Vancouver, B. C.
February 11, 1988.

THE REGISTRAR: In the Supreme Court of British Columbia, Thursday, February 11, 1988. Delgamuukw versus Her Majesty the Queen, at bar.

I caution the witness and interpreter, you are still under oath.

MR. RUSH: Just before my learned friend commences, I want to advise you that Ms. Mandell will be late this morning. She won't be here until 10:30 and this afternoon she will be excusing herself from the remainder of the cross-examination.

THE COURT: All right.

MR. RUSH: And you will have to put up with me again.

THE COURT: As long as your friends agree, Mr. Rush. You know that the rule is that when the party who examines a witness in chief or counsel in chief must make the objections, so you will keep that very much in mind, but perhaps your friends will agree in these circumstances that the rule can be waived.

THE COURT: Mr. Mackenzie?

MR. MACKENZIE: My lord, another procedural matter, I confirm that all counsel will be ready to argue that -- those two issues tomorrow morning.

THE COURT: All right. I look forward with great expectation.

MR. RUSH: I want to advise your lordship that there may be one or two other procedural matters, not the major matter, that I would like to raise.

THE COURT: I will be glad to hear those matters at any time. Thank you.

MR. MACKENZIE: My lord, handing up three new tabs to be added to the document book. I would request that each person -- that your lordship make a notation in the table of contents and we will provide you with a typewritten table of contents once we have finished the documents.

THE COURT: All right.

MR. MACKENZIE: So handing up tabs 14, 15 and 16. One of these is not yet punched so you will have to stick it in after the tab.

And I will give the description to that. Tab 14, may be described --

THE COURT: Just a moment.

MR. MACKENZIE: Thank you. Tab 14, may be described as plaintiffs' document number 5541, excerpt; tab 15 is the province's document number 1324, which is Exhibit 102.

THE COURT: Province's document --?
MR. MACKENZIE: 1324, which is Exhibit 102 in these proceedings, excerpt.
THE REGISTRAR: What was the number on the first one?
MR. MACKENZIE: Tab 14, plaintiffs document 5541. And, my lord, tab 16 is Emma Michell commission transcript, volume one, excerpt. And that's Exhibit 73 in these proceedings.
THE COURT: Thank you. Now these documents go after the second map, which is attached to tab 13, is it?
MR. MACKENZIE: Tab 13, my lord. There are two maps at tab 13.
THE COURT: Yes. These can't be inserted in the book, I take it?
MR. MACKENZIE: They are all punched except for the ones at tab 16, my lord.
THE COURT: All right. Thank you.

CROSS-EXAMINATION BY MR. MACKENZIE: (Continued)

MR. MACKENZIE:

Q Mr. Mitchell, yesterday you expressed concerns about logging activities in the Goosley Lake territory, correct?
A Yes.
Q You were concerned about the impact on wildlife?
A Yes.
Q You were concerned about the impact on traplines?
A Yes.
Q And you told us also yesterday that you are currently working at the Moricetown sawmill; is that right?
A Yes.
Q You are working in the mill?
A I am not working, I am supervising.
Q Supervising in the mill?
A In the logging.
Q Supervising on the logging operations?
A Yes.
Q Those logging operations are now being conducted at Corya Creek?
A Between Corya Creek and John Brown Creek.
Q And those logging operations are clear cutting patches in that area, correct?
A Yes.
Q And are you aware that that is the area of Bazil Michell's trapline?
A Yes.
Q And are you aware that Bazil Michell has expressed

concerns about logging on his trapline?
A I didn't know about Bazil's concern, but I knew about Henry's -- Henry Alfred and I only knew that he was consenting to the logging.
Q Yesterday, you also told us that you used to trap at the Goosley Lake territory; is that right?
A Yes.
Q And you stopped trapping for marten around 1952; is that right?
A Yes.
Q You are a member of a registered trapline on that territory, aren't you?
A My name's on it, yes.
Q And Dan Michell is the head man on that trapline?
A Yes, on the registration, yes.
Q That's -- do you know that that's trapline 609-T064?
A I don't know about the numbers but I know by my memory.
Q Now, before Dan Michell, the late Alex Tiljoe was the registered owner of that trapline, wasn't he?
A Yes.
Q And the trapline was transferred to Dan Michell in 1976; is that right?
A Yes.
Q You became a member of the trapline in 1951, right?
A I was a member of that trapline since I was a little boy, when my father raised me on that trapline. He raised me there, he teach me there.
Q Your name was added to the list of the trapline in 1951?
A Yes, the white man's way, yes, in the Indian's way I belong there.
Q And members of that trapline make fur returns to the fish and wildlife branch?
A At one time I made a return but they wanted it, eh, and I forgot what year it was. What I caught.
Q And did you make a fur return in 1959?
A Probably then, yes.
Q Put tab 2 of the document book in front of the witness, please.
That's your signature on the the bottom of that return?
A No, there is some letters missing in this signature.
Q I have, my lord, I have a carbon copy of that document, which I am going to put before the witness to assist him in reading the signature at the bottom of the document.

I will put that carbon copy before you, Mr. Mitchell, does that assist you in recognizing your signature on the bottom of that trapline document?

A No, I know that it's the other one I couldn't read. Yes.

THE REGISTRAR: Exhibit 225, tab 2.

(EXHIBIT 225: RETURN OF REGISTERED TRAPLINE HOLDER)

MR. MACKENZIE:

Q I am referring to Exhibit 225, Mr. Alfred, you see the licence number at the side of the page there, 5706-57?

A Yes.

Q And this return was covering the season of 1957-1958, wasn't it?

A Yes.

Q That, I am instructed, Mr. Mitchell, that that is the number, the licence number of a special firearms licence. Did you have a special firearms licence in that year?

A Never did have no firearms licence. Not that I know of, anyway.

Q Did you have a firearms licence in 1955?

A No.

Q Did you have a fire --

A I don't know.

Q Did you have a firearms licence in 1958?

A No.

Q And number 5723, do you recall that, 1958?

A Where is that 5723?

Q This is 5706, Exhibit 225, refers to 5706, I am asking about other licences. Did you have a special firearms licence in 1960?

A No.

Q Did you have a special firearms licence in 1961?

A No.

Q Did you have a special firearms licence in 1962?

A No.

Q Is there any other member of that line whose name is Alred Mitchell?

MR. RUSH: Just a moment.

MR. MACKENZIE:

Q I am referring to the line --

A In that line?

Q Exhibit 225, referring to the trapline at Goosley Lake, which we have been discussing. I am talking

about Dan Michell's registered trapline?
A There is just me.
Q There is no other Alfred Michell or Mitchell on that line?
A There is one more but he is in a different clan.
Q He is not in that territory?
A No.
Q Are you a member of any other traplines?
A Well, I was raised on that trapline, that's all I know.
Q Referring to Exhibit 225, do you recall taking this in to the Fish and Wildlife office in 1959?
A I couldn't recall when that -- whether I took that in or not. One of the reasons that I may have taken this return in was that at the time when the laws in regards to this trapline registry was strongly enforced on us for fear of being -- like, we are scared of what might happen and as a result I took that in. But today, we are not scared of them, we don't have to do these things.
Q When you took the trapline in, did you speak to the game warden, Mr. Cox? When you took this Exhibit 225, this document to the fish and wildlife office?
A Probably him. Some of the game wardens there take them -- there is one more at Glentanna, Allan Fletcher. Could be him.
Q Allan Fletcher has a trapline on Driftwood Creek, doesn't he?
A That I don't know.
Q Do you recall when you went in with your return that the game warden typed out the document for you?
A In that year I recall putting my kids in there but I don't recall which one though.
Q Referring to your comment, you said yesterday, you told me your band number was 86; is that right?
A Yes.
Q And your birth date is August 6, 1924, correct?
A Yes.
Q Referring to tab 4, there is a band council resolution which you identified yesterday for the Alexander Dennis Company trapline and I wonder if the witness could be directed to that document. Tab 4.
Q You told me you signed this document, this band council resolution, do you remember saying that?
A Yes.
Q That is your name that appears on the third line of this band council resolution, Alfred Mitchell, band

number 86, birth date, 06/08/24?
A Yes.
Q And where is the Alexander Dennis trapline?
A That's right at -- northwest of Knedebeas territory.
THE COURT: Northwest?
A Northwest of Knedebeas territory.
MR. MACKENZIE:
Q Now looking at the signatures on that band council resolution, tab 4, do you recognize Dan Michell's signature there at the top?
A Yes.
Q He was the chief councillor at that time, wasn't he?
A Yes.
Q And then your signature follows. Is the next signature Roy Naziel's signature?
A It looks like it is Roy Michell.
Q And then the next one is Roy Naziel?
A Raymond Naziel.
Q I am sorry. Raymond Naziel sell. Is that Dick Naziel's son?
A Yes.
Q And Dick Naziel was your father-in-law?
A Yes, that's right.
Q Now, yesterday, Mr. Mitchell, you testified that in the 1940s you were trapping pretty regularly, you remember that?
A Through those years, yes.
Q And then in 1952, you began to find other employment; is that right?
A Yes, sometimes start working.
Q And you found other employment in the logging industry; is that right?
A Yes.
Q Now before 1952, did you have any employment besides trapping?
A Yes, my grandfather and my father had a pole camp.
Q And you worked in the pole camp in the 1950s you said; is that correct?
A Yes.
Q Did you have any other occupations during those years, besides trapping?
A I worked with my father in the pole camp most of the time.
Q And your father was big Tommy Michell?
A Yes.
Q And his pole camp was near Beament, wasn't it?
A Yes.

Q Near Mosquito Flats?
A I would say four or five miles from Mosquito Flats.
Q And you worked for the Bell Pole Company in the summer of 1961, didn't you?
A That was my last year.
Q And were you logging on the east side of the Bulkley River when you were at the pole camp with your father in the '50s?
A Yes, on the east side of the river.
Q And that was in -- that was north of Causqua?
A North of Causqua Creek.
Q North of Causqua.
Q And you would take poles from the forest, take the good poles from the forest and develop those into telephone poles or poles for telephone poles in your camp; is that correct?
A Well, just pick out big number enough for poles and peel them right out in the bush with a team of horses to take them out.
Q And you would leave the other timber there?
A Smaller timber we don't touch.
Q Now, after 1952, did you have any other occupations besides working in the logging industry?
A Yes, I worked for Sylvester William, starting in '58, the fall. And '59.
Q And what were you doing in that --
A In the '60s, actually.
Q What were you doing in that time?
A He had a portable mill, portable mill.
Q Where was the portable mill?
A That was in Springhill area.
Q That's in Wah tah kwets' territory?
A Yes.
Q And during those years that you were working you didn't go trapping as often as you had in the '40s; is that correct?
A We go trap beaver every spring, every other spring we worked during the winter.
THE COURT: Are you saying you went trapping every other spring?
A Yes, sometimes every spring.
THE COURT: Sometimes every spring?
A Yes.
MR. MACKENZIE:
Q But you didn't trap for marten after 1952 regularly?
A No, my brother did.
Q Now, the reason that you are out trapping is to take the furs and sell them; is that correct?

A Not only not only that, it was meat for food.
Q Yes. But you sell the furs to make some money?
A Yes.
Q And the prices of furs vary over the years, don't they?
A They go up and down. Now it's pretty low.
Q It was pretty low in the 1950s, wasn't it?
A It was -- fur in the '50s, some years it was pretty low. It was average. Some years it was pretty low. We still go out and trap beaver for meat. Trouble is that when I am working for a company, spring break for about two months, that's when we get time to go out during that time, we trap beaver.
Q But when the prices for furs go down, not as many trappers go out; is that correct?
A A lot of people go out for beaver, I know. Like I say, that's the best food we have in our diet. Just like you guys like T-bone steak, same as us, we lived on it, like bull hen, change our diet like that. I like, being out in the bush.
Q So you were trapping in those days primarily for the food?
A Food and some money, sure.
Q When you are working and you have a good income, do you buy food from the stores?
A Yes.
Q Do you go to Smithers to shop sometimes?
A Smithers, Hazelton.
Q You testified that these days you eat about one steak a week; is that correct?
A If I got a lot of money I eat two steak a week.
Q That's white man's food?
A Yeah.
Q And today, children are in school during September, aren't they?
A Yes.
Q And so you can't take them out on the traplines, can you?
A In springtime we take them out, longer days, some long weekends. We driving around our territory, that's Sam Goosley Lake, a road right around it. And a logging road.
Q Yes, you have spoken about those roads before, and you also told us yesterday that you had a car accident in 1982, do you recall that?
A Yes.
Q And you loaned your pick-up truck to your brother

Billie Mitchell?
A That's right.
Q I take it you have a driver's licence then, Mr. Mitchell?
A '82, yes, I had a driver's licence.
Q And you drive on Highway 16 quite frequently going between Moricetown and Smithers and Hazelton?
A Yes.
Q And you take the Buck Creek Road and sometimes the Equity Mine Road when you are going into the Goosley territory, don't you?
A Yes.
Q You broke your ribs in 1982 during that accident, didn't you?
A Yes.
Q And did you go to the Smithers Hospital to have care?
A Yes, they bring me to the Bulkley Valley Hospital.
Q That's in Smithers?
A Smithers.
Q And the doctor looked after you in the hospital when they brought you in?

MR. RUSH: What's the relevance of this cross-examination? I would like to object to this. I would like to know why it is relevant that a doctor looked after a witness who was injured in a motor vehicle accident in the Smithers Hospital?

