VANCOUVER, B.C.
January 8, 1988

THE REGISTRAR: Order in court. In the Supreme Court of British Columbia, Friday the 8th day of January, 1988. Delgamuukw against Her Majesty the Queen, my Lord.

MR. GOLDIE: My Lord, I produce and hand to my friend a file, Andrew George trapline 609T008, and it is in it's original form. It contained those documents, the originals of which were filed yesterday. I was also asked, or I said that I would assure myself that the trapline map, which dealt with the line of Matt Michelle, Exhibit 90, whether it was an enlargement of section -- or the same boundaries as Exhibit 24A, and I can assure my friend that is the case. I'm not sure whether that map was part of the documents under tab 14.

THE REGISTRAR: It was marked.

MR. GOLDIE: It was marked? All right, thank you.

THE COURT: Yes, it's 90B.

MR. GOLDIE:

Q Yes, thank you very much. Mr. Joseph, could you turn to tab 26 of the book of documents in front of you. These are documents, my Lord, in relation to trapline ATN 604T046, registered originally I believe in the -- to Sam Seymour and Company of Houston, and I think you told us who Sam Seymour was. Can you just refresh my recollection on that?

A Sam -- Sam is the son of Enoch and Mary Seymour, and Sam is the first cousin to Catherine.

Q Katherine?

A Michell.

Q Michell? But Sam Seymour himself was not a member of of the House of Gisdaywa?

A No.

Q Now, by a resolution of the Band Council of Moricetown it would appear that the registration of that trapline after Sam Seymour died would be in the name of Christine Holland, that's the second document under there. Is that -- was that done to your -- or I should ask you this: Do you know who Christine Holland was or is perhaps?

A Yes.

Q And what's her relationship?

A She's the grandmother to Sam and Katherine, both.

Q Sam and Katherine being brother and sister?

A Yeah -- cousins.

Q Cousins, right. Just looking at that council resolution, it's signed firstly by Dan Michell. To your knowledge was he the chief counsellor of the Moricetown band in 1976; it's the next page I think, Mr. Joseph?
A Yes. I think he was. He's signed there as the chief counsel.
Q Right. But ultimately this -- this line became registered in the name of Christine -- or Katherine Michell and Company, and that's because Mrs. Christine Holland wanted it that way; is that your understanding?
A Yes. They were all grandchildren, that's the reason for that.
Q All grandchildren of?
A Christine Holland.
Q Christine Holland? So she was an elderly lady?
A Yes.
Q And what is her relationship to the House of Gisdaywa?
A She is the clan -- there's no relationship to blood, but she's the same clan as my grandmother's father.
MR. GOLDIE: Most of this trapline is in the territory claimed by Sarah Layton or Knedebeas; is that right.
MR. RUSH: Should he not have some reference points?
MR. GOLDIE:
Q If you want to refresh your recollection on that would you turn, please, back to tab 9. Yes. If you put that overlay of the trapline, 604T046 is down in the left-hand corner, isn't it?
A Yes.
Q And the part that is in your territory immediately south of the trapline, that was registered in your uncle's name and of which you're a member of the company?
A Yes.
Q Now, but the bulk of the trapline was in the territory claimed by Knedebeas?
A Yes, yes.
Q Is that Sarah Layton?
A Knedebeas is Sarah Layton, yes.
Q Yes. Well now, and Christine Holland is related to Sarah Layton; is that correct?
A Yes.
Q All right. Why is -- or more accurately, does Christine or Katherine Michell have your permission to trap in the territory of Gisdaywa?
A Why is it you say?

Q No. I say does she have permission?
A Yes. She's following her -- the same territory that they've used in the past.
Q Yes. I appreciate that she is trapping on a line which has been in her family for some time, but that -- the trapping on that line takes it into the territory claimed by Gisdaywa, and did I understand you correctly to say that so far as your territory is concerned she has your permission to trap there?
A Yes.
Q Do you recall when you gave her that permission?
A I have never given her permission, but they've been using that territory as it was for years and years.

MR. GOLDIE: Would it not be correct to say that the territory of Knedebeas extends up to the southern boundary of the trapline which your uncle was the registered holder?

MR. RUSH: Are we referring to the traditional hunting and trapping?

MR. GOLDIE:

Q Yes. The territory of Knedebeas?
A What was the question?
Q I'm sorry, I didn't frame it in a very clear way, but if you look at the -- at the overlay under tab 9, you will see that the trapline boundary 0604T046, which is presently registered in the name of Katherine Michell, follows in part the boundary of the hunting and trapping territory which is claimed by Sarah Layton, and Sarah Layton and Katherine Michell are members of the same House?
A Yes.
Q Well -- and you tell me that when Katherine Michell, and whoever traps on her behalf, is trapping on your territory she is doing so because that's what she and her family have done for many years?
A There may have been arrangements between my grandmother and Christine Holland.
Q There may have been?
A Yes.
Q But that's -- if there is you don't know?
A Yes.
Q But you think there may have been?
A There may have been, yes.

MR. GOLDIE: Yes. But what I'm suggesting to you is that the territory of Knedebeas really goes up to the boundary of the trapline shown as 609T010.

MR. RUSH: Excuse me. Just before Mr. Joseph answers that

question, I think it would be certainly more convenient for Mr. Joseph if he -- and for me, because I have trouble following this overlay, if he had a unencumbered map in front of him, and I suggest that while he's considering a question he might also have the map that is in tabulation 22, which is the territorial map of Gisdaywa's territory. I find it difficult, my Lord, to follow the two documents, the overlay and as well the map at the back, and it might be easier for Mr. Joseph if he has the other map in front of him at the same time.

MR. GOLDIE: By all means.

THE COURT: All right. Tab 22?

MR. GOLDIE: Yes.

THE COURT: Is this the same as the map in Exhibit 62? No, it's not.

MR. GOLDIE: I think --

MR. RUSH: I'm sorry, I thought --

MR. GOLDIE: It is the map, while it's dated May the 12th, my Lord, it is a map which is not the same as that in Exhibit 62 of the same date.

THE COURT: Yes.

MR. GOLDIE: And the difference is the boundary between Madeek and Gisdaywa, which I've discussed with the witness.

MR. RUSH: Well, if I may suggest, my Lord, the map which is the second map of May the 12th which shows the -- that's the map that should be put in front of Mr. Joseph, if my friend doesn't mind.

MR. GOLDIE: Not at all.

MR. RUSH: 62, tab 3.

MR. GOLDIE:

Q Are you using the map from tab 2, Mr. Joseph, or tab 22?

A Yes.

Q Well, my friend would prefer you to use this map, which is from -- it's -- and we're talking about the southern boundary and -- of your territory, and I'm suggesting to you that the southern boundary of your territory should follow the boundary of the trapline, 609T010. Now, I think it would be more helpful to the witness, or possibly of some help to the witness if I also referred him to Exhibit 87A, which is the map of the trapline of Joseph George and Company.

THE COURT: Do I have a copy?

MR. GOLDIE: We're going to have every map in the courtroom out at sometime.

THE REGISTRAR: It's in tab 11 of book 2.

MR. GOLDIE: Yes, it's under tab 11.
THE COURT: Oh, tab 11, yes.
MR. GOLDIE:
Q Mr. Joseph, yesterday we looked at the map of the trapline of Joseph George and Company, and you pointed out that at one time, to the best of your recollection the territory which is to the west, which is marked Richard Lattie and Company, was part of your uncle's trapline?
A Uncle and grandfather.
Q Uncle and grandfather, right. Because this is the trapline of Old Joseph, isn't it?
A Yes.
Q Now, what I'm directing your attention to now is the southern boundary of that trapline, which runs starting from the right-hand side looking at the trapline map, which runs below Owen Lake but then goes up quite sharply towards Nadina Mountain before turning south again and then running over to the west boundary. Now, that I contrast with the southern boundary of the territory of Gisdaywa, which is further south than Peter Alec Creek, which is on the map of Exhibit 62 identified as Tazdlii Kwe. Maybe you would be good enough to pronounce that word?
A Tazdlii Kwe.
THE COURT: That's T-a-z-d-l-i-i- K-w-e, Mr. reporter.
MR. GOLDIE:
Q That is Peter Alec Creek. I refer back to the trapline map, 87A, and you will see that the boundary of the trapline is considerably north of Peter Alec Creek, which is identified in that map. Now, with those in your mind and going back to the -- to the boundaries of Knedebeas as shown on the overlay under tab 9, my suggestion to you is that the boundary of the traditional territory of Knedebeas is really the trapline boundary, which would take it up towards Nadina Mountain. Would you comment on that, please?
A There's been a lot of changes made in the territory since the registration by the Fish and Wildlife and the D.I.A. I always knew that as Tazdlie Kwe, the southern boundary of Gisdaywa.
Q You always knew that?
A Yes.
Q Isn't that southern boundary then a little north of the boundary that is shown on the map under Exhibit 62 but it is a sizeable creek in its own right, you say that's the boundary?

A Yes. Well, it is -- it follows this height of land. They don't cross over these ridges.
Q When you say "they", you mean the people of the House?
A On either side.
MR. GOLDIE: So the ridge is the dividing point?
MR. RUSH: What ridge was he pointing to?
MR. GOLDIE: He's pointing to below Peter Alec Creek.
MR. RUSH: And he pointed along the black line that's there?
MR. GOLDIE:
Q Yes. But you tell me that Peter Alec Creek is really the boundary of the House of Gisdaywa?
A They used both sides of Peter Alec Creek.
Q I see. But is it regarded as the boundary?
A Yes. They don't cross over that because of these -- the ridges in the mountain that's here. It's too steep.
MR. GOLDIE: I see. That's the mountain that's marked on the map as Polar Mountain?
MR. RUSH: No. That's Poplar?
A Poplar.
MR. RUSH: It is Polar, but we agreed it was Poplar.
MR. GOLDIE:
Q Yes, that's right. I had forgotten that agreement. You say that's steep and people don't go over that?
A Yes. A natural boundary.
Q Yes. Let's go back to Sarah Layton's territory. Her people would have the right to come up to Peter Alec Creek, would they?
A No. They would stay on the other side of the ridge.
Q So there's a kind of area between Sarah Layton and Gisdaywa that neither people use?
A Yes.
Q All right, thank you. And you, I take it, therefore don't agree with me when I suggest to you that the boundary of Gisdaywa is even north of Peter Alec Creek; you don't agree with that?
A No.
MR. GOLDIE: All right, thank you. That one I think goes under tab 22, Mr. Joseph. My Lord, I tender the documents under tab 26, which consist of the Application for Registration in the name of Katherine Michell and the Band Council Resolution requesting the registration in the name of Christine Holland of March 23rd, 1976 as Exhibits 91A and 91B.
MR. RUSH: I don't think the Band Council resolution has been proved, but there will be a witness who will come along later and I'm sure will do so. We don't object

on that basis, but however, Mr. Goldie, I wonder if I could have a look, please, at the application and if we couldn't file the original of the application.

MR. GOLDIE: Yes. I have the original of the Band council Resolution. Do you want that filed?

MR. RUSH: No.

THE COURT: All right. The original application will be 91 and the resolution will be 91A.

MR. GOLDIE: We've been following putting 91A for the first and 91B for the second.

THE COURT: All right. 91A and B.

EXHIBIT 91A - Original of application for registration of trapline of Katherine Michell dated January 27, 1977

EXHIBIT 91B - Band Council Resolution dated March 23, 1976

MR. GOLDIE: Yes. Next, Mr. Joseph, would you turn under tab 27, the documents with respect to trapline 609T014. Now, again this is a trapline that you referred to in your evidence in chief. It is registered in the name of Steven Tom, and there are others forming part of that group, but Steven Tom, tell us again, please, who he is?

A Steven Tom?

Q Yes. To assist you, Mr. Joseph, I think your reference was to J.B. Tom, Swassa Tom, John Baptiste and Company. There's a trapline that is partly in Madeek's territory and partly in your territory?

A Yes.

Q Now, I think you told his Lordship about the relationship of John Baptiste Tom and Swassa Tom, but I don't recall you referring to Steven Tom, and I wanted your assistance with respect to him.

A I never heard the name Steven Tom. I knew J.B. Tom and the others.

MR. GOLDIE: If we look at the first document, which is an application for registration of the 18th of November, 1942 in the name of J.B. Tom, that would accord with your recollection, would it not?

THE COURT: Actually it's J.B. Tom and Company, is it not?

MR. GOLDIE:

Q Yes. J.B. Tom -- well, the full name of the applicant of the first document is John Baptiste Tom and Company. That would be in accordance with your

recollection and evidence, if I remember correctly?
A Yes. I know J.B. Tom, but the registration here I have never seen or never heard of this one.
Q I see.
A Because at that time I wasn't around here.
Q No. I appreciate that. But the names at the top of that registration, J.B. Tom, Swassa Tom, Felix Joseph Tom and Mary Tom, you knew all of those people, didn't you?
A Yes.
Q And they were members of what House?
A Kaiyexweniits.
Q Of your own House?
A Yes.
Q And then the next document is the back of the preceding one, and that has at the top of it "Transferred to Tom Steven 17 March, '83 with various approvals", but the approvals relate to the application of December 15th, 1942. I'll just go on to the next one, which is a letter dated February 26th, 1983. I give -- and this is a letter from J.B. Tom, at least it purports to be a letter from J.B. Tom. Did you ever have occasion to see the signature of Mr. Tom; would you recognize that?
A No.
Q But the letter reads:

> "I give or relinquish my rights to my registered trapline to Steven Tom and Company, Swassa Tom, Felix Tom, Joseph Tom and Mary Tom."

The only name that you don't recognize there then is Steven Tom?
A Yes.
Q And so far as you know, he's not a member of your house?
A He may have been a member. Another name I don't really know about is Mary Tom.
Q Oh, I see, thank you. The people then that you recognize would be Swassa Tom, Felix Tom, Joseph Tom, and of course J.B. Tom?
A Yes.
Q Let's go over to the next one, which is an application for registration in the name of Steven Tom, February 25, 1983, and his address is Burns Lake, and the -- the signatures appear to be Swassa Tom, Joseph Tom, Steven Tom, Felix Tom. Mary Tom is not -- her

signature isn't there, but she's still a member of the company apparently, and that appears from the back of the application to register, and that date is March the 14th, 1983. All that you can say then at the present time is that Steven Tom, whoever he may be, you don't recognize as a member of your House?

