34 to -- to help to explain how the spirit of the plant
35 is connected to the spirit of the human being?
36 A There is one plant called C'un yee. That gives you
37 luck. Sometimes they use as medicine. When you
38 first take it out, you have to talk to it so it can
39 give you luck. Take it out -- after you take it
40 out -- it's the roots, it's the root we're after.
41 C'un yee. I got one here. Do you want to see it?
42 Q Sure.
43 A That's my lucky charm. You guys like to buy a lucky
44 charm in store. May I take it out? That's what you
45 call C'un yee. I always carry it, trapping, bingo
46 game.
47 MS. MANDELL: My lord, would you like to see it?

THE COURT: Thank you.
THE WITNESS: Always use that for cleaning rifles too.
THE COURT: This is a root, is it?
THE WITNESS: That's a root of that C'un yee.
THE COURT: Thank you.
THE WITNESS: It's got a name for it in white. I don't know. I forgot the name for it in white man.
MS. MANDELL: George, do you know the name?
THE INTERPRETER: Indian Hellabore.
THE COURT: I'm sorry, I didn't hear.
MS. MANDELL:
Q It's Hellabore.
Where within the territories is it possible to get that root?
A Any mountains. Not right on the mountain. There's lots right on the mountain, but maybe half ways up the mountain.
Q And if you don't talk to the plant before you take the root, what do the Wet'suwet'en believe will happen?
A My father told me that give you bad lack when you take that plant out, you have bad weather. Or if you talk to that plant good -- the root to this plant is really tough to take out. So when you're taking it out, when you're digging it out, the roots are really tough, and if you talk nice to it, it comes out with no -- very easily. And when you -- after you take it out, you take the -- the plant leaves, and you also talk nice to that one, and then you put the leaf back in, this leaf and the stem back in where the root was.
Q Is it your belief and the belief of other Wet'suwet'en that you have to take care of the territory?
A Yes.
THE COURT: I'm sorry, before you get into that, I never did get the name of this plant.
THE TRANSLATOR: C'un yee, C-'-u-n y-e-e.
THE COURT: Thank you. Perhaps you could put the question again, Ms. Mandell.
MS. MANDELL:
Q Is it your belief and the belief of other Wet'suwet'en that you have an obligation to take care of the territories?
A Yes.
Q And why do you have that obligation?
A Yes, it is our responsibility to take care of the territories because it has been handed down from generation to generation, and we are -- we have been

taught to take care of the territories. For instance, in our territory my father had said, "Son, you may be the one to take care of this territory," so -- and that is why they teach us all the landmarks, mountains, hills, and the boundaries, so we would be the future caretakers of our territories.

Q And as caretakers of your territories what do you understand your obligations to be?

A Yes, our responsibility within the territory is as caretakers. Our -- my father had told me that any time when you're hunting or trapping you do not take everything, you only take what you need, like beaver and marten. You only take what you can -- what you can use. And the same goes with the big game. Some time back there used to be lots of moose, moose was plentiful, but now there's hardly any around.

MS. MANDELL: My lord, I have one other area to canvass. Perhaps this is an appropriate time to break.

THE COURT: All right. Good. 2:00 o'clock, please.

THE REGISTRAR: Order in court. Court will adjourn until 2:00.

(PROCEEDINGS ADJOURNED AT 12:27 P.M.)

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

_____

Leanna Smith
Official Reporter
United Reporting Service Ltd.

(PROCEEDINGS RESUMED PURSUANT TO A LUNCHEON ADJOURNMENT AT 2:00 P.M.)

THE REGISTRAR: Order in court. Recalling Delgamuukw and Her Majesty the Queen at bar, my lord.

EXAMINATION IN CHIEF CONTINUED BY MS. MANDELL:

Q My lord, a few questions before I move into the last area. Before we were -- we had taken the lunch break, we were talking about the spiritual relationship of you and the Wet'suwet'en to the territory and you were talking about your role as a caretaker. Do the Wet'suwet'en, and do you understand that your role as caretaker carries obligations both to the past and to the future generations?

A Our ancestors and grandfathers have taught us to take care of the territories so we can teach that to our children and grandchildren for their future use.

Q According to the teachings that you have been taught from your father and from your grandfather, where do you understand that the Wet'suwet'en originated from?

A Yes. The information that our great, great, great grandparents had handed down from generation to generation. They all -- all resided in the same area and then we today still live in the same territory. We never came from anywhere but where we are today.

Q When you say it is the territory where we are today, which territory is it that you are referring to?

A Wet'suwet'en territory.

Q Could the witness be shown tab 21, please? I neglected to put this picture to you when we were discussing the cabins, and I wonder whether or not at this time could you identify -- identify the place shown in the picture?

Q I took this picture at Poplar Lake, Tac'ets'ol'een, and there is two elders standing here, Sylvester William -- Late Sylvester William and Lucy William and they are standing there on a big floating cabin; it is on a big ramp. That's where this cabin is now.

Q And to your knowledge, first of all had you ever stayed there in that cabin with Sylvester?

A I stayed there few times with Sylvester.