MR. MACKENZIE: Well, my lord, there is quite a lot of evidence called about medicinal plants, and healing on the territories, and the use of the sweat lodges, as Mr. Mitchell in fact said they are hospitals for the ancestors and the Wet'suwet'en. And this it seems to me this evidence is relevant to show that the times have changed and the Wet'suwet'en people are moving with the times, as we all are, in some cases.

THE COURT: Well, I think, Mr. Rush, that the examination in chief was far-ranging, covered a wide variety of subjects. I think within the context of your opening, numerous references to the way of life of these people, seems to me that we may be probably frequently are far, far afield. At the end of the day I shall have to try and collect it together in some manageable way but I don't think at this point that I could say that cross-examination under no circumstances can be relevant. That being so, I think I should allow Mr. McKenzie to continue.

MR. MACKENZIE:
Q Mr. Mitchell, you told us yesterday that your children

are in school, is that in Moricetown?
A One going to school in Prince George and one in Hazelton.
Q And you had eight children with your first wife; is that correct?
A Yes.
Q And they all went to school?
A All went to school.
Q And did they go to high school?
A Well, just made it to Grade 12 in Prince George, college, got some of them went to Vancouver, my daughter and my son.
Q They went down to Vancouver to college there?
A Taking a course.
Q Taking courses. And the situation now is that your children can go to school and to university without charge; is that correct?
MR. RUSH: Just before the question is translated, does my friend mean without charge, meaning Mr. Mitchell's children and grandchildren are not required to pay tuition?
THE COURT: No, I took that to be the import of the question. But it may not mean that and I think --
MR. RUSH: Well, I think it requires some clarification. There is a large number of charges involved in going to university in this province today.
THE COURT: Yes. Mr. McKenzie, could you clarify your question, please?
MR. MACKENZIE:
Q Your children may go to school now without paying tuition fees; is that right?
A We don't pay ourselves, but the Indian Affairs does.
Q And yesterday you mentioned that you were concerned about the UIC cheques, did you mean Unemployment Insurance Commission?
A Yes, that's what I was talking about.
Q Have you received cheques from the Unemployment Insurance Commission?
A Yes.
Q Are you a member of the Roman Catholic Church in Moricetown?
A Yes.
Q Your family attends the church?
A All the family, yes.
Q Your brother Billy lives in Houston, doesn't he?
A What?
Q Your brother Billy lives in Houston?

A Yes, he stays in Houston.
Q When he goes down do Goosley Lake he drives down on the mine road; is that correct?
A This winter he didn't have no vehicle there. Got somebody to drive him into the mining road.
Q He doesn't get back to Moricetown very often, does he?
A A lot of times he comes back. When he comes back he stays with Peter Jim and his wife in the village, because he has got no home there. He is single.
Q Billy doesn't get to the feasts too often, does he?
A I see him there all the time, sitting beside me.
Q Now, Mr. Mitchell, I would like to draw another document to your attention. You have spoken at length about the logging in Goosley Lake, there is a lot of clear-cutting in Goosley Lake, isn't there?
A Yes.
Q And referring to tab 9, my lord, I would request that that map be put before the witness.
Now, generally speaking, Mr. Mitchell, you recognize this as the area of the Goosley Lake territory, you see Goosley Lake in the centre at the bottom there?

MR. RUSH: There are two questions there.
MR. MACKENZIE: Yes, I am sorry.

Q Mr. Mitchell, you see Goosley Lake in the lower centre of that area?
A Yes, I see Goosley Lake.
Q And, generally speaking, do you recognize this as the area around Goosley Lake?
A That's the area.

THE COURT: I haven't found it yet, Mr. Mackenzie.
MR. MACKENZIE: My lord, Goosley Lake is in the lower third of the area encircled in red and the area boundary resembles the Namox boundary on exhibit number 184.
THE COURT: I still don't see Goosley Lake.
MR. MACKENZIE: Well my lord, it's --
MR. RUSH: The yellow line.
MR. MACKENZIE: The yellow line on the right side is going right through the lake, my lord. The yellow line is going right through the lake.
THE COURT: I have got a yellow line on the left side. Just a minute. Let me see the witness' --
MR. MACKENZIE: Right here is Goosley Lake.
THE COURT: All right. To the right of the yellow line.
MR. MACKENZIE: Sorry, my lord.
THE COURT: Yes. Thank you.
MR. MACKENZIE:

Q Now Mr. Mitchell, if you look up at, just above to the northeast of Goosley Lake, that's where the Equity Mine is, isn't it, just northeast of Goosley Lake?
A That's where that -- yes, right there. That's right.
MR. MACKENZIE: My lord, the witness is pointing to the boxes which are really, are mineral lease designations beside a lake, a small lake, just northwest of Goosley Lake.
THE COURT: Yes.
MR. MACKENZIE: Northeast of Goosley Lake. Thank you.
Q And I will just put a -- I have got a green pen here, I will just put an A where the witness has pointed to the location of the mine.
That's the Equity Mine, is it, Mr. Mitchell?
A Yes, that's the Equity Mine.
MR. RUSH: Well, he puts his pen in a different place than you put the A. So maybe just to make sure --
MR. MACKENZIE:
Q See where I put the A there, the Equity Mine is right there.
MR. RUSH: His pen is not where you have the A. But if you are including the same area --
THE COURT: I don't think it really matters precisely where the mine is. It's within those mining licence areas or permit areas is it?
MR. MACKENZIE:
Q Mr. Mitchell, are you aware that the mine covers an area of 2200 acres?
A No, I am not aware of that. I never was told that.
Q Pretty big place though, isn't it?
A Yes.
MR. MACKENZIE: My lord, before I go on with this, I request that this document be marked as an exhibit because I have some other questions to ask about it.
MR. RUSH: I don't object to it being marked for an exhibit in respect of what Mr. Mitchell can identify on the map. I think there is a lot of markings and keys and so on and so forth which he may or may not be able to identify.
THE COURT: That's helpful. It can be the next exhibit then.
THE REGISTRAR: Exhibit 226, tab 9.
THE COURT: But it's only evidence for which the witness can identify.

(EXHIBIT 226: MAP, TAB 9)

MR. MACKENZIE:

Q Now Mr. Mitchell, starting at the mine site, you see the Equity Mine Road starting at the green A at the mine site?
A Yes.
Q And could you describe -- my lord, do you have that road leaving the mine site?
THE COURT: I think so. It's a solid line with a dotted line almost superimposed?
MR. MACKENZIE: No, the road goes straight north.
THE COURT: The dotted line?
MR. MACKENZIE: Yes.
THE COURT: What's that heavier line that in intersects westerly and --
MR. MACKENZIE: I think that's a height of land, my lord.
THE COURT: All right.
MR. MACKENZIE:
Q So, Mr. Mitchell, can you describe where that road goes for his lordship and move along that road to show where that Equity Mine road goes from the mine?
A Starting from the mine going north and a little jog here. There is a creek, that's where the trail goes down into Goosley Lake. This trail here. A deep creek right in here.
Q I am marking the line as Mr. Mitchell goes along it, with a red -- correction, an orange marker, my lord.
A There is a height of land. There is a creek here, that's why the big jog.
MR. MACKENZIE:
Q Yes. Then it continues past the height of land and up to the northwest?
A Right along the top line here, right through here.
Q On the map that says Klo Creek, doesn't it?
A That's Klo Creek.
MR. RUSH: Klo Creek is a different place.
A That's a different place. Okay. This map is not accurate.
MR. MACKENZIE:
Q Let's carry on with the road, shall we?
A Okay, that goes --
THE COURT: The road crosses Klo Creek?
MR. MACKENZIE:
Q Crosses the creek and goes along Dungate Creek down to Houston?
A Yes, across Dungate Creek and down to Houston.
Q And I have marked that with an orange marker following the road from the mine --
A Yes, Klo Creek.

Q Mr. Mitchell is pointing to a creek in the centre of the map area, as Klo Creek and it's so marked.
A This is our boundary down here someplace.
Q Yes. And that's fine. We have got the Equity Mine Road down there in orange?
A How can they miss some of this here? Some of these lakes you guys missed.
Q Now, Mr. Mitchell, the road that comes along the bottom of the territory is called the Buck Creek Road, isn't it?
A The Buck Creek, yes.
Q And let's talk about that for a minute. That road comes from Houston down Buck Creek and then into the Goosley Lake territory, doesn't it?
A Yes.
THE COURT: I am sorry, I haven't found the Buck Creek Road yet.
MR. MACKENZIE: Well, my lord, it's on this map, it's on the -- follow it along for your lordship --
THE COURT: Is it a dark line that leaves Houston and runs almost due south?
MR. MACKENZIE: Yes, comes down to Buck Creek and then runs along the west -- correction, crosses over Buck Creek on a bridge and then runs along the east side of Buck Creek, crosses over again and runs along the west and south sides of Buck Creek, into the territory and then along the southern boundary and then crosses over and comes back into -- out of the territory, and on this map and then carries on right through to the Goosley Lake area.
A Our territory, we call it Neel dzii tezzdlii Kwe. We don't call it Buck Creek.
Q It becomes Goosley Lake?
A Yes.
THE COURT: All right. Do you have the spelling for that Mr. Reporter?
THE TRANSLATOR: N-e-e-l, d-z-i-i, t-e-e-z-d-l-i-i, k-w-e.
MR. MACKENZIE:
Q Now, I am going to ask you about some of the areas Mr. Mitchell, because you have spoken quite a bit about the logging in the various areas. Looking up to the northeast of your territory, there are several areas in black outline, that's the Foxy Creek area, isn't it? Up in this area?
A No.
Q Up here in this area?
A Yes, yes, that's right, that's Foxy Creek, goes right into Maxan territory.

MR. RUSH: The witness pointed to a line on the map which he identified as Foxy Creek.
A This here map is not accurate.
MR. MACKENZIE:
Q Yes. Well, let's deal with it as it is then, Mr. Mitchell. You pointed to the Foxy Creek area and you testified that there is logging going on up in that area now; is that correct?
A Right now, there is logging all over the country, even in this area here. That's where they got their roads, right down in our territory, they are logging right along here, that's our territory. You haven't got it on the map. They are logging along here.
Q Well, looking at the Foxy Creek area, I am going to mark this area where it appears that there are some logging patches, with a green B.
A This roads goes right down this way.
MR. MACKENZIE: Yes, my lord, the witness is pointing to another road leaving the mine road about midway in the territory and heading east.
A Goes down towards Foxy Creek.
Q I am going to put a C where that road leaves the mine road and heads down towards Foxy Creek.
THE COURT: You say that road continues, does it?
A Yes, it turns off here somewhere, the mine road here and that road runs into this area towards Foxy Creek.
MR. MACKENZIE:
Q Now, you testified also yesterday that there is some logging going down over around Allin Creek and in the southeastern portion of your territory; is that correct?
A Okay. Right along here, Nee'del, there is a mining exploration to when they first started there and that's big timber through here and there is some logging going on there now.
Q The witness is pointing to the area between -- along Allin creek --
A Between here, Allin Creek is our boundary drew.
MR. MACKENZIE:
Q Yes. I am going to put a green D where the logging is going on now according to the witness.
A That is Allin Creek.
Q And you testified also that it there is some logging taking place down around Goosley Lake as well, isn't there? Here is Goosley Lake and a logged area near your cabin and near the lake?
A Yes, there is a logged area. This one here was logged

out, oh, late '50s.
Q The witness is pointing to the --
A Right by that lake.
Q -- the area at the northeast tip of Goosley Lake. I am going to put a let's D there.
MR. RUSH: You have already got a D.
MR. MACKENZIE: A letter E. Thank you I misspoke. Thank you, Mr. Rush.
A Right along this lake there, that's another, that would be the same here, they are dumping it into the lake that time.
Q And the witness is now referring to an area --
A That one here dumping it into the lake to take it over here. That's where the road comes out.
Q The witness is now referring to an area on the southern shore of Goosley Lake, an area that has been logged out, and I am marking that with a F, a green F. Now, there has been logging south of the Goosley Lake Road as well, hasn't there, down around Tsee Delk'en, and that area?
A Down in here. Is this Tsee Delk'en?
Q Down in the southern part of your area, south of the road, you see the green road going along down below the lake. Here is the lake here.
A That's a little lake there.
Q You testified yesterday also that there is a bridge across the falls at Buck Creek; is that right?
A Yes, right on our boundary.
Q Yes. And that was -- do you know that was built by a logging company?
A Either a logging company or forestry. I don't know.
Q Do you know that Houston Forest Products built that bridge?
A No, I didn't know that.
THE COURT: Where is that bridge?
MR. MACKENZIE: Mr. Mitchell can tell you, my lord.
A That bridge was built last year or two years ago. It's right on our boundary where the falls is, we call Neenlii Wek'ut.
MR. MACKENZIE: Just down from district lot 6671, at the western boundary, my lord. Southwestern boundary point there, going across the creek, that's where the boundary crosses at the falls.
THE COURT: Where is the bridge, please.
MR. MACKENZIE: The boundary?
A Right on the boundary here.
THE COURT: Thank you.