A No. He may go by a different name. A lot of times they -- they use other names or -- like Swassa Tom, I don't really -- all the name he uses, Swassa Tom, but I don't know -- I don't know if it's his registered name or anything like that.

Q Right. It's certainly the name he has gone by on all the trapline registrations?

A Yes.

Q Now, if the other members of the trapline company of Steven Tom and Company are members of your House they would have the right to trap to the extent this trapline is on your territory?

A Yes.

Q Now, to the extent that this trapline is on Madeek's territory, would they have the right to trap there?

A Yes. If Madeek agrees with that.

Q Yes. At the present time -- or the former holder of the name of Madeek was George Naziel?

A Yes.

Q And at the present time there is no holder of that name?

A No.

MR. GOLDIE: All right. I would like to tender those three documents as exhibits, my Lord, the first being the front and back of the application for registration dated the 18th of November, 1942 as Exhibit 92A.

THE COURT: Any objection, Mr. Rush?

MR. RUSH: My Lord, I don't take an objection to the application form. I do take an objection, however, to the -- to the handwritten letter because of the inability of Mr. Joseph to identify the signature or anything about the letter.

THE COURT: Yes.

MR. RUSH: I don't object to the other application going in.

THE COURT: All right. You don't press for the letter, do you, Mr. Goldie?

MR. GOLDIE: Well, I'm not sure. My friend simply says that Mr. Joseph hasn't proven the letter, but I could put the obvious question to him, would he agree that the signatures on the application of 1942, the signature on the letter, and the signature on the application of

February 25, 1983, or would he agree that they're all the same as the signature on the letter February 26th, 1983, and of course they're all produced from a file, which is the sub-stratum of Exhibit 26A, and it is a file which has been verified by an affidavit that it is one of the business records of the Province kept in the ordinary course of the Province's business. It is not a document which is standing all by itself forlorn and alone.

THE COURT: No. I'm forlorn and alone.

MR. GOLDIE: So it really makes no sense to eliminate that letter when a document that is filed contained exactly the same information, namely that a relinquishment of rights signed John Baptiste Tom.

THE COURT: Well, let me ask him. Would you look at the last document on that tab, please, Mr. Joseph. It says:

> "I do hereby relinquish all rights to my registered trapline to Steven Tom."

And do you recognize that signature, J.B. Tom?

A The J.B. Tom with an X on it?

THE COURT: Yes.

A I have never -- I don't know if -- as far as I know J.B. Tom was -- did a lot of reading and writing. I don't know why the X is there.

THE COURT: Well, I wouldn't worry about that, somebody may have said "This is where you sign it and put an X there" and then he signed it. I don't know what happened there, but -- and we don't need to speculate about that, but do you recognize the signature?

A I see it's J.B. Tom, yes. I don't know if it's his.

THE COURT: And if you look at the --

MR. RUSH: Sorry, my Lord. He says he sees it as J.B. Tom, he didn't say that he recognized the signature.

THE COURT: I put that in the question and I thought he was responding to that, but maybe not. Do you recognize the signature?

A No.

THE COURT: You don't? All right.

A I'm not too sure about it.

THE COURT: All right. Well, the law has never claimed to be sensible, Mr. Goldie, logical or sensible. I don't think the document is proven.

MR. GOLDIE: Well, I was going to make one further submission. It wasn't on the basis of sensibility, it was that I may wish to take the position that that letter is an

admission against interest. J.B. Tom was identified as a member of the House, Steven Tom is not identified as a member of the House.

THE COURT: Yes.

MR. GOLDIE: I may wish to take the position that that is an admission against the interest of a member of the House in a trapline in the House territory.

THE COURT: Well, does that really -- can you advance that argument until such time as the signature is proven? I can understand the argument if the signature is proven, but seems to me there's a threshold problem here.

MR. GOLDIE: Well, the proof of the signature may never be able to go beyond the finding of the document in a file amongst others carrying the same signature given the dates we're looking at. The two things flow together.

THE COURT: I have every sympathy with your problem, Mr. Goldie. It seems to me that a lot of these things are capable of proof, but I think you're in an area that -- I may be drifting back to criminal law -- but I think you're in an area where you have to have an expert identify the signatures.

MR. GOLDIE: Well, I've -- I may not be driven to that with respect to this particular document, but I would like to have it marked for identification.

THE COURT: Yes, yes.

MR. GOLDIE: That would be Exhibit 92B for identification.

THE COURT: Yes. 92B for identification.

MR. GOLDIE: And the application for registration of the February 25th, '83 is 92 --

THE COURT: 92C.

MR. GOLDIE: 92C.

THE COURT: Yes. Front and back.

MR. GOLDIE: Yes.

EXHIBIT 92A - Application for registration of trapline of John Baptiste Tom and Co.

EXHIBIT 92B FOR IDENTIFICATION - Letter from Steven Tom dated February 26, 1983

EXHIBIT 92C - Application for registration of trapline of James I. Lattie dated February 25, 1983

MR. RUSH: I would like the original filed, if it can, please.

MR. GOLDIE: That's the original of 92A, is at the request of my

friend is now filed.
THE COURT: Yes.
MR. GOLDIE:
Q You mentioned, by the way, Mr. Joseph, that J.B. Tom did a lot of reading and writing to your knowledge. That would include reading and writing in the English language?
A That is -- what I said that is when I knew when he was a lot younger.
Q Yes?
A He went -- I went to a residential school and he used to come there and visit there in the 40's. That's the only area since. I don't know what's happened since then.
Q But at that time he was able to read, write and speak English?
A Yes. But lately I've been hearing that he was not well.
Q No. Well, that -- that is in much more recent times?
A Yes.
Q Now, the next one is under tab 16, and this is the trapline of Dick Lattie and Company, which is immediately west of the line registered in your -- in your uncle's name, and you told his Lordship that whoever was trapping that line was doing so without the permission of you, as the chief of the House of Gisdaywa?
A Yes.
Q And the reason for that is that the Lattie family are Gitksan people?
A Yes.
Q From New Hazelton?
A Hazelton.
MR. GOLDIE: From Hazelton, yes, thank you. And you -- the documents, my Lord, are a registration, an application for registration.
THE COURT: I haven't found it on the --
MR. GOLDIE: Under tab 16.
THE COURT: On the overlay under tab --
MR. GOLDIE: 0 --
THE COURT: 011.
MR. GOLDIE: Yes. Have you located it?
THE COURT: I'm sorry. I think I've found it, the 11 on the --
MR. GOLDIE: The 11 is a little close.
THE COURT: Yes. I've found it, thank you.
MR. GOLDIE:
Q The documents under that are two applications for

registration, the first being that of May the 6th, 1957, and that is a registration in the name of Richard Lattie and Company, and on the reverse there is a notation that the previous has been cancelled and registered as a company trapline. The -- I would ask that that be marked as Exhibit 93.

THE COURT: Any objection?

MR. RUSH: No. As long as the original is provided.

THE COURT: 93A front and back.

EXHIBIT 93A - Two applications for registration

MR. GOLDIE: Yes. Now, I do not have the original in this sense, that what was in the file is a photograph from which the document in the book is filed. The second registration, which is January the 25th, 1982 in the name of James Ivan Lattie, and on the reverse is described as:

> "Formerly trapline of Richard Lattie, deceased died on May 18th, 1981."

And then there are names of group members, all members apparently of the Lattie family. I would tender that as Exhibit 93B.

THE COURT: Any objection?

MR. RUSH: No.

THE COURT: Thank you. Front and back?

MR. GOLDIE: Yes.

EXHIBIT 93B - Application for registration of trapline of James Ivan Lattie dated January 25, 1982

MR. RUSH: Again, I just ask that the originals be tendered.

MR. GOLDIE:

Q All right, well then the original that is in the file for 93A I hand up, and 93B. The next line I wish to refer to is under tab 17. Now, Mr. Joseph, is it in your knowledge, your grandmother Mrs. Cecilia George had a trapline or claimed a trapline near Hazelton in what would be Gitksan territory?

A Yes.

Q And is it a trapline that over which there was some controversy between your grandfather, Felix George, and a white man by the name of Guss, G-u-s-s. Do you have any recollection of hearing anything about that?

A No.
Q But you did know that your grandmother had a line up in the Hazelton area?
A Yes.
THE COURT: I'm sorry, this grandmother's name was?
MR. GOLDIE:
Q Cecilia, Cecilia George. That's correct, is it not, Mr. Joseph?
A Yes.
Q The first document I want to refer you to is an application for registration which has got "Cancelled" written across it, and it appears to be dated December 30th, '31. Do you see that? It's the fourth page in, and there's a photocopy of a map at the bottom of it?
A Yes.
Q Now, the signature of the applicant is given as Cecilia Joselle, an X over the word mark, George. Did you understand your grandmother's full name was Cecilia Joselle George?
A I know it was Cecilia, the way some of our -- the elders pronounced it, it was different.
Q I see.
A Cecilia.
Q So she may have had a second name, but it may have been pronounced differently than what I just pronounced?
A No. They pronounced the first name differently.
Q I see. How did they pronounce the first name?
A Well, other elders in the village called her Cecilia, that's where it comes from.
Q I see.
A Can't say Cecilia.
Q But we're speaking of the same person?
A Yes.
Q Now, could your grandmother read or write her name?
A No.
Q Now, up at the top of the -- of the application to register there is typed these words, "Mrs. Cecilia", and it looks like "Joselle George also Felix". Now, that's the first name of your grandfather, of course?
A Yes.
Q Thomas, that's the name of the oldest son, your uncle Thomas Seymour George.
A Yes.
Q Now, what about Sam, Joseph, Francis Calista and William?
A They're all brothers.

Q They're all children of Felix and Cecilia?
A Yes.
Q All right. The reverse of that contains nothing except the words "recommended", and then I want to -- my Lord, I'm going to show my friend a couple of letters from an RG10 file, which so far as I'm aware have not been listed. We came across them when we were examining some other documents, and your Lordship will notice that the source of some of these documents are of Cecilia George's file of the Attorney General of Canada. These ones we came across in a completely different file, and as far as we know they're not listed. I'm going to hand them to my friend and ask them to consider whether he's prepared to admit them?
MR. RUSH: No. My Lord, I want to just make one comment at this time. The document that's been provided to us is a document that I thought had been divulged on a federal government document list at the beginning of the week. Am I wrong about that?
MR. GOLDIE: It may be. I --
MR. RUSH: You provided me with copies of this, did you not?
MR. GOLDIE: Yes.
MR. RUSH: And I thought you had listed those?
MR. GOLDIE: No. Those were different documents.
MR. RUSH: I see, okay.
MR. GOLDIE: I don't think I've been able to provide you with a copy of this before now.
MR. RUSH: All right. Well, then my point about this is perhaps premature. I'm going on to another point. Perhaps when I've got the floor here I'll just make that point. The federal government has delivered two document lists since the beginning of Mr. Joseph's cross-examination. Some of the documents are pertinent to the cross-examination, and while I don't think I'm in a great position to be crying wolf about the fact of late delivery of documents, I do think that the disclosure of documents prior to the cross-examination would have been more appropriate in these circumstances, so that had we found it necessary to discuss these with Mr. Joseph we could have. I make that point, and I must say that I don't make that point in respect of these documents. Mr. Goldie did send me these, and I am not, as I said at the opening here, prepared to admit them.
MR. MACAULAY: Perhaps I should speak to that, my Lord. It's true that two short lists of documents were delivered during the cross-examination or towards -- well,

towards the end of the examination in chief and during the cross-examination. In these circumstances we thought we had exhausted the supply of the files kept here and there by Indian Affairs, but we were wrong. The information we had received earlier was not accurate. We discovered some others and we thought that rather we should disclose them immediately, it is -- it's not desirable, but we disclosed them as soon as we found them. These are very short lists.

THE COURT: I don't think you can be criticized for disclosing them as soon as you find them, Mr. Macaulay. The only problem is one of consequences, and we're not at that point, as I presently see it.

MR. MACAULAY: I might say something about the RG10 series, that is an enormous vast series. It's like a huge mine.

MR. GOLDIE: It's a black hole.

MR. MACAULAY: My learned friend, Mr. Goldie, has had somebody digging in that hole for some considerable time and so have we, and maybe his miner has discovered something that we hadn't. I don't know if I've seen these documents yet. We list them when we get them, but it's an enormous series that covers the whole country, and there's a great deal of cross mining process to get into.

THE COURT: Okay. I will have to deal with whatever problems arise from the use of late discovered documents in due course. I'm not sure I can do anything more with this problem now, except that I'm not sure I understand your position, Mr. Rush. I rather thought that when you had your dialogue with Mr. Goldie that you were agreed he could use these documents and then --

MR. RUSH: Yes, I do. And I must say that this is a document that is dated January the 4th, '87. I'm sorry, the letter conveying the documents to me was January 4th, '87, so it was the first day of the hearing of this week, and these are documents apparently taken from the RG10 series. I can't confirm or deny whether they were taken from the RG10 series. These are certainly archival documents, it appears on the face to be archival documents. There are some tentative -- well, on this point there is an agreement that certain documents will be admitted, but these are documents that in some way I can determine if in fact the source is as it's said to be, and I mean I must have some room to be able to do that. I don't think that four days is sufficient -- is that -- I just can't admit these documents on the basis that they've been

provided to me at this time.
MR. GOLDIE: We have proceeded in this trial to date on the assurance by counsel that the source is archival. When my friend produced photographs for the first time in the courtroom in Smithers and we said "Where are these from" and the answer was the Public Archives of British Columbia, that was sufficient. Now, if we're going to have to produce a certificate in respect of every document that comes from an archive, this agreement that we had is not really worth very much.
MR. RUSH: Well, nor am I asking that. I'm simply --
THE COURT: Gentlemen.
MR. GOLDIE: I'm sorry.
THE COURT: One at a time, please.
MR. GOLDIE: I'm stating that the source of these documents is RG10 file 33/13.
THE COURT: What does that mean?
MR. GOLDIE: That means that that comes from a file located in the Public Archives of Canada, they're microfilm copies in Victoria, but 33/13 of RG10 is a source which is a very large file, and these are two documents from that and they were sent out to us by our researcher in Ottawa. I can produce if necessary an affidavit from her as to the source, but I hope I'm not going to be confronted with providing an affidavit every time an archival document is produced.
THE COURT: All right. Mr. Goldie, what do you understand your agreement with your learned friend is regarding the use of archival documents?
MR. RUSH: It is that they would be admitted as such.
THE COURT: All right. Mr. Rush, what do you understand the arrangement is regarding the use of archival documents?
MR. RUSH: Well, we were mid-flight in determining the scope of the agreement, and the question -- the agreement as among three counsel, not just Mr. Goldie and myself, fell on foul water over what were archives, and we were trying to agree amongst ourselves the -- we wanted a very broad definition of archives, and we tried to define it in specific terms. Now, in my submission we felt that archival documents should be documents that would be admitted without the requirement of certification, and authenticity, and this is the agreement. We haven't consummated this agreement and perhaps we should have before today, but the fact is that we could not reach agreement on what constituted archives. Now, I can say that what would

not be in issue, so far as we were concerned, is provincial archival documents or federal archival documents that we were satisfied came from those sources. Now, Mr. Goldie has said -- has assured me that these come from the sources that he says, but forgive me if I want some assurances from the people who want to consult with me, and I have not in four days -- firstly, I didn't know that this particular document was going to be advanced, but I haven't had an opportunity with an unlisted document to vet them through the people who advise us, and frankly, what we do is we pass these onto people who consult with us and assist us in assessing the documents. So that that's where we stand, and that's why I can't give that assurance. I'm going to try and evaluate all these documents that have been handed to me on Monday, Tuesday and Wednesday of this week on Sunday, so if that is any help to my friend where I hope to consult with our people on them, but at the moment I'm not prepared to admit them.

