Vancouver, B.C.
January 8, 1988

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

THE REGISTRAR: In the Supreme Court of British Columbia, Monday the 11th day of January 1988, calling the matter of Delgamuukw against Her Majesty the Queen, my lord.
THE COURT: Before you start, Mr. Goldie, may I inquire of counsel if this blue book I have called the Further Amended Trial Record is the current?
MR. RUSH: Yes.
THE COURT: And it has the pleadings as they presently stand?
MR. GOLDIE: Yes.
MR. RUSH: Yes, I believe that's the case, my lord.
THE COURT: Thank you.
THE REGISTRAR: You are still under oath, Mr. Joseph.
MR. RUSH: Before my learned friend begins, my lord, I just want to point out to you is that it is obvious that Mr. Grant is not here today. Miss Mandell will be with me today and as well my articling student Mr. Paul Tetro is with us today as well.
THE COURT: Welcome.
MR. RUSH: I have two matters which I would like to deal with prior to the recommencement of Mr. Goldie's cross-examination and they deal with matters to which we made reference last day. One is the filing of the commission evidence of Lucy Bazil Verigin. You have an original copy.
THE COURT: Yes.
MR. RUSH: And in line with the practice that we have already adopted, I would like to file the commission evidence as the next exhibit in the proceedings and then I will file as sub-exhibits or exhibits under a letter heading the exhibits that were filed in the commission proceedings. So if I may, I would like this to be the next exhibit.
THE COURT: Any problem with that, gentlemen?
MR. RUSH: I should say there is perhaps more than one qualification to this. It is understood I think in filing this that all proper objections taken by both sides would be the subject matter or could be the subject matter of subsequent discussion before your lordship or indeed possibly at the time that certain passages are referred to that the -- both sides would be entitled to raise the objections raised in the commission. And secondly, Mr. Mackenzie who

1 attended for the provincial defendant advises me
2 that there were some transcription errors which he
3 thinks that Mr. Grant who attended for the
4 plaintiffs may well agree with and I don't have any
5 dispute with that. And that would be sorted out
6 when both he and Mr. Mackenzie are present. So
7 subject to that, I would like to file these.
8 THE COURT: All right. If there is no objection.
9 MR. GOLDIE: As my friend has said Mr. Mackenzie attended at the
10 commission. And it was my understanding from the
11 discussion on Friday that some of the issues raised
12 during the commission were going to be dealt with
13 when the documents were tendered. It appears now
14 that they will not be having regard to Mr. Grant's
15 absence and we will simply await a future time to
16 deal with those be issues.
17 THE COURT: All right. Mr. Macaulay?
18 MR. MACAULAY: We made some objections during the course of the
19 taking of that evidence and I take it we will be
20 entitled to maintain those objections before your
21 lordship at an appropriate time?
22 THE COURT: Yes. All right. Well, then, to put it crudely
23 perhaps, all objections noted in the transcript
24 remain at large and counsel are free to speak to the
25 question of typographical or transcription errors as
26 they may be advised.
27 MR. GOLDIE: I am going to ask Mr. Mackenzie to state his
28 understanding.
29 THE COURT: Yes.
30 MR. MACKENZIE: Thank you, my lord. Mr. Rush in expressing the
31 qualifications referred to these transcription
32 questions. He also said that all proper objections
33 taken by both parties during the commissions will
34 stand. Well, my lord, in addition to that, of
35 course, all the evidence at the commission is
36 subject to further objection by the parties in
37 argument. And we reserve that right whether
38 objections were taken at the time in the commission
39 or not. It is still subject to those objections.
40 THE COURT: You are talking about objections to relevance, for
41 example, or hearsay and things of that kind?
42 MR. MACKENZIE: Yes, my lord.
43 THE COURT: What do you say about that, Mr. Rush?
44 MR. RUSH: Well, there has been a general caveat, I think, by
45 both sides from the beginning that each side
46 reserves the right to make objections not raised in
47 the commission proceedings themselves and at the

1 same time there were specific objections raised --
2 THE COURT: Right.
3 MR. RUSH: -- which were the subject matter of some discussions
4 in the proceedings. I don't really have any
5 difficulty with what Mr. Mackenzie said.
6 THE COURT: All right, Mr. Macaulay.
7 MR. MACAULAY: We are in agreement I think about our rights.
8 THE COURT: Well, the commission evidence then will be Exhibit
9 99, I think.
10
11 (EXHIBIT 99: Commission Evidence)
12
13 MR. RUSH: Thank you very much.
14 THE COURT: And may I inquire whether the evidence which is the
15 subject of this transcript was also memorialized on
16 a disk?
17 MR. RUSH: Memorialized on a disk, that is to say was it
18 contained within one of the reporters' disks or do
19 you mean on a video tape?
20 THE COURT: No, I mean on a disk that I understand the reporters
21 are preparing sometimes.
22 MR. RUSH: Yes, I think so.
23 MR. MACAULAY: It was.
24 THE COURT: All right. So if I speak to the friendly reporters
25 I can probably obtain a disk of this evidence?
26 MR. RUSH: Yes.
27 THE COURT: All right.
28 MR. MACKENZIE: There is one more thing, my lord. Some of the
29 exhibits on that commission were marked for
30 identification merely because Mr. Grant had not
31 received acceptable copies. And I would like to
32 have that stated as well. We will be providing
33 original documents to Mr. Grant and those can be put
34 in and marked as proper exhibits with the
35 identification designation removed.
36 MR. RUSH: I should say that Mr. Mackenzie has provided, as of
37 today, certain original exhibits and as they become
38 available I have no problem inserting them into the
39 proper place.
40 THE COURT: All right. And what is your suggestion about
41 exhibits to the commission evidence, Mr. Rush?
42 MR. RUSH: That they be numbered by a letter designation, 99A,
43 B and C and so on.
44 THE COURT: Do you know how many there are?
45 MR. RUSH: There are 12.
46 THE COURT: All right.
47 MR. RUSH: And I have those exhibits which were introduced in

1 the commission proceedings here. Do you wish me to
2 go through them now or do you simply wish me to --
3 THE COURT: Unless counsel think you should, I don't think
4 that's necessary.
5 MR. RUSH: Well, I have an exhibit list which identifies
6 several of the exhibits for identification. And
7 this list enumerates the 12 exhibits in sequence.
8 And perhaps I will just file these and have these
9 marked Exhibit A through whatever the 12th letter
10 is.
11 THE COURT: Yes, Exhibit A to the power of 12?
12 MR. RUSH: Yes.
13 THE COURT: Thank you.
14 MR. RUSH: And as Mr. Mackenzie has indicated, I will tender
15 the originals as they have become available and as
16 Mr. Grant has had a chance himself of observing
17 them.
18 THE COURT: Well, I think that I will ask Madam Registrar in the
19 course of the next few days to go through those and
20 see if she can identify them from the list that has
21 been given and confer with counsel some time to see
22 if they are agreed on what the proper designation of
23 each document should be by its distinctive letter so
24 that we will all be ad idem on that question.
25 MR. RUSH: Thank you.
26 MR. MACAULAY: If there is objection to the copies because they
27 weren't very good copies or for whatever reason, the
28 Registrar ought to be told of that now so that those
29 are not marked. I take it that the documents that
30 ought to be marked are the ones that Mr. Mackenzie
31 will be producing in due course.
32 THE COURT: I think we can substitute if we find any need to do
33 that.
34 MR. MACAULAY: So your lordship's direction is that the
35 inadequate copies be marked pro tem?
36 THE COURT: For the time being, yes. But I am not going to have
37 them marked until Madam Registrar goes through them
38 and picks out which ones appear to relate to the
39 list that's been give to her. And if you all agree,
40 they will be marked with a distinctive letter
41 subject to substitution.
42 MR. RUSH: Now, my lord the other matters that I want to
43 address is a question of the exhibits that are
44 contained within the tabs of Exhibit 62.
45 THE COURT: Yes.
46 MR. RUSH: And I spoke to Mr. Goldie about this last week.
47 During the course of the examination of Mr. Joseph,

1 I did not separately mark the individual tab
2 exhibits and I think they should be. And I would
3 like to go through and have those marked now.
4 THE COURT: Yes.
5 MR. RUSH: The document book itself, of course, is marked as
6 Exhibit 2 and I would like to have --
7 THE COURT: 62?
8 MR. GOLDIE: 62.
9 MR. RUSH: Excuse me, 62.
10 THE COURT: For identification.
11 MR. RUSH: And I would like to have the chart of the House of
12 Gisdaywa, that is the genealogy chart marked as
13 62-A.
14 THE COURT: Mr. Macaulay and Mr. Goldie will interrupt if there
15 is any disagreement with what you are suggesting,
16 Mr. Rush.
17 MR. RUSH: Thank you.
18 THE COURT: Both pages will be 62, right?
19 MR. RUSH: Yes.
20 MR. GOLDIE: Excuse me. I think I should say this, my lord, I
21 am quite happy to have these marked. I think the
22 fewer documents for identification we have the
23 better.
24 THE COURT: Yes.
25 MR. GOLDIE: But there are a number of these documents which
26 cannot be accepted as truth of the matters
27 contained. They are documents which have been
28 spoken to by the witness. They are marked -- as far
29 as I'm concerned they are marked because they are in
30 existence. And the genealogy chart is one of them.
31 Presumably the person who created that chart is
32 going to be called as a witness and we should not be
33 precluded from challenging anything that is found on
34 that chart through that witness. But I repeat, it
35 seems to me to be a waist of time to reserve matters
36 for identification when the witness has given
37 exstensive evidence with respect to it and some
38 parts of it are proven by him.
39 THE COURT: Yes.
40 MR. GOLDIE: But we will come to several like that so that they
41 cannot be regarded as having proven the truth of
42 everything that is found in them.
43 THE COURT: Well, is it your -- are you content, Mr. Rush, to
44 have these documents marked Exhibit 62A to the power
45 of 18 being the number of tabs in the book as
46 exhibits of the trial, but not necessarily as proof
47 of the truth of the facts stated in them?

MR. RUSH: Well, I think that what Mr. Goldie said was, with respect to the genealogy chart, some of it was proved by the witness from his direct knowledge and some of it couldn't be.
THE COURT: Yes.
MR. RUSH: But on that qualification, I couldn't agree with that because I don't think that applies to all the documents. He has proved many of the documents in here. And I didn't understand my friend to be saying that his qualification applied to every aspect of the genealogy chart.
MR. GOLDIE: No, I am just -- of course as far as I'm concerned, the problems of admissibility ought to be reduced and we should be talking about the weight to be given the document. But we are now talking about admissibility. And all I am saying is the genealogy chart I am content to have it marked as an exhibit, but by that act --
THE COURT: Yes.
MR. GOLDIE: -- it doesn't -- it isn't conclusive of the matters therein.
THE COURT: They are not conclusive.
MR. RUSH: And I don't have anything to say about that. Perhaps I should just go through these, my lord.
THE COURT: All right, go ahead.
MR. RUSH: And the reason for that is because I don't believe everything has been proven. Tabulation 2 of Exhibit 62.
THE COURT: I wonder if it wouldn't be easier to call them 62-1 to relate to the tabs?
MR. RUSH: That is fine as well, my lord.
THE COURT: So we will have 62-1 and 62-2.

(EXHIBIT 62-1: Genealogy Chart of Gisdaywa)
(EXHIBIT 62-2: Seating Chart for Gidsaywa)

MR. GOLDIE: I do want to point out, my lord, that we raise no objection to the admissibility of the photographs which extend from 5 to 17 inclusive.
THE COURT: Yes.
MR. GOLDIE: Because we were told they came from the Provincial Archives of British Columbia or that they were personal photographs of which the witness had personal knowledge.
THE COURT: Yes.
MR. GOLDIE: I wouldn't make that statement but for the concern that was expressed about our title documents on

Friday.
THE COURT: All right.
MR. RUSH: The tab at tab 3 which is the map of the territory of Gisdaywa dated May 12, '87.
THE COURT: That will be 62-3.
MR. RUSH: 62-3.
(EXHIBIT 62-3: Map, dated May 12, 1987)

THE COURT: Now, in that tab I also have a map of the territory of Madeek. I don't recall at the moment where it came in.
MR. RUSH: That tabulation -- the Madeek territory should be at the end in tab 18. And in fact, the tab 18 which contains the Madeek territory was identified as Exhibit 65 for identification.
THE COURT: Yes.
MR. RUSH: And I am happy to have that marked as an exhibit if my friends don't object to that.
THE COURT: As Exhibit 65?
MR. RUSH: Yes.
MR. GOLDIE: It is already in as 65 for identification and on the same basis that we have been talking about.
THE COURT: It will become 65.
MR. RUSH: Thank you.