Q And this picture, it looks like from the writing on

the bottom of the picture it says May 1980. Did you put that writing there?
A Yeah.
Q And --
A That's the same time I took this picture. I was beaver trapping at that time.
Q You were beaver trapping at that time?
A Yes.
Q And do you know today what's become of that cabin?
A That's that cabin that burnt with all Sylvester's belongings. He had a stove in there, cooking outfits, axe. They got it locked up. He use that every year.
Q And did you have any possessions in the cabin when it burnt?
A No.
Q Do you know who burnt the cabin?
A No.
Q And what year do you know that it burnt down?
A Two years ago.
MS. MANDELL: I'd ask that the witness be shown Exhibit -- oh, perhaps we can first mark that as an exhibit.
THE COURT: Yes, 221.
THE REGISTRAR: Yes, my lord, 221 tab 21.

(EXHIBIT 221 tab 21 - PHOTOGRAPH)

MS. MANDELL:
Q Could the witness be shown Exhibit 184, the map of -- there it is, the sketch map of Namox? I'd like to last turn your attention to the area of damages which to your mind has occurred in the Namox territory and I would ask you first whether or not you are aware if there's been clear-cut logging done in the Namox territory?
A All this was Neel dzii teezdlii. All clear cut logging all the way up to this end here and it is just very few greens standing timber in between those.
Q Does the clear-cut -- where does it start?
A It starts from this little lake here.
Q Okay.
A And there is still some clear cut along this road too.
Q Okay.
A All the way up there is patches. This one all clear cut. Only place they left is steep hill down here

this side, they left that, and from here, it's all clear cut and there's not a patch of timber. Small patches of timber left. Right now just wonder they logging this area here.

Q My lord, the witness has identified the portion of the territory to the extreme south. The entire area south of the river system which flows through Sam Goosley Lake to Allan Creek and Neenlii wek'ut, and I am going to mark that area as an area he's identified as places where there is clear-cut logging.

A This winter they are working this area here.

Q And he's identified a number of places along the area which have been left still timber standing and I am going to put -- identify for the record that there is a strip which he's identified from the place which we have marked on the boundary as Tsee Delk'en due north to the river and also another place roughly --

A Yes, it is in patches all along here between the blocks.

Q And patches between the blocks from Tsee Delk'en to roughly where we have got the number one trail. Are there any other portions of Namox's territory which you can identify have been clear-cut logged?

A They have been logging this area here starting from this cabins. Some clear-cut logging along the road here, patches here, and one long clear-cut area right along here.

Q All right. It's going to be impossible to identify the entire area, but I am going to put the words "clear-cut logging" in the area that the witness has identified with his fingers and it's, my lord, roughly between cabin number 3 and in the area in and around cabin number 2.

A And there is some clear-cut logging around -- on all trapline, trapline dotted lines here.

Q And I am going to extend that to encompass the trapline of the witness as he's identified it heading due east. Are there any other places?

A Right along where that Nee'del is some logging there too, the east side of Nee' del.

Q Are there any other places?

A There is a mine near -- mining road goes down into -- goes like this and then goes down to this creek. There is a road goes -- goes -- it will be south side this little lake. That's Tsee zuul

ts'ak. A road now goes right down here, and I don't know where that road goes. There is logging around this area too.

Q Are those the main areas?

A Yeah, that's the main area and there is another one there. Right at the ponds Neenlii wek'ut, a bridge across there, and they are logging up this area. That started last year.

Q Okay.

A That's all I remember.

Q I've identified those areas in very rough terms with the words "clear-cut logging".

Can you describe what the effect on the trapping of marten has been to -- with the clear-cut logging to your best knowledge?

A In some places you will see clear cuts -- big patches, they are about two mile long. There is a family of marten there. There is different species. Not only that, squirrels, weasel, grouse, rabbits. When they clear cut that area and they leave it for year, and then they burn it. Them squirrels, I see them right where clear cut, they always hang around where they are and the poor things, they burn them too. And marten, the same thing. They got dens. I guess that's where -- I guess that's where one family lives. I know one place and this area, marten den. I found that one I was going out on marten.

Q What happened to the marten den?

A Well, that certain marten den, shoot them. So this all the places surrounding there, you see a lot of fox. They have dens. That's where keep their young. Same thing with marten.

Q And what's the effect of the logging on the fox and the marten and their dens?

A Well, the dens will be burnt out.

Q Okay. Have -- to your knowledge have the animal trails been interfered with by the logging?

A Well, all the animal trails will be all destroyed. Even now trapline in our line -- okay. I got this place, that's our trapline. If they log out this area, you'll never see any more -- no more blazes. It is all clear cuts.

Q Have there been any salt licks to your knowledge interfered with by the logging?

A Salt licks, some places, no, you got bulldozers they got now. They are the ones that just wherever a

bulldozer are, they are cutting big machineries now and faller bunchers. They are heavy machinery. They are the ones who are spoiling everything.

Q As a result of the logging, has there been logging roads brought into Namox's territories?

A Forestry have an access road along the Sam Goosley area and the roads are put in there to access logging areas and also there is a road in there to the mine and there is roads branching off on that for logging.

Q And have the placement of the roads in your territory contributed to sports hunters coming into the Namox territory to your knowledge?

A Right now there is a road right around our territory right down the middle and comes out Buck Flat, Buck River. In fall time -- fall season open, you go up that road and you will see sports hunters -- pretty near every curve you turn, there is a sports hunter there.

Q From what you have been able to observe, have the presence of sports hunters had any effect on the beaver?