MR. GOLDIE: I think that the discussion can't really take us very much further. There is no disagreement over the admission of documents from the archives. When my friend says there is no agreement on what constitutes archives, he's talking about our desire to expand that and my friend's reluctance to include certain sources, or indeed, our concern about certain sources which he's suggesting, but what I am content to do is leave the matter at the present time, and because I suspect Mr. Joseph will still be on the witness stand on Monday. Now, however, I do want my friend's position with respect to the balance of the documents under tab 17, because these are documents from the -- from the provincial file -- I'm sorry, the correspondence, the R.C.M.P. correspondence is from the federal file, and it's listed under this document number 10430, the applications for registration.

THE COURT: I'm sorry. I don't see any correspondence from the R.C.M.P. here.

MR. GOLDIE: The first two under tab 17, my Lord.

THE COURT: Oh, yes.

MR. GOLDIE: Now, the source of those apparently is the Public Archives of British Columbia GR 1085 Box 26, file 5.

MR. RUSH: The source of the R.C.M.P. letters?

MR. GOLDIE: That's what's written down at the bottom of the right-hand corner.

MR. MACAULAY: That's correct, that's where we got them, my

Lord. I obtained those from that source.
MR. GOLDIE: But those two stand on their own. They indicated the outcome of the dispute between Felix George and the -- and Mr. Guss, and the outcome was in Mr. George's favour or Cecilia George's favour. But the documents from the provincial file start with the application for registration of December 30th, 1931, front and back, an application for registration.
THE COURT: Well, let me ask Mr. Rush what he says about that document, the 1931 application?
MR. RUSH: All right. I would like to see the original.
MR. GOLDIE: That document is an archival document, I'm instructed it's no longer in the custody of the Province, and the original is in the archives.
MR. RUSH: Could you advise me the number of that, please?
MR. GOLDIE: I will endeavour to do so. I think the -- I don't have the information with me here. However --
MR. RUSH: My concern here, my Lord, is the photocopy of the map that's on the document, and I would like to see the source and the originals.
MR. GOLDIE: Well, if they're in the archives we can't provide the originals, they don't release originals from the archives.
MR. RUSH: I appreciate that. What I'm concerned about is to have a look at the number and the file under which they were photocopied from the archives.
MR. GOLDIE: Well, I'm instructed it's PABC GR 1085 Box 26, file 5. Does that apply to the application for registration?
MR. RUSH: PABC -- what number is that, please, on the document list?
MR. GOLDIE:
Q 10430. I'm sorry, if I may continue, the documents which are not archival start with an application for registration in the name of Alfred Wilson, Alfred Mercer Wilson. Do you know who he is, Mr. Joseph?
A Yes.
Q And is he a member of your House?
A No.
Q Do you know what house he belongs to?
A The House of Spookw.
Q Spookw? So he is a Gitskan?
A No. He's related to Spookw from the Gitksan, yes.
Q But he is a Gitksan?
A No. Well, you'd say some connection with Spookw from the Gitksan side through his mother.
Q I see?

A Yes.
Q Well, apparently the line was transferred from Sylvester George. And Sylvester George is whom?
A My uncle.
Q And you would recognize his signature, would you?
A Yes.
Q And that appears on a letter to the Fish and Wildlife on a printed form and then a handwritten letter of September 8th, 1982. Just looking at the last first, that's the signature of your uncle?
A Yes.
MR. RUSH: Which one are you showing him?
THE COURT: The last document in the tab.
MR. GOLDIE:
Q The handwritten letter of September 8th, '82, which reads, and:

"I, Sylvester Charles George, of Hagwilget Reserve, hereby agree to sell my trapline, which is located in the Hazelton area, to Albert Mercer Wilson of Hagwilget Reserve.
I, Sylvester George, relinquish all my rights to the trapline in the Hazelton area registered to me to Albert Mercer Wilson."

Signed Silvester C. George. And it's witnessed by Mr. Frank Gillion. He's a conservation officer of the province, is he, Mr. Guillon.
A Yes.
Q And Sylvester George then was -- was what relation to Cecilia, your grandmother?
A Son.
MR. GOLDIE: Son, right. So he appears to have sold or transferred the line to Albert, and that would take it out of the House of --
THE COURT: You mean Albert Mercer Wilson?
MR. GOLDIE: Albert Mercer Wilson, yes.
THE COURT: Yes.
MR. GOLDIE: And that would take it out of your House, if there ever was an interest of your House. Did your House ever have an interest in that trapline?
MR. RUSH: Could you just indicate what you mean by "an interest" to the witness.
MR. GOLDIE:
Q Well, was it ever a trapline which was regarded by Gisdaywa as a trapline that members of that House could use?

A Gisdaywa has never used that -- the territory.
Q No. This is in Gitksan territory, isn't it?
A Yes.
Q Did you have any -- do you have any knowledge of why a Wet'suwet'en trapline should be in Gitksan territory?
A Well, they're there, my grandmother Cecilia George had a -- is one of the two that had a seat in the Gitksan Feast House.
Q I see.
A And she had -- she would go to a feast at Gitanmaax, to every feast, and the former Spookw gave her permission to use that territory.
Q That trapline is now -- well, let me put it this way. Have you any knowledge of why the trapline was transferred by your Uncle Sylvester to Albert Mercer Wilson?
A I didn't know about that until quite sometime after that.

MR. GOLDIE: And did you ever hear of any reason why that would be -- why that was done?

THE COURT: Getting pretty close to hearsay, isn't it,Mr. Goldie?

MR. GOLDIE: Well, it would be remarkably close.

THE COURT: Is this a convenient time to take an adjournment?

MR. GOLDIE: Yes.

THE COURT: All right, thank you.

MR. GOLDIE: Perhaps before we go, let me just finish that one question.

THE COURT: Yes, all right.

MR. GOLDIE:

Q Do you have any knowledge of the reason why the transfer was made, regardless of the source of your knowledge?
A The only reason I could see was Sylvester, my uncle, was a very sick man.
Q All right.
A And still is.

MR. GOLDIE: That's sufficient for my purposes. Thank you.

THE COURT: All right, thank you.

THE REGISTRAR: Order in court. Court stands adjourned briefly.

(PROCEEDINGS ADJOURNED AT 11:20)

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

Graham D. Parker
Official Reporter
United Reporting Service Ltd.

Proceedings

(PROCEEDINGS RECOMMENCED AFTER A BRIEF RECESS)

THE REGISTRAR: Order in court.

MR. GOLDIE: My Lord, we were dealing with material under Tab 17 of the book, and I had asked the witness to identify the signature of Sylvester George, which he did, and I am going to ask that the Alfred Mercer Wilson application for registration in respect of trapline 609T045, which is the -- and it's dated November 17th, 1982, front and back, the letter to the Fish and Wildlife Branch, which is signed by Sylvester George, dated November 17th, 1982, and the handwritten letter of September 8, 1982 all be marked as Exhibit 93 A, B and C -- 94 A, B and C. And I am going to leave the matter of documents which come from Canada's file 10430 for the present, as I am leaving the documents which come from RG10 for the moment.

THE COURT: Mr. Rush?

MR. RUSH: I agree with that.

THE COURT: Thank you.

(EXHIBIT 94A - ALFRED MERCER WILSON APPLICATION FOR REGISTRATION DATED NOVEMBER 17, 1982)

(EXHIIBT NO. 94B - LETTER TO FISH AND WILDLIFE BRANCH DATED NOVEMBER 17, 1982)

(EXHIBIT NO. 94C - HANDWRITTEN LETTER OF SEPTEMBER 8, 1982)

MR. RUSH: I just don't know which ones of these documents were referred to. If you could just go through them again. Exhibit 93.

MR. GOLDIE: A is -- 94A is the application for registration of Alfred Mercer Wilson, dated November 17th, '82, front and back, which would be A.

THE COURT: Yes.

MR. GOLDIE: The next document is a printed form on which the

signature of Sylvester George is found, dated November 17th, 1982. That's B. And the next document is the wholly handwritten document dated September 8th, 1982, Exhibit 94C.

MR. RUSH: Can we have the original, please, of the application?

MR. GOLDIE: To the extent that I can comply with that, I will. I don't have that here.

MR. RUSH: Thank you.

MR. GOLDIE: Now --

MR. RUSH: I think it's understood, when I asked that, that I would like the original file to the extent that there is an original. Maybe a photocopy in his file, whatever.

MR. GOLDIE: Now, the next line that I want to refer to is under Tab 28, and this is line 609T006. There is a map there, and the general location is indicated on that map. It is to the northwest of the Thomas George. And perhaps, My Lord, since I am going to be concerned about the boundaries of this to a little greater extent than the previous ones, Your Lordship might like to just refer to the overlay under Tab 9. 609T006.

THE COURT: Yes, I see.

MR. RUSH: Mr. Goldie, I wonder if you could do the same you did with the Knedebiis.

MR. GOLDIE: When I come to it, yes.

MR. RUSH: When you come to that.

CROSS-EXAMINATION BY MR. GOLDIE, CONTINUED:

Q The registration of that line is -- was Peter Alfred and company, and Peter Alfred was in the House of what?

A Madeek.

Q And indeed did he not bear that name at one time?

A No. He had Kanoots.

Q He had the name Kanoots?

A Yes.

Q Referring to the map in Exhibit 62, the map of your territory. That is the -- that's the territory which is to the northwest of your -- of Gisdaywa and across the Morice River from Madeek territory that we have been talking about earlier, which is again adjacent to your territory?

A Yes.

Q But Kanoots' territory of the House of Madeek that we are talking about, then, is east of the Morice River

and, I guess one with would say, south of the Bulkley, south of Houston?

A Yes.

MR. GOLDIE: Does -- Your Lordship has got Madeek-Kanoots?

THE COURT: Yes, I think so.

MR. GOLDIE:

Q Now, the trapline was registered in the name of Peter Alfred and company, and I direct you again to Tab 28. The application for registration is dated the 31st of March, 1945. Have you ever had occasion to see the signature of Mr. Alfred?

A Yes.

Q Would you recognize it at the bottom of that application form?

A Part of it is --

Q It may be a little hard to follow. I am going to show you the original of the application for registration dated the 31st of March, 1945, and there is a signature "Peter Alfred" there. Does that resemble what you know of Peter Alfred's signature?

A Yes.

Q Now, going to the map itself which follows. Would you agree with me that that is -- well, I think you have already said that to your knowledge that's the territory -- in the territory claimed by Kanoots, who himself was Peter Alfred?

A Yes.

MR. GOLDIE: I'll tender that as an exhibit. And does my friend wish me to tender the original of that?

MR. RUSH: Yes, please.

THE COURT: The application be 95A.

MR. GOLDIE: And the map would be 95B.

(EXHIBIT NO. 95 A - APPLICATION FOR REGISTRATION DATED MARCH 31, 1945)
(EXHIBIT NO. 95B - ATTACHED MAP)

MR. GOLDIE: I'm supplying the registrar with the original.

Q Do you know a Lucy Bazil, B-a-z-i-l, Mr. Joseph?

A Yes.

Q Can you tell His Lordship who she is?

THE COURT: I'm sorry, is that B-a-s-i-l?

MR. GOLDIE: B-a-z-i-l.

THE COURT: Thank you.

MR. GOLDIE:

Q She's a Wet'suwet'en, is she not?

A Yes.

Q And she's a hereditary chief?
A Yes.
Q And she's a member of the House of the Wah tah kwets?
A Yes.
Q To your knowledge, she has lived on the territory of Kanoots; is that correct?
A Yes.
Q And in fact her father was the former Kanoots, Jim Mooseskin?
A Yes, he was the uncle of Peter Alfred.
Q Of Peter Alfred. So Peter Alfred succeeded to the name when his uncle died?
A No. Went to another person before that.
Q But in any event Lucy Bazil was the daughter of a former Kanoots?
A Yes.
Q And are you aware that she has filed an affidavit and has been examined on that affidavit in the course of giving evidence on commission? Were you aware of that?
A It all depends -- I know that there was talk about it, but when it happened, I don't know.
Q No. But in connection with this lawsuit?
A Yes.
Q Yes. And she -- would you agree with me that by reason of the fact that she has lived on that Kanoots territory and by reason of the fact that her father was a former Kanoots, that she would have knowledge of that territory?
A Yes.

MR. GOLDIE: My Lord, fortuitously or otherwise, a copy of her commission evidence was what Your Lordship was referring to the other day.

THE COURT: Yes.

MR. GOLDIE: She gave evidence on November 23rd, 24th, 25th and 26th.

THE COURT: Yes.

MR. GOLDIE: I have just the one copy here of her affidavit which was marked on -- as an exhibit, and I'll hand that up, if I may.

THE COURT: Thank you.

MR. GOLDIE: Her affidavit is Exhibit 4 on her -- in the course of her giving her evidence. And if Your Lordship would look at paragraph 5.