(EXHIBIT 65: Map)

MR. RUSH: Now, my lord, tab 4 would become Exhibit 62-4.
THE COURT: That's the picture of Mr. and Mrs. George?
MR. RUSH: Yes.
THE COURT: Yes.
(EXHIBIT 62-4: Photograph)

MR. RUSH: Tab 62-5.
THE COURT: That's a picture of two totem poles?
MR. RUSH: Yes.

(EXHIBIT 62-5: Photograph)

MR. RUSH: And tab 6, 62-6.
THE COURT: This is Hagwilget?
MR. RUSH: Smoke houses at Hagwilget and poles.

(EXHIBIT 62-6: Photograph)

MR. RUSH: And tab 7 pole at Hagwilget, House of Kaiyexweniits.
(EXHIBIT 62-7: Photograph)

MR. RUSH: Tab 8. Now, this is a photograph which I had understood was only marked for identification. It matters little because it was marked in Lucy Bazil's commission as I think Exhibit 5. Perhaps for convenience it could be marked 62-8.
THE COURT: Yes. What are the names of the two gentlemen shown there?
MR. GOLDIE: One is Peter Alfred and the other is either Peter Jim or George Naziel depending on which witness.
THE COURT: Thank you.

(EXHIBIT 62-8: Photograph)

MR. RUSH: And Exhibit 9 or tab 9 as Exhibit 62-9, pole.
THE COURT: Can anyone tell me just quickly by recollection what this is a representation of? A pole where, does anybody remember?
MR. RUSH: This is a Moricetown pole.
THE COURT: Moricetown?
MR. RUSH: Yes.
THE COURT: And which House?
MR. RUSH: My lord, this wasn't put to the witness. And this is one of those, given what my friend said, that he was prepared to allow these to go in. I intend to put this to the witness and if it can be marked for identification reserving that number.
THE COURT: All right.

(EXHIBIT 62-9 FOR IDENTIFICATION: Photograph)

MR. RUSH: And then the photograph of Thomas George and Bill Nye.
THE COURT: Yes.
MR. RUSH: That is Exhibit 62-10.

(EXHIBIT 62-10: Photograph)

MR. RUSH: Now, my lord, the photograph that is contained at 62-11 was identified, but in my book of documents I have in that tab two other photographs which are Exhibit 63 and 64 and they may not be in yours. They are loose.
THE COURT: Oh, wait a minute, I have 64.
MR. RUSH: There should be a 63.
THE COURT: I don't have 63.
MR. RUSH: It could be that this is separate. You have it as a

separate document.
THE COURT: Yes.
MR. RUSH: These were identifications of the Hagwilget rock made by Mr. Joseph. But in any event, the photograph of the man holding a -- the line of a fish net is -- has been identified.
THE COURT: That is the Hagwilget Canyon; is that correct?
MR. RUSH: That's correct. That's Exhibit 62-11.

(EXHIBIT 62-11: Photograph)

MR. RUSH: Now, this is the pulling of the headstone rope which is 62-12.
THE COURT: Yes.

(EXHIBIT 62-12: Photograph)

MR. RUSH: And the sled itself is 62-13.

(EXHIBIT 62-13: Photograph)

MR. RUSH: The drawing of Bill Nye, Chief Medeek, is Exhibit 62-14.
THE COURT: Yes.
(EXHIBIT 62-14: Photograph)

MR. RUSH: The photograph of Madeek Exhibit 62-15.

(EXHIBIT 62-15: Photograph)

MR. RUSH: The photograph of the pole being carved by Mr. Joseph in the photograph is Exhibit 62-16.

(EXHIBIT 62-16: Photograph)

MR. RUSH: Now, Exhibit 62-17 is a photograph that -- of a number of Wet'suwet'en chiefs that was not put to Mr. Joseph, that on the basis that it came from the archives, if my friend is content to have that filed I will have it filed. But otherwise I can't really say that it is something that Mr. Joseph addressed his evidence to.
THE COURT: Well, according to what Mr. Goldie said it will be Exhibit 62-17.
MR. RUSH: Thank you.

(EXHIBIT 62-17: Photograph)

MR. RUSH: And then the map is Exhibit 65 of Madeek. The genealogy was not entered as an exhibit, I believe. No, it was not entered as an exhibit in Mr. Alfred Joseph's testimony. But it was in the testimony of Lucy Bazil and they are contained among the exhibits that were previously referred to by me as exhibits from her commission.

THE COURT: Well, we don't need to mark it as 62-18 because it is already Exhibit 65, but I will keep it conveniently within the envelope of Exhibit 62-18.

MR. GOLDIE: I think, my lord, that 65 as originally tendered and marked was just the map.

THE COURT: That's right.

MR. GOLDIE: And the genealogy was under tab 18. My friend tells us that that was marked as an exhibit on Lucy Bazil's examination.

THE COURT: All right. So can it also be 62-18 then --

MR. RUSH: I don't think it should be.

THE COURT: -- as a document? You don't think it should, Mr. Rush?

MR. RUSH: Well, I don't have any difficulty with it, sure, it will appear twice.

THE COURT: That's fine.

MR. RUSH: 62-18.

THE COURT: Yes.

(EXHIBIT 62-18: Genealogy of Madeek)

MR. MACAULAY: I understand my friend to be saying that the genealogy and the Madeek genealogy in this book is the same as the one. There are no differences between this one and the one marked on Lucy Bazil's examination.

THE COURT: I gather not.

MR. RUSH: I can't give him that assurance, I don't know.

THE COURT: Somebody will prepare them some time.

MR. RUSH: I believe they are the same, my lord.

THE COURT: I don't think it matters terrribly if they are marked twice.

MR. MACAULAY: It is not a question of it being marked twice, but if they are indeed different documents we are going to have -- a year from now or eight months from now, we are going to have some confusion.

THE COURT: Well, one of them is 62-18 and the other one is the exhibit on Lucy Bazil's commission evidence. And if someone compares them and tells us we will re-arrange the numbers.

MR. RUSH: That's all that I have, my lord.
THE COURT: Thank you. Mr. Goldie.
MR. GOLDIE: My lord, on Friday the Exhibit Number 98 was reserved for a copy of the report of the Special Joint Committee of the Senate and House of Commons.
THE COURT: Yes.
MR. GOLDIE: Published by the King's Printer in 1927 and I have copies of that now. I tender that as Exhibit 98.
THE COURT: Yes, thank you.

(EXHIBIT 98: Report of the Special Joint Committee of the Senate and House of Commons)

MR. GOLDIE: I am not going to read that at this time, my lord.
THE COURT: Nor am I. I take it the cover is a matter of convenience, is it?
MR. GOLDIE: The true cover is inside.
THE COURT: Yes, all right.
MR. GOLDIE: What is on the front is just a matter of convenience to preserve it.
THE COURT: The first document is appendix. I am sorry, to the journals.
MR. GOLDIE: Yes.
THE COURT: Thank you.
MR. GOLDIE: And the page number that I read I think was Roman XVII. And before I leave that, I should have directed your lordship's attention to page Roman X. This will be, of course, developed before your lordship at much greater length, but halfway down the page just following the letter of the Minister of Justice. And I can say to your lordship that this part of the report is partly historical. And the Minister of Justice was referring to an Order in Council of Canada number 751 of 1914 which is set out at Roman page VIII. The report of the committee which I bring to your lordship's attention now in relation to the questions that were put to Mr. Joseph is in the third paragraph following the letter of Mr. Doherty and it reads as follows:

> "Having given full and careful conversation to all that was adduced before your committee, it is the unanimous opinion of the members thereof that the petitioners have not established any claim to the lands of British Columbia based on aboriginal or other title and that is the position taken by the government in 1914 as evidenced by

1 the Order in Council and Mr. Doherty's
2 letter above quoted afforded the
3 Indians full opportunity to put their claim
4 to the test. As they have declined to do
5 so, it is the further opinion of your
6 committee that the matter should now be
7 regarded as finally closed."
8 That is the background of the word "finality" and
9 the extract at page Roman XVII that I referred to on
10 Friday.
11
12 Alfred Joseph, previously sworn:
13
14 CROSS-EXAMINATION BY MR. GOLDIE:
15 Q Now, Mr. Joseph, if we could go back to the subject
16 that we were discussing on Friday. And broadly
17 speaking, we were talking about your
18 responsibilities as chief councillor at the
19 Hagwilget Band and what had been accomplished in the
20 past 20 years when you were chief councillor. I
21 think you told his lordship in answer to a question
22 that at the present time some 200 of 400 band
23 members live on the reserve. Is my recollection
24 correct?
25 A Yes.
26 Q Now, there are advantages, as I understand it, to
27 you and your people to living on the reserve. Am I
28 correct that, for instance, there are no taxes on
29 your houses or the property on which your houses
30 stand?
31 A Yeah, there is some advantage.
32 Q There is no income tax, for instance, payable on
33 income earned by a band member on the reserve?
34 A Yes.
35 Q And there are no provincial sales taxes exigibles in
36 respect to transactions which take place on the
37 reserve.
38 MR. RUSH: Maybe the word "exigible" can be explained.
39 THE COURT: Payables.
40 MR. GOLDIE: There are no payables.
41 THE COURT: Everybody knows what that means.
42 MR. GOLDIE:
43 Q In other words, if a transaction is completed on the
44 reserve nobody pays provincial sales tax, am I right
45 on that?
46 A Yes.
47 Q Does that extend to electric light?

A Yes, I think it does.
Q Not withstanding some of those advantages, some 200 members of the band live off the reserve. Can you tell his lordship why that would be so?
A You mean the people that are off the reserve pay taxes?
Q No, I am sorry, I will reframe my question. You have told his lordship that some 200 live off the reserve?
A Yes.
Q Is that because they are following occupations outside the reserve or from which it is not convenient -- or in respect of which it is not convenient to live on the reserve?
A Yes, they are following places where they work and get better wages off the reserve.
Q Yes. Primarily it would be because the benefits from being off the reserve in the way of wages and other matters outweigh the advantages of living on the reserve, would that be a fair way of putting it?
A Yes.
THE COURT: This is called the Hagwilget Reserve, is it?
A Yes.
MR. GOLDIE:
Q Now, the occupations, and I am now talking about the people who do live on the reserve, what are the principal occupations of those people?
A Mostly sawmill, logging and building, carpenters on reserve.
Q And the logging would take place -- the actual logging takes place off the reserve?
A Yes.
Q And sawmilling they would -- those who work in the sawmills would not work on a sawmill on the reserve, they are off the reserve; is that right?
A Yes.
Q And do any of them engage in trucking?
A Some at other reserves, but not on our reserve. There used to be some people trucking.
Q Is the main source of income related to the forest industry then, sawmilling and logging?
A Yes.
Q Now, turning to another aspect, Mr. Joseph, have you voted in provincial elections?
A Yes.
Q And in federal elections?
A Yes.