MR. MACKENZIE: I am putting a letter G.
THE COURT: We have a G.
MR. MACKENZIE: Sorry.
Q And you testified yesterday that they are planning to log up in to the -- up into the Klo Creek area? Above the falls or on the other side of the falls?
A Yes, they have got that, they were building that bridge when we went through there, when we went there last year. They are logging out there now, probably. A lot of good timber in this, Klo Creek, along here, some good big timber right in this area.
Q He is talking about the good big timber in the centre of the map, just south of the mine road, and I am going to put a green letter H up in this area.
A Call this peak here is L diits L ayis.
Q You spoke about that yesterday. We can get a spelling for that, please Mr. Mitchell. I put a I where the witness pointed for that peak. I think we marked that F on Exhibit 184.
THE TRASLATOR: 597.
MR. MACKENZIE: My lord, I am not going to have any further questions on this map. So this would be a good time to -- put it aside for now.
Thank you.
Q Now, Mr. Mitchell, when you were speaking about the mine road, you said there was also a road from near the mine site down to the lake; is that correct? Down to the Goosley Lake Road?
A Yes, it goes right down to the Goosley area.
Q And Equity Mine built that road, didn't they?
A Yes.
Q Now, Equity Mine built the long mine road in about 1979; is that correct?
MR. RUSH: Which one is that?
MR. MACKENZIE:
Q The mine road that goes from the mine site out to Dungate Creek and up to Houston they built that about 1979; is that correct?
A I am not sure what year it was.
Q Late '70s?
A In the '70s, anyway.
Q And are you aware that the Forest Service has issued grazing permits for the southwestern part of your territory, the territory claimed by your house?
A I don't know about that.
Q There is a ranch in your territory, a farm in the southwestern part of your territory, isn't there?

A Yeah, a couple of mile below Sam Goosley.
Q That's on the road coming from Sam Goosley Lake, isn't it?
A Yes.
Q And do you know the owner of that ranch is Mr. David Jellet?
A No, I don't know his name.
Q Are you aware that that property was first granted by the Crown in 1915?
A I know there is a ranch there, when I was a little kid, that's where we went through with a wagon, going through that ranch or farm or whatever it is.
Q Now, I would like to refer to some photographs, my lord, in the green booklet of photographs.

Now, before we start looking at the photographs, Mr. Mitchell, I am instructed that looking at your house's territory, it seems to be about 155 square miles in area, do you think that's a fairly accurate estimate? I am speaking about, Beg your pardon, speaking about the Namox territory around Goosley Lake?

A Our ancestors, they didn't go by square miles, they go by their boundaries and that's what they have it in their head, and that's what I am using. I don't know about square miles.
Q So, would you be able to say what the area of that Namox territory is at Goosley Lake?
A If you take me to a certain spot I could walk right in there. I don't need a map, no compass, in that area.
Q Okay. Now, referring to the book, the photograph booklet, the first photograph I would ask that you look at, Mr. Mitchell, is the photograph at tab 1. And now, that is a sign that says Morice Mountain Cross Country Ski Trails; have you seen that sign coming along the Buck Creek Road? I am instructed it's near Silverthorn Lake?
A I see a lot of signs along the road but I probably seen this -- a lot of signs along the road.
Q Are you aware there is a cross country ski area around Silverthorn Lake going up to the Morice Mountain area?
A Now the white man doing a lot of things, they probably have that.

MR. MACKENZIE: My lord, I request that that be marked as the next Exhibit.
THE COURT: Well, it's a tenuous identification.
MR. RUSH: Certainly is.
THE COURT: Are you objecting, Mr. Rush?

MR. RUSH: Well, I can't really object. I am sure that something like that is out there. I know there must be a reason that Mr. Mackenzie put it in there. But I don't think this witness has identified that. I don't really object to it, if my friend wants to put it in for identification or some other way.

A You know, if there is a background in this one here, I would recognize the place. But there is a lot of places that you see timber like this. Probably got one in there and took a picture of it.

MR. MACKENZIE:

Q Do you know where Silverthorn Lake is?

A Silverthorn Hill?

Q Silverthorn Lake.

A No.

MR. MACKENZIE: Well, I won't admit that for an exhibit then, my lord.

Q Now, as you said, you have driven along the Buck Creek Road several times to get to your territory, haven't you?

A Didn't even drive through there. There was snow shoes in there lots of times.

Q You said there is a lot of sports hunters go along that road now also?

A Right now, yes.

Q And yesterday or the day before yesterday, you saw on the map that that road turns off to go down towards Parrot Lake, do you remember that?

A Yes, I remember that.

Q Are you aware that that road in the the 1920s was the main wagon road for settlers to get down to Francois Lake?

A Yes, they drove me through there when I was a baby.

Q That was the main route into the Francois Lake area?

A Yes, Francois Lake. Wagon road.

Q Now, that Buck Creek Road is maintained by the Department of Highways, isn't it?

A Now, I think it is.

Q And it's kept plowed in the winter?

A Now there is school children through there.

Q School buses that drive through that road?

A I see school buses driving through there, yes.

Q And there are logging trucks to that road?

A Lots of logging trucks.

Q And looking at tab 5 in the booklet, I am instructed or this was taken just south of Goosley Lake on the Goosley Lake Road heading towards Buck Creek, that's a

common sight in that area, would you agree with that?
A This one here looks like it's taken just below Tsee Delk'en.
Q And there is a logged area in the background there?
A Just this site that Sam Goosley, in places like this around our territory.
Q And that's been re-planted?
A Yes, probably re-planted.
MR. MACKENZIE: My lord, next Exhibit.
THE COURT: Yes. This can be Exhibit 227.

(EXHIBIT 227: PHOTOGRAPH)

THE REGISTRAR: Exhibit 227, tab 5.
MR. MACKENZIE: Yes.
Q Going along the road to Buck Flats, there are a lot of private homes along in the Buck Flats area, aren't there, Mr. Mitchell?
A Yes.
Q And there are --
THE COURT: Is Buck Flats within the claimed territory of Namox?
A No, that's outside of our territory.
MR. MACKENZIE:
Q That's in the Madeek/Kanoots area?
A Yes.
MR. MACKENZIE: Yes, my lord, Lucy Bazil testified about that at length in her commission.
Q And you are an aware that there are bridges across Buck Creek, that road that comes towards your lake? Bridges on the Buck Creek road?
A Before we get to our territory there is two bridges Pass over Buck River. And one more bridge built last year right across our boundary line.
Q Now, the Department of Highways and the Forest Service, do not seek permission from Namox to use that road, do they?
A No.
Q The school buses that use the road do not seek permission from Namox to use that road?
A School bus never go up that far. Our territory.
Q School buses just go to the Buck Flats area; is that correct?
A Yes.
THE COURT: Should we adjourn, Mr. Mackenzie?
MR. MACKENZIE: Yes.

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

Wilf Roy
Official Reporter

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

THE REGISTRAR: Ready to proceed, my lord.
THE COURT: Mr. Mackenzie.
MR. MACKENZIE: Thank you, my lord. Mr. Mitchell, I'm referring to Exhibit 184. And would you put that before the witness, please, Madam Registrar.
THE COURT: Mr. Mackenzie.
MR. MACKENZIE: Yes, my lord.
THE COURT: I'm sorry. Tab 5 was marked as an exhibit. Yes. Thank you. 184.
MR. MACKENZIE: I'm going to be continuing to refer to the photographs, my lord, but just have a pause here to refer to 184.

Q Mr. Mitchell, we spoke about the ranch. Can you tell his lordship, please, the location of the ranch on Exhibit 184?

MR. RUSH: Just before you do that, what is 184, please?
MR. MACKENZIE: I beg your pardon.
MR. RUSH: The sketch.
MR. MACKENZIE: It's the sketch map of Goosley Lake territory.
MR. RUSH: Thank you.

A The location of the what?

MR. MACKENZIE:

Q The location of the ranch.
A Oh, ranch.
Q Just west of the lake.
A It's right there. Right where that N is, that's where the ranch is.

MR. MACKENZIE: I'm going to put a letter Z with green ink, my lord, showing where that is. It's just above the maroon N that Ms. Mandell put on the map, 184.
THE COURT: It's where the witness said the letter N is?
MR. MACKENZIE: That's correct, my lord.
THE COURT: And you're putting Z?
MR. MACKENZIE: That's -- that's N on its side, my lord.
THE COURT: Yes. All right.

A Both looks the same.

MR. MACKENZIE: Yes, that's right. I have a green one there, and I'll circle mine.

Q Now, referring to tab 10, Mr. Mitchell, of the photograph book. I beg your pardon. Yes, that's it. Is that the road to the Buck Creek Ranch?

A Yes, that's the road. I remember seeing that keep off sign part of it.

MR. MACKENZIE: Next exhibit, my lord.
THE REGISTRAR: That will be Exhibit 228, tab 10.
(EXHIBIT 228: Photograph at Tab 10)

MR. MACKENZIE:
Q And, Mr. Mitchell, the Buck Creek Ranch is the ranch you just marked on Exhibit 184, is that correct?
A Yes.
Q And the owner of that property is now doing some logging on that property. Do you know that?
A No, I don't know that.
Q Do you know whether the owner of that ranch has approached Namox for permission to log on his property?
A No, I don't know that.
Q Referring to tab 18, Mr. Mitchell. I'm instructed that -- well, that that picture was taken just west of the ranch looking east up the Buck Creek Road. Do you recognize that terrain? I beg your pardon. Looking west. Looking west up towards Houston just past the the ranch, west of the ranch.
A Okay. Where that sign we just looked at this road is going south.
Q Yes. Slightly south, yes.
A Going up hill south.
Q Would you recognize that part of the road?
A Yeah. That's clear cut.
MR. MACKENZIE: Next exhibit, my lord.
THE COURT: 229.
THE REGISTRAR: Exhibit 229, tab 18.

(EXHIBIT 229: Photograph at Tab 18)

MR. MACKENZIE:
Q Mr. Mitchell, looking at that picture, have those clear cuts been replanted?
THE INTERPRETER: I couldn't hear what you're saying.
MR. MACKENZIE: I'm sorry.
A I think about '85, '86 that's when they replanted that, and that's when there was a camp by 'Al egh ben.
MR. MACKENZIE: Do you have a spelling for that, please?
THE TRANSLATOR: It's 558.
THE COURT: I'm sorry.
A It's forestry campsite there.
THE COURT: The number, please?
THE TRANSLATOR: 558.
THE COURT: Thank you.
MR. MACKENZIE:
Q On Exhibit 184 could you tell, please, where 'Al egh ben is?
A 'Al egh ben right there.

MR. MACKENZIE: The witness is pointing to the small lake just south of Goosley Lake where we have an F.
THE COURT: Yes.
MR. MACKENZIE: And a Q or -- I beg your pardon. An F at any rate. A black F. Yes, that's right, and a Q also. So that's the location of 'Al egh ben.

Q And looking at Exhibit 229 there's a loaded logging truck. You see loaded logging trucks going along that road from time to time, Mr. Mitchell?
A I believe about that time I was employed elsewhere so, and I didn't go up there during that time. I would go up during the springtime, spring break, and when -- and during that spring break we don't see no logging trucks.
Q Has Dan Michell or Billy Mitchell told you that there are loaded logging trucks driving along that road?
A Right now Dan Michell told me that Logan -- logging trucks pass this lake from -- from Houston. Goes along this creek going up this way.
Q Referring to the --
A South Goosley Lake.
Q Referring to the southeast tip of Goosley Lake heading southeast along the road?
A West side of this creek.
Q Yeah. West side of the creek flowing into Sam Goosely. That's --
A And it's logging now. That's what I told by Dan.
Q Now, to your knowledge, Mr. Mitchell, do the owners of the logging trucks seek permission from Namox to use that road?
A No, I don't know.
Q Referring to tab 19. Now, Mr. Mitchell, I'll read that sign for you at tab 19. The sign post says "Parrott Lake". P-A-R-R-O-T-T. Pointing off to the right of the picture and down below in red letters there's a sign that says, "No access to Equity Silver Mines. Use new road at." That's the turn off to Parrott Lake Road, isn't it?
A Yeah. One side it says Equity Mine.
Q Yes.
A And turn off for that's right at the fork. There is two signs there.
Q We're still talking about -- looking at Exhibit 184 we are talking about the point where the Parrott Lake Road heads off to the south from the Buck Creek Road, is that correct? Yes, you're pointing --
A It's the fork in the road is just before we get into

our territory.
Q Yes. The fork in the road is just at the -- where the territorial boundary crosses -- just before the territorial boundary crosses Buck Creek, is that correct?
A Yeah, that's right.
MR. MACKENZIE: Yes. Do you have that, my lord?
THE COURT: 230.
THE REGISTRAR: 230, tab 19.

(EXHIBIT 230: Photograph at Tab 19)

MR. MACKENZIE:
Q Now, Mr. Mitchell, the reason the sign about Equity Mine is there is because people in the summer sometimes drive along the road to go up to the mine, is that correct?
MR. RUSH: How could he know the reason for that.
THE COURT: I think you better put your question differently, Mr. Mackenzie.
MR. MACKENZIE: Thank you, my lord.
Q Is the traffic going along the Goosley Lake Road to go up to Equity Mine?
A In summertime it's always open all the way around.
Q Yes. It's open around the lake up to the mine, isn't it?
A Yes.
Q Yes. But it's not kept -- that crossroad up to the mine is not kept open in the winter, is it?
A It's not open in the winter.
Q Now, you mentioned that Equity Mine Road built that -- sorry. Equity Mine built the road from the lake up to the mine site. Do you recall mentioning that?
A They got that mine road down into the lake. Not right into the lake, but right along where cabin is.
Q And you're referring to the -- the -- a route coming from the point marked X north --
A Down to --
Q -- East of the lake coming down past the number 3 where the cabins are, is that correct?
A Yes. And all -- they have some roads right along this lake back into this trail for exploration sites right along this -- this hill here.
MR. MACKENZIE: The witness is referring to the hill just northwest of Goosley Lake, and he says that there are exploration roads going into that area north of the lake.