I should refer Your Lordship to the page 2. There is a heading "Dzengoz'aay". Perhaps, Mr. Joseph, you might help me again in the pronounciation of that

word.
MR. GRANT: My Lord, if I may speak. It may be of assistance if Mr. -- if my friend -- Mr. Mitchell dealt with that in the Lucy Bazil commission, it may assist for the spelling and that. We do not have a copy to give to Mr. Mitchell right now, but possibly if my friend is going to deal with it further later, we will arrange for a copy for him to have.
THE COURT: Well, it's D-z-e-n-g-o-z's-a-y.
MR. GOLDIE:
Q And that is the Wet'suwet'en name for the territory of Madeek-Kanoots?
A Yes.
Q So if I referred to the territory of Kanoots, you will understand that I am referring to the territory of Dzeng -- I am not going to try it again.
The paragraph reads:

"I have obtained permission from Peter Alfred, the former Kanoots, George ..."

And I can't make it out.

"And Fred Joseph, Kanoots, to describe and speak about the Dzengoz'aay territory owned by the House of Madeek. I have spoken with members of the House of Madeek and understand that Fred Joseph will speak for the House of Madeek until such time as someone is chosen to take the name Madeek in succession to George Naziel, who recently died. This territory is located in the middle of part of Nenlii Kwe (Buck Creek), fifty miles south of the village of Kyah Wiget, Moricetown."
THE COURT: Mr. Goldie, the reporter needs the spelling of those words, which is N-e-n-l-i-i, new word, K-w-e. K-y-a-h, new word, W-i-g-e-t.
MR. GOLDIE: And then she goes on to say that she was instructed about the territory by her father, a member of the House of Madeek, Gitdumden Clan, who is now deceased, and that he pointed out boundary points and major landmarks when we travelled within the territory, and then she describes the territory.
THE COURT: Could you just stop. Could someone tell me, and I'm sure I should know this, but what's the connection between Madeeks and Kanoots? One's the house and the other is whom?

MR. RUSH: Kanoots is a chief within the House of Madeek, and I think that evidence has --
THE COURT: I'm sure it has. That would be the same situation with the witness whose of the House of Gisdaywa, but the House is --
MR. RUSH: There are sub-chiefs within the house.
THE COURT: Yes. I had the name of this House a moment ago. I'm sorry, the witness is Gisdaywa, and the name of the House is Kaiyexweniits.
MR. RUSH: That is not the same situation.
THE COURT: No.
MR. RUSH: Kanoots is one of the sub-chiefs within Madeeks' House, and Madeeks' House may have a separate Wet'suwet'en name to which both Madeek and Kanoots belong.
THE COURT: But the House is Madeek?
MR. RUSH: The House is Madeek.
THE COURT: All right, thank you.
MR. GOLDIE: And Mr. Naziel, when he was alive, held the name of Madeek. But we are concerned and Your Lordship will know from the discussion yesterday that Madeek has a territory further north around -- encompassing Broman Lake, and then he had a territory west of the Morice River, and this is territory east of the Morice River. It's identified on the map of the territory of Gisdaywa on Exhibit 62 as Madeek, and then the name Kanoots underneath.
THE COURT: Yes.
MR. GOLDIE: Then returning to the affidavit:

> "The boundary of the Dzengoz'aay can be described as follows:
> The bounday description starts at where the Upper Bulkley River meets Wedzen Kwe"

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

> "(Bulkley-Morice River)"

And it continues. But the part that I am concerned about is in the last four lines:

> "From the mountain"

And the mountain is Morice Mountain. And perhaps, Mr. Joseph, you could locate Morice Mountain on the map.
MR. RUSH: This is on 62.

MR. GOLDIE: On Exhibit 62, yes. And you are pointing at -- it's identified in English, My Lord, Morice Mountain on the -- from the name Madeek-Kanoots in the territory, it's --
THE COURT: I have it.
MR. GOLDIE: Yes.
Q She is giving the boundary. She says:

"From the mountain"

That is to say Morice Mountain.

"The boundary goes west down the slope to meet Wedzen Kwe (Morice River)."

And that would follow the black line on the Exhibit 62 map, would it, Mr. Joseph?
A Yes.
Q Thank you.

"At a point opposite the mouth of Celtay Toostaan Kwe (Houston Tommy Creek)"

And that's where indeed the black line comes down; is that correct Mr. Joseph?
A Yes.
Q "From here it goes north along the east bank of Wedzen Kwe to the starting point at the confluence of the Upper Bulkley River."

Now, that would take you way up to the place where the Morice flows into the Bulkley?
A Yes.
Q Thank you. And that is a boundary that is marked as such on the map at Exhibit 62.
Now, I want to read you --
MR. RUSH: Just if I may say, the boundary that you have just refered to is marked not in the bold highlighted but --
MR. GOLDIE: It's an interrupted line.
THE COURT: It's an interrupted line. Oh, yes, I see.
MR. RUSH: It appears to be a dotted line along the river.
MR. GOLDIE: I would describe it as a double interrupted line.
MR. RUSH: Well, I won't disagree with that.
MR. GOLDIE:
Q And -- but that's what I have just read to you described; is that correct Mr. Joseph?

A Yes.
Q I want to read to you what Lucy Bazil said about that, and I am going to read from page 154 of her cross-examination. Well, I should start at 153, line 16:

"MR. MACKENZIE:
Q I am looking at page 3 on Exhibit 4 and you understand that that boundary description describes the Madeek-Kanoots territory?
A Yes.
Q And that description is true as far as you're concerned?
A Yes.
Q And have you read that description?
A Yes.
Q And that description says that the territory goes along the Bulkley River."

That's the first line. And the witness said:

"A Buck River, not Bulkley River."

And then there was a discussion between counsel, and Mr. Grant asked the witness of an opportunity to read the lines, and the witness said:

"By reading some of it I can understand."

MR. RUSH: Where are you reading from now?
MR. GOLDIE: At the bottom of page 153. The interpreter asked:

"Do you want me to translate that to her?"

And there is an exchange again between counsel. And Mr. Grant said at the top of page 54:

"If you're referring to a description which you just put to her and then asking her if its right or wrong, I think it's important that she have the opportunity to read it. That's all I am saying.
MR. MCKENZIE: Yes, I agree. And I think you will recall she said she had read it.
MR. GRANT: She had read it before.
MR. MCKENZIE:
Q Yes. And she would swore it was true. Now, further on in the description at the

top of page 3, Exhibit 4, the sixth line from the bottom it says 'The boundary goes from Morice Mountain west down the slope to meet Wedzen Kwe (Morice River) at a point opposite the mouth of Celtay Toostan Kwe (Houston Tommy Creek); from here it goes north along the east bank of Wedzen Kwe to the starting point at the confluence of the Upper Bulkley River.'

Now, your territory doesn't include the Morice River, does it?

A No.

Q No it doesn't go to the Morice River does it?

A No.

Q No. So that description is incorrect, right?

A Yes.

Q Yes. And in your evidence today you also told me that Wid'uk ts'anlii, which is under 'Creeks' on page 4 of Exhibit 4, Wid'uk ts'anlii, Peacock Creek, is not in your territory is it?"

Now, just stopping there, Mr. Joseph, would you agree with Lucy Bazil that the territory of Kanoots doesn't go to the Morice River?

A When I travel down that road with my uncle, he said that this is Kanoots' territory that we are on now.

Q When you say "when we travelled down that road", you are referring to the road from Houston to Owen Lake?

A Yes.

Q And your uncle would be Uncle Thomas?

A Yes.

Q And he would say --

A Yes.

Q -- look to your left as you are driving down the road?

A Yes.

Q That that is the territory of Kanoots?

A Yes.

MR. RUSH: The witness pointed to a line on the map.

MR. GOLDIE: Well, there wasn't a line on the ground, I take it.

MR. RUSH: I suppose not.

MR. GOLDIE:

Q Your uncle would simply be referring to the country on the left-hand side of the road; would that be right?

A Yes.

MR. RUSH: But the witness was pointing to something on the map.
THE COURT: Well, I think there is a line there that I would take to be a road, is it?
THE WITNESS: It's the road. And it is -- that was a well travelled road, and the mountain there takes up most of that area, and it's very steep.
MR. GOLDIE:
Q That's Morice Mountain?
A Yes.
Q But if -- would you accept that -- Lucy's statement that the territory doesn't go down to the river?
A It goes to the river, as far as what I know.
Q And the basis of your knowledge --
A Yes.
Q -- is what your uncle told you driving down?
A Yes.
Q And if you were asked to chose as between the basis of your knowledge and the knowledge of Lucy Bazil, who lived on the territory of Kanoots, you would accept Lucy Bazil's statement; would you not?
A Well, I would have to take my uncle's statement as the way I was told when I travelled with him along that road.
Q Yes. But he didn't live in the territory of Kanoots, did he?
A No.
Q The -- now, she also stated that the -- that Peacock Creek was outside her territory. Do you know where Peacock Creek is or by its Indian name?
MR. RUSH: Perhaps just have the Indian name.
MR. GOLDIE: Wid'uk Ts'anlii.
Q That's spelled W-i-d-e-k, capital T-s'a-n-l-i-i. Can you locate that on the map on exhibit -- Exhibit 62 map?
A Widek Ts'anlii.
Q Yes.
A Right here.
Q You are pointing to a creek which is identified with a name that I just spelled, just below Madeek-Kanoots, My Lord.
THE COURT: Yes, I have it. Thank you.
MR. GOLDIE:
Q Would you accept your statement that that creek is outside the territory of Kanoots?
A Well, I have never been up Wid'uk Ts'anlii, I just travelled through there, and I don't know whether -- may have been used by Kanoots. I don't have -- I have

never heard of -- all I know is that it is described to me as Kanoots and Madeek territory, as I travelled through there.

Q With your uncle?

A Yes.

Q Now, I want you to look at the trapline map under Tab 28. And do you see the creek that's identified on that map as Peacock Creek?

A Yes.

Q And do you see a point which is more or less identified with the words "Mount Morice"?

A Yes.

Q Would you agree with me that the trapline territory does not go down to the Morice River and excludes Peacock Creek?

MR. RUSH: You mean the registered trapline --

MR. GOLDIE: I mean the registered trapline as shown on the map that is at Tab 28.

THE WITNESS: It doesn't include the Peacock Creek.

MR. GOLDIE:

Q Right.

A But the traditional territory is still, as far as I know, Morice River --

Q And the source of your knowledge is your Uncle Thomas?

A Yes.

Q All right. Thank you.

A And I see quite a few straight lines here, and I have never seen that one --

Q I'm sorry, you see quite a few?

A Straight lines. And our traditional boundaries don't -- aren't like that.

Q I see. Yes. You are talking about the boundary lines on the trapline map under Tab 28?

A Yes.

Q I am going to ask you to look at that photograph in Exhibit 62, and the copy that is in our copy of Exhibit 62 is a photocopy. But you gave evidence with respect to the people in that photograph; did you not?

THE COURT: Which photograph is that, please?

MR. GOLDIE: It's --

THE COURT: Tab?

MR. GOLDIE: Tab 8.

MR. RUSH: My Lord, I think the print should be put to the witness. It was objected to -- this photograph was objected to, and I think it was entered as an exhibit in any event in Lucy Bazil's commission.

THE COURT: Well, this is a photograph of the witness, is it

not?
MR. RUSH: No.
MR. GOLDIE:
Q No. He identified them -- would you tell His Lordship who you identified those two people as?
A I can see Peter Jim. The other one is not too clear, but it's George Naziel. My Lord,
MR. RUSH: My Lord, I might have been wrong about this. Mrs. Koenigsberg advised me it was during Mr. Joseph's testimony, and I think it was re-introduced in Lucy Bazil's commission.
MR. GOLDIE: Well, I now have the transcript where it was introduced in the examination of Mr. Joseph. It's June the 19th, Volume 23, page 1565, and at line 11 my friend said this:

> "That's the waterfall between Namox territory and the boundary that is between Kanoots and Namox. That area is Neen Lii."

That's 153, My Lord.

> "Q I am going to show you a photograph, Mr. Joseph. I wonder if -- could I have the document book, please. If you, My Lord, could turn to tabulation 8 in the document book. Mr. Joseph, I wonder if you would just look at that photograph, and I would ask you if you can identify what that photograph represents, and I will ask you in a moment to identify the individuals there, but do you recognize that photograph and what's contained in it?
> A Yes."

And then I asked what the purpose of it was, and my friend said:

> "This is to demonstrate that here is a geographic reference point which Mr. Joseph understands to be a boundary."

I said:

> "Of his territory?
> No. He's indicated it is not on his territory, it is between Namox and Kanoots."

And then I asked for the source of his information. And he then went on to say:

"Q All right. Can you recognize what this is?
A Yes.
Q That is depicted in photograph tabulation 86.
And what is this point as you can see it here?
A It is a waterfall and boundary.
Q All right. And have you been there?
A Yes.
Q All right. And who are the two people in the photograph?
A One of them is late George Naziel, who is Madeek at the time, the other is Peter Jim."

That was the answer you gave to the question that was put to you in June as to who the people were?

A Yes.
Q Do you have any doubt about that now?
A No. I know that Peter is here, but -- and George Naziel's picture is a bit dark and he is turned the other way. It is George Naziel.
Q Now, Lucy Bazil was shown the same photograph and it was marked as Exhibit 5, and she was asked this:

"Q Do you know when that picture was taken?"

And it's at page 65 of the transcript, My Lord.

"A Last trip my brother went with Peter, that's what he told me, but I don't know what year it was taken."

And that is after she was asked this question at line 2:

"Q Okay. I am showing you a photograph of two men from in front of something. I don't want to lead. Do you recognize that photograph, where it was taken?
A Yes, that's my brother Peter Alfred and it's at the falls. That's Neen lii.
Q That's Neen lii?
A Yeah.
Q Okay. Can you just -- which of them is on

the left on this side?
A That's Peter Alfred on the left.
Q And it's her brother Peter Jim?
A Yes.
Q And you've been to that place yourself?"

You might be mistaken then, Mr. Joseph, that the person you thought was George Naziel might be Peter Alfred himself?

A It looked very much like George Naziel, but then it could be Peter Alfred.
Q Peter Jim, of course, was Lucy Bazil's brother?
A Yes.
Q And she knew Peter Alfred well, did she not, to your knowledge?
A Yes.
Q And who was it that informed you that this was a boundary mark?
A John Namox.
Q I see.
A And other persons have also told me, like Alfred Mitchell.
Q Well, did -- I'm looking at your evidence, and it appears to me that I may be wrong, that one of the sources of your information was Madeek, which would be George Naziel; would it not?
A Yes.
Q But you now think that you have not been able -- that the identification in that photograph of George Naziel might be in error, and that it might be Peter Alfred?
A It might be.