A In that top part, there is a road right along there. There is some beaver dams right along the road. Some poachers, they are -- we don't know who, they would be the sports hunters or somebody else but right now there is a road right through where the beavers are and there is hardly any beavers there now. So is the moose, this top part when I was trapping there, 47. You will see about 20 moose out there in the open, out in the meadow, and now you have to look for it.

Q Okay. When you are talking about the top half, you are talking about the northern part of the territory?

A Northern part of our boundary, yeah.

MS. MANDELL: Could the witness be shown tabs 37 and 38 which I believe have been marked as exhibits? Yes, it is Exhibits 187 and 186.

THE REGISTRAR: 38 hasn't been marked.

THE COURT: Yes, they are both marked, 186 and 187 respectively.

MS. MANDELL: Tabs -- I am sorry, it is at tab 36 and 37 and 38. Those three pictures I think strung together would make a single ridge. Am I right about that? Yes.

THE COURT: I think they overlap a bit.

MS. MANDELL:

Q A little bit. Perhaps we will start with tab 36.

Do you know where this location -- you have identified the location. Is the photograph here, does that exhibit represent what the -- can you identify the clear-cut logging patches in the photograph?

A This clear-cut logging Tsee Delk'en. This area here, it will be right along here. That's going Tsee Delk'en is right here, going this way. That will be going south.

Q Okay. And tab 37, Exhibit 186, is that an extension of the same --

A That's the same area but you're further north this time. That's Tsee Delk'en right there.

Q Can you estimate by looking at the two photographs how much area has been encompassed by that clear-cut logging patch?

A From here, it's -- oh, I'd say about over two miles.

Q Okay.

A I don't know about miles, but I estimate that.

Q And you've identified that in the southern most part of the territory. Is this the part of the territory where you and others have been successful in trapping the marten with the thicker furs?

A Yes, in this area here. In this area, that's Namox, they all got their traplines up. Alec Tiljoe has his cabin here. He got his trapline here. That's right through that clear-cut area. Namox have his trapline up this way.

Q Now, you had identified earlier a mine and you put your finger on a place which is in the centre of Namox's territory, and appears to be marked on the base mat?

A Mine is right there, Equity Mine. Equity.

MS. MANDELL: Mark it with an X which would be Equity Mine, and I will circle it.

THE COURT: Thank you.

MS. MANDELL:

Q Do you know when Equity Mine came into the territory?

A Sorry?

Q Do you know when Equity Mine came into the territory?

A I wouldn't know exact year but it was in the 60's.

Q In the 60's?

A Late 60's, somewhere around there.

Q And as a result of the placement of the mine and in the territory, did you or your family suffer any

damages as a result of the loss to you of blazes or trails for your own traplines?

A I know east side of that mine, I lost lot of traps through that area. The mining company had to heliport all along that site here, that's in the east side of that mine.

THE COURT: Is it an open-pit mine or underground?

THE WITNESS: What I was saying is that they got a heliport all along that trapline mine. That's where I lost a lot of traps. I couldn't follow my blaze. There is a lot of blazes. Not only the miners; forestries. They are making blazes for the timber to be cut out.

MS. MANDELL:

Q Is it an open-pit mine or is it an underground mine?

A Open-pit mine.

MR. MACKENZIE: Excuse me, my lord. This line of questioning has been dealt with I think in what will be discussed on having been dealt with in respect to the CNR, I understand, last week and I take it this will be discussed on Friday according to Mr. Rush when we come to consider the relevance of Mr. Plant's -- or the -- Mr. Plant's objection to damages being alleged as a result of third parties.

THE COURT: All right, thank you.

MS. MANDELL:

Q With respect to the traps which you lost when the blazes and the heliport was put into the territory, could you estimate how many traps that was?

A On this land alone, I had 13 dozen.

Q And do you recall approximately when it was that you identified that your traps had been lost and --

A Me and my wife went over there -- went up this area in 1976 and I figured I was going to get all the traps out and start walking from the south side. At that time I had a road up in that area so be closer for me to go into it. I only found 29 traps.

Q I am going to now show you tab 35. Can you identify that photograph?

A Yes. This is a tailing pond on that mine, Equity Mine. It is on the north side of that mine anyway.

Q Okay.

A And this runs into Foxy Creek.

MS. MANDELL: I ask that that be marked as the next exhibit?

THE REGISTRAR: 222 tab 25.

(EXHIBIT 222 tab 25 - PHOTOGRAPH)