Q Now, you mentioned that the -- you mentioned that the Equity Mines built the road up to the mine site, is that correct, from the cabins?
A Yes.
Q Yes. Now --
A There's some clear cut logging up along the road too.
Q Oh, yes.
A And they -- probably this road was built by the loggers partways up the hill.
Q Yes, past the cabins?
A Yeah, past the cabin.
Q Yes. Now, Equity Mines did not seek permission from Namox to build the road, did it?
A No.
Q And referring to tab 9. I'm instructed that's a picture taken from the south shore of Goosley Lake looking across. Would you recognize that, Mr. Mitchell?
A Yes. Now I know where it is.

MR. MACKENZIE: Next exhibit, my lord.
THE COURT: Thank you.
THE REGISTRAR: 231, tab 9.

(EXHIBIT 231: Photograph at Tab 9)

MR. MACKENZIE:
Q Is that clear cut logging areas across the lake there, Mr. Mitchell?
A Okay. The guys are coming down the road when you take this picture. There is campsite right along the lake here on our side.
Q Yes.
A And this is that clear cut logging I was talking about.
Q Referring to the far side of the lake in the picture?
A Far side of the lake. That's the one they dump into the lake and take it across.
Q Oh, yes. Can you tell us on Exhibit 184 approximately where that campsite is, please?
A That campsite is right there. Right here.

MR. MACKENZIE: Mr. Mitchell is pointing to the very south -- southwestern tip of Goosley Lake just where the stream from the black F runs into the lake.

Q Now, the logging companies that conducted that logging and dumped the logs into the lake did not seek permission from Namox, did they?
A No.

Q Now, referring to tab 12, Mr. Mitchell, and my lord. You recognize that location, Mr. Mitchell? I'll read that sign to assist. It says, "Welcome to Equity Silver Mines Limited. Canada's largest silver mine. Incorporated March 1979. Started operation July 1980."

THE COURT: Sorry. Incorporated March '79 and started operations --

MR. MACKENZIE: July 1980.

THE COURT: Thank you.

A That's just before you go into that Equity Mine. The trouble is no background in here. I couldn't -- this looks like a cleared area so.

MR. MACKENZIE:

Q Referring to the cleared area in the background on the left of the photograph?

A That's -- this would be the mine here, and this land would be right hand side of that road going into --

Q I'm sorry. Yes?

A Going into the Equity Mines.

Q Yes. You've seen that sign before? Next exhibit, my lord.

MR. RUSH: Did you get an answer?

MR. MACKENZIE: I'm sorry.

Q Mr. Mitchell, you've seen that sign before?

A Yes.

THE REGISTRAR: Exhibit 232, tab 12.

(EXHIBIT 232: Photograph at Tab 12)

MR. MACKENZIE:

Q Now, we marked the Equity Mine Road on exhibit -- Exhibit 226. Now, that road was originally built by Equity Mines Limited, wasn't it?

MR. RUSH: Well, maybe you should just show him what you're talking about.

MR. MACKENZIE: I'm sorry.

THE COURT: He's already said that.

MR. RUSH: That's what I thought he said.

THE COURT: That the mining --

MR. RUSH: There are several roads going through.

MR. MACKENZIE:

Q We are talking about the Equity Mine Road that goes from the mine site up to Dungate Creek and up to Houston. The Equity Mines built that road?

A To Dungate Creek Equity Mine built that road.

Q Now, that road is maintained by the Department of

Highways, isn't it?
A I don't know.
Q You've seen snowploughs on the road in the winter?
A Probably, otherwise I'd be using snowshoes.
Q That's right. And there is a couple of bridges on that road. You recall that?
A There is one bridge on our territory.
Q Yes.
A There's one bridge on our territory.
Q And referring to tab 13. There's quite a lot of traffic along that road, isn't there? Have you seen one of these trucks that's depicted in tab 13 driving along that road?
A In fall time when I go out hunting that way I meet these trucks.
Q And those are concentrate trucks, aren't they?
A Concentrate trucks, yeah.

MR. MACKENZIE: Next exhibit, my lord.

THE REGISTRAR: 233, tab 13.

(EXHIBIT 233: Photograph at Tab 13)

A Those guys don't even have permission to drive through there.

MR. MACKENZIE:

Q Yes. Those trucks take out the concentrate from the mill at the mine site, don't they?
A Probably, yes.
Q And are you aware that they take it to Houston and then over to Prince Rupert?
A I know they're taking it out. Where they're taking it to that's their business. In other words, it's not my business.
Q I am instructed there are about four trucks a day going along that road. Is that a figure that sounds familiar to you?
A I see a lot of trucks going by. Probably that's them.
Q There are a lot of trucks in that Equity Mine Road out to the Dungate Creek, aren't there?
A Like I said, I'm working down the other end. When I'm working I'm not up to stay up in the winter.
Q Well, you mentioned the logging at Foxy Creek. Do you remember that?
A Yes.
Q And the trucks that are going into that area come along the Equity Mine road, don't they?
A Yes. They use that road, yes.

Q And those trucks don't -- the owners of those trucks don't seek permission from Namox, do they?
A No.
Q The answer is no. Speaking about that road, you're aware there are powerlines going -- taking -- beg your pardon. You're aware there are powerlines going along that road?
A Yeah. I see the powerlines through there.
Q You know those lines are taking power to the mine site?
A Yes. Otherwise it wouldn't have lights.
Q Yes, that's right. And you and Billy use that Equity Mine Road frequently as you've mentioned, don't you?
A Yes.

MR. MACKENZIE: My lord, referring to tab 14.

Q Have you ever been on the Equity Mine Road out to Dungate Creek in the winter, Mr. Mitchell?
A Not in winter. I go through there in summer. Springtime. Springtime I go. Once I had that -- sometimes they have that road open down into the -- down to the cabin sometimes, but not all the time, but this one spring they had this road open down into our cabin.
Q You're speaking about the road from near the mine site?
A Yeah. Yes.
Q Down to the lake, Goosley Lake?
A Yeah. Yes.
Q Does Billy use that road in the winter?
A Yes.
Q And he's told you that there are graders and snowploughs on the road keeping it open, hasn't he?

THE COURT: Mr. Mackenzie, that's surely evidence that can't be -- if it's evidence at all can't be of any assistance, can it?

A That's what I'm trying to tell you, there is got to be ploughs otherwise I use snowshoes.

MR. MACKENZIE: Yes. Well, I won't press that, my lord.

THE REGISTRAR: Mr. Mackenzie, did you want that photo marked?

MR. MACKENZIE: No.

Q So that Equity Mine Road, to your knowledge, is open to all members of the public, isn't it?
A That I don't know, no.
Q You know that a lot of people use that road, don't you?
A What I know is during hunting season a lot of people on that.

Q Now, speaking about the Equity Mine, are you aware that there are 155 people working at the mine?
A No. I didn't go and count them if that's what you mean.
Q Are you aware that many of the people working at the mine are from the Houston area?
A I wouldn't know that either.
Q Are you aware that the mine, Equity Mines, has received an effluent permit from the Province of British Columbia to operate at that site?
A No, I don't know that.
Q Are you aware that the Equity Mines has received mining licenses -- mining leases from the Provincial Government to operate that site?
A I don't know that either. They should get license from us.
Q Yes. They didn't seek permission from you, did they?
A No.
Q And are you aware that the mine now prohibits hunting and shooting on the mine territory?
A Right around their area got signs there no shooting, no hunting.
Q They didn't discuss that with Namox, did they?
A No. Like last fall they got that -- my brother was going down to the cabin and they got that access road down to our cabin was chained right off.
Q Was chained off?
A Yes.
Q They had closed the road?
A It was closed.
Q Now, are you aware that the Equity Mine company did logging in that area to clear the site for mining operations?
A They have to log it in order to have their mine in there.
Q They didn't get permission from Namox --
A No.
Q -- To log that area? Are you aware that Equity Mines received a special use permit from the Forest Service to conduct that logging?
A No. That there again they should have asked us because we got traps through there. If they had let us know we would take our traps out. We were never asked anything. That's government.
Q And referring to tab 15 in the photograph book now. I'll read that sign to assist you.
MR. RUSH: Which tab is that?

MR. MACKENZIE: Tab 15.
MR. RUSH: Thank you.
MR. MACKENZIE:
Q I'll read that sign to assist you, Mr. Mitchell. It says, "Houston via Buck Flats Road 55 kilometres". Now, can you recognize that site -- that location, sorry, on tab 15?
A You're saying this is Buck Flat turn off from Highway 16?
Q No. I'm instructed this was taken looking at the mine site, seeing the mine buildings, and with the crossroad going down from the mine down to your Goosley Lake cabins. Is that familiar to you?
A Oh, it is 55 kilometres, is it?
THE COURT: To Houston.
A I couldn't read it, you know.
MR. MACKENZIE:
Q I'm sorry. As I say it says --
A Explain it little better and maybe I --
Q It says Houston via Buck Flats --
A From Houston?
Q It doesn't say to Houston. It says, "Houston via Buck Flats Road 55 kilometres".
A That's going to -- that would be going through Goosley Lake area?
Q Yes. You recognize that location, do you? See -- do you recognize the buildings in the picture? I'm showing you the photograph. You're looking at the photocopy. I'm now showing you the photograph.
THE COURT: So this would be looking southward?
MR. MACKENZIE: Well, yes, my lord. Looking at the mine buildings. So it would be -- I'm instructed it would be looking generally in an easterly direction.
A Well, I'm not sure what that building is. It -- it's just a roof showing there, and I'm not sure of that. There's a whole build -- if the whole building was shown --
Q Yes. You see the powerlines in the picture?
A Yeah. You see the powerline all over B.C..
Q Yes. So you don't recognize that?
A No, I didn't recognize this building. If you got better picture than that I see.
Q Thank you. Have you ever been to the mine site at Equity Mines, Mr. Mitchell?
A What's that?
Q Have you been to the Equity Mine site?
A I drove through there a lot of time going -- going

into our -- sometimes in summer we even go to our area for picnic. Now that road's in there we take our kids in there.

Q Referring to tab 16. This -- I'm instructed this is taken at kilometer 24 on the Equity Mine Road, and I think that will be a familiar picture to you, will it not, Mr. --

A Yes.

Q Would you tell his lordship what that is, please?

A See left hand side of that swamp there going up towards Taan deet taa begh call this place.

MR. MACKENZIE: Could we have a spelling on that, please.

THE TRANSLATOR: 321.

THE COURT: 321?

THE TRANSLATOR: Yes.

MR. MACKENZIE:

Q And would you be able to locate that on the map, Exhibit 184?

A Yes.

Q This is the location of tab 16, the photograph?

A Approximately right there. And that's Equity Mine Road comes up here, eh, and it hits right along there.

MR. MACKENZIE: Mr. Mitchell referred to the Equity Mine Road coming along Dungate Creek, and then he referred to the location directly east of Dungate Creek where we have beaver marked along the creek.

Q And there's a swamp there, and that's the Taan deet taa begh?

A Taan deet taa begh.

MR. MACKENZIE: Taan deet taa begh. Next exhibit, my lord.

THE COURT: Yes.

THE REGISTRAR: Will be Exhibit 234, tab 16.

(EXHIBIT 234: Photograph at Tab 16)

MR. MACKENZIE:

Q Mr. Mitchell, I'm standing over here to assist you because my photograph is a clearer picture than the photocopy that you have. And looking at that photograph which is now marked as Exhibit 234, that's the area where there was -- there was a forest fire, isn't it?

A Yes.

Q And that was the fire in about 1964 you mentioned?

A Around '58 I mentioned.

Q Around 1958?

A Yes.

Q Was that the fire in which your father's cabin was burned?
A Yes.
Q Do you know that that is known locally as the Paul, P-A-U-L, Fire?
A That I couldn't remember, no.
Q Do you recall that fire on your territory? Were you there then?
A I was. My brother was fighting fire in this area.
Q You're referring to the ridge in the background?
A Yeah. That's -- that will be our territory.
Q Referring to the ridge in the background, and you say that's your territory along there?
A This is what you call the ridge area, C'enexw dzel Ts'aay. It's up to here.

MR. MACKENZIE: Yes. Could we have a spelling for that, please.

A That's the ridge here.

MR. MACKENZIE: Excuse me. We'll just get a spelling for that. That appears on the Exhibit 184.

THE TRANSLATOR: 569.

MR. RUSH: Where is the ridge again, please?

A Ridge is right there.

MR. RUSH: Yeah.

MR. MACKENZIE: It's mentioned on --

MR. RUSH: And in the photograph?

A It's this one here.

MR. RUSH: Thank you.

THE TRANSLATOR: I'm sorry. That last number I gave you, it's 552. C'enexw dzel Ts'aay.

MR. MACKENZIE: The number is 552.

Q And that name appears on the northeastern boundary of the territory. You discussed it before when you were going over that boundary.