1 Q And the franchise, that is the right to vote in
2 provincial elections and federal elections, extends
3 to all adults on the reserve; is that right?
4 A Yes.
5 Q What about elections for the school trustees of the
6 high school in Hazelton? I don't mean trustees of
7 that school, but trustees of the district in which
8 that school is found?
9 A Yes, we vote.
10 Q For the trustees?
11 A Yes.
12 Q My understanding is that the reserve has its own
13 school for the primary grades and that high school
14 people on that reserve attend a provincial high
15 school in Hazelton; is that correct?
16 A Yes, they attend high school. I think there is an
17 agreement with the federal government on that.
18 Q There is some contribution?
19 A Yes.
20 Q By the federal government?
21 A Yes.
22 Q The high school itself is a school that is open to
23 all students in the district, whether they are
24 people from a reserve or whether they are members of
25 your band who live off of the reserve or whether
26 they are people -- non-Indians who live in Hazelton
27 or whatever and it is open to all?
28 A Yes.
29 MR. GOLDIE: Am I right in my understanding that your band
30 applied for registration under the Small Business
31 Enterprises Legislation of British Columbia. And I
32 will just get the documents I wish to refer to in a
33 minute. It is not quite clear, but this is in the
34 upper right-hand corner, my lord, is a number of
35 the -- this defendant's documents.
36 MR. RUSH: Is that 1825?
37 MR. GOLDIE: I think it is. It is document number 1825.
38 Q Mr. Joseph, can I ask you to turn to the page that
39 is marked Application for Registration and tell me
40 if the signature on the top of the third page is
41 yours?
42 A Yes.
43 Q And that is an application that is dated February 5,
44 1985 and it was verified by taking an affidavit
45 before Mr. Brown who was a lawyer in Hazelton?
46 A Yes.
47 Q Can you tell his lordship what the purpose of that

application was?
A I signed quite a number of documents and that one may have been the one for a sawmill.
Q Yes, I was going to suggest to you that the application was to obtain the benefit of a provincial program called the Small Business Enterprise Program which had the purpose of assisting those who wanted to set up a small sawmill?
A Yes.
MR. RUSH: A portable.
MR. GOLDIE:
Q A portable sawmill, I am sorry?
A Yes.
Q And that appears from the second page of the application where it is stated that: "The timber processing facility is a portable sawmill." That portable sawmill is, as its name implies, a small sawmill that can be moved from one setting to another for the purposes of sawing logs practically on site?
A Yes.
Q And the timber for that sawmill would come from off the reserve?
A Yes.
Q So that in order to carry out the program that you had in mind when this application was made, the band would seek rights to timber somewhere in the Hazelton Kispiox area?
A Yes.
Q My lord, I would like to tender the document in its entirety which consists of a certificate of registration, an internal memorandum, the application itself which consists of one, two, three, four pages. The last page requires information with respect to the ownership of something called J.A.D. Sawmills Limited. That was the name of the company that you were going to use, is it?
A Yes.
Q But that company was to be owned by the Hagwilget Band Council?
A Yes.
MR. GOLDIE: Thank you. I tender that, my lord, as Exhibit 99.
THE REGISTRAR: 100.
MR. GOLDIE: Yes, 100.

(EXHIBIT 100: Registration, Internal Memorandum and Application)

MR. GOLDIE:
Q In addition to activities which you've described which included what you mentioned on Friday and the business activity that we have just discussed now, the bands apply for and obtain the right to use wood lots or does the Hagwilget Band -- has it ever sought to use wood lots outside the reserve?
MR. RUSH: Well, I wonder if that question could be clarified, there were two there.
MR. GOLDIE: You are quite right.
Q I will put it this way. Has the Hagwilget Band, to your knowledge, applied to the provincial government for the right to use forest resources as a wood lot?
A Yes, I think they have.
Q And have they -- is the Band Council engaged in any other -- I will call them commercial activities, other than the sawmill and the right to use wood lots? I will put it this way, any commercial activities outside the forest industry?
MR. RUSH: Well, I want to just clarify this. The commercial activity referred to in the sawmill was an application for registration.
MR. GOLDIE: Yes.
MR. RUSH: And I don't think it has been determined whether or not there has been any actual activity under that registration or anything else.
MR. GOLDIE:
Q I didn't mean to suggest that there was actual sawmilling or actual logging, I am just talking about attempts or examples of the band seeking to engage or engaging in commercial activities. Are there any other examples which come to your mind, Mr. Joseph, of commercial activities by the Band Council?
A Yes, the size of the village and the location is very -- is right in the middle of the surrounding settlements. And the way the village is, there is a canyon running right through it and a highway. And then there is the B.C. Hydro right-of-way. And it is a very small village and we don't have timber of any sort. We don't have gravel, no resources of any kind. So we try different projects. Like we made an application through the D.I.A. to start up a bowling alley. And we have had studies done and we

applied for funding. But at first we have to do a feasibility study which took some time to do. We had this consulting group, I think Cuso and they have done a study for us. And they recommended that the bowling alley be set up on the reserve because it was a sport that all ages could be involved in. So we have occasion and we don't know, it didn't go anywhere. We worked on it for quite a while. And things like that we have tried.

And there is a bit of ranching going on, but there again, there is hardly any land to do a project like that. So I think the people that are engaged in raising beef have to really -- they have to buy their hay from off the reserve to feed their cattle, so I don't know how they are doing right now because I have been off council since last summer. But there is a -- we at the Band Council have always encouraged anyone to start a business, but it is quite a lengthy process when you apply for money or for funding. And we have seen other -- we have watched other reserves when they tried some project. And we don't duplicate any other reserve's projects. So it is very -- we try things that is needed in the area and yet we just haven't gotten anywhere. We applied for recreation facilities on the reserve and that is -- that one is going ahead as far as funding goes on the reserve. But other than that, there isn't too much that we can try on the reserve because of the size of the village and the way -- where it is situated it is mostly that the canyon takes up most of our reserve.

Q Yes, the reserve that was set aside is on both sides of Hagwilget Canyon?

A It is called Hagwilget, but yet we are told by the D.I.A. that we are only using the east bank of the Hagwilget Canyon.

Q And the west bank is to be --

A Gitanmaax.

Q Is to be reserved for Gitksan?

A Yes.

MR. RUSH: I just want to point out that he mentioned Gitanmaax which is another band.

MR. GOLDIE: Well, my understanding is that it is a Gitksan Band.

MR. RUSH: Yes.

THE COURT: Which side do you get, east side?

A East, yes.

MR. GOLDIE:

Q You mentioned recreation, Mr. Joseph. Does the Band Council support sports activities of an organized nature like softball?

A Yes, they are into softball. And they sponsor tournaments in softball, basketball and sometimes hockey. We don't have a -- we don't have the population to support some of these, but one of the chief councillors that is in now organized all of these things and he uses other village facilities to put up these tournaments.

Q Yes, these are -- just taking softball, for one instance, there is an exstensive league organization, is there not, that includes both Indian and non-Indian teams?

A Yes.

Q And at one time you mentioned in your evidence carving at Ksan. That's the localality down on the river, the Skeena and Bulkley Rivers. And there is preserved or there is stored in a museum setting a number of the valuable things of both the Gitksan and the Wet'suwet'en people?

A Yes.

Q Is that supported by the band counsel?

A Yes.

Q Is that part of what I will call the revitalization or recreation of interest in cultural matters that has gone on there for some time?

A Yes.

Q And the Band Council supports that?

A Yes.

Q Now, I want to go to another subject. And that is a map that was produced by Mr. Grant on Thursday in response to my request in June for the map that was on the wall at the Feast in Moricetown with the Carrier-Sekani, what we have been calling the All Clan or Moricetown Feast. I wonder if I could have this put up.

THE COURT: Mr. Goldie, could I interrupt you to deal with a matter if you are leaving this subject. Could I ask you, please, Mr. Joseph, Mr. Goldie asked you about commercial activities on and off the reserve. Do some residents, members of the band resident on the reserve leave for part of the year to go fishing, for example, and then come back?

A Not -- they used to go -- have commercial fishermen, but they haven't -- none of our members are --

THE COURT: But not at the present time?
A No, not at the present.
THE COURT: All right. Thank you. Sorry, Mr. Goldie.
MR. GOLDIE:
Q I was going to ask this, are any of the 200 members of the band who live off the reserve, do any of them live in Prince Rupert and engage in commercial fishing as a full-time occupation?
A No.
Q Now, I am asking Miss Sigurdson to put up the map that was produced by my friend on Thursday. And I am going to ask you, Mr. Joseph, to have a look at this and to tell us if that was a map that was up on the wall at the Feast Hall in Moricetown on the occasion of the All Clan Feast with the Carrier-Sekani in April of '86. Do you recognize that as such?
A Yes.
Q Is that a map that was prepared on behalf of the Gitksan-Wet'suwet'en Tribal Council which purports to show the degree of the overlap of the Carrier-Sekani claim?
A Yes.
Q That's what it was for, was it?
A Yes.
Q All right. And indeed does it show with the heavy -- the heavy dark line, does it show your understanding of what their claim was in relation to the Gitksan-Wet'suwet'en territory at that time?
A Yes.
MR. GOLDIE: I am going to ask that that be marked as an exhibit, my lord. That will be Exhibit 101.
THE COURT: Thank you.

(EXHIBIT 101: Map)

MR. GOLDIE:
Q Now, that map shows House territories or House boundaries, I should say, for the Wet'suwet'en but not for the Gitksan, am I right on that?
A Yes.
Q Although there is a very substantial overlap in the northeast part of the Gitksan territory and that effects Gitksan people, does it not?
A Yes.
Q Was the Gitksan overlap with Gitksan territories discussed at the Moricetown Feast at all?

A No.
Q Just the Wet'suwet'en?
A Yes.
Q And the Wet'suwet'en is in the southern part of the claim area?
A Yes.
Q All right, thank you. But that map that is now Exhibit 101 depicts the extent of the land that was being argued about in 1986?
A You mean at the All Clan Feast in Moricetown?
Q Yes, that's right.
A There was no argument, we just took our -- our chiefs just said where -- we say in our language their land, Yin Tah, that's the only thing that they talked about. We just pointed it out to them.
Q I am sorry, who pointed out?
A Our hereditary chiefs.
Q Yes. And indeed I think you told us this before that there was no argument --
A No.
Q -- at the meeting?
A No.
Q But the meeting was because the Carrier-Sekani claimed the territory overlapping your own which is shown on that map?
A Yes.
Q Now, when I say "claimed", do you understand what I mean when I say comprehensive claim in terms of claims made to the federal government?
A Yes.
Q And indeed the Gitksan-Wet'suwet'en Tribal Council had made a comprehensive claim when it presented a map to the Minister of Northern and Indian Affairs in 1977; is that right?
A Yes.
Q Now, the Carrier-Sekani had made a comprehensive claim. And it was your understanding that in that claim they were claiming the territory which overlapped as shown on that map?
A Yes.
Q Now, a comprehensive claim, am I right in my understanding, is a claim that is based upon aboriginal title?
A Yes.
Q And it is intended to encompass or to take into account lands which were the traditional lands used by the people who are making the claim?

MR. RUSH: Are you asking his understanding about the Gitksan-Wet'suwet'en claim or the Carrier-Sekani claim?

MR. GOLDIE: I am just talking about a general category of comprehensive claim is made to the federal government. And Mr. Joseph has confirmed my understanding that that is a claim based upon aboriginal title and that the Carrier-Sekani had made such a claim and that the Gitksan-Wet'suwet'en Tribal Council had also made such a claim.

Q I am right in that, am I not, Mr. Joseph?

A Well, Gitksan-Wet'suwet'en Tribal Council made a comprehensive claim, but I am not too sure what the Sekani-Carrier made if it was a comprehensive claim.

Q I see. You are not sure if it fell into the same category?

A Yes.

Q As the Gitksan-Wet'suwet'en claim?

A Yes.

Q But you did understand that the claim that included the overlap territories was a claim made by the Carrier-Sekani based on aboriginal title? You understood that, did you not?

A The Sekani-Carrier made -- when was that?

Q Well, it was your understanding. And I am now talking about at the time of the Feast in Moricetown in 1986 that the claim made by the Carrier-Sekani to the land shown on that overlap map, that that claim was based on their traditional use. They claim to have used the territory in the traditional sense, what I called a few minutes ago aboriginal title.

A I don't know if I -- I never heard them say that they used our territory.

Q But it was your understanding that the overlap came about because they were claiming those territories?

A Yes.

Q And their claim was to exclusive use as was the claim of the Gitksan-Wet'suwet'en Tribal Council or the hereditary chiefs of the Gitksan-Wet'suwet'en?

A I just know that they made a claim, but I don't know about the exclusive use part of it.

Q Well, your claim is exclusive use, isn't it?

A Yes.

Q Were you aware that the federal government had accepted the Carrier-Sekani comprehensive claim for negotiation?

A Yes, I think I heard of it.

1 Q And of course you are aware that the federal
2 government had accepted the Gitksan-Wet'suwet'en
3 Tribal Council comprehensive claim for negotiation?
4 A Yes, that was accepted before the Sekani-Carrier.
5 Q Yes, a long time before?
6 A Yes.
7 THE COURT: When you say "long time", I wonder if you can be any
8 more conclusive than that.
9 MR. GOLDIE: Let me see if I can.
10 Q When was the -- when was the Gitksan-Wet'suwet'en
11 comprehensive claim accepted for negotiation?
12 A I know the application was made in 1977.
13 Q Yes.
14 A But I can't recall when it was accepted.
15 Q I see. All we can say at this time is that it was
16 before the Carrier-Sekani claim?
17 A Yes.
18 Q Now, to your recollection, was that the only map
19 that was up on the wall of the Feast Hall at
20 Moricetown in April 1986 on the occasion of this All
21 Clan Feast?
22 A Yes, I think that was the only one. We had so many
23 people in such a small hall that sometimes you can't
24 see what's up against the wall there.
25 Q But you remember --
26 A Yes.
27 Q -- that this map --
28 A Yes.
29 Q -- was up on the wall?
30 A Yes.
31 Q And it had been placed there by the hosts?
32 A Yes.
33 Q Now, I want to show you another map --
34 THE COURT: Are you leaving this one, Mr. Goldie?
35 MR. GOLDIE: Yes.
36 THE COURT: Could I just have a look at this first, please.
37 Yes, all right, thank you. Could I just ask -- the
38 hosts at Moricetown were the Wet'suwet'en?
39 A Yes.
40 THE COURT: Thank you. And the map then was prepared by or for
41 the Wet'suwet'en?
42 A Yes.
43 THE COURT: Thank you.
44 MR. GOLDIE: Now, I want to show you another map and there is a
45 copy of it under tab 4 of the first one of those
46 binders in front of you, Mr. Joseph. Yes, just pull
47 that out, please. My lord, this was marked as

Exhibit 5 on the examination for discovery of Mr. Sterritt and is document 1324 of the provincial's list.