MS. MANDELL:
Q And to your knowledge has this tailing pond or any of the outflow from Equity Mine caused pollution to the creeks that are in the area?
A At one time back up into other creek that runs into -- that's north there, okay. There is a creek runs south from this mine. That mine is right on the ridge and the -- they polluted that creek of ours on the outside where the cabin is. That was, I think it was, in '82 at that time.
Q And you are pointing to the cabin placed at number 3?
A Yeah. And that time they blocked it off just about half mile from our cabin, they blocked it off, and made a dam there with tailing pond.
Q Prior to 1983, when that dam was there made, had you or others that you know of used that creek which moved into the cabin area for drinking water or for washing?
A At that time we get our water from this creek here. We used to use this creek but even now we don't trust that. There is a creek run into this main creek in here. Always use that creek that runs out from south-east.
MS. MANDELL: Okay.
THE COURT: There is a mill at the mine site, is there?
THE WITNESS: Yes, a mill at the mine site.
THE COURT: Thank you.
MS. MANDELL:
Q I am going to now ask you to look at Caspit's territory, Exhibit 211. Are you aware of whether there has been clear-cut logging done on Caspit's territory?
A All along the bottom side you see this access road here. It is access road as a Forestry access road. Comes right up to here. There is some clear cut in this area all along there road up to here and then in patches right up to here, right on top of the hill. There is just patches there, ready to be cut. That's P.I.R. log in that area, got a tree farm licence on that area.
MS. MANDELL: My lord, I have just indicated where the witness has pointed to the general area by the words "clear-cut logging" and it turns the bend, you can see the access road, goes along the western part of the territory and the logging the witness has indicated turns the bend and moves along the

southern portion of the territory roughly paralleling the line we have now identified for marten.

THE COURT: Yes.

MS. MANDELL:

Q Is there any other places within Caspit's territory to your knowledge where there is clear-cut logging?

A No. That's the only area.

Q All right. And you had earlier identified that there was good moose, deer and beaver and -- I am sorry, and bear, in this area. Has the logging to your knowledge affected the ability to harvest those animals?

A Below this road, they have -- Chapman had a mill up in this area or Spence, I forgot which. It did selective logging. Now it's still standing. That's all I know.

Q I don't know though whether or not you have answered my question and that is whether to your knowledge the clear-cut logging that's been done in Caspit's area has made it harder for you or others to harvest the moose, the deer or the bear there?

A Yes, yes. Because there is always -- it is good moose country always in this area here.

Q Is there still good moose country there?

A Right now, you have to go -- there is hardly any moose around there now. This where -- this has been cut around '68.

THE COURT: It was clear cut in 1968?

THE WITNESS: Yes. No, replant it at 1968.

MS. MANDELL:

Q Replanted in 1968?

A We replanted in 1968.

THE COURT: How is it doing after 20 years? Is it green?

THE WITNESS: They are about five, six feet.

THE COURT: What species?

THE WITNESS: Spruce, but there is some pine growing into it.

THE COURT: What was there before?

THE WITNESS: Balsam, mostly balsam and spruce before.

MS. MANDELL:

Q In any of the areas which you have described which have been clear cut either on Caspit or on Namox's territory, do you know whether or not the wolverine have now moved into those territories?

A I don't see them anymore on there.

Q You don't see them anymore?

A No.

MS. MANDELL: I have got no further questions of this witness.
THE COURT: All right, thank you. Mr. Mackenzie or Ms. Koenigsberg? Thank you.
MR. MACKENZIE:
Thank you, my lord. I have some document books to hand up to your lordship and the other counsel. Handing up for the court and for your lordship.
THE COURT: Thank you.
MR. MACKENZIE: I also take the opportunity to hand up some photograph books, my lord. These are entitled List of Photographs Relating to Henry Alfred, Alfred Mitchell and Dan Michell but, of course, I will be using them only for Mr. Mitchell's examination.
THE COURT: Thank you.
MR. MACKENZIE: Some of these are coloured photocopies, my lord.
THE COURT: Camera is working better this time, Mr. Mackenzie.

CROSS-EXAMINATION BY MR. MACKENZIE:
Q Now, Mr. Mitchell, you told his lordship on Friday that your mother was Mary Muldoe; is that correct?
A Yes.
Q She was a Gitksan lady?
A Gitksan.
Q Yes. And your father was Big Tommy Michell?
A Big Tommy Mitchell.
Q He was a Wet'suwet'en?
A Wet'suwet'en.
Q And you are a member of the Gitksan House?
A Yes.
Q You told us on Friday that you were a member of the House of Wiiseeks?
A Wiiseeks, yes.
Q In your affidavit which is Exhibit 185 at tab 1 of the document book, you say that you are a member of the House of Gitludahl; is that correct?
A Who?
Q Gitludahl?
A Yes, I just know that I belong in that House.
Q Well, Mr. Mitchell, which House do you belong to, Wiiseeks or Gitludahl?
A Wiiseeks.
Q Mr. Mitchell, then your affidavit is incorrect?
A I was too young to remember but when Wiiseeks -- my Uncle Pete, I work with him whenever he put up a feast. I don't -- I don't live with him. I was raised with my father in Wet'suwet'en area and I don't know too much about that area.