Now, Mr. Mitchell, the forest service fought that fire, didn't it?
A Yes.
Q They hired people from the Houston area and all around to fight that fire, didn't they?
A Not from Houston area, no. Lots from Moricetown. They have bus -- there was big fire. They had bus coming from Moricetown take firefighters in there.
Q And that's been replanted that area?
A I don't know that. I know right now lot of small pine growing up in there.
Q Now, Mr. Mitchell, as you see in the picture, Exhibit 234, this is about kilometre 24 on the Equity Mine

Road. Are you aware that there's a snowmobile cabin in that area?
A Yes. I seen it.
Q And that's a cabin that is built by a local snowmobile club from Houston?
A Yes.
Q And that club did not seek permission from Namox, did they?
A No.
Q Are you aware that that club received a special use permit from the Ministry of Lands of the Provincial Government?
A No, I don't know about that.
Q Now, I'm referring to tab 11. Yes. I'm going to read that sign to assist you, Mr. Mitchell. That sign says, "This area was harvested under Ministry of Forest supervision as part of a continuing program to control the spread of the spruce beetle by quick removal of infected trees. The insect cannot spread to nearby healthy trees." Did you ever see that sign along the Equity road? I'm instructed that that's about 12 kilometres from Houston just at Dungate Creek coming into your -- the territory that your house claims.
A I've probably seen it, but I don't pay too much attention to it. I was looking for my moose.
Q Are you aware that there's a clear cut area just along the road there coming in along Dungate Creek?
A Yeah. There's some cleared area right along Dungate Creek before you go up into our territory.
Q Do you recall seeing that -- that sign near the cleared area as you were driving along looking for your moose?
A I was looking for a moose, I'm not looking for a sign.
Q Now, are you aware that there was an attack of spruce beetle in that area, Dungate Creek area in 1984?
A Like I say, I'm not a forestry ranger. There's a lot of beetle areas. I don't know too much about beetles, but wherever there's beetle they cut it right out. That's all I know.
Q They cut it out because the beetles attack and kill the trees, right?
A Yes. Probably, yes.
Q And to your knowledge -- you've seen that done in other parts of the area?
A Yes. Beetle area was just a small patch.
Q And are you aware that the forest service has a

program to try and stop the spread of those beetles in the Bulkley Valley and Houston area?
A Yeah, I do know. I can -- some years like Babine is places that are -- are not accessible they send crews in there to cut the trees and then they burn it. And then there's some other areas they send in small contractors and they -- small contractors are put in there and clear cut the area in there.
Q And are you aware what happens to the trees when the beetles attack them? Do you know that the needles turn orange and they get tinder dry?
A I notice that wherever beetle, timber spruce boughs, they turn brown or whatever.
Q Referring to tab 20.
THE COURT: Are you tendering this tab 11?
MR. MACKENZIE: That hasn't been identified, my lord, tab 11.
THE COURT: Oh, all right.
MR. MACKENZIE:
Q Is that what the trees look like when they are attacked by beetles?
THE COURT: Sorry. What number is it, please?
MR. MACKENZIE: Tab 20, my lord.
THE COURT: Thank you.
A Yes.
MR. MACKENZIE: Next exhibit, my lord.
THE REGISTRAR: 235, tab 20.

(EXHIBIT 235: Photograph at Tab 20)

MR. MACKENZIE:
Q Now, Mr. Mitchell, I'm instructed that that picture, tab 20, Exhibit 235, was taken in the Harold Price Creek area in August 1986. Are you aware that there's a lot of logging going on up in the Harold Price Creek area to clear out beetle infested areas?
A Logged out area between Chapman Lake and Harold Price Creek a lot of clear cut area. It's not just for beetles. For logs too.
Q And are you aware that the logging contractors are now moving into the Blunt Creek Valley, that's X'aaz kwe, at the upper northeast part of that valley? I'm sorry.
A Yes.
Q I'm putting Exhibit 211 in front of you and showing you that. If that's the territory claimed by Caspit, and you understand that I'm speaking about this creek that's running through the centre of that territory

which is Blunt Creek and you call it X'aaz kwe?
A X'aaz kwe, yes.
Q And are you aware that there are logging contractors moving into the upper part of that valley to cut out the beetle areas?
A Well, I worked -- I work in this area for two years.
Q You're referring to the --
A That's --
Q You're referring --
A The Sus kwe.
Q You're referring to the eastern boundary of the Caspit area at district lot 2304 2306, my lord.
A And there is another contractor working up this area here.
Q Moving into the Caspit?
A Soon Dzel.
Q Moving into the Caspit area just northeast of Soon Dzel which appears on Exhibit 211, are there contractors working up there these days?
A When I was working was for a company there was no beetles there, not that I know of. So this area --
Q You were logging up there?
A I worked for company, yes.
Q I see. Which company was that?
A P.I.R. got this license for this area. I working for Finks Sawmill.
Q Do you understand that we're speaking about the Sus kwe area?
A Yes.
Q And P.I.R., what's that stand for, do you know?
A Pacific Inlanders Resource.
Q That's a logging company?
A That's sawmill. Got a sawmill right in Smithers.
Q Yes. And they're also -- P.I.R. is also logging around the Xaaz Creek?
A Yes. They have got timber license right along here too.
Q We're referring to the western boundary of that Caspit territory. And that is the northwestern boundary. And they have a forest access road that goes in there, don't they?
A Yes.
Q Yes. And you've driven on that road several times, haven't you?
A I drive that lots of times.
Q We're referring to the forest access road in the western part of the Caspit territory.

Now, P.I.R. didn't seek permission from Caspit to build the road and to work in there, did they?

A No.

Q No. They didn't seek permission from Sylvester Williams to work in there, did they?

A No.

Q And P.I.R. didn't seek permission from Caspit to work in the eastern part of the territory along the Sus kwe, did they?

A No, not that I know of.

Q No. They didn't seek permission from Sylvester Williams to work up there on the Sus kwe, to work up there either, did they?

A Not that I know of. Unless Sylvester would have told me they had permission. I travel with him lots.

Q And to your knowledge P.I.R. didn't seek permission from Goohlaht to work in that area, did they?

A Which area Goohlaht?

Q I'm talking about the Caspit area.

A No. Not that I know of, no.

Q And that -- the logging road that's going -- the logging road going into the eastern part of the Caspit territory, isn't there, along -- sorry.

A The logging road turns off Chapman Lake. That's Carrier Sekeni territory.

Q The logging road goes out to Chapman Lake and then along northwards along Chapman Lake, doesn't it?

A Goes to Chapman Lake and -- turns up Chapman Lake and --

Q And it goes up the Fulton River?

A Fulton River and then down this Harold Price Creek. That's where it turns into Sus kwe.

Q Yes. Referring to the eastern boundary of the Caspit territory. And do you know that the logging road is now being built into Touhy Creek which is Lots wenii ts'anlii?

A All I know is that Touhy about two kilometres from this river here into this area someplace.

Q Referring to the eastern --

A That's all I know.

Q Eastern boundary --

A That's where I work.

Q Boundary of Caspit at lot 2304 and 2306.

MR. MACKENZIE: I'm sorry. Did you want a spelling for Lots wenii ts'anlii?

THE TRANSLATOR: Lots wenii ts'anlii is 577.

MR. MACKENZIE: My lord, would this be a convenient time to --
THE COURT: Yes.
MS. MANDELL: Excuse me, my lord. Before we adjourn I seek the court's leave to be excused. I think I'll go have a baby.
THE COURT: I hope you are. We extend all best wishes. What would you have said if I had said no? Two o'clock.
THE REGISTRAR: Order in court. Court will adjourn until two o'clock.

(PROCEEDINGS ADJOURNED)

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

Peri McHale, Official Reporter
UNITED REPORTING SERVICE LTD.

THE REGISTRAR: Calling Delgamuukw versus her Majesty the Queen, my lord.
THE COURT: Mr. Mackenzie?

CROSS-EXAMINATION BY MR. MACKENZIE: (Continued)

MR. MACKENZIE: My lord, learning my lesson yesterday and taking or following Ms. Mandell's admonishment, I am now rising to ask my friend Mr. Rush which housekeeping matters he was referring to this morning when he said he would be bringing up some housekeeping matters Friday morning?
THE COURT: Are you able to assist your friend in that regard, Mr. Rush?
MR. RUSH: Yes, we are going to be dealing with the question of the costs. You might remember there is a motion outstanding about the costs and some letters which we were to get to you. Well, we finally tracked down the letters from our side and we are going to have them for you tomorrow. But we are going to make a submission to you about the change of venue on questions of evidence and argument for a portion of the trial. And your lordship made certain comments last June about this and we had a submission to make to you about that and a proposal, both about the time and what we would see your lordship doing if you were to venue a portion of the trial back to Smithers for continuation.
THE COURT: You haven't shared any of your proposals with your learned friends up to now?
MR. RUSH: I just have done so. It's a pretty simple proposal, my lord.
THE COURT: All right. Well, you may find it useful to tell your friends what you are going do suggest tonight so they can consider it overnight or keep them, as I will be, in a state of anticipation.
Mr. Mackenzie?
MR. MACKENZIE: I see Ms. Mandell's directions were correct then. I am glad they worked out that way.
I have a couple of more tabs to hand up to put in the document book, my lord. 17 and 18. And those tabs can be described as follows, my lord --
THE COURT: Just a moment, please, until I get them into the book.
MR. MACKENZIE: Sorry.
THE COURT: All right. Thank you.
MR. MACKENZIE: Tab 17 are selected documents from the trapline

files of Dan Michell, registered trapline and tab 18 are documents from the Land Title Office at Prince Rupert.

MR. MACKENZIE: Now, my lord, referring to tab 4 of the -- our document book, you will recall that there were four band council resolutions at that tab and it's just come to my attention, my lord, that another band council resolution was marked as an exhibit on Lucy Bazil's commission, and it was marked -- it's marked in this proceeding now as Exhibit 99-L. And I am going to put that to this witness, because he hasn't had a chance to see it, although it has gone in on Lucy Bazil's examination.

I think the court's copy has an exhibit stamp on it, my lord. I will hand a copy up to your lordship then and to my friends.

Q Now, Mr. Mitchell, this is a band council resolution dated September 10, 1979 and it's dealing with the Louis Tommy and company trapline and that's your signature at the bottom of that page?

A Yes.

MR. MACKENZIE: And the significance of this document, my lord, is that it's different than the document at tab 4, and I am drawing the witness's attention to the difference.

Q Mr. Mitchell, you see on that document, Exhibit 99-L, a stamp, and can you see what it says? I am going to read it to you assist you. It says, "Received September 19, 1979, Smithers Fish and Wildlife Branch." I am handing to you a clearer copy so that you can acknowledge that, do you see that?

A The branch? Yes.

Q Now the band council would send this resolution or, I am sorry, the band council sent this resolution to the Fish and Wildlife Branch, didn't it?

A You mean we send this?

Q Yes.

A We just make that resolution, that's all I know. Just made it.

Q I see. You don't know --

A When they send it, I don't know.

Q When they sent it whether the band council administration sent it to the Fish and Wildlife?

A Yes.

Q You don't know that?

A In a case like that just make out resolutions, meetings, and band manager looks after that, after we

are finished with it.
Q And who was the band manager in September, 1979?
A Steve Whipp or Frank Lindsay, one of the two. I am not sure.
THE COURT: The first name again?
A Steve Whipp or Frank Lindsay.
Q Would the band manager keep copies of the band council resolutions at the band council office?
A Yes.
MR. MACKENZIE: My lord, I have a couple of more questions on the photographs before I move to a new subject.
That's all I have for Exhibit 99-L.
Q And referring to tab 8, the photograph at tab 8 in the photograph booklet. Now, Mr. Mitchell, do you recognize that scene? Shall I read that sign for you, or can you see it?
A I can just read it, "No Through Road", just that one sign and this other one I couldn't read.
Q The other one says "Road Under Construction. Drive at Your Own Risk." Do you recognize that location? I am instructed --
A The turn-off from main road, mining main road going down into, looks like it's going down into Sam Goosley area. I am not too sure.
Q Take a look at the photograph and see if that will assist you. Do you recognize that as the road that leads down to your cabins?
A If this is Tsee Delk'en, yes it is.
Q And Sam Goosley lake would be off to the left hand side of the picture?
A No, it will be on the right hand side of the picture.
Q So you recognize that photograph?
A Yes, like I said, if this is Tse Delk'en, this is going in to Sam Goosley area from the mine.
Q Yes. And can you see any -- could I have this marked as an exhibit my lord?
THE REGISTRAR: Exhibit 236, tab 8

(EXHIBIT 236: PHOTOGRAPH)

Q Do you see any evidence of logging in that area, Mr. Mitchell?
A Clear cut logging in this -- right into this road, as far as set out.
Q Pointing to the centre, mid-ground at the end of the road heading into the picture.
A And as far left a small patch. That would be logged

out area too.
Q Pointing to the left of the picture.
A Like I said, I am not too sure if that is Tsee Delk'en. It looks just like this. And that's going into our territory, down in to Sam Goosley turn-off. Turn-off at the mine.
Q Yes. Can you mark that on Exhibit 184, please? Not mark it, but point it out and I will mark it.
A That would be this road, facing this way.
Q You are starting at the X northeast of Sam Goosley Lake and you think it's the road going down to the lake from there?
A There, yes.
THE COURT: That road doesn't go to Sam Goosley Lake. Doesn't it go to the cabins?
A No, it goes to the Sam Goosley Lake.
THE COURT: It goes to the cabins off to the east of the lake, doesn't it?
A From this picture it will go down to our new cabin.
THE COURT: Not to the lake?
A Not to the lake.
THE COURT: Thank you.
MR. MACKENZIE:
Q Now, referring to tab 28, have you seen one of those trucks in your -- in the mine area, Mr. Mitchell?
A Not in this mine, but I seen some in the Noranda mine.
Q You see that truck has a sign on it saying Equity Silver Mines Limited? Might be easier to see it in my photograph.
A Yes.
Q But your evidence is that you haven't seen one of those Equity --
A Not Equity Mine but I have seen them trucks in other mines.
MR. MACKENZIE: My lord, I would request that this photograph be marked as an exhibit for the limited purpose of showing a truck, a mining truck, which the witness has identified appearing to have the name Equity Silver Mines Limited on it.
THE COURT: Mr. Rush?
MR. RUSH: All he has done is identify a truck he saw at Noranda.
THE COURT: The kind of truck.
MR. RUSH: The kind of truck, yes. Presumably my friend would like to place a truck with that name on it in the mine. This witness hasn't done that.
THE COURT: I think we should call it 237 for identification.