MR. RUSH: Which document?

THE COURT: Where did it come from, please?

MR. GOLDIE: It is under tab 4 of your book of documents, my lord. It will be the first book. If we can have the other -- these maps were all a substantial size.

Q We will put one up on the board there, Mr. Joseph, so that you don't have to wrestle with it yourself. Now, this map, Mr. Joseph, again is one that purports to show the claim area and it is headed Traditional Boundaries of the Gitksan-Wet'suwet'en Territories. Have you ever seen that map before?

A Yes.

Q In its original form was it coloured? Was there a colourcoding or has it always been like that as far as your knowledge goes?

A I seen smaller maps that were colourcoded, but not that size.

Q But not that size. What is before you, of course, is just a single colour, but it has on it a coding which identifies the clan, village and the chiefs and that accords with your recollection of what you saw?

A Yes.

Q Now, can you tell me when you first saw that particular map?

A I have seen so many of them in different sizes that I don't recall the exact date.

Q No. Do you have any recollection of that being on the walls at the Moricetown Feast in April 1986?

A No.

Q Was it produced or used at the Feast in 1987?

A Yes, I think it was. But I don't remember whether there was a map on the wall in Burns Lake.

Q But your recollection is that that map was available or used?

A Yes.

Q Or could be seen by people at Burns Lake?

A Yes.

Q And that map was produced by the plaintiffs in this action?

A Yes.

MR. RUSH: What do you mean by that?

MR. GOLDIE: Well, when I say "produced" I mean manufactured or drawn.

1 THE COURT: Prepared.
2 MR. GOLDIE: Prepared.
3 Q And that's what you understood me to mean?
4 A Yes.
5 Q And your answer is, yes, it was prepared by the
6 plaintiffs. And without examining it in detail, Mr.
7 Joseph, is it -- have corrections been made in that
8 map to the boundaries or -- and I deal first with
9 the external boundaries.
10 MR. RUSH: Well, wouldn't it be fair to the witness to ask who
11 prepared the map and whether he knows if the person
12 who prepared it made corrections?
13 MR. GOLDIE: All right.
14 Q Who prepared the map, Mr. Marvin George?
15 A Yes.
16 Q And did he prepare the previous map?
17 A Yes.
18 Q And behind you is Exhibit 5 in these proceedings
19 which was tendered by the plaintiffs on the opening
20 day. And it is called External Boundaries of the
21 Gitksan-Wet'suwet'en Territories and that is too the
22 work of Mr. Marvin George?
23 A Yes, I think it is.
24 Q And I don't -- this may be an unfair question in the
25 sense that you haven't had an opportunity to compare
26 the two maps closely, but from your own knowledge,
27 were there changes made in the external boundaries
28 between the map that was marked as Exhibit 5 at the
29 beginning of this trial and the map that I have just
30 shown you which is marked as Exhibit 5 on Mr.
31 Sterritt's examination for discovery? Maybe if I
32 put these side-by-side that would assist.
33 MR. RUSH: Shouldn't he be allowed to compare those two maps?
34 MR. GOLDIE: Yes, I am going to suggest, my lord, if we took the
35 morning break the witness might have that
36 opportunity.
37 THE COURT: Yes, all right. Thank you.
38 THE REGISTRAR: Order in court, court is adjourned.
39 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)
40
41 I hereby certify the foregoing
42 transcript to be true and accurate
43 to the best of my skill and
44 ability.
45
46 LISA REID, OFFICIAL REPORTER
47 UNITED REPORTING SERVICE LTD.

(PROCEEDINGS RECONVENED PURSUANT TO ADJOURNMENT)

THE REGISTRAR: Order in court.
MR. GOLDIE:
Q Mr. Joseph, the question that I left you with at the time of the adjournment was whether, to your knowledge, there were any differences between the map that has been marked here in the trial as Exhibit 5, and the map that I produced to you a few minutes ago which I identified as being marked as Exhibit 5 in Mr. Sterritt's examination for discovery. And without going into any detail, do you perceive or see any differences?
A That one there has the boundary at the south shore of Chapman Lake.
Q Yes. "That one" being the map that has just been produced?
A Yes.
THE COURT: Exhibit 101. It isn't marked yet.
MR. GOLDIE: I haven't tendered it yet, but perhaps just as a matter of convenience I'm going to tender that map as Exhibit 102 then, and it is the map that is marked as Exhibit 5 in Mr. Sterritt's examination for discovery and it is entitled "Traditional Boundaries of the Gitksan-Wet'suwet'en Territories".
THE COURT: Yes.

(EXHIBIT 102: Map entitled "Traditional Boundaries of the Gitksan-Wet'suwet'en Territories")

MR. GOLDIE:
Q And Mr. Joseph, now coming back to you, I think you said that Exhibit 102 had the boundary and you were making reference to Chapman Lake?
A Yes. That one has it on the south shore of Chapman Lake and this is the height of land south of the lake.
Q All right. In other words, the Exhibit 102 has the Gitksan territory extending to the south shore of Chapman Lake, whereas Exhibit 5 is on the height of land somewhat to the east of Chapman Lake?
A It's -- it would be the height of land and south of Chapman Lake towards Smithers or east.
Q Towards Smithers, right?
A Yeah.
Q In other words, there is a boundary change, and I'll put it this way, in favour of the Carrier-Sekani?

A The word Carrier-Sekani -- we had the word Carrier in our territory -- in our claim at first, but then it -- there was too many claims coming out with Carrier, but there were, like I said, the Babine Wuu 'an wet'en, the boundary we're talking about, we didn't mean too much in the past between the Wet'suwet'en and the Wuu 'an wet'en because they -- the boundary at Chapman Lake is both wolf clan, Gitdumden, on both sides. And the same on other territories, there's -- like the -- some of the people from Hagwilget were living in Babine, yet they trapped in the 24 mile area with Smogelgem. Smogelgem's nephews were from Babine, so they came from Babine and trapped with him on his territory. And it's been like that through all along the boundaries and there wasn't too much problems with boundaries in the past with our people. They've -- they participated in the feasts and all -- in everything. Whenever they were -- they call, they came to Moricetown, or Moricetown or Hagwilget went to Babine for feasts, and it's always been like that. But it's since the coming of the D.I.A. and Fish and Wildlife that we start talking boundaries and trap lines. It was all shared with different people. It was the same thing in the east, Burns Lake area, it was shared with the people Stellaco through intermarriage and they all knew where the boundaries were and there was no -- no -- not too much disputes about that.

Q Well, if I have followed you correctly, you're saying that with respect to the Wet'suwet'en and the Babine people, boundaries were not a problem because they shared territory?

A Yes.

MR. RUSH: Through intermarriage I think he said.

MR. GOLDIE:

Q Well, I didn't understand him to put it on that basis. He said there was intermarriage, wasn't there?

A Yes.

Q But the sharing didn't depend on intermarriage, it was because the two peoples were closely related generally; isn't that right?

A Yes.

MR. GOLDIE: Now --

THE COURT: You're tendering that map as Exhibit 102?

MR. GOLDIE: Yes, I tendered that, My Lord, as Exhibit 102.

THE COURT: No objection, Mr. Rush?

MR. RUSH: No.
THE COURT: Yes. Thank you.
MR. GOLDIE: Now, I want to ask you a few questions about the feast at Burns Lake. We were furnished with notes on September the 3rd that you made and on Thursday of this -- of last week with notes that a number of other people had made and I'm not going to question you, but I'm going to ask you to identify, if you can, who made the other notes. But first I'll ask you to --
THE COURT: Mr. Goldie, there was a word mentioned in the last long answer of the witness which I'm not sure Madam Reporter would have recognized. It's -- is it Wuu 'an wet'en?
MR. RUSH: Wuu 'an wet'en?
THE WITNESS: Wuu 'an wet'en.
THE COURT: Did you get that word Madam Reporter?
THE REPORTER: Yes.
THE COURT: Yes. All right. Thank you.
MR. GOLDIE:
Q Perhaps you can confirm what that word is used to describe?
A Wuu 'an wet'en is what we described for the Babine and Old Fort people.
Q The Carrier people at those two places?
A Yes.
MR. GOLDIE: Yes. Thank you. Now, in showing you these notes, the first stapled set starts off --
MR. RUSH: Can you show me, please?
THE COURT: Mr. Goldie, Mr. Rush wants to see what you're putting to the witness.
MR. GOLDIE:
Q Yes, I'm sorry. It's the notes that you gave me in the same order that you gave me.
Now, the first batch of notes is headed "Meeting", abbreviated to "Mtng on traditional...", and I think that's abbreviation for territories, "...tties", dated April 4th, 1987.
Can you recognize whose handwriting or whose those notes are?
A No, I can't. Sort of look like printing.
Q Yes, it looks like printing. It's not Mr. Sterritt's is it?
A Kind of look like it.
Q Well, all right. I'll just make a note. But let me ask you to confirm, please, the meeting at Burns Lake was with respect to traditional territories,

1 and at that members of the Carrier-Sekani described
2 their traditional territories?
3 A Yes.
4 Q And now those -- there seems to be a change of
5 printing -- well, first I should ask you this. Can
6 you confirm for me that that meeting took place on
7 April the 4th, 5th and continued on the 6th?
8 A Yes.
9 THE COURT: Of 1987 was it?
10 MR. GOLDIE: Of 1987.
11 THE COURT: Yes. Thank you.
12 MR. GOLDIE:
13 Q I'm going to show you a second batch which is on
14 longer paper, and it's got "C/S All Clan Feast,
15 Saturday, April 4, '87", and it starts off with the
16 words "E.J. a lot of work".
17 Do you recognize that writing? Is it that of Mr.
18 Victor Jim?
19 A I'm not too sure.
20 MR. GOLDIE: All right. Well, I won't ask you any questions on
21 that. But there is a reference in one of these that
22 I just want to ask you a question about. It is in
23 the batch that is on the short paper and it's about
24 six pages from the end of that batch. Now, I don't
25 know whether you can recognize that handwriting.
26 MR. RUSH: Which handwriting?
27 MR. GOLDIE: The writing at the top of that page which begins
28 with the words "What we're saying here is all...".
29 MR. RUSH: Is that the page that appears to have the number 18 at
30 the top?
31 MR. GOLDIE: Yes, it does. I'm not -- yes, it does.
32 THE COURT: It does.
33 MR. GOLDIE: It's the short page with the -- I don't know
34 whether the 18 has come through.
35 THE COURT: Is it on the top left or top right?
36 MR. GOLDIE: Right in the centre.
37 MR. RUSH: Top middle.
38 THE COURT: No, it didn't come through at all. That's 18 is it?
39 MR. GOLDIE: Well, let me --
40 THE COURT: I just made it page 18.
41 MR. GOLDIE: -- hand up that.
42 THE COURT: I have the page.
43 MR. GOLDIE: Does Your Lordship have the page?
44 THE COURT: "What we're saying here is all on tapes."?
45 MR. GOLDIE:
46 Q Yes. Now, the question, Mr. Joseph, is this: What
47 that sentence appears to be saying is "What we're

1 saying here is all on tapes and video, not all for
2 ourselves." And my first question to you is, do you
3 recognize the writing?
4 A No, I don't.
5 Q My second question is to your recollection was the
6 meeting at Burns Lake recorded on video or on tapes
7 or both?
8 A I did see some cameras on the stage, but who -- who
9 owned it or was in charge I don't know.
10 Q All right. I ask you that because Mr. Rush has
11 advised us that there are no tapes and videos in the
12 possession of the plaintiffs and that's so as far
13 as --
14 A Yes.
15 Q -- you know?
16 A Yes.
17 Q Now, at that meeting there was considerable discussion
18 of the overlap in respect of the Gitksan was there
19 not?
20 A Yes, there was quite a bit.
21 Q And there were some fairly strong statements made by
22 members of the Carrier-Sekani about the -- that the
23 Babine Lake is not for the Gitksan of Hazelton. Do
24 you remember that?
25 A I heard parts of it because I don't speak the Gitksan
26 language and it was mostly in Gitksan on their
27 territory.
28 Q Do you mean that the Carrier-Sekani people who were
29 talking about the Babine Lake territory were
30 speaking in Gitksan?
31 A Yes.
32 MR. GOLDIE: I see. But they were saying that the people from
33 Hazelton were not entitled to that territory, to
34 your understanding?
35 MR. RUSH: He said he didn't understand.
36 THE WITNESS: I didn't understand what they were talking about.
37 MR. GOLDIE:
38 Q I see. So you have no knowledge of that discussion?
39 A No.
40 MR. GOLDIE: I'm going to ask, My Lord, that those two sets of
41 notes be marked for identification.
42 THE COURT: All right.
43 MR. RUSH: I think that would be the only way they could be
44 marked since they weren't identified by this
45 witness.
46 THE COURT: Yes. Exhibit 103A and B, short and long.
47 MR. GOLDIE: 103A being the short one, and 103B being on long

paper.
THE COURT: Yes.