Q So is it fair to say that the affidavit is incorrect where it says you are a member of the House of Gitludahl?
A I don't remember saying Gitludahl or Gitludahl.
Q I see. Could we put the affidavit before the witness, please, Exhibit 185, tab 1?
A Gitludahl.
Q This is paragraph 2 on page 1 of the affidavit, Exhibit 185. You say that you are a member of the House of Gitludahl. Do you see that?
A Oh, yeah. Yes, that could be. That is the name of the House of Wiiseeks. Gitludahl, Gitludahl.
THE INTERPRETER: Gitludahl.
THE WITNESS: And Gitludahl is name of the House.
MR. MACKENZIE:
Q Would you like to correct that affidavit to have it read that, "I am a member of the House of Wiiseeks"? Would that be correct?
A That is what I am talking about. I left that area when I was about eight years old and I don't know how the House is structured, and whenever there is a death, they notify me and that is only time that I am involved, when I have to contribute to the cause.
Q And so you didn't concern yourself about that paragraph 2 when you signed the affidavit?
A Well, I figured I am Wet'suwet'en. I live, I raised Wet'suwet'en. I raised Wet'suwet'en since I was eight years old. And I have -- they say Txemsim got a trapline there. I didn't even go there because I raised with my father, my grandfather and our -- in Namox's territory. Even in the village, I stayed right in the village. Only time I go to Kispiox is in their feast, sometimes dance. That's only time I go in Kispiox.
Q So you don't know very much about Gitludahl, the family or the territory; is that correct?
A No.
Q Yes. And you signed the affidavit because the people who handed it to you said it was correct?
A Well, they said that's my house and that's where I signed.
Q And you believe what they said?
A Well, that's my clan, Gisk'aast, and I believe what they say.
THE COURT: Mr. Mitchell, when you said you don't know how the House is structured and you're only involved when there is a death, were you referring to the House of

Wiiseeks or the House of Gitludahl?
THE WITNESS: When my aunt died, Flossy, that's what I mean is going in there, Kispiox area, to help with the feast. That's the only time and I am every involved with that Gitksan.
THE COURT: But I don't know which House you mean, sir. Which House is it that you are only involved in when there is a death?
THE WITNESS: That's Wiiseeks' House.
THE COURT: So when you said, "I left that area when I was eight", you mean the area of Wiiseeks?
THE WITNESS: Well, I left the village of Kispiox. That's where my mother was from. When my mother passed on, my father took me back to Wet'suwet'en.
THE COURT: And brought you up in the House of Gitludahl?
THE WITNESS: Yes.
MR. MACKENZIE:
Q Well, Gitludahl is a Gitksan House, Mr. Mitchell?
A Yes, Gitksan House.
Q And your father was a Wet'suwet'en in the Tsayu Clan?
A Tsayu.
Q That's the Beaver Clan; isn't it?
A Beaver House, yes.
Q Your father is a member of the House of Namox?
A Yes.
Q That's correct. And your mother Mary Muldoe was a member of, you are saying, the House of Wiiseeks, correct?
A Yes.
Q That was a Gitksan House, correct?
A Gitksan.
Q I am sorry, Gitksan, yes.
Q Correct. She was a member of the Gitksan House of Wiiseeks; right?
A Yes.
Q So you are a member of the Gitksan House of Wiiseeks; right?
A I am part G'itnee, I must be down there.
Q Because the house membership passes from mother to her son; doesn't it?
A Yes.
Q That's correct. So you are not a member of the House of Namox, are you?
A No.
Q And you are not a member of the Wet'suwet'en Tsayu or Beaver Clan, are you?

A No.
Q Now, the House of Wiiseeks does not appear in the Statement of Claim in this lawsuit. Does Wiiseeks have a territory?
A They got a territory, Gitksan territory.
Q Yes. Now, you say in your evidence that Mr. Pete Muldoe, your uncle, speaks for the House of Gitludahl; is that right, your uncle is Pete Muldoe, isn't he?
A Yes.
Q And his chief's name is Gitludahl, isn't it, your uncle's chief's name is Gitludahl, isn't it?
A Yes.
Q And he speaks for the House of Gitludahl, doesn't he?
A Yes.
Q Yes. Now, Mr. Mitchell, can you tell me where Wiiseeks' territory is, please?
A Like I said, I left there 1932 and I never been in those territories outside of Kispiox village.
Q I understand, so you don't know where Wiiseeks' territory is exactly?
A No.
Q Fine, thank you.
A If they showed me on a map, then I'll know where it is.
Q Thank you. You think it is out there somewhere around Kispiox, don't you?
A Yeah, in northern part.
Q In the northern part of the territory up passed Kispiox?
A Yes.
Q Yes, thank you. Since you are a member of the House of Wiiseeks, you have a claim to that territory of Wiiseeks, don't you?
A Yes.
Q Yes. And in this litigation, you understand that the hereditary chiefs are seeking compensation for loss of their territory? I am sorry?
A No.
Q Maybe I could put that again. Do you understand that the Gitksan chiefs and the Wet'suwet'en chiefs are now seeking compensation for the loss of territory?
A When you speak of compensation, we are not trying to sell out but we're -- we are seeking compensation in regards to -- in regards to compensation, we are

seeking to have the territories the way they were before, the way our ancestors had governing the land and that is what this litigation is all about.

Q Thank you very much. You want the court to recognize your ownership of the territory; correct?

A What we want is to be recognized as our ancestors. They own that territory and we want to follow their foot steps. Now, government has taken it away from us, all the timbers, even water taking it away from us.

Q So you want the territory back again, don't you?

A The way it was governed our -- like our ancestors.

Q Yes, I understand. Now, you, in the Wet'suwet'en law, the House owns the territory, doesn't it?

A Yes. For instance, in the Tsayu House, Namox looks after the Namox territory and that's what my father had spoken of. He said son, you may be the one to look after the territory in the future for our future children.

Q Tsayu -- in the Tsayu clan there are two houses, Namox and Kweese; that's right?

A Yes.

Q Yes. You say the House of Namox claims Goosley Lake territory; correct?

A Goose Lake?

Q Goosley Lake?