(EXHIBIT 237 FOR IDENTIFICATION: PHOTOGRAPH)

MR. MACKENZIE:
Q Referring to tab 29, Mr. Mitchell, I am showing you --
THE REGISTRAR: What was the tab number?
MR. MACKENZIE: Tab 29, please.
Q Showing you my photograph, which is clear, have you seen a truck like that at the mine site?
A Like I said, not on this site but in Noranda mine area I have seen those.
Q When you say Noranda, do you mean in Ontario?
A That's Babine Lake area.
Q I won't submit that, my lord.
THE COURT: You mean at the mine on the island, Babine?
A Yes.
THE COURT: At Granisle?
A Next to Granisle.
MR. MACKENZIE:
Q And the picture at tab 30, can you identify that picture?
A Yes. I know it's Equity Mine because this little mountain peak out there, that's what we Nee' del.
MR. MACKENZIE: Could we have a spelling for that please?
THE TRANSLATOR: 570.
MR. MACKENZIE:
Q My lord, the witness referred to the mountain peak which is, which appears at the top of the picture. Could that be the next exhibit, my lord?
THE COURT: Yes. 238.

(EXHIBIT 238: PHOTOGRAPH)
THE REGISTRAR: 238, tab 30.
MR. MACKENZIE:
Q Now, Mr. Mitchell, having looked at tab 30, which is exhibit -- beg your pardon. Tab 30, which is exhibit 238, could you just compare that with tab 15, which you looked at before but you couldn't identify. Can you identify those buildings in the picture at tab 15 now? I am showing you my picture of tab 30, exhibit 238.
A It's the roof of might be the same as this one. It's just the roof.
Q Referring to the building in Exhibit 238?
A That roof is, it's got a pitched roof in there, you see there.
Q Now, referring to the building at tab 15 --
A I would be sure, if that's it, I would be sure if I

could see that little mountain over there.
Q How do you feel about tab 15, can you identify that picture yet?
THE COURT: I think I know how he feels about tab 15.
A Yes, that, I would say, I still say, I am not sure. It could be it.
MR. MACKENZIE:
Q Fine. Thank you very much.
Yes, my lord, I think we all do. Thank you, my lord.
Now moving to a new subject, my lord. And you won't need the photograph book any longer, Mr. Mitchell. Now referring to Mr. Mitchell's document book, tab 1, that's the affidavit at Exhibit 185. Mr. Mitchell, I refer you to paragraph 2 on page 2 of Exhibit 185 -- beg your pardon, paragraph 3 on page 2 of Exhibit 185. Now that paragraph, you discussed this in your evidence with Ms. Mandell and in that paragraph you say this territory is located southeast of Neel dzii C'eek, which is Houston, do you see that in paragraph 3? You see that you have said that it's located southeast?
A It's -- this territory is located southeast of Houston, from Houston. Southeast or straight south from Houston.
Q And then you say that the territory is 35 miles southeast of Moricetown?
A It's from Houston, not Moricetown.
Q So that should be changed to Houston, 32 miles --
A From Houston to --
Q So that, the paragraph as it stands now is incorrect?
MR. RUSH: Corrected in direct examination.
MR. MACKENZIE:
Q You corrected it in your direct examination?
A I corrected that from Moricetown, approximately 107 from Moricetown.
Q Did you read that affidavit, paragraph 3, when you signed the affidavit?
A To my understanding this was from Houston and the bottom line it says from K'ayah Wig'et, that's where my mistake was. So I corrected that to 107 miles from Moricetown, approximately.
Q And you have told us that you are not a chief in the House of Namox, you told us that yesterday?
A No.
Q And Emma Michell is your grandmother?
A Emma Michell is my aunt, my father's sister.

Q Big Tommy Michell's sister?
A Yes.
Q And Emma Michell's chief name is Lii luus; is that correct?
A Lii luus, yes.
MR. MACKENZIE: I need a spelling for that, my lord.
THE TRANSLATOR: L-i-i, l-u-u-s.
Q Lii luus is a high chief in the house of Namox, is she?
A She is next to Namox, not a high chief.
THE COURT: I am sorry, I didn't hear?
A She is next to Namox, lower rank than Namox.
THE COURT: Thank you.
MR. MACKENZIE:
Q She is a very important person in the House of Namox?
A Yes, it is important, yes.
Q She had visited the Sam Goosley Lake area, hasn't she?
A She trapped through that area.
Q She has also written to the logging company to get the old cabin at the east end of Goosley lake?
A She told me that.
Q Yes. And are you aware that she has written letters to Equity Mines complaining about conditions on the territory?
A She told me she had been writing to them, I don't know what response she get out of that.
Q So she is very knowledgeable about the territory, isn't she?
A Yes.
Q And she would know the boundaries of the territory, wouldn't she?
A She should know, yes.
Q Now, Dan Michell is, as you said, in line for the name of Namox, isn't he?
A Yes.
Q And his chief's name as you said yesterday is Wigetimstochol?
A Wigetimstochol.
Q And for many years he was the chief councillor at Moricetown, wasn't he?
A Yes.
Q And he certainly visits on and traps on the territory, doesn't he?
A He visits it frequently, yes.
Q He is also the holder of the registered trapline on that territory, isn't he?
A Yes.

Q In fact, he gave you authority to swear this affidavit, Exhibit 185 about the territory, didn't he?
A Yes.
Q And he gave instructions to your brother Billy to trap in certain areas of the territory, didn't he?
A Yes.
Q He is a caretaker of the territory, isn't he?
A Yes.
Q So he is very knowledgeable about the territory, isn't he?
A Me and him were raised there, me and him with my father, so we know the place.
Q You and --
A That's why I can have him look after the area, he traps there. We trapped there since we was a kid, me and him.
Q So he is very knowledgeable about the boundaries of the territory, isn't he?
A Yes.
Q You have mentioned Sylvester Williams on several occasions, his chief's name was Hagwilnegh?
A Yes.
Q It's the late Sylvester Williams?
A The late Sylvester Williams.
Q And you trapped and hunted with him for 40 years, didn't you?
A Over 40 years. Worked with him.
Q Sorry?
A Worked with him, trapped with him, played ball with him.
Q He is a chief in the Laksilyu clan, isn't he?
A Yes.
Q And Hagwilnegh has a territory at Maxan Lake, doesn't it?
A That's east of our territory, yes.
Q Yes. Referring to Exhibit 185, paragraph 6, that is your affidavit, paragraph 6, you say to the northeast is Hagwilnegh, do you see that? The first line there?
A Yes, that's northeast, that's right. All depends which -- where you are standing. If you are standing way down the other end it's northeast, if you standing at the north end it would be southeast.
Q Yes. In your affidavit you say that his territory is on the northeast, don't you?
A I must be standing on the other end when I said that.
Q I don't know which end I am standing on now, Mr. Mitchell.

But, his territory, Hagwilnegh does border your Goosley Lake territory, doesn't it?
A Yes.
Q Sylvester Williams is a very knowledgeable man, isn't he, he was a very knowledgeable man?
A He was very knowledgeable.
Q And he would be knowledgeable about the boundaries of his territories, wouldn't he?
A He knows his boundaries.
THE COURT: I wanted to make sure that I haven't lost something here. I take it there is a difference, it was Hagwinegh will Hagwilnegh and which one was, or is this a misprint in the affidavit?
MR. MACKENZIE: Yes, my lord.
MR. RUSH: That's a misprint.
THE COURT: Same thing.
MR. MACKENZIE: Did you want a spelling for that?
MR. MACKENZIE: Are you satisfied with that?
Q Now, do you know Mr. Leonard George?
A Yes.
Q And his chiefs name is Smogelgem?
A Smogelgem.
Q And in paragraph 6, you say that Smogelgem is to the south and southeast, don't you? That's paragraph 6 of Exhibit 185, your affidavit. Do you see that? Paragraph 6?
A Six?
Q Look at the last words in paragraph 6, do you see that to the south and southeast is Smogelgem. And that's what you say in your affidavit, isn't it?
A Yes, that is right, yes.
Q Mr. Leonard George is in the Laksamshu, isn't he?
A Laksamshu, yes.
THE TRANSLATOR: 133.
MR. MACKENZIE: 133, my lord.
Q So, Smogelgem's territory is also your neighbour to the south?
A Yes, borders Namox territory.
Q His northern border is your southern border, isn't it?
A Northern border what?
Q The northern border of Smogelgem is the southern border of Goosley Lake territory?
A Ours would be the northern side of that boundary.
Q Yes.
A North, yes.
Q And Mr. Leonard George, Smogelgem is, to your understanding, very knowledgeable about his territory,

isn't he?
A Yes.
Q Yes. And he knows about his boundaries, doesn't he?
A Yes.
Q Now the hereditary chiefs of the Gitksan and Wet'suwet'en are plaintiffs in this action?
A Gitksan and Wet'suwet'en. I should have some more water. Might need a refill.
MR. MACKENZIE:
Q You said that the hereditary chiefs of the Gitksan Wet'suwet'en are the plaintiffs in this lawsuit?
A Yes.
Q And they are very knowledgeable about their territories, aren't they?
A I know Wet'suwet'en, they are.
Q The Wet'suwet'en hereditary chiefs are knowledgeable about their territories, aren't they?
A Yes.
Q And you respect their judgment, don't you?
A Yes, a long time ago all my ancestors knew the territories by the landmark and there was no such thing as maps and lines and I know my territory in the same manner. And --
Q And you told us today and yesterday that as a band councillor, you seek the advice of the hereditary chiefs with respect to traplines?
A As a band councillor, who make BCR's to transfer or get somebody else on that trap, according to you guys law. But our law is in a Baal aats, where they named, if there is a land to be transferred to him. That's why our law is, but according to white man law you have to register that, that's why us councillors have to make a BCR to do that, otherwise it's finished writing in that potlatch hall. They don't even sign for a transfer of papers, all corners, three corners, they ask them, okay, that's it. That guy named chief name, he gets that territory.
Q Now, on your examination in chief, you referred to the lake up in the northern boundary called Dliiyh hem ben?
A Yes.
Q Dliiyh hem ben.
A My God, you are getting better.
Q Thank you very much.
THE TRANSLATOR: 550.
MR. MACKENZIE: 550.
Q And originally in your affidavit, you had that

included in the territory, didn't you?
A Yes.
Q And you corrected that, didn't you?
A I corrected that, yes.
Q So the reason you corrected it was that it was not true when you swore it originally?
MR. RUSH: What wasn't true?
A When I first saw that, in my heart, my father told me where the land was, it's just south of that Dliiyh hem ben and that's where I know. I don't know where they got this map from. So, I inquired, Pat Namox, John Namox, they all said the south was Dliiyh hem ben, so it was my father that told me before. I still had my doubt when I signed that affidavit. Now, that's why I corrected it.
Q Yes. That's right. And in the transcript, at volume 53, page 3207, you said that at line 18, you said "When I first saw that map Marvin got, and I doubted it." That's correct, isn't it?
A Yes. Even right now I doubt any map comes in my face because it's all in my mind. Old timers recalls, they don't even need maps. I must have been reborn there, that's why I know all the territory.
Q And later on at line 24 to 26 on page 3207, you said, "I was having second thoughts about including Dliiyh hem ben in our territory." You remember saying that?
A Yes.
Q But you signed the affidavit, didn't you?
A Yes, I signed it.
Q Marvin told you it was true, didn't he?
A He said, he inquired, he didn't inquire us, if he did I would have corrected it there. Apparently he inquired it to the next door neighbour, to next half, maybe they didn't want that Dliiyh hem ben.
Q When you say Marvin, you mean Mr. Marvin George?
A Marvin George.
Q And then, as you say, you went to double check with Pat and John Namox, didn't you?
A Yes.
Q And Pat and John Namox are not members of the House of Namox, are they?
A They are not members but they are raised there with Namox. They travelled through that area when they were kids.
Q They are not members of the Tsayu clan, are they?
A No, Laksilyu.
Q They are members of the House of Wah tah Kwets, aren't

they?
A Yes.
MR. MACKENZIE: I need a spelling for that, please?
THE TRANSLATOR: 409.
MR. MACKENZIE: 409, my lord.
Q Now, referring to your affidavit, Mr. Mitchell, I am going to ask you to have the affidavit, Exhibit 185, and the map, Exhibit 184, available for your convenience, and the first thing I want to ask you about is this: When, in another context at volume 53, page 3208, line 1, you were talking about a height of land, and you said "The creek starts from the height of land, goes in our territory, the other ones go down the other way", and that's what you understand to be a height of land, isn't it?
A There is always a height of land between creeks.
Q Yes.
A Yes.
Q And when you spoke about the Woos territory, in volume 54, page 3262, at line ten, you talked about the height of land at the Woos territory too, didn't you? I am saying that there are heights of land all along the boundaries, aren't there?
A Well, Woos territory, that would be east of Moricetown.
Q Yes.
A Yes.
Q And the height of land is where the creeks flow different ways on each side of the ridge, correct?
A Yes.
Q Now, looking at your affidavit, Exhibit 185, paragraph 5, starting at Tsee Delk'en and that is at the beginning of the description, you say, do you see the description in paragraph 5 of your affidavit? You say, "Starting at Tsee Delk'en, the boundary then runs in a generally westerly direction along the height of land south of Tsee Leegh Taas'aay..."
A South of Neel dzii Tezzdlii ben. Height of land south of Tsee Leegh Taas'aay, yes, a little lake there.
Q And then you say -- you mention another lake, Tloogh Teel ben, do you see that?
A Tloogh Teel ben. That's the name.
Q And then you say here the boundary runs in a westerly direction and crosses Biil K'ee Kwe, do you see that?
A Biil K'ee Kwe.
Q And you say and runs in a northwesterly direction to a hill known as Tsee Deek Wutaiy?