(EXHIBIT 103A FOR IDENTIFICATION: Short document containing handwritten notes)

(EXHIBIT 103B FOR IDENTIFICATION: Long document containing handwritten notes)

MR. GOLDIE:
Q There's a reference in the notes to "Paddy Leon". Who's he please?
A Paddy Leon is a chief from the Topley Landing.
Q That's the Carrier-Sekani?
A Yes.
Q Is he a hereditary chief?
A Yes.
Q And he spoke at the Burns Lake meeting?
A Yes.
Q Did he talk about his territory?
A Yes.
MR. GOLDIE: I am going to show you a bundle of notes that we were sent together with some photographs.
MR. RUSH: Could you just show me what it is that you're showing --
MR. GOLDIE: Beg your pardon?
MR. RUSH: Could you show me what you're showing --
MR. GOLDIE: Oh, I'm sorry, it's your letter of September the 3rd. I guess it's Mr. Grant's letter of September the 3rd.
MR. RUSH: That's fine. Thank you.
MR. GOLDIE:
Q Are those in your handwriting, those notes?
A Yes.
Q And do you have a recollection of taking the photographs, the copies of which are attached to those notes?
A Yes.
MR. GOLDIE: Do you have the originals of those photographs, or did you give them to Mr. Grant?
MR. RUSH: He gave them to me.
MR. GOLDIE: Are they available here?
MR. RUSH: Yes.
MR. GOLDIE: May I see them, please?
THE COURT: These are notes of the same meeting?
MR. GOLDIE: Same meeting, yes, My Lord. I'm going to tender those as Exhibit 104.

MR. RUSH: Okay. And I just ask you to disregard my handwritten notes.
THE COURT: Yes. It will be Exhibit 104.

(EXHIBIT 104: Alfred Joseph's handwritten notes of Burns Lake meeting)

MR. GOLDIE: Right. Thank you.
MR. RUSH: And I'm just showing to Mr. Goldie the originals of the photocopies of the photographs which he was provided.
THE COURT: Thank you.
MR. GOLDIE: I'd like to retain these for a few minutes, please?
MR. RUSH: That's fine, but if you want to put them in --
MR. GOLDIE: No, I'll decide on that in a minute. I'm going to tender the notes as Exhibit 104.
THE COURT: Yes.
MR. GOLDIE:
Q Those are Mr. Joseph's notes. I want you to explain for me please the last page which is under the heading "April the 6th". The first three lines are in the Wet'suwet'en language?
A Yes.
Q Would you tell His Lordship what those three lines say?
A They were talking of names of lakes and rivers and I was trying to get some of the names of them and they sounded familiar because some of our -- some places in our area had the same name, so that's why I wrote them down.
Q So those are simply your --
A Yes.
Q -- understanding of what the speaker was saying --
A Yes.
Q -- of place names?
A Yes.
Q All right. I won't go beyond that, but is the next paragraph, the first line, the same thing?
A Yes.
Q And the next line the same thing?
A Yes.
Q Then you record in English "They are uneasy. History at" -- something -- "Lake." What's the something lake?
A Well, that's -- that's what these -- I thought these words meant.
Q I see. Oh, I see. That is a translation then of the

first name?
A Yes.
Q But what was the lake that was being referred to?
A I think they were talking about Sustut.
Q That's S-u-s-t-u-t?
A Yes.
Q But what you wrote down is, and I quote, "History at..." and then it looks like "B-l-a-" -- something -- "Lake"?
A That's the Bear Lake.
Q Bear Lake. Right. Thank you.
Now, that's an overlap of Gitksan territory is it not?
A Yes.
Q So at least at some point some of the discussion about the Gitksan was conducted in Wet'suwet'en language or Carrier language?
A Well, no, it was mostly in Gitksan.
Q I see. Well, you have some understanding of Gitksan?
A Yes, some.
Q All right. And in fact I believe Mrs. Joseph is Gitksan is she not?
A Yes.
Q Yes. Well, you had enough understanding then to appreciate that the speakers, the Carrier speakers, were saying that so far as the Gitksan of Hazelton were concerned, Babine Lake and Bear Lake was not in their territory?
A Not in whose, like the -- you mean the Gitksan's territory?
Q That's right. Weren't the Carrier-Sekani people saying that the Bear Lake and Babine Lake territory was Carrier-Sekani and not --
A Yes.
Q -- Gitksan?
A Yes.
Q Yes. Thank you.
A At the same time though they -- they admitted that they are -- they said that their -- their houses originated in the Gitksan is what I understood.
Q I see. But they were saying that on the basis of traditional use that territory at Bear Lake and Babine was not Hazelton Gitksan?
A I think that's what they were saying.
MR. GOLDIE: Thank you.
THE COURT: Where's Bear Lake please?
MR. GOLDIE:

Q Can you point to Bear Lake on any of these maps Mr. Joseph? Maybe it's a little clearer on the other map there?
A There's Babine Lake.
THE COURT: Well, it's in the north-east area?
THE WITNESS: Yes.
THE COURT: That's good enough. Thank you. North of Babine Lake?
THE WITNESS: Yes. North-east of Babine Lake.
THE COURT: All right. Thank you.
MR. GOLDIE: And you told us that the -- well, I'll leave that matter as far as the Burns Lake is concerned.
I want to ask you some questions about evidence that you gave in response to questions from Mr. Rush about spiritual matters and the transcript reference is at page 2172 of Volume 34. And you told my friend what certain words meant and at line 46 on page 2174 you stated that the word "H-u-d-a-g-g-h-i" -- how's that pronounced Mr. Mitchell?
MR. MITCHELL: Hudagghi.
MR. GOLDIE:
Q Hudagghi?
A Yes.
Q You say that "means someone way -- who is higher up.", and later "It is the spiritual power believed in today by the Wet'suwet'en." Do you remember giving that evidence?
A Yes.
Q Well, the question that was put to you by Mr. Rush at page 2173, "Is Hudagghi the spiritual power that is believed today by the Wet'suwet'en?" And the answer was "Yes."
Now, many of the Wet'suwet'en people attend church of the Roman Catholic faith regularly?
A Yes.
Q Is Hudagghi part of their worship in that church?
A Yes.
Q Or is it outside the church?
A It's -- it's still used in the church.
Q Is it the same -- is it a word that has the same meaning as God?
A Yes.
Q And it is in fact then, or I shouldn't say -- is it then the God as worshipped in the church at Hagwilget?
A Yes.

1 MR. GOLDIE: Now, 2173 a little later down there is the word
2 "H-a-b-o-'-t-s, which I understand is number 315,
3 and H-o-d-i-'-t is the same word?
4 THE COURT: I'm sorry, H-a-b --
5 MR. GOLDIE:
6 Q H-a-b-o-'-t-s. This is line 26 on page 2173, and one
7 line below it, H-o-d-i-'-t, is the same word, stated
8 to be the same word. And it is described by you as
9 something for the protection of property. It's a
10 ceremony for the protection of property, Mr. Joseph?
11 A Could I get that spelling?
12 MR. GOLDIE: Yes. Well, perhaps the transcript will help you.
13 MR. RUSH: Perhaps it should be pronounced?
14 MR. GOLDIE:
15 Q I'm referring you to line 26.
16 A It's this one. It's all in one.
17 Q H-o-d-i-'-t-s-a-t?
18 A Yes.
19 MR. GOLDIE: And Mr. Mitchell, is there a number for that?
20 MR. MITCHELL: No, there isn't. There's one for Habo'ts'at.
21 It's 315.
22 THE WITNESS: Yes. It's the same. They use it. It's both the
23 same. Hodi'ts'at and Habo'ts'at is -- Habo'ts'at
24 means they -- it means a group of people.
25 Hodi'ts'at is speaking of the same thing.
26 MR. GOLDIE:
27 Q And can you tell me a little more what you mean by a
28 ceremony to protect property?
29 A It's -- when they use it in that sense it's for people
30 that steal. They -- if they find something, they
31 know something has been taken without their
32 permission, they let the person know or whoever done
33 it know that they're going to use this ceremony on
34 them. And that is something that is feared by our
35 people because it -- if you steal something, that's
36 the punishment they put on you.
37 Q It's a ceremony that occurs after something is stolen?
38 A Yes.
39 Q And it is intended to be directed to the person who
40 stole?
41 A Yes.
42 Q Does it -- and is it intended to make that person
43 return the property?
44 A Yes. It's intended for him to return the property and
45 if he doesn't that person will get -- will be very
46 sick and suffer a lot. And it's also used in
47 another way. If you want a young person --

sometimes it happens when the child is not born yet. They go through a ceremony like that. They want him or her to avenge something that happened to an uncle or an aunt, that -- you go through that ceremony and they do that after the child is born too. They want that person to be a good hunter, a good runner or a strong person. They use different things to go through that ceremony.

Q Can you tell His Lordship what kind of property the ceremony would be used for after the property had been stolen, for instance, does it extend the territory?

A On the territory it's -- when they cache their food that means life or death to the person that put it there because they depend -- their time -- their schedule is so rigid that they -- all their movements are on the food that they pack with them. So if they come back to a certain place that food has to be there, but if it's gone that means the whole group may perish, if someone steals that. So that instead of -- and there's no locks and there's no keys, they just use that, this ceremony, to sort of deter whoever is going to take something for nothing. The way that we say it is T'se nek' c'el c'ot means a person takes something and doesn't replace it. He has to -- if he wants to take something he has to replace that item with some other thing.

Q But the ceremony I understood you to say was sometimes used after --

A Yes.

Q -- something is taken?

A Yes, after something is taken.

Q Okay. And my question was what kind of things are taken? From the example you used a minute ago, there's food?

A Food and clothing.

Q How about territory?

A I never heard of it being used in territory. In the territory the man that owns that territory is always prepared to take action if he catches someone on his territory.

Q All right. So that ceremony is primarily related to things that you can pick up and walk away with?

A Yeah. Yeah. And there's another way that they use that is to protect the person, and it's a ceremony where someone has a dream about you, you being in

danger.
Q Yes?
A And to neutralize that they -- I went through the ceremony because when I was about seven, seven years old my grandmother told me that my aunt wanted to see me about something and it was very important. So I went to my aunt and she told me what her dream was. She said that she dreamt about me and her son going down the Hagwilget Canyon and falling in, and she said "I don't want that to happen to you, so I'm going to put you through a ceremony." So I -- she took some of bits of our clothes that we took along to her and she just rubbed us -- rubbed all our bodies and our face and legs, and all that time she was talking. She said "This is to ensure that whatever dream I had of you will never come true." So that's one of the ceremonies where they -- we call it -- it's sort of like a sacrifice, Habeghet'segadileh.
MR. GOLDIE: Could we have a spelling for that?
MR. MITCHELL: Habeghet'segadileh, H-a-b-e-g-h-e-t-'-s-e-g-a-d-i-l-e-h.
THE COURT: I'm sorry, g-a --
MR. MITCHELL: -- a-d-i-l-e-h.
THE WITNESS: That means that they've burnt -- burnt something on your behalf. So that's the ceremony that I've gone through somewhere in 1935 and that is supposed to happen to all young people, adults too at times, but that -- when they do that before you do anything foolish you -- that always comes back to you. So that there is danger out there at all times so you're more careful if you go through a ceremony like that.
MR. GOLDIE:
Q And that ceremony was performed for you when you were seven?
A Seven.
Q When did you last hear of that ceremony being performed?
A When I talk about it there's others. Other people at home say they've gone through the same ceremony.
Q People of your age?
A Yes.
Q Is it --
A Some even younger than myself.
Q Is it performed today?
A Yes.