A Oh, Goosley Lake, yes.

Q Now, you are not a member of a Wet'suwet'en House, are you?

A No.

Q So you personally do not claim ownership of any Wet'suwet'en territory, do you?

A I am Neg'edeld'es in that territory.

Q Yes. You have a right to the Goosley Lake territory because your father was a member of Namox's House; correct?

A Yes.

Q Yes. And you have that right for your life; correct?

A Yes.

Q Yes. Do you have a right to any other territory, any other Wet'suwet'en territory?

A Just that territory where my father trapped. That's where he teach me to trap.

THE COURT: Shall we take the afternoon adjournment, Mr. Mackenzie?

MR. MACKENZIE: Thank you, my lord.

THE REGISTRAR: Order in court. Court will recess.

(AFTERNOON ADJOURNMENT AT 3:02 P.M.)

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

TANNIS DEFOE, Official Reporter
United Reporting Service Ltd.

1 (PROCEEDINGS RECONVENED AT 3:20 P.M.)
2
3 THE REGISTRAR: Order in court. Ready to proceed, my lord.
4 MS. MANDELL: My lord, if I could just interrupt for a minute,
5 we have the latest of the lists of words to be added
6 to the word list. If I could pass it up.
7 THE COURT: Thank you. Okay. Thank you. Mr. Mackenzie.
8 MR. MACKENZIE:
9 Q Thank you, my lord. Now, before the break, Mr.
10 Mitchell, you told us that you had a life interest
11 in the Goosley Lake territory; correct?
12 A Yes, me myself and my brother Billy were raised within
13 the territory. We were taken around there as
14 children, and my brother Billy was also. They
15 packed him around within the territory. And that's
16 where my father raised us, and -- and that was where
17 my heart is because my father was the one that took
18 us there. And today I am still Neg'edeld'es
19 because, like I said, that is where my father raised
20 us. And as a result of my knowledge of the
21 territory, I know all the -- where all the beavers
22 are and where all the hills are, and I know the
23 landmarks and place names there. Dan Michell and
24 them, they more or less let us caretake the place.
25 THE COURT: Can I have a number, please, for the word that
26 describes the life tenancy?
27 MR. MACKENZIE: Yes, my lord, I was going to ask Mr. Mitchell.
28 THE TRANSLATOR: Neg'edeld'es, 192.
29 THE COURT: Thank you.
30 MS. MANDELL: My lord, I -- I don't believe that Neg'edeld'es
31 describes the life tenancy.
32 THE COURT: Oh, I'm sure it doesn't. I'm speaking facetiously.
33 MS. MANDELL: Okay.
34 THE COURT: Thank you. Well, what it means, as I understand it,
35 but if I don't understand it, perhaps I should be
36 corrected, it means, as I thought, that one had
37 rights on his father's territory for his father's
38 lifetime.
39 MS. MANDELL: That's correct.
40 THE COURT: Yes.
41 MR. MACKENZIE:
42 Q Now, Mr. Mitchell, Neg'edeld'es is rights on the
43 territory during the father's lifetime; correct?
44 A I'm a little bit hard of hearing and that.
45 Q Yes.
46 A You have to speak a little bit louder.
47 Q Yes. Well, your claim to the Goosley Lake territory

is the Neg'edeld'es claim; correct?
A Yes.
Q Yes. And since -- and your father was in the House of Namox, wasn't he?
A Yes.
Q Yes. And you knew the people who held the name Namox, didn't you? You know the chiefs who hold the name Namox?
A Yes, the ones I knew were Alfred Namox, and then followed by Alec Tiljoe, and today it's Lucy William holds the name Namox.
Q Yes. And Dan Michell never -- does not hold the name Namox; correct? Dan Michell is not Namox?
A No.
Q No. Now, in your affidavit, which is Exhibit 185, at page 2, paragraph 3 you say, "I have obtained permission from Namox (Dan Michell)." Now, that was incorrect, wasn't it?
A That's incorrect. That's -- well, Dan Michell, he's got it registered through the Wildlife. He's got it registered through the Wildlife. That's why I said that. I know it's Namox's territory.
Q Dan Michell has a registered trapline in the Goosley Lake territory, doesn't he?
A That's his -- yeah, he's got it registered on the white man way.
Q Yes.
A But in Indian way it's Namox territory.
Q Yes. And -- but Dan Michell is not Namox, is he?
A He's in line for it.
Q Yes. His name -- his chief's name is Wiig'itumsts'ol, isn't it?
A Yes.
MR. MACKENZIE: Yes. Do you need a spelling for that, spelling or number? My lord, do you have that?
THE COURT: No, I don't.
THE WITNESS: You almost -- you almost understand and speak Wet'suwet'en.
MR. MACKENZIE: That's the cross we all bear.
THE TRANSLATOR: Wiig'itumsts'ol, W-i-i-g-'-i-t-u-m-s-t-s-'-o-l.
THE COURT: I'm sorry, at the end of that spelling there was s. Is it s-l-s or s-t-s?
THE TRANSLATOR: s-t-s.
THE COURT: Thank you.
MR. MACKENZIE:
Q So when you signed that affidavit, you didn't -- you signed it with that -- knowing that was incorrect,