MR. GOLDIE: All right. Now, My Lord, I would like to pick up one last point on the traplines at this time under Tab 29. This is a document relating to traplines 609T007.

MR. GRANT: Before my friend proceeds, I just wanted to know, I don't believe that he referred to that photograph, but the photograph he has been discussing is Exhibit 5 in the commission evidence of Lucy Bazil. I presume he doesn't presume to tender these or put these in as an exhibit now, and I would propose that they go in the transcript.

THE COURT: It's already in. It's in as part of Exhibit 62.

MR. GRANT: Okay.

MR. GOLDIE:

Q The trapline 609T007 is wholly in the territory of Madeek and Madeek-Kanoots. That would appear so from the overlay map at Tab 9. You may not recognize the

number, Mr. Joseph, but is there not a non-Indian trapping that -- a line in there on Madeek's territory?

A I have never heard of this or seen it.

Q When you say you have, in other words, never heard of this, are you referring to the name Barden?

A Yes.

Q So you have no knowledge whatsoever of what Mr. Barden is?

A No.

Q Have you ever -- are you aware of a trapline that is being trapped by a white man on the territory of Madeek and extends into the both sides of the Morice River?

A I heard of white people trapping in most of the territories, but I have never heard this one.

MR. GOLDIE: All right. I am going to tender as an exhibit the British Columbia trapline registration form, which is dated the 22nd of October, 1985, trapline number 060T007. Registered holder, Rick Barden, Box 338, Houston, B.C. I do not have the original with me. If I can produce it, I will do so. But I would ask that this -- that it be marked as an exhibit.

MR. RUSH: I can't agree to that, My Lord, not on the basis of Mr. Joseph's evidence.

MR. GOLDIE: Well, it's not proven on the basis of what Mr. Joseph said, it's proved on the basis of it being one of the underlying documents to Exhibit 24A.

THE COURT: What is 24A?

MR. GOLDIE: That's the trapline registration map. And I can provide greater detail in that regard, and I am quite prepared to do that later.

THE COURT: All right.

MR. GOLDIE: I would like the number reserved, however.

MR. RUSH: I have no difficulty, if he wants to put it by way of identification, but --

THE COURT: All right. That will be 96 for Identification.

(EXHIBIT NO. 96 FOR IDENTIFICATION - BRITISH COLUMBIA TRAPLINE REGISTRATION FORM, DATED OCTOBER 22, 1985 - REGISTERED HOLDER - RICK BARDEN)

THE COURT: It's very difficult. It's Rick B-a-r-d-e-n?

MR. GOLDIE: Yes, My Lord.

THE COURT: 96 for Identification.

MR. GOLDIE:

Q Now, I want to ask you a couple of questions about feasts and the sources of the traditions of the Wet'suwet'en, and there is a word which is used to describe the traditional stories. Is it Kungax?
A Kungax.
Q Perhaps Mr. Mitchell might --
THE INTERPRETER: Number 117 on the list.
MR. GOLDIE: Thank you.
THE COURT: Let me find it please.
THE COURT: 172?
THE INTERPRETER: 117.
THE COURT: 117. I'm sorry. Thank you.
MR. GOLDIE:
Q Now, I believe in your evidence in chief you said that your territory is referred to in the Kungax and spoken of at the feast?
A Yes.
Q Such as was done at the Moricetown all clan feast?
A No. All that happened at Moricetown feast was that I wore my -- you mean that all clan feast?
Q Yes, that's correct?
A Yes. I just had my blanket on at that one.
Q I see. In order to tell a Kungax one, you would wear your full regalia?
A Yes. And then when that happens, you are dealing with a memorial or raising a pole. It's when you go through the Kungax.
Q That's what has been referred to as a headstone feast?
A Yes.
Q And a pole raising feast. And are those the only times when the Kungax is told?
A Yes.
Q In your description of your territory at the all clans feast at Moricetown on April, 1986, was the -- was that description similar to the description of the territory that you would give in the Kungax?
A At Moricetown we would tell people what my Kungax is, what my clan crest is and what clan I belong to, and the territory that's involved is also announced.
Q Yes. So that at the all clan feast you -- in order to inform the Carrier-Sekani people who were there of your territory, you told something that was pretty close to a Kungax?
A Yes, I explained. This is what would happen if it was a feast concerning a memorial.
Q Yes. You said to them, if this was a headstone feast or a pole raising feast, this is what I would say?

A Yes.
Q And then you and Leonard George said what you would say if it had been a proper feast?
A Yes.
Q Thank you. When was your first -- you first heard of the territory at a proper feast where the Kungax was told?
A When I first heard the territory, it was from my grandparents at home.
Q I see. Yes.
A And when we are out travelling, going to the territory and coming, you are told that this is -- this is our land which we are travelling on now. And if we leave it, we give another one, they tell you again, this is that person's land.
Q That was the way in which it was done when you were travelling over or your grandparents were talking about it?
A Yes.
Q But when it was at a feast, it was told along the same lines that you and Leonard George told it at Moricetown?
A Yes.
Q Thank you. The Kungax does not talk about what is happening on the territory, it simply talks about the identification of the territory?
A Yes.
Q And that identification is -- was in the terms of the prominent features?
A Yes.

MR. GOLDIE: Now, when you gave -- well, My Lord, I would like to not be interrupted in the next sequence.

THE COURT: Of course not. We will adjourn now until two o'clock. Thank you.

(PROCEEDINGS ADJOURNED FOR LUNCHEON RECESS)

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

LORI OXLEY
OFFICIAL REPORTER
UNITED REPORTING SERVICE LTD.⊥h2

Alfred Joseph (for Plfs.)

(PROCEEDINGS RESUMED AT 2:00)

THE REGISTRAR: Order in court. Recalling Dalgamuukw and Her Majesty the Queen, my Lord.
THE COURT: Mr. Goldie.
MR. GOLDIE:

Q While we're waiting for the witness, my Lord, the file that relates to trapline 609T045, Alfred Wilson, what we have consists of photocopies, and there was some question whether there were originals available and that we will make inquiries at Smithers from which these documents came. In the meantime my friend is at liberty to inspect our file, but it is exactly the same as the documents that are in the book.

Mr. Joseph, when you gave your evidence in June you told his Lordship about other territories based upon information which had been given you by a number of people, and one of them is -- that was Bazil Michell; do you remember that?

A Yes.

MR. GOLDIE: And an affidavit has been filed by Bazil Michell which purports to verify the information given you, but I want to look at your evidence that you gave in June. It's page 1694 of volume 25.
THE COURT: Should I have my volume? Are there going to be references to it?
MR. GOLDIE: It won't be extensive, my Lord.
THE COURT: All right.
MR. GOLDIE: But I imagine my friend would like to have one.
MR. RUSH: Yes, I would. Unfortunately it's at my office.
MR. GOLDIE: I'll pass it if necessary.
MR. RUSH: My friend, Ms. Koenigsberg, has been kind enough to give me hers.
THE COURT: She has it committed to to memory, has she?
MR. RUSH: I think she has.
MR. GOLDIE:

Q This is the evidence in chief of Mr. Joseph at page 1694, I'll start -- volume 25, question:

"Q I'm going to ask you if in August of 1983 you went to McDonell Lake with Bazil Michell?
A Yes.
Q And Bazil is still living today?
A Yes.
Q Okay. And did Bazil show you some boundaries when you were out with him on

that occasion?
A Yes."

And at page 1697 there have been a number of references to what Bazil said, and at the bottom of page 1696, question at line 45:

"Q Okay. Were you able to obtain any other names on that occasion with Bazil?
A He said that it was -- he just wanted to give us the main names, like the Cronin, and the one I asked him about. He said it was -- it was too far across to give us more accurate names and they wanted to get -- get up closer before he gave us any more names.
Q Bazil is still living?
A Yes.
Q And how old a man would Bazil be today?
A I would say he is -- he remembers events that took place in 1903 and four, so he would be quite old, over 90.
Q Over 90 or 80?
A Yes, 90.
Q Ninety?
A Yes.
Q Okay. And have you heard Bazil talk about any of these points at the feast?
A Yes."

And when Mr. Rush referred to points, you took him to understand, did you, that he was referring to geographic features, such as mountains and streams?

A Yes.

MR. GOLDIE: Is it not true that Mr. Michell appears to believe that your territory stops at Nadina Mountain? If you're not aware of that I can give you the appropriate references, but --

MR. RUSH: I think you should do that.

MR. GOLDIE:

Q Well, I'm just asking him if he's aware of that before I do so.

A No. I'm not aware of it.

THE COURT: I'm sorry?

MR. GOLDIE: He's not aware.

THE COURT: Oh, thank you.

MR. GOLDIE: That Mr. Michell may have that belief. I'm going to refer now to Exhibit 71C, which is volume 3 of the

commission evidence of Bazil and Josephine Michell, which was conducted on the 15th and 16th of May, 1986.

THE COURT: The names again, please?

MR. GOLDIE: Bazil and Josephine Michell. This has been filed as Exhibit 71C.

THE COURT: Yes.

MR. GOLDIE: This particular volume.

THE COURT: Um-hum.

MR. GOLDIE: And I'm going to start at page 3-168. Does your Lordship have that?

THE COURT: No. It's downstairs. I can get it if I should have it.

MR. GOLDIE: Well, the actual -- well, I have a copy, but I think I'll put this in front of the witness and my friend can follow from that.

THE COURT: Go ahead, Mr. Goldie.

MR. GOLDIE: I'm reading from line 2 on page 3-168.

THE COURT: 168?

MR. GOLDIE: And this is Mr. Plant's cross-examination:

"Q You spoke of a place called Nadina Mountain which I think you said was Gitdumden territory; do you remember speaking about that?

A Yes.

Q You have been up there, have you, Bazil?

A No.

Q Do you know if there are Wet'suwet'en people around there?

A Patrick and Tyee Lake David, Peter Pierre all used to live around that area. They hunted and trapped that area. That territory belonged to Gitdumden. The boundary went as far as Driftwood Creek, from Driftwood Creek onwards belongs to Laksilyu.

Q Bazil, do you know if there are people still hunting or trapping up and around Nadina Mountain?

A I don't know if the people are. The people that used to are all dead now.

Q Bazil, do you know if the other side of Nadina Mountain if there are --"

I'm sorry, I'll read that again:

"Q Bazil, do you know if the other side of

Nadina Mountain if there are Wet'suwet'en people that hunt or trap there?

A That belongs to the Babine people. Can't remember the hereditary chief who has that territory."

Now, just pausing there, Mr. Joseph, the phrase "Babine people", if you heard that you would understand the speaker was referring to the Carrier?

A The Babine are part of the Wet'suwet'en.

Q What people are Babine that are part of the Wet'suwet'en?

A People that live at Fort Babine and Old Fort, Smithers, Topley Landing.

Q At Fort Babine?

A Yes.

Q But are they part of the -- are they -- are any of them plaintiffs in this case?

A No. I don't think they are.

Q As I say, if you heard the phrase "Babine people", then you would understand they would be Wet'suwet'en, but they would not be of the Moricetown and Hagwilget Wet'suwet'en?

A No. Not a part them.

Q And it is the Moricetown and Hagwilget Wet'suwet'en who make up the plaintiffs in this case; is that right, of the Wet'suwet'en people?

A Yes. Wet'suwet'en from Burns Lake on that are living anywhere that the Wet'suwet'en are part of this case.

Q Well, I want to be reasonably clear about this, if I can. I didn't think that there were -- that the territory claimed by the Wet'suwet'en in this case included Fort Babine?

A No.

Q It does not?

A No.

Q All right. Well, then my suggestion to you is that if you heard that phrase "Babine people", they would be -- you would classify that as Wet'suwet'en but not as plaintiffs in this case?

A There are people from Babine that are living at Hagwilget and Moricetown.

Q I see, all right. Then the phrase itself doesn't tell you very much about --

A No.

Q Whether they're plaintiffs or otherwise, they are simply Wet'suwet'en people?

A Yes.
Q Isn't that phrase also applicable to people who are part of the Carrier-Sekani counsel?
A Yes.
Q So the -- that phrase itself is -- doesn't tell us very much about the people, it's just the general name of other Indians who speak Wet'suwet'en or some tongue like Wet'suwet'en. Is that a fair way of putting it?
A Well, Babine, we refer to them as Wuu'an wetie, people that live at Babine.
Q I see.

THE COURT: I didn't get that word before.
MR. GOLDIE: No. Either have I.
THE TRANSLATOR: W-u-u'a-n-w-e-t-i-e.
THE COURT: I'm sorry. Mr. grant is making far more noise than I can overhear.
THE TRANSLATOR: W-u-u'a-n-w-e-t-i-e.
THE COURT: Thank you.
MR. GOLDIE:

Q Mr. Joseph, I am looking at the plaintiff's reply to demand for particulars dated September 10th, 1986, and it is in response to a demand for particulars of paragraph 61 of the statement -- amended statement of claim, and that paragraph reads, and I quote:

> "The plaintiffs and their ancestors exercised jurisdiction over the territory as against other aboriginal peoples."

And the demand was to identify the aboriginal peoples. And the reply, it reads as follows:

> "With respect to the aboriginal peoples referred to in paragraph 61 of the further amended statement of claim, the plaintiffs reply that the aboriginal peoples to which they refer are" --

And then there's:

> "A) Salish, B) Nuuchanlath, C) Chilcotin, D) Shuswap, E) Beaver, F) Sekani, G) Nutsone."

And then skipping down to KK, Uu an we'teen, and I would ask you to agree with me that that is the name of the Babine people that you gave me just a minute ago. I direct your attention to KK. Would that be the name that you gave me a minute ago?

A Yes.
Q Thank you. So those were people who you say your people exercised jurisdiction over the territory as against them. In other words, if I follow it correctly, that they would be treated as people who have no rights over your territory?
A I can't say that all of them would have no rights, because like I said, some of them are -- some of them living amongst us and in the past some -- the wife would be from Babine and the husband would be from Hagwilget or Moricetown, and they still use the territory back and forth, so some are still living at Hagwilget and Moricetown.
Q And those that did would be given the rights which their husband's or wife's House would grant them; would that be right?
A Those that did?
Q Live in Hagwilget or Moricetown?
A Yes.
Q Yes, all right. Then there was a discussion in Wet'suwet'en, and the witness went on:

"THE WITNESS: Dim tsum suk was Laksamshu and his wife was Laksilyu. We don't know whether it was he or his wife who had that territory."