Q Very often?
A Yes, I think it is.
Q For every young member of the Wet'suwet'en?
A No, not for every young -- people that still participate in feasts and are living at home all know about that.
Q Yes. Now, what about the ceremony relating to theft? When did you last hear of that ceremony being performed?
A Theft?
Q To protect against property being stolen?
A That -- that ceremony I've heard of it. When people had things missing they said that they would go through that ceremony, but I think that that's one part of the ceremony that's been discouraged by the church. I don't know whether it's still being carried out. I've heard quite a bit about it, but I don't know if it's been performed.
Q And at page 2175 you described another ceremony. At the top of page 216 -- 2176, line 2, you said "Waghe'at nii"?
A Oh, yes, that's Waghe'at nii.
Q Yes. And you've described what -- and you described in your answer what that is. They come up with a breath from deep within?
A Yes.
Q That's sometimes called the gift of breath?
A Yes.
Q And that's a power to tell the future?
A That's the power that they use -- that's used when you are undertaking a -- like if you're going hunting or you're going travelling or else if you're sick you happen to end up in the hospital, and they come to you and say "I have had this feeling about you because my breath says that you are going to be fine." So that has always been -- it was an everyday thing with my grandparents.
Q Your grandparents?
A Yes. Mrs. Felix George and her neighbour across the way, they always talk about it. If they heard someone sick or hurt or was going somewhere hunting they'd come up with that saying that I have my doubts about this project or this hunt or if it's a person is sick.
Q It is also a power to wish for death is it not?
A No.
Q No?

A I've never heard that. They never wished that on anyone.
Q It's not something which is talked about very much now?
A Some -- some of the elders still --
Q Talk about it?
A -- talk about it, yes.
Q But not the way it was done in your grandmother's day?
A No. Every -- all people talked and used that at that time.
Q And at page 2177 you talked about what happens when people have a bad dream about you and you said that once you'd heard that on a phone call?
A Yes.
Q What was it you heard, please?
A Well, I was carving out of the country and I phoned home to see how things were. Then my wife before hanging up told me that -- to take it -- take things easy and watch myself. So I said "Why is that?", and she said "One of the elders from home has had this dream about you.", and that he came to her and said -- asked about me and she told him I was out of the country. And he said that to let me know that I should be careful, that he would do something knowing that I was out of the country, and he said that he'd perform a ceremony to protect me, but still I had to take it easy, which I did.
Q And did you change the way you behaved as a result of that phone call?
A Well, being away from home and alone I had some plans which I had to cancel.
Q I see. All right. I won't pursue that.
And at 2178 you said "I had to go through a ceremony not from the breath power but from a dream." And that refers to a ceremony that you went through?
A Yes.
Q Is it connected with the same thing?
A Yes, it's the same thing.
Q Now, does that ceremony --
A Oh, that -- that's -- no, it's the same one. Yes. Yes.
MR. GOLDIE: Would you like to see the transcript so that you can --
MR. RUSH: There's another word there that's used --
MR. GOLDIE: Let's see.
MR. RUSH: -- at the bottom of 2177.

MR. GOLDIE:

Q Yes. Yes. His Lordship asked "Have I got that last one spelled correctly, d-z-a-h." Then it goes on?

A Yes. Yes. That's the same. It's Dzah ngiitl te'. It means I've had a bad dream about you.

Q All right. Now then, is the ceremony that is referred to later on in that page at line 27 that you went through, is that connected with the same thing?

A Yes.

Q Now, is that ceremony performed very often nowadays?

A It -- elders don't, whenever they do something of this nature, don't usually talk about it, but if you're there to witness it you know what is happening, but they don't tell all -- anyone.

Q No. So if it is performed it's performed by elders and that's not something which is talked about?

A Yes.

Q Now, that reminds me. Later on you spoke about secret societies. What is a secret society of the kind that you referred to at page 2180?

A A secret society is a group of medicine persons and they have a membership of so many numbers and as soon as one of them passes on they recruit another one so it's a -- it's a very -- from what I understood peoples is that they didn't -- no one volunteered to get into their society. They were taken by the group.

Q There are how many groups?

A I don't remember how many there was, but there was a number in the Wet'suwet'en.

Q Well, I don't want to pursue the point if it's a concern to you, but are you a member?

A No.

Q Do you know what the societies do?

A They -- the society is a group that have their own songs and they have their own -- they go through their -- they come to feasts, they sing, but they -- they're a group, just a group by themselves. No one else participates in their ceremony, but it is -- and they have different whistles and I've heard those whistles, but it's -- like when I first heard it I was carving alone in a carving shed at K'san.

Q Is that what you told us before earlier?

A Yes. That's the same whistles that they have.

Q Are these secret societies very important to Wet'suwet'en people and their everyday life? I mean, for instance, in their lives at Hagwilget?

1 A Well, at one -- at some time earlier it was important,
2 but it's been getting not -- there's not too many
3 participants anymore and the church is the one that
4 discourages any -- any practises like that, but
5 some -- there are members around, exactly how many I
6 don't know.
7 Q I take it from your answer that they're not -- they're
8 not a -- they're not as important today as they once
9 were?
10 A Yes.
11 Q And in terms of the ordinary day-to-day life of your
12 people they're not that important?
13 A I've never -- no, not as strong as it used to be
14 and -- but the other areas as like for healing and
15 to protect you there are people around that are
16 still practising for your protection.
17 Q Yes. But does that have any bearing on the way, for
18 instance, in which you as chief councillor at
19 Hagwilget did things for your -- for the people who
20 lived there? Do any of these things have any
21 bearing on the way in which you and your people
22 governed yourselves --
23 A No.
24 Q -- from day-to-day?
25 A No.
26 MR. RUSH: Perhaps this should be broken down a bit? I mean,
27 you're referring to "any" things. Are you referring
28 to the secret societies or the other aspects of what
29 he's describing?
30 MR. GOLDIE:
31 Q Well, I'm quite happy to do so, but Mr. Joseph said in
32 response to my question about secret societies, I
33 believe he said that there are healers who, and
34 people who, protect you. They still practise these
35 things?
36 A Yes.
37 Q But my question is including those and the secret
38 societies, they don't have much to do with the
39 day-to-day way in which you and your people govern
40 themselves, am I right in that?
41 A Not at the council level.
42 Q No?
43 A No.
44 Q Now, from the standpoint of your people, the people
45 who live at Hagwilget and the people that you know
46 from having been chief councillor there for 20
47 years, what is -- which is more important to them,

or what is the most important thing from their livelihood, their life with the band or their membership in a house or what?

A Well, at Hagwilget the most important thing are in the -- in our -- in the people's life there is the feast system. It is very strong in Hagwilget and it's the same with both Wet'suwet'en villages and Moricetown, including Babine, Fort Babine or Fort people. If they happen to be in an area they always participate in a feast. So it -- and there are times when there's people coming from Stellaco and Fort Fraser to participate in our feasts. So there is no boundary as far as feast and the clan system is concerned. We all come together at one place for a feast and the most important thing there is what's happening in the feast. And they -- the witnesses are there. You cannot have a feast with just one clan.

Q No.

A So that is important, where we come from our father's side and that -- the father's side is the one that ties -- ties the two -- two clans together, so there's always a father's side within the four clans so one clan doesn't stand alone. So that is why this feast system is so important to our people and the songs that they sing and the ceremonies that are carried out and the language, the names. The names are always in either Wet'suwet'en or Gitksan, so when a young person, no matter how educated they get, they get degrees, they come back to the village and they come into the feast house, they still have something to learn.

Q Yes. Now, I think you've described that before and you just finished of course describing it now, but I wanted to be clear in my own mind about a certain relationship between the feast system or the villages, the clans, the houses, the bands, to what degree does the feast system become a part of the government of the research? For instance, all of the decisions that you've had to take with respect to water and sewage and things like that, is that any part of the feast system or is that something which is off to one side and is dealt with by the elected members of the council?

A Well, the times --

THE COURT: Mr. Goldie, I have a feeling that this may take a little time, will it not?

MR. GOLDIE: Well, I -- it may.
THE COURT: I think it might be a convenient place to adjourn and you can put the question to the witness again after lunch. Two o'clock, please.
THE REGISTRAR:Order in court. Court is adjourned until two p.m..

(PROCEEDINGS ADJOURNED FOR LUNCHEON RECESS)

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

Tanita S. French
Official Reporter

(PROCEEDINGS RESUMED PURSUANT TO LUNCHEON ADJOURNMENT)

THE REGISTRAR: Recalling Delgamuukw against Her Majesty the Queen.
THE COURT: Mr. Goldie.
CROSS-EXAMINATION BY MR. GOLDIE:

Q Mr. Joseph, at the noon recess I had asked you which was the most important to you and your people and I gave you a series of names, a membership in a house, clan, band. I don't know whether I mentioned village. I don't think I mentioned secret society. But in any event, you told me the most important thing was the Feast?
A Yes.
Q And my understanding of the evidence in this case so far is that the Feasts mark great events such as a death, pole raising, the taking of a chiefly name. Have I got -- would you agree with that?
A Yes, there is other kinds of Feasts and that's the Shame.
Q A Shame Feast?
A Yes.
Q Which occurs when a certain event happens?
A Yes.
Q But these are important events?
A Yes.
Q And they are matters of great social importance to the community, are not they?
A Yes.
Q And as you and other witnesses have stated, money must be paid and contributions made in recognition of the importance of the Feast?

A Yes.
Q And indeed a chiefly name cannot be obtained without the expenditure -- without the considerable amount of money on the part of the person seeking the name?
A Yes.
Q Although -- yes, all right. But earlier today and on Friday we talked about what I call day-to-day events such as matters of education, matters of running water, the sewage lines, the recreational hall, the office for the Band Council, things of that order. Am I right in thinking that Feasts play no part in those events?
A No.
THE COURT: I'm sorry, Feasts play no part in those events?
A No.
THE COURT: Or Mr. Goldie is not right when he suggested that to you?
MR. GOLDIE: Well, maybe I can clarify that.
THE COURT: Thank you.
MR. GOLDIE:
Q Are you agreeing with me, Mr. Joseph, that when it comes to those matters that I listed to you and I gave you the examples of education, provision of water in the houses, sewage, the support of recreation -- the provision of recreational facilities, the support of sports, those were all the sort of things that go on at the band?
A Yes.
Q And am I correct in my understanding that Feasts take no -- have no place in those events?
A Well, you can't say there is no place for a Feast in those events because when we talk education we are thinking of the -- our system as well. And we try and educate our children. They have to also understand our form of government.
Q Yes, when you say "our form of government", you are not talking about the Band Council?
A No.
Q You are not talking about the things the Band Council does?
A Well, that is part of our government too. But I mean in the Feast system we have to educate our young as well.
Q Yes. And that part of their education relates to their traditions as an Indian people?
A Yes.
Q But education in terms of arithmetic, geography, the

English language, those are carried out in either the primary school on the reserve or the high school or for those of your people who go to university at whatever institution they attend; is that right?

A Yet you talk of geography. There again we have to educate our young on what -- on the territory and its use.

Q And that is done at the Feast?

A Yes.

Q And then we have geography in terms of the names of the other provinces of Canada and the location of the river St. Lawrence and things like that, that's what they learn at school?

A Yes.

Q So the sense I have of your evidence so far, and I want you to correct me if I am wrong, is that Feasts and the spiritual matters that you spoke of are important to your people in relation to these great events such as the death, a pole raising, a Shame Feast, the taking of a chiefly name, the location and boundaries of their traditional territories, that's what the Feasts are concerned about?

A Yes.

Q But in terms of the ordinary day-to-day living where people earn their living, how they earn their living, the Feasts have nothing to do with that?

A Well, if it concerns hunting and trapping, our people still hunt and trap. And at Feasts the elders always talk of the importance getting an education. And they encourage young people to go to school.

Q Yes. And, of course, the trapping is done by the registered holders of trap lines, that is to say registered under the Fish and Wildlife Registration system; is that correct?

A Not just the registered holder. The members of a House all can go out to these territories.

Q And that's known as a company?

A Yes.

Q Yes. If a chief, and I am talking now about a hereditary chief, but who is a chief in your house, if you wish to remove that name from that particular person, would you have the power to do that?