that Dan Michell was not Namox?
A Well, I just mentioned it to you that Dan Michell got it registered, that territory, and I know it's Namox's territory.
Q Thank you.
A In white man's way it's Dan's territory.
Q Now, in Wet'suwet'en law when you speak about the territory, you require the permission of the chief of the territory; correct?
A Yes. Because of Namox being my dad's uncle, I've always travelled through the territory with him. Sometimes we used to go over -- go down and see Alfred Namox.
Q Today -- when you signed that affidavit, Namox is Lucy William; correct?
A Lucy William, yes.
Q Yes. And you require Lucy William's permission to speak about Goosley Lake territory, right?
A Yes, Dan is in line and designated to be successor to Namox. Because of the failing health and illness of the present Namox, she has given authority to Dan, Dan Michell, and he in turn asked me to speak for -- for them on the territory. Because of that -- and that is why Dan was out on the territory to instruct Billy from -- when he was trapping out there, to put him down in another area of the territory. And that is when -- when Dan was shovelling snow at the cabin and you yourself sneaked up on him and took pictures, and that's when Dan caught you.
Q Thank you very much. You already mentioned that.
A You're welcome.
Q I want to move on to the question of the intermarriage between your mother and your father. Your father was Wet'suwet'en, and your mother was Gitksan. Now, those marriages are common in the Hagwilget area, are they not? There are many?
A My mother is Laksamshu, and my father is Tsayu. They are -- they are apart from one another because of in the -- in the past, when -- when the Tsayu and Laksamshu population was way down due to death, the population was way down, and that is when the Tsayu and the Laksamshu combined in to help one another, and that is why they sit side by side in the feast hall.
Q And Joe Wilson is Wet'suwet'en -- was Wet'suwet'en?
A Joe Wilson
Q Joe Wilson.

A Yes, Wet'suwet'en.
Q And his wife, Maggie Wilson, was Gitksan?
A Gitksan.
Q Yes. And there are other marriages between Wet'suwet'en and Gitksan?
A Yes, there is a lot of that during the present time, and it has also happened in the past, and that is why you can go down to Kitsegukla or around the areas you'll find some of them people speak Wet'suwet'en.
Q And the Wet'suwet'en people marry the Babine people also, don't they?
A Yes.
Q Now, Mr. Mitchell, you're a member of the Moricetown Band?
A Yes.
Q Yes. And your registered number is 63, band number?
A Eighty-six.
Q Eighty-six. Yes. And you have also been a member of the band council?
A Yes.
Q And how long were you a member of the band council?
A In 1950 I was a council member for the first time, and then because of my employment, working elsewhere, I -- I was -- I had some period there where I wasn't on council, and then about 1955 or '57 I was on council again. And then for a period of about ten years I wasn't on there, and then I got back in again, and I'm -- up to today I'm still on council, yes.
Q So you have been a member of the council from 1965 to today; is that correct?
A Something like that.
Q Thank you. And the band council is the government for the Moricetown Reserve; correct?
A Yes.
Q Yes. And what are the subjects of the band council's work?
A Yes, we -- we as council are -- work with D.I.A., Indian Affairs. We look after -- after the funding end of it, which D.I.A. let's us handle, for such things as water lines and other things.
Q And you make recommendations to Fish and Wildlife about trapline holders as band council?
A As council members the elders speak to us about the traplines, such as this court case here, our territory being taken over by governments, and then

they in turn talk to us because we understand the system a little better than they do. Some of them don't speak English, and they're saying that we don't want to sell our lands, and that is sort of recommendation we get from the elders. And as council members -- and that is how we work with the elders and help them. But as -- in regards to registered trapline holders, the elders take care of -- speak on that themselves.

MR. MACKENZIE: And referring to my document book at tab 4, would you please put that before the witness? The first document under tab 4 is a Band Council Resolution dated June 7, 1982. Is that your signature on the bottom of that document reading Alfred Mitchell?

THE COURT: Isn't the question simply is that your signature?

MR. MACKENZIE:

Q Yes, that's the question. Is that your signature?

A Yes.

THE COURT: Is your name Mitchell, M-i-t-c-h-e-l-l, or Michell, M-i-c-h-e-l-l?

THE WITNESS: Problem there is that there's two Alfred Michell in Moricetown.

THE COURT: Yes.

THE WITNESS: And on my U.I.C. card it's -- I work on Mitchell, otherwise we get our cheques mixed up.

THE COURT: I see. You don't want that.

THE WITNESS: No.

THE COURT: But what is your name, sir?

THE WITNESS: Alfred Mitchell now.

THE COURT: All right. Thank you.

MR. MACKENZIE: And the next document is a Band Council Resolution dated September 10, 1979. Is that your signature at the bottom? The question is: Is that your signature at the bottom, the second document under tab 4?

THE INTERPRETER: Excuse me, I neglected to translate what he was saying before.

MR. MACKENZIE: Oh, I beg your pardon.

THE COURT: Well, I've noticed that the witness was getting along very well without everything being translated for three days. Is it necessary that everything be translated? If it's required, then of course, by all means. But it seems to me that this is taking -- some very simple questions are taking a very long time because it's going through this

translation process, which I must say, after the experience we've had, seems unnecessary. What do you say about this, Ms. Mandell, if anything?

MS. MANDELL: Well, all along the witness has indicated where he felt he needed to be translated, he has turned to the translator, and --

THE COURT: Yes.