Those words are D-i-m t-s-u-m s-u-k, L-a-k-s-a-m-s-h-u, and L-a-k-s-i-l-y-u. Question by Mr. Plant:

"Q Are they both from Babine?
A Yes.
Q Is that the territory south of Nadina Mountain?
THE INTERPRETER: South?
MR. PLANT: The other side was what my question originally was.
THE INTERPRETER: The other side of Nadina Mountain?
MR. PLANT: Yes.
THE WITNESS: Yes, it is on the other side of Nadina mountain.
MR. PLANT:
Q Which direction is that?
A From Nadina Mountain the other side belongs to Babine people I told you about, and the area this side belongs to Patrick, Tyee Lake

David and Round Lake Tommy and those people."

And then Mr. Plant asked what Josephine was saying, and the interpreter stated they were asking each other about the mountain peak, whether it belonged to Laksilyu or another clan. Mr. Plant:

"Q Which mountain peak was that?
A Tsit geets, just further east, near Topley.
Q Further east from where? From here?
THE INTERPRETER: From here. Near Topley.
MR. PLANT: When Bazil talks about the other side of Nadina Mountain he means the other side from here?"

And the witness responded:

"I've described to you the area around Nadina Mountain. West of Nadina Mountain belongs to the people I mentioned to you, who are Wet'suwet'en, and north belongs to the Babine people."

Mr. -- and then there was a further question. Now, Mr. Joseph, you would agree with me that Mr. Michell appears to be stating that the territory of the Wet'suwet'en people stops at Nadina Mountain, or what do you take of the statements that he's making there?

A Well, he says here that Patrick, Tyee Lake David and Peter Pierre all used to live around that area, and there the Nadina Mountain that I know is in the southern part of Gisdaywa territory.
Q Do you know of any other Nadina Mountain?
A No.
Q Are you suggesting then that Mr. Michell has misunderstood the questions?
A Well, this Nadina that he's talking about may be some other name.
Q But you've never heard of any?
A Not in the Driftwood area or --

THE COURT: What page was that, please?
MR. GOLDIE: I beg your pardon?
THE COURT: What page was that.
MR. GOLDIE: 3-168.
THE COURT: Thank you.
MR. GOLDIE: And going over to 3-169. Perhaps if I may see that for a second. I will hand this up to your Lordship so

that you can see the way in which the discussion --
THE COURT: No. I have it now.
MR. GOLDIE: All right. I'm instructed that Mr. Michell was giving his evidence in Wet'suwet'en and it was translated.
THE COURT: And where was it taken?
MR. GOLDIE: It was taken at Moricetown, I believe.
THE COURT: At Moricetown, right.
MR. GOLDIE: Yes. In Mr. Michell's residence.
THE COURT: Yes.
MR. GOLDIE: Well, if there is no other Nadina Mountain and you're not aware of any other, it is clear then, according to the way you have read what I've directed your attention to, that Mr. Michell was confused?
MR. RUSH: Well, how can he say that? He doesn't know the situation under which the evidence was given. It could be a hundred different reasons.
MR. GOLDIE: Well, he's just finished suggesting that as far as he knows there's only one Nadina Mountain, that the people that Mr. Michell is talking about are not people that are around the territory of Gisdaywa.
THE COURT: Isn't the question of whether the witness is confused or not a matter that I have to resolve? The evidence of the two witnesses is relatively straightforward, there's a rationalization required, but I'm not sure it's something the witness could usefully be asked to do.
MR. GOLDIE:
Q Well, let me put this question: If Mr. Michell was talking about the Nadina Mountain in the territory of Gisdaywa, do you agree with him that on the other side of the Nadina Mountain is the territory of the Babine people?
A He's talking about Driftwood area there. He can see that, except that the Nadina Mountain is -- I think he's -- either whoever is questioning misunderstood that name Nadina --
Q Well, the questioner didn't have any problems with the name Nadina, it's Mr. Michell who had the problem, isn't it, or the interpreter?
A Interpreter.
Q All right. You've not quite answered my question, but I think I know what your answer is, that if Mr. Michell was talking about your Nadina Mountain you would not agree that the territory on the other side of Nadina Mountain belongs to the Babine people?
A No. Not in the south.

MR. GOLDIE: All right, thank you.
THE COURT: May I ask, please, where is the Driftwood area?
MR. GOLDIE: That's --
MR. RUSH: Why not let the witness answer.
MR. GOLDIE:
Q All right. I was just going to say --
A Driftwood creek is known as G'ida'ii Kwe.
MR. GOLDIE: Well, I was going to ask the witness if he would tell his Lordship where Driftwood Creek is in relation to Smithers.
THE COURT: Oh, that Driftwood Creek. I know that one.
A It's north of Smithers.
THE COURT: There's a cannery there?
A Yes.
THE COURT: Yes. I know that one.
MR. GOLDIE:
Q Is that what you think Mr. Bazil Michell is talking about?
A Yes.
Q And it's your belief that he -- well, I'll leave that. Mr. Joseph, when you went with Mr. Michell -- Mr. Bazil Michell as I first referred to in your evidence in chief, that was I think you told the court in 1983, or was it 1982? Do you remember what year it was that you went with Bazil Michell out to -- no, August of '83 you went out to McDonell Lake with Bazil Michell?
A Yes.
Q And at that time he was in his 90's?
A Yes.
Q And what was the purpose of your going out there with Bazil Michell?
A He was telling us that there -- it was shown that his boundary from northern -- from Kitsegukla Valley, and he said he would take us out on the other side and showed it to us from the south side, and show us the other mountains.
Q So the purpose was to go out with Mr. Michell so that he could show you the boundaries of his House?
A Yes.
Q And his House is what?
A His House is Hag wil negh.
Q Hag wil negh?
A Yes.
Q And do you know the Houses of any of the people that Mr. Michell mentioned in the evidence that I read to you a few minutes ago, Tyee Lake David?
A Yes.

Q What House is his?
A His is Woos.
Q And do you know where that House is?
MR. RUSH: Do you mean where the territory --
MR. GOLDIE:
Q Where the House territory is?
A Woos House territory is right around Tyee Lake.
Q Woos has a number of territories?
A Yes.
Q Has he? Are they all north of Highway 16, some of them are below, south of Highway 16, aren't they?
A Yes. Some of them are south of Highway 16.
Q And one of them is quite near yours, is it not?
A Yes.
Q And what about Peter Pierre, not a name I've seen so far. Do you know --
A Peter Pierre was Woos' younger brother.
Q Of Woos?
A Yes.
Q So both of those people, Tyee Lake David and Peter Pierre, are both from the House of Woos?
A Yes.
Q And both of them therefore would have rights to hunt and trap in a territory near you?
A Yes.
Q Now, do you know what clan the House of Woos belongs to?
A Gitdumden.
Q Gitdumden, yes. So in August of 1983 you went out with Mr. Bazil Michell, and the purpose was to show a boundary, and the purpose of showing you the boundary was in connection with the court case that was being prepared at the time, was it?
A Yes.
THE COURT: I'm sorry, I didn't get the name of Bazil Michell's House.
MR. GOLDIE: Oh, yes. I'm sorry, my Lord. Perhaps Mr. Interpreter can help us.
THE INTERPRETER: Number 29 on the list.
THE COURT: Thank you.
MR. GOLDIE:
Q Now, you told me this morning that Thomas George had pointed out to you the territory of Kanoots on the road on your way down to the territory of Gisdaywa?
A Yes.
Q With respect to the territory of Gisdaywa, did you ever hear Thomas George speak at a feast in the manner

we discussed this morning, the telling of a Kungax?
A Yes.
Q And how many times did you hear that?
A I've heard that when I was very young, when he first took the name.
MR. GOLDIE: And do you recall --
MR. RUSH: Has he finished the answer?
MR. GOLDIE: Just a moment, please. I've been very lenient, Mr. Rush.
MR. RUSH: So have I.
MR. GOLDIE: I beg your pardon?
MR. RUSH: I said so have I.
THE COURT: Gentlemen, gentlemen, there's no purpose in this sort of thing, none whatsoever.
MR. GOLDIE: I ask my Lord that I'm not harassing the witness.
MR. RUSH: Neither am I suggesting that.
THE COURT: No. You're both absolutely right again. The problem is I think it's Friday and everybody is a little bit too touchy, and I think we ought to try and get along just as best we can and things will go much more smoothly. I think in that particular case the witness was perhaps going to say something further, Mr. Goldie.
MR. GOLDIE: Well, I had misunderstood that, my Lord. I have never deliberately interrupted this witness.
THE COURT: I'm sure.
MR. GOLDIE:
Q Now, Mr. Joseph, do you wish to add to your last answer?
A Yes. The ones that I remember was when first my grandfather Joseph died.
Q That's Old Joseph Nahloochs?
A Yes.
THE COURT: I'm sorry. Is this the second time?
A No. The first time.
MR. GOLDIE:
Q Yes?
A And that's when it was first time that I really was -- I paid attention to what was going on at that time, and then it may have happened since, but I've already been moving around working somewhere else when my uncle Knedebeas, but the next time that it happened was a year before he died.
Q And that was 1974?
A '73 is when the next time that I seen it performed.
Q Yes, all right. And so you heard your uncle?
A Yes.

Q In about 1974?
A Yes.
Q And in 1973?
A Yes.
Q And did he tell his Kungax about your territory or the territory of Gisdaywa in the same way that you described this morning?
A Yes.
Q Now, in the course of preparing, or the part of the preparation for this lawsuit was to try and identify territories from a Kungax or the traditions of the House; is that right?
A Yes.
Q And for how long have people known that part of the preparation for this lawsuit would be the identification of boundaries from what is told at the feasts?
A You say how long have our people known the lawsuit --
Q Or that a lawsuit was intended, or that it was being prepared for?
A Well, my -- as I've said before, the grandparents have always talked of the land, and later on Woos and other chiefs were talking about it, but there was no -- no one knew when -- when something like this would happen.
Q No. Well, perhaps this will be of assistance to you: Mr. Sterritt, Neil Sterritt that is, has for a long time been associated with the preparation for this lawsuit, has he not?
A Yes.
Q And you've worked with him for that purpose?
A Yes.
Q Mr. Sterritt has sworn in an affidavit that the Gitksan Wet'suwet'en hereditary chiefs instructed the Tribal Council Association to commence an action on their behalf after the completion of nine years of research. Now, that was sworn in February 1985, so that would take it back to about 1974 -- I'm sorry, 1976. Would that be in accordance with your recollection, so far as it goes?
A Yes.
Q Mr. Joseph, the -- you know who Moses David is?
A Yes.
Q And who is he, please?
A He is the son of Johnny David.
Q Who is a Wet'suwet'en?
A Yes.

Q And one of those who has provided you with information about boundaries?
A Yes.
Q And was interviewed by Mr. Leonard George about boundaries?
A Yes.
Q Is that right? Did he, to your knowledge, suggest that the territories of Owen Lake was properly in the territory of Goohlaht; do you recall that?
A South-east of Owen.
Q South-east of Owen Lake? I'm referring to interview notes provided us in September 8th, 1987 by copy of what was sent to my friends appearing for the Government of Canada, and it is interview notes relied on by Dr. Antonia Mills in her expert opinion report, and I'm referring to the one with Moses David of August the 23rd, 1982. The interviewer appears to be Leonard George, and Moses David is recorded as stating, and I read as follows:

"Yes. Along Tagecholain."

Can you identify what that is?
A Tag'its'o len?
MR. GOLDIE: I think the witness has it.
MR. RUSH: Would you repeat that again?
THE COURT: T-a-g-e-c-h-o-l-a-i-n.
MR. GOLDIE: That's how it is spelled in this transcript, but I suspect it is just a variation of a name that Mr. Michell will give us.
THE COURT: Yes?
THE INTERPRETER: T-a-g'i-t-s'o-l-e-n.
MR. GOLDIE:
Q And is there an English name for that?
A Yes. I think there is, but I can't recall it.
Q Can you tell us approximately where it is?
A Tag'its'olen is a little south-west of Owen Lake.
Q Inside your territory or outside?
A Outside.
Q And he says that name north-west of that belongs to Gitdumden. That would be so, would it not, according to your understanding?
A Yes.
Q And then he says:

Then right down to Morrice Lake was owned by Mathew Sam (Gyolooget)."

Q You agree with that?
A Yes.
Q

"Then next to that is Caspit."

Now, Kaspit is part of Gyologyet, is it not?
A Yes.
Q And Kaspit is next to Gyologyet?
A Yes.
Q Is not Noostel in there somewhere?
A Tag'its'o len was -- I think that was little piece in with Noostel.
Q And then Kaspit and Goohlaht is next?
A Yes.
Q And then he says:

"Next to that is Caspit then next to that is Madeek."

Is that correct?
A Did he say Gyolooget?
Q He stated Gitdumden then right down to Morrice Lake was owned by Mathew Sam, Gyolooget, and you said that was right, and then next to that is Kaspit and next to that is Madeek, and I'm questioning the next to that is Madeek?
A Well, it's when you say down to Morrice Lake, that's owned by Woos, Gyologyet and Madeek. All three used to go in there, one like they would alternate as they went in.
Q They alternated in their use of that country?
A Yes.
Q So that the one time somebody might think Woos owned the country and another time he might see Madeek in the country?
A Woos held the name Gyologyet for quite awhile.
Q I see.
A Then he took the name Woos, and he still went back there. And Madeek also went in there.
Q Would that be the George Naziel who was --
A No. It was before him.
Q Before him?
A Yes.
Q But I put it to you a minute ago that if the -- if there were three chiefs who were using that country, either at the same time or they rotated the use --
A As they took different names, but some of them stayed,

like Mathew Sam was a Gyologyet after Big Seymour, then he became Woos, and after him Gordon Hall took the name Gyologyet.

Q But what I'm trying to get, I follow you in your explanation with respect to Woos, and -- but I understood from you that Madeek was also in that group?

A Yes.

Q But -- all right. Let's leave it at that then. And then Mathew David is reported -- Moses David is reported as saying that next to that is the one owned by Sarah Layton, that's Knedebeas?

A Yes.

Q And Knedebeas and Noostel all look after the country together?

A Yes. They're from the same House.

Q Same clan?

A Same clan. Same, or these two are of the same House.

Q Same House?

A Yes.

Q All right. Then there was the part to Owen Lake, Bii wenii, that was owned by your late grandfather Goohlaht. Now, surely that doesn't fit with your understanding?