A Tsee Deek Wutaiy.
Q And that's what you say in your affidavit?
A Yes.
Q And looking on the map, that's Exhibit 184, that's in fact what the boundary does, it stars at Tsee Delk'en and then it runs south, south of the first lake?
A Tsee Deek Woot'ai, little lake here.
THE COURT: Well, the spellings are in these --
MR. MACKENZIE:
Q Then it runs south of the next little lake, correct.
A Yes.
A That's the one here.
Q Referring to the next lake. And then it runs south of the next lake too, doesn't it? This lake here just south of the boundary there, just -- the third lake?
A Tsee Deek Woot'ai.
Q And there is another lake just above there, isn't there?
A Gilseyhu ben.
Q Now, look at the first lake, over from Tsee Delk'en, the water from that lake runs south, doesn't it?
A Yes.
Q And looking at the next lake, the water from that lake runs south too, doesn't it? It runs to Parrot Creek, doesn't it?
A According to my father is this, the ridge ran through here like I say, there is a high ridge. This side. That will be ours. And then it will go down into a creek, it will cross a creek. Another height of land along here.
Q But getting back to the second creek, second lake over from Tsee Delk'en, the water from that lake runs south from Parrot Creek, doesn't it?
A Yes.
Q You see that. Then moving to the third lake over from Tsee Delk'en, the water that that lake runs south into Parrot Creek, doesn't it?
A Yes.
Q Now, if you look at the Exhibit 184, there is a blue shaded line running from Tsee Delk'en to T'se Deek'aay, do you see that line?
A Yes.
Q Now there are some lakes north of that line, aren't there? You see that first lake north of the line going along the blue shaded line, flows into the east end of Goosley Lake, doesn't it?
A Yes.

Q And then moving along the, moving along the blue shaded line, I think there is another lake there, right here, that flows into Sam Goosley Lake on the west end; is that correct? Or flows into Buck Creek?
A Yes.
Q So, the lakes to the north of the blue shaded line flow north; is that correct?
A That little lake?
Q The lakes that are north of the blue shaded line, they all flow north into this Goosley, Buck Creek, don't they?
A This one here.
Q Yes. So that blue shaded line is a height of land along that ridge, isn't it?
A There isn't a height of land -- height of land in our boundary, there is a lot of height of lands along there.
Q I agree. But the blue shaded line is a height of land, isn't it, runs from Tsee Delk'en to Tsee Deek Woot'ai on Exhibit 184, that's a height of land, isn't it?
A Like I said, it's a lot of height of land along here.

MR. MACKENZIE: Fine. Mr. Mitchell, do you want to say something?

THE TRANSLATOR: Did you mention Tsee Deek Woot'ai?

MR. MACKENZIE: Tsee Delk'en and Tsee Deek Woot'ai, they are both on the southern boundary.

THE COURT: They are marked on Exhibit 184.

MR. MACKENZIE:

Q Then there is another part of the boundary I want to look at with you, you agree with me that that blue shaded line is a height of land in that general area?
A Like I said, there is a lot of height of land throughout our area.
Q And that's one of them?
A That's one of them, yes. We travel through a lot of height of land.

MR. MACKENZIE: My lord I am going to be moving to another series of questions.

THE COURT: All right. Thank you. Take a few minutes.

(PROCEEDINGS ADJOURNED AND RESUMED FOLLOWING RECESS)

a true and accurate transcript of the proceedings herein.

Wilf Roy

Official Reporter

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

THE COURT: Mr. Mackenzie.
MR. MACKENZIE: Thank you, my lord. My lord, I'm sure it goes without saying, and I apologize in advance to my learned friend, but may I remind my learned friend, or assume that my learned friend has cautioned the witness about communication with other people in discussing his evidence during cross-examination.
THE COURT: I always take that to be assumed, Mr. Mackenzie.
MR. MACKENZIE: Yes. Thank you, my lord.
Q And now referring to your affidavit, Mr. Mitchell, Exhibit 185. And I want to look at the area of the boundary at around Dungate Creek.
THE COURT: Still in paragraph 5?
MR. MACKENZIE: Yes, my lord, paragraph 5.
Q From Neenlii Wek'ut the boundary goes north up the ridge to a height of land east of Bob Creek. Do you see that, Mr. Mitchell?
A Yes.
Q And we start at that point on paragraph 5 on page two of your affidavit where the description starts at "to the height of land east of Bob Creek" about halfway down the paragraph. My lord, do you have that? You see Neenlii Wek'ut, my lord?
THE COURT: Yes, I have it.
MR. MACKENZIE: Yes. Thank you.
Q Height of land east of Bob Creek. And just following your affidavit now, Mr. Mitchell, from the height of land east of Bob Creek the affidavit says, "The boundary runs in an easterly direction to the height of land east of Tsee Delk'en' ts'anlii, (Dungate Creek)". Mr. Mitchell has got that. It's in the affidavit.
THE COURT: Yes.
MR. MACKENZIE:
Q And, "here the boundary runs in a generally northerly direction along the height of land east of Tsee Delk'en' ts'anlii to Wenelbee C'es, the height of land west of Dliih hem ben".

Now, do you have Wenelbee C'es, Mr. Mitchell?
A Wenelbee C'es is -- that's the one they marked off, eh.
Q Yes. We're looking at it. I want to ask you about

Wenelbee C'es. But does Mr. Mitchell -- do you have those words now?
THE TRANSLATOR: Yes.
MR. MACKENZIE:
Q Wenelbee C'es, where is that?
A Wenelbee C'es is just next point here.
Q It's the --
A That's where that other map.
Q Yes. On Exhibit 184 there's a peak which we have looked at before, 5062, I think it would be feet in height, and just immediately to the north of that is a contour marked 4500 feet. And you say that Wenelbee C'es is at that point, Mr. Mitchell?
A Yes.
THE COURT: Which point, 5062?
MR. MACKENZIE: At the 4500 foot contour.
THE COURT: Oh.
MR. MACKENZIE: Moving up to the point right above 4500 foot contour.
THE COURT: Yes.
MR. MACKENZIE: And I'm going to mark that. I'm going to mark that contour, or at least that point with a number. There's so many numbers and letters on this map now, my lord, I'll -- arbitrarily I'll say number six, my lord.
Q And am I pointing to Wenelbee C'es now, Mr. Mitchell?
A Yes.
MR. MACKENZIE: Yes. So Mr. Mitchell has confirmed that I'm putting in number six at Wenelbee C'es. Does your lordship have that point?
THE COURT: Well, I have the 4500 foot. I'm trying to find out what it is you're relating it to.
MR. MACKENZIE: My lord, is your lordship concerned about where that name appears in the affidavit?
THE COURT: Yes.
MR. MACKENZIE: Yes, my lord. If you see, my lord, it appears --
THE COURT: Oh, yes. I have it.
MR. MACKENZIE: Yes.
THE COURT: And number six you put right on the peak above the 4500 foot contour?
MR. MACKENZIE: Yes, my lord.
THE COURT: Yes. All right. The boundary is south of that peak?
MR. MACKENZIE: Yes, my lord.
THE COURT: As drawn on Exhibit 184?
MR. MACKENZIE: That's correct, my lord.

THE COURT: Yes. All right.

MR. MACKENZIE:

Q So the point I want to make is originally -- originally your affidavit referred to that peak which we have marked as number six on 184, didn't it?

A That's where I make my --

Q Then you corrected it?

A That is the boundary I corrected after.

Q Yes.

A At first down to Wenelbee C'es right across to the C'eetadek. That was all of ours too so I corrected this one. This part west of Wenelbee C'es.

MR. MACKENZIE: Could we get the spellings of those words, please. The first one is C'eetadek. C'eetadek appears on page four of the affidavit. And Mr. Mitchell deleted that from his affidavit during his examination in chief. You see that, my lord, under the title ridge?

THE COURT: Yes.

MR. MACKENZIE: Yes, my lord. I just want to get it clear what the original description referred to.

Q And now can you tell us where C'eetadek is, Mr. Mitchell?

A C'eetadek this point here.

Q Now, you're referring -- you're referring to a point or a hill northeast of the small lake that we have marked with a letter A, and it's directly above the northeastern most point of the present boundary. I'll mark that with the number seven, my lord.

THE COURT: What are you marking number seven?

MR. MACKENZIE: I'm marking that ridge C'eetadek identified by --

THE COURT: Yes. Thank you.

MR. MACKENZIE:

Q Am I pointing correctly there, Mr. Mitchell?

A Yeah. C'eetadek.

Q Now, in your original description when you refer to the height of land east of Bob Creek are you referring to the northwestern most point of this boundary, or are you referring to a point further northeast of Bob Creek?

A This point here is highest point.

MR. MACKENZIE: The witness is speaking --

A Highest ridge.

MR. MACKENZIE: Yes. The witness is speaking about the current -- the present northwestern most point as

shown on the sketch. And I'll put a number eight there.
THE COURT: Where are you putting eight, please?
MR. MACKENZIE: I'm putting an eight on the northwestern most point east of Bob Creek, south of Dungate Creek.
Q That's right there, correct?
A Yes.
MR. MACKENZIE: That's number eight right there, my lord.
THE COURT: Yes. Thank you.
MR. MACKENZIE:
Q Now, Mr. Mitchell, when we were looking at this northern boundary you referred to another map. What map was that?
A That's map Marvin showed to me when I -- when I went this one here.
Q When you signed the affidavit?
A Yes. When I signed the affidavit.
Q And on that map the boundary went from point 8 to point 6 and over to point 7, didn't it?
A Yes. On his map, yes.
Q Yes. And so that's what he told you was the boundary of your territory?
A My territories my father kept telling me this one here. He said late Tommy Mitchell saw this claim and that's the boundary he kept telling me. When Marvin showed me this boundary I had my doubts and --
Q Yes.
A And that's why I checked with Pat Namox and John Namox. That's how I confirmed that.
Q Yes. And you referred to Dliiyh hem ben. Do you need that spelling?
THE TRANSLATOR: 550.
MR. MACKENZIE: We marked that as little lake point A on Exhibit 184. The witness has just said that originally the boundary went from point eight to point six to point seven.
THE COURT: Yes.
MR. MACKENZIE:
Q And that's the description that's in your affidavit, isn't it?
A Yes.
Q Yes. And that's the -- that's the description as you say in your affidavit. But, again, with respect to this part of the boundary, Dungate Creek, although you had doubts you swore the affidavit, but then you corrected it in your testimony here in court, didn't you?

A Yes. Like I said earlier our ancestors they didn't have maps like this. My father walked around with me in this area. That's how I know the hills, creeks, and all the lakes. Our map -- ancestors' map is in their head. Not like this one here. That's how I know. I didn't learn this territory boundaries by map, I learned it by my father.

MR. MACKENZIE: Yes, I understand that. Now, I'm referring to the transcript at volume 53, page 3205, starting at line two. Does your lordship have a copy of that transcript?

THE COURT: Nope. It's all right.

MR. MACKENZIE: Thank you, my lord.

Q Now, Ms. Mandell is leading you through this section, and I'll just read along here starting at line two. Miss --

MR. RUSH: What's the --

MR. MACKENZIE: I beg your pardon. Page 3205, volume 53.

MR. RUSH: Go ahead.

MR. MACKENZIE: Sorry.

Q Ms. Mandell says, "All right. You then identify in the affidavit that the boundary continues in a northerly direction along a height of land west of Klo Creek, and that is marked under the English version of the map, to a height of land east of Bob Creek, and that too is marked, my lord." And Ms. Mandell says, "It's the top point of the northern boundary before the boundary makes a dip." Court says, "Yes, I see it. Thank you." And Ms. Mandell says, "And then in an easterly direction to the height of land east of --". "Tsee Delk'en." And Ms. Mandell says, "Which is Dungate Creek, my lord." Ms. Mandell says, "And is that part of the -- what landmark does that part of the boundary represent? From here to here?" And you say, "All the way here to this point is height of land." Ms. Mandell says, "That's to Bob Creek, my lord."

Then further on page 3205 at line 38 Ms. Mandell says, "All right. Now, you say in the affidavit that here the boundary runs in a generally northerly direction along the height of land east of -- it's Dungate Creek?" And you say, "Tsee Delk'en." And Ms. Mandell says, "To Wenelbee C'es?" And you answer, "Wenelbee C'es."

And that's number six, isn't it?

A Yes.
MR. MACKENZIE: Do you have that, my lord?
THE COURT: Yes.
MR. MACKENZIE:
Q And then at line 45 Ms. Mandell says, "And then the height of land west of?" And you answer, "Dliiyh hem ben." And she says, "Which is a lake?" And on page 3206 you answered, "Dliiyh hem ben." Line two she says, "And then runs in an easterly direction to the height of land north of --". "Dliiyh hem ben." And line five she says, "-- the lake to C'eetadek?" And you answer, "C'eetadek."