MS. MANDELL: -- I -- I would say that if he feels more comfortable in Wet'suwet'en and that's why he's turning to the translation, it's for a reason.

THE COURT: Well, he didn't need it a moment ago when I asked him a question. It seems to me it isn't necessary, but I'm not going to presume to say one way or the other. But it does take a lot of extra time. Let's see how we get along, please. The question is whether your signature is on that document.

MR. MACKENZIE:

Q Is that your signature on that document?

A Yes, that's my signature.

Q The third document is dated September 10, 1979, and it's relating to Mathew Sam. Now, the question is: Is that your signature at the bottom of that page? Sorry, re Mathew Sam?

A Is that the one with this, Mathew Sam?

Q Yeah, Mathew Sam & Company. Is that your signature?

A Yes.

MS. MANDELL: Perhaps you could help to identify the document you're talking about?

MR. MACKENZIE: Well, it's the third document I have under tab 4, dated September 10, 1979, re Mathew Sam & Company, Trapline.

MS. KOENIGSBERG: I think the difficulty is that I -- I have that page as Louis Tommy, and Mathew Sam is the second document. They're both dated the same date.

THE COURT: They're both dated the same day. That's the only problem.

MR. MACKENZIE: Yes, my lord.

THE COURT: He's told us the first two have his signature. The question now is the third one.

MR. MACKENZIE: I'm sorry, my lord. There appears to have been some mix-up. It's just the third one.

THE COURT: You're looking at Louis Tommy now, are you not, the third page?

MR. MACKENZIE: My lord, perhaps I can just expedite this by saying that there are four documents under tab 4 and ask the witness whether his signature appears on those four documents.

THE COURT: Well, we have it for the first two.
MR. MACKENZIE:
Q Yes, and I'll just move over to the witness then and work through with his.
And we're looking at the Louis Tommy Band Council Resolution dated September 10, 1979. The question is: Is that your signature at the bottom of that document?
A Yes.
Q I'm sorry because the copies are mixed up in the others. We're looking now at the fourth document, dated June 7, 1982, re Alexander Dennis & Company. Is that your signature at the bottom of that document?
A Yes.
MR. MACKENZIE: My lord, I'd ask that those four documents under tab 4 be marked as the next exhibit.
THE COURT: Are you objecting?
MS. MANDELL: No.
THE COURT: All right.
THE REGISTRAR: All four will be one exhibit?
THE COURT: Yes.
MR. MACKENZIE: Yes, my lord.
THE REGISTRAR: That will be Exhibit 223, tab 4.

(EXHIBIT 223 - FOUR BAND COUNCIL RESOLUTIONS DATED JUNE 7, 1982, SEPTEMBER 10, 1979, SEPTEMBER 10, 1979, AND JANUARY 18, 1975)

MR. MACKENZIE: My lord, to save the Court's time, perhaps I could meet with the Registrar and have subnumbers given to those.
THE COURT: Oh, I record them.
MR. MACKENZIE: Thank you, my lord.
THE COURT: They're all Exhibit 223.
MR. MACKENZIE:
Q Now, Mr. Mitchell, yesterday you told us that when you went hunting you do not apply for a permit. Do you remember saying that?
A Yes.
Q Yes. And today you said that you applied for a permit for your son. Do you remember saying that?
A Yes.
MR. MACKENZIE: Yes. I refer the witness and the Court to tab 3 of the document book. And, my lord, I'm approaching the witness just to make sure that I can assist him with locating the signatures.

THE COURT: Yes.
MR. MACKENZIE:
Q Looking at the first page under tab 3 of the document book entitled Application for a Sustenance Permit, I'm pointing to a document following paragraph 6. Is that your signature?
A Yes.
Q Turning over to the next page -- I'm sorry, I'll remain on page 1, my lord. Referring to the signature at the bottom of the first page following paragraph 7, is that your son John's signature?
A That's John's, yes.
Q Turning over to the next page under tab -- tab 3, I'm pointing to the signature. Is that your son John Mitchell's signature?
A John.
Q Yes. And referring to the third page under tab 3, a document entitled Fish and Wildlife Branch Permits - Sundry, pointing to the document under "Permitee," is that your signature?
A Yes, that's my signature.
Q And pointing across the page to the signature beside the word "Designate," is that your son John's signature?
A John, yes.
MR. MACKENZIE: My lord, I would submit that those three pages be marked as the next exhibit.
THE COURT: Yes, Exhibit 224.
THE REGISTRAR: Exhibit 224, tab 3.
THE COURT: Three pages.

(EXHIBIT 224 - APPLICATION FOR SUSTENANCE PERMIT DATED JANUARY 11, 1983, A. MITCHELL; APPLICATION TO HUNT DATED JANUARY 11, 1983; PERMIT #B11791 DATED JANUARY 11, 1983)

THE COURT: What do you think, Mr. Mackenzie? Are you finished with that document?
MR. MACKENZIE: I may have some questions on that later. I'm finished with submitting that as an exhibit.
THE COURT: All right. We'll adjourn then until ten o'clock tomorrow morning.
THE REGISTRAR: Order in court. This court will adjourn.

(PROCEEDINGS ADJOURNED AT 4:00 P.M.)

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

_____

Leanna Smith
Official Reporter
United Reporting Service Ltd.