A Goohlaht was there because his wife was in the House of Kaiyexweniits.

Q That's the name that we're treating as another name for the House of Gisdaywa. But I heard what you say, but I'm still in -- I don't understand how that gives Goohlaht any rights in the Owen Lake territory?

A Anytime I've heard about Goohlaht being in Biiwenii, the Owen Lake area, was because of his wife, Mrs. Felix George. He had his own territories to the south.

Q Yes. You're going back now to the time when your grandfather, Felix George, was Goohlaht?

A Yes.

Q All right. So that any interest that the Goohlaht -- that Moses David was talking about would have in the Owen Lake district would have come down from Felix George, who had been Goohlaht many years ago?

A Goohlaht was using his wife's territory at the time, Moses was talking about.

Q You mean your grandfather, Felix George, was using his wife's territory?

A Yes. Staying in the Biiwenii area.

Q All right. Now, I have just two or three other things

to deal with, and this -- I now want to ask you some questions that arise out of the fact that you were chief counsel of the Hagwilget band, and you gave some evidence about what you did in that capacity. Just tell me again, please, how long you were chief council?

A Well, I was first elected in 1961.

Q Yes?

A And was a councillor until I think sometime around '63 and became chief councillor, and I have been either a chief or a councillor there since that time.

Q And are you still?

A No.

Q No. I thought that was -- you retired as a counsellor and didn't run for election?

A I didn't run for election last year.

Q Last year?

A Yes.

Q All right. So down to 1986 then was the -- your span of service on the tribal -- on the band council really extends from 1961 to 1986?

A '87.

Q Beg your pardon?

A To '87.

Q '87, thank you. And throughout that time, as I think you told us, you were concerned with things such as expenditures for health, sewage systems, expenditures for school, expenditures of those sort of things had been taken care of for recreation, as well as the concerns of the band when the highway was widened, and of course you documented or you've spoken at some length about the concerns of the band when the blasting took place in Hagwilget Canyon, but -- and you also have joined in litigation with respect to the rights of the band; am I right in that?

A Yes.

Q The Petition of Right, which has been marked as Exhibit 26, you are the Gista-Waah, that's G-i-s-t-a dash W-a-a-h, also known as Alfred Joseph suing on his own behalf and on behalf of the members of the House of Gista-Waah, and then there's -- you are Alfred Joseph, Chief Councillor, Leonard Austin and Jack Sebastion, Band Counsillors members of the Hagwilget Indian Band suing on behalf of themselves personally and on behalf of all other members of the Hagwilget Band. So you remember that?

A Yes.

Q That had to do with fishing sites, didn't it?
A Yes.
Q Now, but I want to go back to this question of expenditures. Are you aware that the Federal Government makes a special appropriation of $300,000 a year to the non-treaty Indians in British Columbia called a B.C. Special Fund?
A I heard of it, yes.
Q Yes. Well, am I correct in my understanding that that appropriation is divided amongst the bands in British Columbia, other than the Treaty Eight bands on a basis that reflects the number of members of that band?
A Yes.
Q So that each year there -- a sum becomes available of that $300,000 to every band except the Treaty Eight bands?
A Three hundred dollars to every band, did you say?
MR. GOLDIE: No. There's a division of $300,000.
MR. RUSH: There are more Treaty Indian bands in B.C. other than Treaty Eight bands.
MR. GOLDIE:
Q Well, we'll talk about the mainland then?
A When I first heard of that it was 100,000, I think.
Q Yes. It goes back to the days of the Joint Parliamentary Commission of 1927, doesn't it?
A I've never heard of that money until about the 60's.
Q I see. And at that time it was -- it was $100,000?
A Yes. When I first heard it was $100,000.
Q Yes. But now it's $300,000?
A Yes. I think so.
Q And it's -- have you ever had occasion to make use of that money?
A Well, we have a meeting with the rest of the other eight bands and often decide what we're going to do with that money.
Q Can you give his Lordship some examples of what you've decided in the past to do with that money?
A Well, at times we -- we use it for different projects, and at times it doesn't amount to very much because of the size of our band.
Q Um-hum. So sometimes you don't use it at all?
A Sometimes it is -- you have to apply for that.
Q Yes. I understand that.
A And sometimes I don't think we got it. Sometimes, like I said, we didn't know about it for quite sometime.
Q Well, I asked you if you could recall any examples of

the sort of project that would be made possible through the use of this fund?
A When I first became involved as a chief and councillor our books, everything was done by the D.I.A.
Q Yes?
A That is how -- we didn't know about that money until we started attending meetings with the D.I.A. to say there is this much money here, and they ask us what we're going to do with it.
Q Yes?
A And I don't think it was up until 19 -- in the '70's onward is when we started to handle our own books, so up until that time sometimes we used the money for the village, other times we didn't apply for it.
Q And when you say "Use the money for the village", you mean in projects like waterlines or --
A Yes.
Q Firefighting equipment?
A Yes.
Q Are those examples of the sort of things you would do?
A Yes.
Q All right. And are you able to tell me, and perhaps you already have, but are you able to tell me how that fund came about to be established?
A I don't know how it was established, but I was just told that it was called a B.C. Special, that's the only thing.
Q That's all you know about it?
A Yes.

THE COURT: Mr. Goldie, would it be convenient to take the afternoon adjournment now?

MR. GOLDIE: Yes.

THE COURT: Because it's Friday and I have Monday to look after it might take a few more minutes, but I will be back as fast as I can.

THE REGISTRAR: Order in court. Court is adjourned briefly.

(PROCEEDINGS ADJOURNED AT 2:55)

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

Graham D. Parker
Official Reporter
United Reporting Service Ltd.

Proceedings

(PROCEEDINGS RECOMMENCED AFTER A BRIEF RECESS)

THE REGISTRAR: Order in Court.
MR. GOLDIE: My Lord, I am going to interrupt the questioning that I had begun with Mr. Joseph on the B.C. special fund and go back a step. First I spent a little time with him referring to Lucy Bazil's affidavit, which was marked on her commission evidence. I wonder if it might be convenient or useful to have a copy of that affidavit marked at this point, or whether it's sufficient to await it's arrival as part of the commission evidence.
MR. RUSH: I can speak to that. Given the fact that Mr. Goldie made reference to the transcript and then made reference to some of the exhibits, we called up the original exhibits, and when Mr. Grant gets here, we were going to propose that at the end of the day that Lucy Bazil's transcript be entered as an exhibit. And we were going to enter the exhibits that were part and parcel of that commission, so I am in agreement with you that we should do that. And, I think, because Mr. Grant handled the commission, I think there may be certain reservations about objections that were taken by both sides at the commission, and I think the intention is that these exhibits and the commission go in subject to the parties raising or chosing to raise any objections that they might have.
THE COURT: Subject to all just exceptions.
MR. RUSH: Yes.
THE COURT: All right. I will be glad to hear Mr. Grant whenever he arrives or whenever it's convenient.
MR. GOLDIE: Then the other backwards step that I propose taking

for a minute is to go back to the notes of the interview of Moses David by Leonard George that was produced by my friend, and that was not marked, the excerpt that I was reading from was not marked.

THE COURT: Yes. Just a moment. All right. You wish to tender those interview notes?

MR. GOLDIE: Well, it's not the complete set of notes, but it is the page from which I was reading, and I have some further questions to put to the witness in relation to it, and I think it would be very much clearer if the document was put in in part at this time.

THE COURT: Any objection, Mr. Rush?

MR. RUSH: I can't see any.

THE COURT: All right.

MR. GOLDIE: If you saw one you would take it.

MR. RUSH: I certainly would.

THE COURT: He certainly would.

MR. GOLDIE: I tender that as --

THE COURT: Exhibit 97?

MR. GOLDIE: Yes, it is, My Lord.

(EXHIBIT NO. 97 - NOTES OF THE INTERVIEW OF MOSES DAVID DATED AUGUST 23, 1982)

MR. GOLDIE: Now, I wonder if a copy of that could be placed in front of Mr. Joseph.

Q Mr. Joseph, about eight lines down in the second answer that Moses David gave was the paragraph that we were discussing, and eight lines down we find the sentence:

"Then there was the part to Owen Lake, (Beweni) that was owned by your late grandfather (Gooh'lot)."

Firstly, if I just pause there, Moses David is in what House?

A In the House of Goohlaht.

Q Yes. And he holds the name of Samooh, S-a-m-o-o-h?

A Yes.

Q Now, when he says that that part to Owen Lake was owned by your late grandfather, he is talking -- as we decided earlier, he is talking about Felix George?

A Yes.

Q And Leonard George is the grandson of Felix?

A Yes.

Q Now, I want to go on and go a little further. He

says:

"Then up the river there is one part that I don't know too much about. It was held by someone called U I I think and was handed down by her father then it eventually wound out with Dick Lattie. And when Dick Lattie died, I don't know who got it. Then above that, belonged to a fellow that used to be known as Big Leon."

Have you ever heard that name?

A No.

Q "David Grey used to have the name."

I don't know whether Mr. David is referring to Big Leon or something else, but continuing:

"Then J.B. Tom got name, because it used to belong to his uncle."

Now, that is a trapline or a territory or something that is associate with J.B. Tom. And we were looking this morning at that trapline which now has the number 609T014, which is registered in the name of Steven Tom and company, and which is descended from J.B. Tom. Now, that ends -- there is a period there. Then he goes on to say:

"Owen Lake is Gilseyhu."

I'm not sure what that -- I'm not familiar with that word.

THE INTERPRETER: It's Gilseyhu. Number 132.

MR. GOLDIE:

Q 132. He continues:

"It belonged to your grandfather (Goohlaht) and he loved his son so when he died he passed it on to him."

Now, his son would be Thomas, would it not?

A Yes.

Q Thomas is the only son of Felix who is in that area?

A Yes.

Q "He was raised on there and he trapped with his father there so he gave him the line so he

became the caretaker of that area."

And Mr. Leonard George then says:

"So that belongs to Goohlaht.
Moses David: Yes and it was passed on that way."

Now, when I read those and when I go back to the sentence that we discussed earlier, namely, that there was a part to Owen Lake that was owned by your late grandfather, isn't Moses David saying that that part of the territory belongs -- is owned by Goohlaht?

A I heard stories about Owen Lake being Gilseyhu, but that it was given as a compensation in the lifetime of Gisdaywa. And it was supposed to go back to the Gisdaywa, is what I heard people talk about before, but that was years ago.

Q Well, I think you have agreed with me that Moses David is talking about owning territory and not being on the territory as a matter of right or by leave of somebody else.

A Goohlaht lived on Owen Lake for quite some time, like the Felix George reserve. Here at the start it says:

"Part to Owen Lake"

And:

"Then there was the part to Owen Lake (Beweni) that was owned by your late grandfather (Goohlaht)".

They are talking about the reserve part.

Q And then later on he says:

"Owen Lake is Gilseyhu. It belonged to your grandfather, and he loved his son so when he died he passed it on to him."

So he's talking there about the ownership of that part; isn't he?

A I don't know how he could pass it to Thomas, because the Gisdaywa before Thomas was there, long before Thomas was born.

Q Well, that's your understanding, and I understand what your understanding is, but at the present I am asking

you to agree with me that what Mathew -- what Moses David is talking about is ownership. Now, whether he's right or whether he's wrong is another question, but that's what he is talking about is ownership; isn't it?

A It says ownership to part of Owen Lake.

Q Yes. All right. Now, Moses David is dead, of course, at the present time, unlikely to -- trying to make your next year's collection.

A There is another part that says -- he is talking about someone named UI. That's supposed to be Ya.

Q But that is in the next part of the sentence. But the question that I just wanted to clear up is that Moses David is dead?

A Yes.

Q All right. Now, you said that you had heard something about Goohlaht getting some of this area for compensation?

A Yes.

Q Now, compensation for what?

A I don't know. All I heard is that there was a part of it that went for compensation for awhile, and that was -- went back to the House of Kaiyexweniits.

Q Well, I take it that you don't know what it was compensation for, although it's just compensation?

A Yes.

Q Now, you say it went back?

A Yes, to the House of Gisdaywa.

Q Gisdaywa?

A Yes.

Q Now, is the Goohlaht that might have got it for compensation, Felix George?

A No, it would be before him.

Q Before him?

A Yes.

Q Well, it's clear that Moses David is talking about Felix George, though, isn't he?

A He is talking of Goohlaht.

Q He says "your late grandfather, Goohlaht". He says that in two places.

A Uh-huh.

Q It belonged to your grandfather, Goohlaht. Now, that can only be Felix George.

A Yes.

Q All right. Now, you say that it passed to or it may have passed to -- at some part of this area it may have passed to Goohlaht before Felix George?

A Yes.
Q Are you suggesting that it went back before Felix George became Goohlaht? I mean, are we talking about something that is in Felix George's time or --
A No.
Q Long before that?
A Long before that.
Q You have no personal knowledge, it's just something you have heard as part of the stories of the territory?
A No.
Q Where did you learn of that?
A I was told by some people that years ago something had happened in that area, and that there was part of the -- or the lake or part of it was compensation to Gilseyhu. These may have been for a service or a harm, I don't know what for. When they say an area leaves the House for awhile, it's either for -- it's compensation for a favour or someone was harmed.
Q Yes. These people from whom you heard this were members of your House or others?
A Members of my House.
Q Did -- is this something which Thomas, your Uncle Thomas, ever told you about?
A I have heard that from elders around the village, like my grandmother and --
Q I see. Well, they told you a story about compensation. Did they tell you when it came back to Gisdaywa?
A No.
Q Perhaps it never has come back to Gisdaywa.
A If this compensation was given to someone in his lifetime, his or her lifetime, when that person dies it goes back to the House.
Q I see. Well, if it wasn't given for compensation, then it may belong to Goohlaht today; isn't that what Moses David is saying?
A Well, when I've travelled with Moses, he didn't say anything to me about that. And also been in that area with Johnny and -- Johnny David. He didn't say anything about that either.
Q But from what you know, you can confirm what Moses David is saying here to the extent that at sometime, from what you have heard, this territory to Owen Lake, or as he puts it, Owen Lake itself, belonged to Goohlaht?
MR. RUSH: Part to Owen Lake it says.

MR. GOLDIE: No, later on he says:

> "Owen Lake is Gilseyhu. It belonged to your grandfather, Goohlaht."