A Not only -- there again I can't just remove the chief from the House. It has to come from the people that are in that House who are left to advise me.

1 Q The other chiefs?
2 A Yes, because of non-participation or absence or the
3 chief request -- want to remove themselves because
4 they can't be there all the time.
5 Q But on the other hand, if a person is elected as a
6 councillor or chief councillor of the band, they are
7 there until the next election or unless they choose
8 to resign; is that right?
9 A Yes.
10 Q And, of course, the election for chief councillor in
11 a band is by all of the members of the band
12 regardless of what Houses they happen to belong to?
13 A Yes.
14 Q Now, I want to show you a file of material that we
15 obtained.
16 MR. RUSH: What's the number on this, please?
17 MR. GOLDIE: I think it's Canada Document Number 10778. And I
18 sent this over to my friend on January 7th.
19 MR. RUSH: Yes. I just want to point out for the sake of the
20 record, yes, that's true, this was sent over to me
21 January the 7th after Mr. Joseph's cross-examination
22 had commenced. And after on January the 6th this
23 document had been divulged in a federal government
24 documentary list. I think it was list number 24 or
25 was it 25. So that this document was disclosed
26 after the commencement of the cross-examination.
27 And apparently is now being used by the province in
28 its cross-examination of Mr. Joseph.
29 And I just want to point out to your lordship
30 I think I made this submission to you earlier and I
31 don't have very much more to add to it except to say
32 that this puts the plaintiffs' case in a difficult
33 position where we have to respond to documents that
34 in a sense we could not have discussed with the
35 witness prior to his commencing the
36 cross-examination. And I think it makes it
37 impossible for me really to canvass it with Mr.
38 Joseph. We are told that this came to light to the
39 federal defendant in the course of their
40 investigations into the trap line files. But there
41 is a mass of trap line files that are both in the
42 hands of the province and of the federal government.
43 MR. GOLDIE: And of the tribal council.
44 MR. RUSH: And as a consequence of that, it seems in my
45 submission that documents that could have been
46 available should have been available. And I really
47 don't know what the solution to this is except that

1 I wish to say that it makes it impossible for me to
2 really deal with it with Mr. Joseph except on
3 redirect and that isn't by any way a means of
4 understanding the document.
5 THE COURT: Well, I appreciate the difficulty. I am reluctant,
6 exceedingly reluctant, to shut out the use of any
7 document that might be useful, even though delivered
8 late as long as some notice has been given. I have
9 had complaints on both sides about late delivery of
10 documents and I think that the best I can do is to
11 allow the document to be used and to regard its late
12 delivery as a matter that may go to weight. And
13 also if you wish, Mr. Rush, to have an opportunity
14 to refer to it before re-examining if it is your
15 wish so do. I think I would be creating a very
16 dangerous precedent if I decide that I am going to
17 cut off the use of documents because of late
18 disclosure if they are relevant. I hope that the --
19 that the incident of this sort of thing would be
20 rare, but I expect that it will arise on both sides.
21 And I think it dangerous to say, no, I am going to
22 impose an exclusion rule because of a late delivery.
23 I can't, at the moment, predict where the unfairness
24 will lie then. I think the better fairness will
25 result if I continue on the side of admissibility.
26 You may proceed, Mr. Goldie.
27 MR. GOLDIE: I am not going to make any submission to your
28 lordship. I don't accept for the minute the
29 proposition that there is any unfairness.
30 Q Mr. Joseph, I am putting in your hands a bundle of
31 documents which are photocopies apparently of
32 originals and they are -- appear to be arranged
33 cronologically starting with the last document
34 first. And they range in time from November 19,
35 1982 to November -- September 4, 1984. And before
36 dealing with them, I am going to ask you if you
37 would once again, please, identify the handwriting
38 of Andrew George as that of your cousin Andrew, the
39 son of Thomas your uncle. Can you do that for me?
40 A The signature?
41 Q Yes.
42 A Yes, I know it is Andrew's.
43 Q The next document is not one you can speak to nor
44 the -- but then there is an Application For Use Of
45 Land Within An Indian Reserve. And I want to refer
46 again to the signature of the applicant Andrew
47 George and the co-applicant Rita George. Is Rita

Andrew's wife?
A Yes.
Q Do you recognize the two signatures on the application form?
A Yes.
Q And then the next one is a typed letter of July 4, 1983 and is that once again Andrew's signature?
A Yes.
Q And then there is a handwritten letter of September 7th or partly printed I should say. Is that too the signature of Mr. Andrew George?
A Yes.
Q The next document is not one you can identify or the one following or the one following that. And then we have another copy of the earlier document, the application which you have seen before. And then there is a letter dated March 22, 1984 on the letterhead of Smithers Indian Friendship Centre. And that too is Mr. Andrew George's signature?
A Yes.
Q And there is a second copy of that. And there appears to be another copy of the application form or at least part of it. And then the final is September 4th addressed to the Broman Lake Band and that too appears to be Mr. George's signature, is that your understanding also?
A Yes.
Q I will leave those in front of you. But turning to the very first one which is the last of the series --
MR. RUSH: You are going to have to identify these each one by one because I don't know if the sequence that I have in my bundle here is the same as you are citing, so if you could just identify them.
MR. GOLDIE: I believe it is, but I will do so as I go on.
Q The first in time is the last document and it is the handwritten document of November 19, 1982 addressed to the Department of Indian Affairs at Prince George.

> "Dear Sirs: I would like to obtain a copy of map or blueprint of Felix George Indian Reserve Number 3 which possibly is part of lot 3417 which is located on northeast end of Owen Lake southerly of Houston, B.C.
>
> I have written and spoke personally at the meeting with Omineca Band and I was told to

be more specific of the location I wish to lease. And I would like to obtain the map or blueprint to see which part is leased already. The lease is for dwelling purposes or a trapping grounds cabin.

We have owned the trapping grounds registration for generations and also Felix George is my grandfather and the other hereditary chief Joseph Nahlochs whom trapped the areas for many years is also my uncle.

Thank you, yours Truly, Andrew George."

Now, I think you told me previously that you were unaware of Andrew's desire -- Mr. Andrew George's desire to lease part of the Felix George Indian Reserve, but I may be wrong in that. Were you aware in 1982 that he had written in this sense in the letter you see before you?

A Yes, he talked to me about wanting to move to Felix George Reserve and that he had to go through Omineca Band. And I told him that we were trying to locate Felix George Reserve and that we weren't too successful in that area.

Q And then the next letter is a copy of a letter dated April 6, 1987 addressed to Andrew George and apparently sent by Mr. Brian Shantz, Superintendent of Reserves, Prince George District. Do you know Mr. Shantz?

A No.

Q Did Mr. George tell you in 1983 that he had received from Mr. Shantz a copy of land available for leasing at Felix George Indian Reserve Number 3?

A I don't recall that.

Q And then going over three documents, the intervening documents are maps of the area in question. The document headed Application For Use Of Land Within An Indian Reserve, did either Mr. George or his wife inform you that on July 4th that they had applied to lease property within the reserve, namely Lot 3 or an alternative?

A There again I was told that they were trying to get a place, but I never heard of the lease.

Q I see. And then there is a letter dated July 4, 1983 from Mr. George to Mr. Shantz and I won't -- enclosing the application and I won't read that. And then a letter of September 7, 1983 from Mr.

1 George stating that he had not heard from the
2 Department of Indian and Water Affairs and wishing
3 to be advised of what was happening. And then two
4 documents -- one document over, skipping one, is a
5 letter of September 26, 1983 to Mr. George from the
6 Department stating that the department had forwarded
7 a letter to the Omineca Band Council and suggesting
8 that Mr. George contact the Band Council directly.
9 By this time, Mr. George, were you -- or Mr. Joseph,
10 were you aware, and by this time I mean September
11 26, '83, that Mr. George's application had been
12 forwarded to the Band Council?
13 A To the Omineca Band?
14 Q Yes.
15 A No, I wasn't.
16 Q The next letter is to the Omineca Band by Mr. Shantz
17 dated September 26th. I won't read that. And then
18 the enclosure that appears to be a copy of the
19 application. And going over to the letter on the
20 letterhead of Smithers Indian Friendship Centre,
21 March 22, 1984. What is the Smithers Indian
22 Friendship Centre? Is that something which is the
23 Gitksan-Wet'suwet'en Tribal Council sponsors?
24 A No, I don't think so.
25 Q It has got nothing to do with the Tribal Council?
26 A No, they don't sponsor the Friendship Centre.
27 Q All right. Mr. George apparently was at the
28 Friendship Centre and he is talking again about his
29 choice and he would like to proceed with the
30 application. And the documents that follow that
31 appear to be all duplicates, except when we a come
32 to the last one September 4, 1984 which is a letter
33 to the Broman Lake Band asking that its lease
34 application be proceeded with. Is it your
35 understanding that there was a division of the
36 Omineca Band and that the Roman Lake Band is an
37 off-shoot of it?
38 A Yes, there is an area that I have heard of different
39 bands like Omineca Band and Roman Lake Band, but I
40 didn't know what is happening there. They keep
41 changing and sometimes you hear of Nee tah Bun Band.
42 Q If Mr. George leased land in the Felix George Indian
43 Reserve from the Broman Lake Band, that would be
44 contrary to the ownership of that territory in the
45 House of Gisdaywa, would it not?
46 A The lease would be.
47 Q Yes. Because the lease would be granted under the

1 Indian Act -- by a band under the Indian Act of
2 traditional territory or part of a traditional
3 territory?
4 A Yes.
5 MR. GOLDIE: Now, I tendered that bundle of documents from the
6 federal list --
7 THE COURT: Well, only the documents the witness has identified
8 identifying would be admissible, would they not?
9 MR. GOLDIE: Unless my friend is content to accept the -- to
10 remove the documents that are written from the --
11 are written by the District Superintendent of
12 Reserves and the Department of Indian and Northern
13 Affairs. if he wants those removed, of course it
14 doesn't affect the substance of the evidence that is
15 afforded by these letters and the witness' evidence
16 with respect to them. But to my mind it removes
17 connecting documents.
18 THE COURT: What do you say, Mr. Rush?
19 MR. RUSH: I think the proper way to proceed is the witness has
20 identified the signature of Mr. George and those are
21 the documents that he can attest to and those are
22 the only ones that are admissible, the other ones
23 are not.
24 MR. GOLDIE: Well, I will tender, then, as the next exhibit Mr.
25 Andrew George's letter of November 19, 1982.
26 THE COURT: This will be Exhibit 105?
27 THE REGISTRAR: Yes.
28 MR. GOLDIE: The documents that I am referring to comprise
29 Exhibit 105, is that what your lordship --
30 THE COURT: I would think it would be convenient to do it that
31 way. It may be that they should be originally
32 recorded. Is there any need to do that, Mr. Rush?
33 MR. RUSH: Not for my sake, my lord.
34 THE COURT: Well, the only exhibits are those with the signature
35 of Andrew George on it and they collectively will be
36 Exhibit 105.
37 MR. GOLDIE: That's the letter of November 19, 1982, the
38 application of July 4, 1983, the letter of July 4th,
39 1983.
40 THE COURT: I'm sorry? July 4th, I missed that. Yes.
41 MR. GOLDIE: The body is typewritten. The handwritten letter of
42 September 7, 1983. The duplicate of the application
43 dated 4th of July, 1983. And it appears that the
44 two maps are attached to that application.
45 THE COURT: Yes.
46 MR. RUSH: I thought the two maps were attached to Mr. Shantz's
47 letter?

MR. GOLDIE: No, I think they are part of the application.
MR. RUSH: The second two?
THE COURT: Yes.
MR. GOLDIE: The letter of March 22, 1984.
THE COURT: Yes.
MR. GOLDIE: And there are two of those. And there is another copy of the lease application and that is an enclosure to the letter of September 4, 1984.
THE COURT: Yes. All right, those documents will be Exhibit 105.