And that's number seven, isn't it?
A Yes.
Q Yes. And then after that you -- and then after that you explain that the lake, Exhibit A, should be outside the boundary, don't you?
A Yes.
Q Now, one other point on the boundary to which I wish to draw your attention, Mr. Mitchell, and then we'll be finished with this part of the questions. And that is over at -- on the eastern boundary at Foxy Creek. Now, in your page three in your affidavit at paragraph 5, and we'll follow it on Exhibit 184, you have the boundary coming down the height of land on the northeast C'enexw Dzel Ts'aay, is that correct?
A C'enexw Dzel Ts'aay.
MR. MACKENZIE: Got that, Mr. Mitchell?
A And that's --
MR. MACKENZIE: And that appears towards the bottom of your paragraph 5 of your affidavit. Now, do you have where that is, my lord?
THE COURT: Yes.
MR. MACKENZIE: Yes. Do you have that spelling, Mr. Mitchell?
THE TRANSLATOR: Yes. 552.
MR. MACKENZIE:
Q Then you say here the boundary runs southeasterly to Foxy Creek. So you have the boundary going over to Foxy Creek, don't you?
A Yes. I have boundary from Dzel Ts'aay to Foxy Creek, yeah.
MR. MACKENZIE: Have you got the spelling?
A C'enexw Dzel Ts'aay from Foxy Creek.
MR. MACKENZIE:
Q Yes. That's the ridge we just mentioned. Have we got that clear? Okay.

Then the boundary you say follows a southerly direction along the west bank of Foxy Creek, right, you go down Foxy Creek for three miles, right, and then you go south -- southerly through C'el T'aat Wec'oo?

A Niss Tsee diizdlee kwe.

Q You go through the beaver pond?

A Pass -- before we get Niss Tsee diizdlee kwe there is a beaver pond.

Q The name of that?

A That's Niss Tsee diizdlee kwe.

MR. MACKENZIE: You need that spelling, Mr. Mitchell? Do you have that, Mr. Mitchell? It's in the affidavit.

Q And you go to the head of Niss Tsee diizdlee kwe, which is Allin Creek, correct?

A Yes. This side is Niss Tsee diizdlee kwe.

Q And you follow Allin Creek down to a point opposite the head waters of Neenlii kwe, correct?

A Yes.

Q Now, if you look over to the left you'll see there is that blue shaded line again, and after it leaves C'enexw Dzel Ts'aay it carries on, doesn't it?

A Yes.

Q Yes. We're looking at this blue shaded line now on the southwest -- southeastern boundary, and that's the height of land going along there, isn't it?

A Yes.

Q Yes.

A That's what I was wondering, what's this line here?

Q Yes. When you look at it you see it's a height of land, don't you?

A What are they, that's what I want to know. What are those lines that's right in the middle of our territory?

Q But if you look at this particular one --

A You go right out here.

Q Yes. Yes. You'll see that this particular shaded line follows the height of land just west of Foxy Creek, doesn't it? You see it going around Foxy Creek?

A Height of land all over like a height of land through here.

Q I agree. This blue shaded line is height of land in this area.

A Okay. What does that represent?

Q It doesn't represent anything except it's the height

of land --
A Oh.
Q -- At that point.
A That's -- if that's a boundary I disagree. That's what I was wondering.
Q I'm not suggesting it was a boundary. I just wanted to bring to your attention that the height of land is marked coming down there.
A Oh, just height of land. Okay.
THE COURT: Are you sure that's the height of land, Mr. Mackenzie? If you look at the very top centre of the plan at Old Man Lake and Lake McBrierie the height of land takes 90 degree turns, and that's unusual.
MR. MACKENZIE: Those are provincial administrative boundaries, and in this area they follow the heights of land in this particular -- along this particular area.
THE COURT: I see. All right.
MR. RUSH: Apparently they go in square and right angle turns in certain parts.
THE COURT: That's what I wondered about.
MR. MACKENZIE: My lord, this will all become clear. I think the witness has agreed that this particular area west of Foxy Creek is the height of land.
THE COURT: Oh, well, it rather looks like it, but I'm not sure the witness should be expected to --
MR. MACKENZIE: Well, my lord --
THE COURT: -- Draw that conclusion.
MR. MACKENZIE: Sorry, my lord. Sorry, my lord.
THE COURT: Well maybe -- maybe he can reach that conclusion. It rather looks like it, but if you're going to be calling some expert evidence on it, or something of that kind, is it important to have the witness -- press the witness for an answer to that question?
MR. MACKENZIE: No, my lord. I think the witness has agreed that's the height of land west of Foxy Creek, because the creeks run one way on one side and the other way on the other side. And this will become clear, my lord. I just want to draw the court's and Mr. Mitchell's attention to that particular line.
THE COURT: If he can agree fine.
MR. RUSH: Well, my lord, what I heard was Mr. Mackenzie was saying this was the height of land and Mr. Mitchell was saying well, if you say so that's --
THE COURT: I think that's right.
MR. RUSH: That's what I see.
MR. MACKENZIE: Well, that's cross-examination -- what cross-examination is, my lord, it's leading questions.

THE COURT: Well, it can be leading. What do you say, Mr. Mitchell, does that line represent the height of land?
A That's what he says that blue line -- that's what he said.
THE COURT: What do you say?
A Well, I know, like I said, this height of land goes right through Equity Mine.
THE COURT: Just south of there?
A What I was saying if that was some kind of boundary that I wouldn't agree with. So now he said it's just height of land.
THE COURT: It does look like it skirts around the head waters of Foxy Creek which would suggest to me it's height of land.
A That's height of land, yes.
THE COURT: All right.
MR. MACKENZIE: My lord, that testimony appears at volume 53, page 3211, line 14 to 17, line 25, and page 3214, lines five to eight.

Now, my lord, referring to tab 5 of the document book. This is Exhibit 73G.
THE COURT: I'm sorry. Tab number again, please?
MR. MACKENZIE: 73G, my lord.
THE REGISTRAR: Tab 5 of the black book, my lord.
THE COURT: Okay. Thank you. You say this is already an exhibit?
MR. MACKENZIE: Yes, my lord. Exhibit 73G, my lord. It's Exhibit 2 at the commission of Emma Michell, and that was filed by the plaintiffs.
THE COURT: Yes.
MR. MACKENZIE: Now, Mr. Mitchell, this is an exhibit identified by Mrs. Emma Michell on her commission evidence, and that appears -- that commission evidence appears at tab 16, my lord. I'm referring to volume 1 of Emma Michell's commission evidence at tab 16, page 46, question 38.
THE COURT: I'm sorry. Tab?
MR. MACKENZIE: Tab 16, my lord.
THE COURT: Yes.
MR. MACKENZIE: Page 46, line 38. Do you have volume 1 there, my lord, page 46?
THE COURT: I can't find page numbers.
MR. MACKENZIE: They're up in the very top left hand corner, my lord.
THE COURT: Someone put a staple through it, I guess.
MR. MACKENZIE: Sorry, my lord.

THE COURT: Now, the page again?
MR. MACKENZIE: Page 46, my lord, in volume 1, excerpt from volume 1.
THE COURT: Yes.
MR. MACKENZIE: And 47.
THE COURT: Yes.
MR. MACKENZIE: Starting at line 38 on page 46, my lord. Mr. Grant says, "I'd like to refer you to the map." And then there's an off the record discussion, and Exhibit 2, Map of Namox' territory appears there. And then Mr. Grant says, "Okay, Emma I'm showing you a map which is now up beside you. And for the record, while Mr. O'Byrne was here, I showed it to you and you recognized this map and it's been marked as Exhibit 2 on this Commission."

And just as a matter of information, my lord, Mr. O'Byrne was appearing for the Crown in the Right of the Province in the right of that commission evidence.
THE COURT: Yes.
MR. MACKENZIE: And then Mr. Grant says, "Now, just to give you your bearings there is a lake near the bottom called Neel dzii ben?" The witness said, "Neel dzii ben." Question, "Do you know that lake?" The witness, "I never been out there (inaudible) since I hear about Neel dzii ben." Mr. O'Byrne says, "Excuse me Mr. Grant, can we have that translated, please?" "(Further response by Witness to Interpreter)" "It's inside my line and I've heard of the lake."

Q Okay. Mr. Mitchell, starting at -- do you see Tsee Delk'en down in the lower part of the map?
A On the right hand side?
Q Yes. Down on the lower right hand side on the boundary do you Tsee Delk'en?
A Tsee Delk'en you got wrong place.
Q Tsee Delk'en down here?
A No. Tsee Delk'en right here.
Q You're referring to the next lake west. Let's look at the boundary on this map. Yes. The boundary goes from Tsee Delk'en in a northwesterly direction north of those little lakes and continues in a westerly direction over to the Tsee deek Woot'ai before it turns north again, correct? You see that on that map?
A Yeah, I see that all right. It's a wrong map.
Q Yes. Okay. Then looking up at Dungate Creek you see that the boundary goes from the height of land east of Dungate Creek -- I'm sorry. The height of land east

of Bob Creek goes directly -- it goes easterly across Dungate Creek to Wenelbee C'es, doesn't it? You see that. And then it continues north, doesn't it? You see that on that map?

A According to this map here it's from Tsee dee Woot'ai pretty near straight line, eh, and then --

Q Yes. And then over on the Foxy Creek area you see that the line comes down along Foxy Creek and then it turns west along Foxy Creek and then it heads south.

THE COURT: Just a moment. I haven't found Foxy Creek.

MR. MACKENZIE: My lord, Foxy Creek is in the upper right hand corner of the map which is Exhibit 73G. It's coming down from the northeast.

A According to this map here it says you got this one here, that little lake Tsee suul ts'ak ben. That's not the right name of that. This is G'oh k'ets ha t'ai. That's Foxy Creek. That's where Foxy Creek starts.

MR. MACKENZIE: Yes. Yes.

THE COURT: Is this Foxy Creek that's shown on this map starting at the lake which is called Dieeh Hum Bun, is that Foxy Creek?

A No. Dliiyh hem ben. Dliiyh hem ben is way up here. It's up north.

THE COURT: Dieeh Hum Bun is marked on this map.

A No, that's wrong. Dieeh Hum Bun is Tsa zulle Khak.

MR. MACKENZIE: We need some spellings for those.

A You must be drunk when you did this.

Q I didn't do it. I'm just referring you to the eastern boundary, and you see it comes along Foxy Creek, then it goes south then to Nee'del. You've told us about Nee'del. And then it comes further south. You can see it's west of Allin Creek. And I suggest to you it comes further south along the height of land down to the point at the head waters of Buck Creek. You see how that boundary comes down on that map?

THE TRANSLATOR: Excuse me. I have to get some words here. Tsee zuul ts'ak ben is 556. Wenelbee C'es is 549. Dliiyh hem ben is 550. There was another one.

MR. MACKENZIE: Nee'del.

THE COURT: Mr. Mackenzie, you've been talking about Foxy Creek on this map 73G, but I don't have it located yet, unless it's this creek with two branches in the extreme northeast corner of this territory within the black line. Is that what you're talking about Foxy Creek?

MR. MACKENZIE: Yes, my lord. Yes, I have been. Perhaps it

would be more accurate to say that the boundary appears to follow a creek -- and the boundary appears to follow a creek flowing south.
THE COURT: I don't see. That's what I don't see, where this boundary follows a creek.
MR. MACKENZIE: Well, my lord, can you see how the boundary moves around?
THE COURT: You mean the easterly boundary?
MR. MACKENZIE: Yes, my lord. Northeast portion.
THE COURT: Yes. You say that's covering over a creek?
MR. MACKENZIE: Yes, my lord.
THE COURT: I see. It does extend out of the bottom. You say that's Foxy Creek?
MR. MACKENZIE: I'm suggesting that, my lord.
THE COURT: I see. You say that one of the branches of Foxy Creek swings south and that's the boundary?
MR. MACKENZIE: Yes, my lord.
THE COURT: Well, can Mr. Mitchell tell us whether he agrees with that or not?
MR. MACKENZIE: Yes, my lord.
THE TRANSLATOR: Excuse me. There is one G'oh, starts G'oh?
A Well, they got -- this says Tsa zulle Khan Bun. That's where G'oh k'ets ha t'ai. That's what you call this lake where you got Tsa zulle Khan Bun. Where you got this Klem Ben (phonetic) that's Tsee Delk'en. Klem Ben (phonetic) is way over north outside of our boundary. And here I don't know why got this G'oh k'ets ha t'ai way over here for.
MR. MACKENZIE: Well, my lord, shall I put that question to the witness, my lord?
THE COURT: Yes. I hope so.
MR. MACKENZIE:
Q Mr. Mitchell, do you agree with the way that the easterly boundary is depicted on this map, Exhibit 73G?
A No, I don't agree with this boundary.
Q Okay. And --
A Lot of mistakes on it.
Q And do you agree with the southern boundary as it's depicted from Tsee Delk'en west?
A Like I said, I don't agree with it.
Q And do you agree with the boundary up at the area of Dungate Creek?
A No, I don't agree with it.
MR. MACKENZIE: My lord, is that satisfactory in answer to your lordship's questions?
THE COURT: Yes, I guess so.

A They have these names inappropriate places.
MR. MACKENZIE: Yes. Does your lordship wish to adjourn at this time?
THE COURT: Yes, I think probably we should.
MR. MACKENZIE: My lord, this is already marked as Exhibit 73G in these proceedings. No requirement to mark it now.
THE COURT: No, it needn't be marked again. All right. All right. Thank you. We'll adjourn then until ten o'clock tomorrow morning.
THE REGISTRAR: Order in court. Court will adjourn.

(PROCEEDINGS ADJOURNED)

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

Peri McHale, Official Reporter
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