Q So you may disagree with him when he suggests it's owned today, but you can confirm that you have heard stories of it belonging at one time to Goohlaht?
A Yes.
Q And as you told us earlier, Moses David is or was in the same clan as Goohlaht. Who is Goohlaht today? Is that Lucy Namox?
A Yes, Lucy Namox.
Q Thank you, Mr. Joseph. I now want to go back to the question of the B.C. special.

THE COURT: Well, may I ask something.
Mr. Joseph, according to Wet'suwet'en law, no matter how much a father loved his son, he couldn't pass the territory to him, could he?

THE WITNESS: No.

THE COURT: What then do you understand from that passage in those notes?

THE WITNESS: Like I've heard that part of Owen Lake was at one time given to someone as compensation, but that it went back when that person died. It went back to the person that let this other person use it, one that was compensated.

MR. GOLDIE:
Q Moses David used the word "caretaker" in relation to Thomas George, assuming he was the son referred to of Felix George. What do you understand that to mean?
A Does it say that on this part here?
Q If I may point it out to you. It's at the bottom of this paragraph that we have been looking at, the last sentence. It says here:

> "So he became the caretaker of that area."

And the question is what do you understand is meant by the word "caretaker"? Well, you may have answered it in your interrogatory. You were asked question 59B.

MR. RUSH: Was he going to answer?

MR. GOLDIE: I was going to suggest that he may have already answered it.

MR. RUSH: Well, maybe he would like to answer it now. I don't know whether he was waiting.

THE COURT: Well, he waited quite awhile, Mr. Rush. There was no answer. I think you may proceed, Mr. Goldie.

MR. GOLDIE:

Q I am going to show you the -- your answer to interrogatory 59B, which was:

> "How does your House exhibit or exercise ownership or jurisdiction?"

And you say:

> "The name that you take, the territory goes with it, the regalia, the songs, the crests. When we speak about our territories at the feast, the other chiefs witness this and acknowledge the truth. My uncle's kids are using the area with our permission. If other people use it and they do not belong there, we can say something about that use of the territory. My crest is the bow and arrow and two cubs. I cannot sell the territory. I am the caretaker of the territory for my House members. Territories were never sold but sometimes were given for compensation for a wrong that might have been done or for a debt that was owed to another clan because of a payment or assistance that they provided."

When you gave that answer, did you mean it in the sense that you could not sell the territory?

A Yes.

Q All right. Thanks. And anybody who held the name could not sell the territory; is that right?

A Yes.

Q And in that sense, then, ownership is the same as being a caretaker, or a caretaker is ownership?

A When I say caretaker, I'm there as Gisdaywa in my lifetime, and that means I will take care of it while I'm Gisdaywa.

Q Yes.

A So another Gisdaywa comes along, we'll do the same thing.

Q And as Gisdaywa --

A Yes.

Q -- you own the territory?

A Yes.

Q Now, I want to go back to the B.C. special fund. And

the question that I wanted to put to you was did you know how that fund came about? Do you have any knowledge about that?

A I -- like I've said, I've heard of the B.C. special that was established somewhere in '26, '27, and that we were getting -- all of B.C. was getting a hundred thousand a year, and it was given out on a per capita basis. Is that the one you were talking about?

Q That what's known as the B.C. special.

A Yes.

Q And were you aware that it was established in '26 or '27 as a result of a report of Parliament?

A Yes, it was -- I was told it was established at that time, but we've never heard or used it until sometime in the sixties, is when we first were told about it.

Q I see.

A Because the D.I.A. handled all our affairs up 'til then.

Q Yes. But from then on in they asked you how you wanted to spend the money?

A Yes.

Q Now, I want to read to you an excerpt from a joint -- report of a special joint committee of the Senate and House of Commons, appointed to inquire into the claims of the Allied Indian Tribes of British Columbia set forth in their petition submitted to Parliament in June, 1926. This is listed as document 1173 of the Province's list, and I'm reading from page xvii. And this is part of the report:

> "Cash compensation for annuities similar to treaty annuities.
> It may be remarked with reference to the payment of annuities that the policy for the payment of annual sums to individual Indians was inaugurated in the early days, having in view the then condition of the Indians, and that the annuity might be a source of revenue for their support, but conditions have changed so materially that the need and usefulness of such a per capita payment to Indians of British Columbia is negligible. In lieu of an annuity Committee would recommend that a sum of $100,000 should be expended annually for the purposes already recommended, that is, technical education, provision of hospitals and medical attendance, and in the promotion

of agriculture, stock-raising and fruit culture, and in the development of irrigation projects. An annual expenditure of this amount for these purposes would seem far more applicable to the Indians in their present condition than the payment of any per capita amount."

Now, I should have asked you first, have you ever had occasion to look at or be familiar with this document which I referred to, namely, the report of the Special Joint Committee of the Senate and House of Commons submitted to -- appointed to inquire into the claims of the Allied Indian Tribes of British Columbia? I'll show you the document in question and ask you if you have seen it or are familiar with it. That's the cover. And you should not assume that that cover is one that would be likely that you saw. It's one that's been put on there by my client. But that document would be part of the original copy. Have you ever seen anything like that?

A No.

Q Now, have you ever heard as an elaboration on the basis for this B.C. special anything along the lines of what I read to you a minute ago; the purposes for which it would be used, for instance?

A Well, we -- like when I was first in council, the only people -- only person that knew of any of these things was the Indian Agent, and we met with him while we were in council.

Q Yes.

A And he advised us of any monies that were supposed to go to the village, and we -- he'd send us reports on what monies were around. He would send us any contracts that needed to be signed, and that's all we did. We had no office on the reserve at all. It was all done out of the D.I.A. office in the sixties.

Q But so far as the purposes for which this fund was available and you became aware of it, were you told that that fund, at least the per capita amount that was allotted to your band, was available for purposes such as what I have read there; namely, education, provision of hospitals, medical attendants, promotion of agriculture, stock raising, fruit culture and of the development of irrigation projects? Were those the sort of things that you understood that --

MR. RUSH: How could I possibly re-examine on that question?

THE COURT: Well, is that the test?
MR. RUSH: No, it's a hearsay -- it's a -- what were you told about what's in this.
MR. GOLDIE: Well, it's -- I am exploring the knowledge of the witness, however he gained it from whoever of this.

Q Now, were you ever told that that special fund was for certain purposes of the kind such as I have just read to you?
A I was told that the money was there, but exactly how it was expended is what I haven't been told.
Q All right. Were you told that it was to -- that it was in place of money paid to treaty Indians?
A No, there was no mention of treaties.
Q No. Were you ever told that it was -- arose from a report of Parliament, which concluded that aboriginal title had not been established?
A No, there was no mention of that. I never heard that part of aboriginal title concerning that.
Q And so far as you know, there was no copy of that report ever distributed to your band?
A No.
Q I am going to read you the next paragraph, and if there is any part of what I read that is familiar to you or that is like something that you have heard, I want you to tell me. Paragraph reads:

> "In concluding this Report your Committee would recommend that the decision arrived at should be known as completely as possible to the Indians of British Columbia by direction of the Superintendent General of Indian Affairs in order that they may be become aware of the finality of the findings and advised that no funds should be contributed by them to continue further presentation of a claim which is now been disallowed. Furthermore the committee recommends that this report ..."

I won't read any further. I will.

> "Furthermore the committee recommend that this report together with the evidence, be printed as an appendix to the journals of the Senate, and also in blue book form to the number of 1,000 copies and that Rule 100 there relating thereto be suspended."

Now, the question that I put to you is primarily with respect to the findings of Parliament with respect to the claim. If I may pause there and say, are you aware that a claim was made to Parliament in 1926 based upon aboriginal title by the Allied Indian Tribes of British Columbia?

A No, I haven't been aware. I heard the name, but I didn't know what was happening at that time.

Q That would be pretty precocious to know that. But you have heard the name Allied Indian Tribes?

A Yes.

Q What about the name Andrew Paul?

A I have heard of Andrew Paul quite often.

Q And heard of him as a man who had gone to Ottawa to speak about aboriginal title?

A Yes.

Q And what about the Reverend Paul Kelly?

A I have heard the name.

Q Same thing?

A Yes.

Q How about the name Reverend Arthur O'Meara, O-'m-e-a-r-a?

A No, I never.

Q Never heard of him?

A No.

MR. GOLDIE: My Lord, this document is going to have to be filed as an exhibit. It is a fairly bulky document, and I would propose that I have it photocopied and filed. I don't think it will serve any particular purpose to tender one page of it at this time.

THE COURT: You are going to be tendering it in its entirety in connection with other matters as well as this?

MR. GOLDIE: It is relevant to matters that -- other matters in the case, yes.

THE COURT: Well, I take it that by some process it's probably admissible, but I should hear what Mr. Rush says.

MR. GOLDIE: Well, yes, it is admissible because it is printed by the King's printer, and it's a document that has been adopted by Parliament.

THE COURT: What do you say, Mr. Rush?

MR. RUSH: There is a paragraph in the Statement of Defence which makes reference to this document.

THE COURT: Yes.

MR. RUSH: I expect that my friends will be placing some argument on it. I think the whole document should be before you. I think it will be before you at some time. I have no difficulty in it being marked as an

exhibit. I don't think it's a desirable purpose to file just a portion of a report. I don't think that helps anything.

THE COURT: All right. Well, is there anything magic about the sequence or the timing when it's filed? Do you have some reason why you want it now, Mr. Goldie?

MR. GOLDIE: Not particularly, no. I just -- the purpose of my discussion was to determine whether any purpose would be served by simply filing an extract from it.

THE COURT: I think you are agreed on that point, unless you have some position on this, Mrs. Koenigsberg.

MS. KOENIGSBERG: I would think it desirable to file the entire report.

THE COURT: All right. Well, a copy of the entire report can be the next exhibit. You can make it available whenever it's convenient. It will be number 97, I think.

THE REGISTRAR: 97.

THE COURT: 97, yes. Thank you.

(EXHIBIT NO. 97 - REPORT OF A SPECIAL JOINT COMMITTEE OF THE SENATE AND HOUSE OF COMMONS)

MR. GOLDIE:

Q I have some further questions, Mr. Joseph, in connection with your evidence as councillor and chief councillor. The reserve in question, Hagwilget, as I think you have told us, between Hazelton and New Hazelton and the highway between those two points runs through the reserve?

A Yes.

Q And the reserve itself has a frontage on the Bulkley River Canyon?

A Yes.

Q Over which the suspension bridge that is there now runs?

A Yes.

Q And the people of the village are the descendants of those who moved there after the fall of rock in about 1820?

A Yes.

Q That's the tradition of the village, is it?

A Yes.

Q And is it correct that the Wet'suwet'en people who came to Hagwilget after that fall of rock, took possession of the village site and the fishery from the Gitksan who were living there, without the permission of the Gitksan?

A I don't think they were there without the Gitskan permission.
Q That's your belief, but I suggest to you that there are some stories which have been told which suggest that the -- it was -- that it was against the wishes of the Gitksan that the Wet'suwet'en people who came there took possession of that site. Have you ever heard of stories to the effect that it was against their wishes?
A No, I never heard that.
Q All right. Thank you. You have told us a number of things about being chief councillor. Are there any -- is there anything else that you wish to add to your description of what you did as chief councillor?
A Well, when you're elected chief councillor, you have to make sure that you look after the village, it's needs, and which all you did at the start was to make applications to the D.I.A. office, and they in turn made applications to regional. But we were very unsuccessful in that last year on getting little things we needed.

At first we had no running water in the village, and 1956 we got running water, which was stand pipes. And they weren't in the house, they were just out in the -- in front of the house. There may be one stand pipe for about five or six houses, and that is the way our running water situation was at Hagwilget. And we also had no inside plumbing done. You can't put water in the house to start with, because of the way the houses were built.

There was no insulation in the houses. There was no foundation in the houses, all wood posts. And if you tried to put water into the house, there was -- the bottom of the house wasn't enclosed, so the pipes would freeze in the wintertime.

So things of that nature that we had to deal with with the D.I.A.

And we had to also apply for sewer lines. We had to apply for recreation halls, and most times the smaller bands were sort of pushed aside for the bigger bands. So sometimes we were -- the smaller bands were left out.

We had to justify what we wanted by doing studies. We had to prove to the D.I.A. that what we needed was ready to go. So then we had to go to the engineers, the people, the D.I.A., call them in, do a feasibility study and then another -- study after studies were

done. Sometimes that was rejected. So it was a very hard thing for small bands to carry on.

So we were always involved in things like that. We didn't have an office, to start with, on the reserve. Whenever we wanted to meet with the D.I.A., we had to make an appointment with them, which was another hard thing to do, because of only one superintendent for 8 or 9 bands. So in the fifties and sixties was very hard to get something done at the village level.

Q It was a very difficult job?
A Yes.
Q And it took a lot of your time?
A Yes.
Q But you have succeeded to a great extent. You have an office on the reserve with a band council?
A Yes.
Q And you have modern houses that have running water and inside plumbing and sewage lines?
A Yes.
Q And electric light?
A Yes.
Q And indeed, I believe, some satelite receivers for television? Those would be individual --
A Yes.
Q -- things. Would it be right to say that your job as chief councillor over these years, in taking care of the band's affairs, was one that occupied a good part of your daily life?
A Yes.
Q How many people live on the reserve?
A At the present time, around 200.
Q And the affairs that you have been talking about would be the important things in the lives of those people? It was important for them to get running water in their houses, it was important for them to get houses that were insulated and that would allow the introduction of running water and inside plumbing? These were the things that mattered to them; is that right?
A To the present generation, yes.

THE COURT: Is this a convenient point to adjourn, Mr. Goldie?
MR. GOLDIE: Yes, it would be, My Lord.
THE COURT: Could I just ask -- Mr. Joseph, you said that the members of the village were about 200. Does that mean that that is approximately the size of the Hagwilget band?
THE WITNESS: That's the people that are living there now, but

membership is more than that.
THE COURT: How many would be in the band membership?
THE WITNESS: Be close to 400.
THE COURT: I see. All right. Mr. Grant? Mr. Grant, does this have to be looked after now? Can it be dealt with Monday? I wasn't able to deal with Monday's list. But if we have to do it now, by all means.
MR. GRANT: We'll leave it then until Monday morning. I prefer to do that then.
THE COURT: Thank you. All right.
THE REGISTRAR: Order in court. This court stands adjourned until Monday, January 8th at 10 a.m.

(PROCEEDINGS ADJOURNED TO MONDAY, JANUARY 8, 1987)

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

LORI OXLEY
OFFICIAL REPORTER
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