(EXHIBIT 105: Documents containing Andrew George's Signature)

MR. GOLDIE:
Q Mr. Joseph, I suggest that the traditional interest of the Wet'suwet'en in a House territory was limited to trapping and hunting, do you agree with that?
MR. RUSH: I think my friend should explain what he means by "interest".
MR. GOLDIE: The concern. Well, no, the claim to ownership and jurisdiction.
MR. RUSH: That apparently is what you mean by "interest"?
MR. GOLDIE: That's right.
MR. RUSH: Maybe that should be put to the witness.
MR. GOLDIE: All right, I will do so.
Q I suggest to you, Mr. Joseph, that the traditional claim of the Wet'suwet'en in a traditional territory is limited to trapping and hunting rights, would you agree with that?
A I don't think it is only trapping and hunting rights today.
Q I realize that you have said there is something else today, but I am suggesting to you that traditionally the claims of ownership and jurisdiction are limited to the hunting and trapping rights?
MR. RUSH: I think my friend should say what he means by "traditionally".
MR. GOLDIE: Well, other than the claim that is made in this lawsuit.
MR. RUSH: So anything before 1984?
MR. GOLDIE: Let me put it another way.
Q When your uncle was living in the territory of what we know in this case as the House of Gisdaywa there were white ranchers there, weren't there?
A Yes.
Q And I am suggesting to you that the only concern

which your uncle had was in respect of trapping and hunting?

A Not the way they -- the elders and others have put it. When they talk of their land they also put in the word Wa ts'a yid'egh.

Q Yes, and what does that word mean?

A That means everything that came from that territory.

Q Well, I was talking about your uncle. And is it your evidence that your uncle was concerned about everything that came from the territory?

A Yes.

Q Well, when he wanted to farm or ranch he got a piece of land in the same way as the white ranchers did, didn't he?

A Yes.

Q He preempted land?

A I think most of those living close to their territory did.

Q In other words, he applied to the Crown?

A Yes.

Q For property that he could ranch on?

A That is what he did I think, yes.

Q Yes. And I have not seen anything that relates to your uncle that suggests that he claimed the right to farm was a traditional right. Do you ever recall him talking about farming or ranching as being part of the traditional pursuits of the Wet'suwet'en?

A Well, they -- they adapted to everything else, so I don't think you can limit whatever they wanted to do.

Q But when it came to trapping, he talked about that being something which his people had been doing for a great many years, didn't he?

A Yes.

Q So I am suggesting to you that your uncle didn't have the same negotiation of ownership and jurisdiction as you do today?

A He always said -- talked about the land as the land that belonged to the Kaiyexweniits and Wet'suwet'en and they used it as the demand -- they had to meet the demands of the trade before and after the coming of the Europeans. They have trapped to trade with other natives before the coming of white man and then they traded with the white traders that came in. So whatever came out of the land they considered as our resources.

Q Well, under tab 15 of the second book in front of

you there, if I can direct your attention to it, there is a copy of a provincial Order in Council to which is attached -- just the provincial Order in Council. And it is dated October 24th, 1921. And it says:

> "That application has been made by the Department of Indian Affairs, at Ottawa, under the provisions of Clause A, Subsection 2 of Section 7 of the "Land Act", for a granting of a Preemption Record to one Thomas George, an Indian of the Hagwilget Band, covering the south-east quarter of Lot Number 3432, Range five, Coast District, containing 160 acres.
>
> That it has also represented that Thomas George is a young man, twenty-eight years old, and is industrious, intelligent, of good character and a thoroughly deserving Indian.
>
> That it is further reported that Thomas George has a wife and three children and owns three cows, two calves, four horses, harness and wagon.
>
> That the application is favourably reported upon by the local Government Agency.
>
> And to recommend that by virtue of the authority contained in Clause A of Subsection 2 of Section 7 of the "Land Act", a Preemption Record of the parcel of land above described be issued to Thomas George."

And then the next document is a photocopy of a Crown Grant from the Crown to Thomas George of the southeast quarter of Lot 3432, Range five. And that accords with a your understanding that Mr. George preempted 160 acres of land in the Owen Lake district, am I right in that?

A Well, he applied for land. I think when reserves were first established where our people were allotted land through counting the population of Wet'suwet'en. And at the time that the count took place, from what I heard my grandfather say and grandmother, is most of the Wet'suwet'en people were on their hunting territory when the count took place.

Q Most of the pre-recommendations took place on the

hunting territories?
A No, when reserves were first established.
Q I see.
A They -- the count that took place before the reserves were established by counting the number of people in Hagwilget, Moricetown, but most of the hunters were out hunting at the time.
Q I see. I understand you now, yes.
A So they said that when reserves were given out they didn't have enough to cover all the people, Wet'suwet'en people.
Q Yes. And that's why some of them sought to --
A Yes.
Q -- preempt land?
A Yes.
Q But the activity that was carried on was, in the case of your uncle, a farming activity, wasn't it?
A Yes.
Q And the fact -- did he own cows and horses and wagons when you knew him?
A Yes.
Q None of those things are -- were owned or used by the Wet'suwet'en traditionally, were they?
A They were -- after they were introduced they were still being used the same as they would any furs.
Q Yes, we may have not understood each other. My point is that until the white man introduced cattle and horses and wagons, those things formed no part of the traditional Wet'suwet'en activity?
A No.
Q Now, not only did your uncle preempt land, but he sold it to somebody who wasn't a Wet'suwet'en, isn't that so?
A It may have happened, I am not too sure.
Q Well, I want you to look at the next document which in my book is a very poor photocopy of a Deed of Land. Well, the next document I want to refer you to, Mr. Joseph, is over the page and it is headed This Indenture. And I am sorry it is such a poor copy.
THE COURT: September 2, 1937?
MR. GOLDIE: Yes, my lord.
Q And it is between Thomas George and Evelyn Sagor and the legal description coincides with that of the Crown Grant. And the consideration is $300. Would that date 1937 be about when your uncle moved into town?

A I think he moved in before that.
Q And do you know why he did?
A From what I know is that he wanted his children in school.
Q And the school being not on the reserve but where, in Houston or Telkwa?
A Telkwa, yes.
Q He is described as being from the Village of Telkwa, isn't he?
A Yes.
Q And do you recognize his signature at the bottom of the page there?
A Yes, I can see Thomas George.
Q But you can recognize his handwriting, do you?
A Yes, I think it is.
Q And would it be in accordance with what you claim to be the ownership and jurisdiction of this land for your uncle sold that to a stranger?
A What was the question again?
Q I say would it be in accordance with the claim that you are making here of ownership and jurisdiction over this land for your uncle to have sold that land to a stranger for $300?
A No, I don't think it would be in accordance with what is happening today.
Q No. It would be, however, in accordance with Wet'suwet'en law if Wet'suwet'en law was concerned only with trapping and hunting, would you agree with that?
MR. RUSH: I think you should reframe that question, that is not exactly clear.
MR. GOLDIE:
Q Well, I don't know how to make it any clearer. Can you answer my question, Mr. Joseph?
A I don't think it is only trapping and hunting. As I have said before, anything that came from the land was used by the Wet'suwet'en people to trade with other nations. It wasn't only just from hunting and trapping.
Q But your uncle was giving to somebody else the right to take the produce of that land and use it as he or she thought fit, isn't that the result of selling his land to a third party?
A Well, I think whatever he did he done -- he taken his family into consideration.
Q He had taken his family into consideration and also he would take into account Wet'suwet'en law, would

he not?
A He may have had something to do with Wet'suwet'en law. He may have had the use for that $300 elsewhere in Wet'suwet'en law.
Q Well, whatever he did, he gave up forever the right to go back on that land and use it, didn't he?
A I don't think it is forever when you sell something. You can get it back some other way like --
Q I suppose it can be bought back?
A Yes.
Q Yes. But your uncle, however, was very vigorous in his belief that the trap line was the traditional trap line of his family?
A Yes, the whole territory, not only the trap line.
Q Well, did he ever say to you whenever -- well, I should ask you this question first. What was the last time you visited the territory with him?
A Some time in the fifties.
Q Did he ever suggest to you that the homestead that he had on that 160 acres belonged to Gisdaywa?
A Whenever he referred to Owen Lake area he said that was our territory.
Q The Owen Lake area?
A Yes.
Q Which was the area that was part of his trap line at the time?
A Owen Lake and other lakes around it.
Q Yes, I agree. Now, Mr. Joseph, to your knowledge, have other Wet'suwet'en preempted lands?
A I have heard of other preemptions, yes.
Q Johnny David, for instance?
A Yes, I think he talked of preempting.
Q And do you know whereabouts he preempted land?
A No.
Q How about Round Lake Tommy?
A Well, if you are living on a piece of land and you are chased off it, how else could you get it back without going to jail?
Q That may be a very good explanation, but the fact is some of these people, two that I have just named you --
A Yes.
Q -- to your knowledge preempted land?
A Yes.
Q Now, was Johnny David had a hereditary chief?
A Yes.
Q And how about Round Lake Tommy?

A Yes.
Q Were you aware that your cousin claimed -- no, I won't pursue that. Am I correct in my understanding that ordinarily under Wet'suwet'en law that users of land are not supposed to talk about it? And when I say "users of land", I mean the House owners of land are not supposed to talk about it to outsiders?
A Well, I can't say they can't talk about it. They have to inform someone of where their territory is if that person is on or near the territory.
MR. GOLDIE: Yes. Before I go on with that, I am going to tender as an exhibit the documents under tab 15, but I am going to ask your lordship just to reserve a number so that I can obtain better copies.
THE COURT: Well, should we resolve now which ones are being admitted?
MR. GOLDIE: Well, I am going to tender them all, my lord. The Order in Council, the Crown Grant and the Deed of Land for Mr. George to Sagor that they will be tendered under different provisions.
THE COURT: Yes.
MR. GOLDIE: The Deed of Land is tendered because the signature is recognized and also because of the provisions of the "Land Act".
THE COURT: Yes.
MR. GOLDIE: And if my friend requires it I will obtain certified copies of the Order in Council and the Crown Grant and those two are admissible under provisions of both the Evidence Act and the Land Act.
THE COURT: Mr. Rush?
MR. RUSH: Where are these documents from?
MR. GOLDIE: I think they are all from the Registrar of Land Titles in Prince Rupert.
MR. RUSH: They are not in one of the archives?
MR. GOLDIE: The Order in Council may be, but so far as I'm aware the repository of the Bill of Sale, the Deed of Land and the Crown Grant are both in the Registrar's office in Prince Rupert. And any document which is in the Registrar's office when furnished by the Registrar is receivable in all courts of the province as proof of the facts set out and the certificate or the contents or records. That is section 308 of the Land Title Act. I believe it is a section that my friend has utilized in other proceedings.
THE COURT: What are you saying, Mr. Rush?

MR. RUSH: I don't take a position.
THE COURT: All right. Well, those documents then can be Exhibit 106. And you are going to furnish better copies?
MR. GOLDIE: Yes, I am. I just ask that the numbers be reserved.

(EXHIBIT 106: Tab 15 Documents)

THE COURT: I am going to take the afternoon adjournment, but before we do that is it possible to determine where this land is?
MR. GOLDIE: Yes, it is, my lord.
THE COURT: I don't really have to know with any speficity.
MR. GOLDIE: Does your lordship remember, so long ago as it was, that I asked Mr. Joseph if he could identify George Lake?
THE COURT: Yes.
MR. GOLDIE: And the preempted land touches that lake.
THE COURT: So it is not in the Felix George Reserve?
MR. GOLDIE: No, it is just to the southeast of it. The Felix George Reserve is Lot 3417 and this --
THE COURT: That is close enough. I want to make sure. It is in the land claimed as the territory of Gisdaywa?
MR. GOLDIE: Yes, it is.
THE COURT: But is not in the Felix George Indian Reserve?
MR. GOLDIE: No. If your lordship would look at the surveyor's drawing attached to the Crown -- it is attached to the --
THE COURT: Yes.
MR. GOLDIE: It is the second document in.
THE COURT: Yes.
MR. GOLDIE: The darkened spot is the preempted land. And that lake in the lower right-hand corner is George Lake and 3417 is off to the left and above.
THE COURT: Yes. All right. This is quite sufficient for my purposes. May we take the afternoon adjournment.
THE REGISTRAR: Order in court, court is adjourned briefly.
(PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)

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

LISA REID, OFFICIAL REPORTER
UNITED REPORTING SERVICE LTD.

h2 Alfred Joseph (for Plfs.)

(PROCEEDINGS RECONVENED PURSUANT TO AFTERNOON BREAK)

THE REGISTRAR: Order in court.
THE COURT: Mr. Goldie.
MR. GOLDIE:
Q Mr. Joseph, I'd asked you a question and then I went onto another subject and I'll go back to my first question, and that was that users of land are not supposed to talk about it to outsiders, and you pointed out to me that the owners had to talk about land because that's what they did in the feasts. But I am taking this from some notes of an interview you had with a Mr. Daly that Mr. Rush supplied me with, and the distinction that was made there referred to users of land rather than the owners of land, and the example that you gave regarded the boundaries at -- of Emma Michell's land at Sam Goosly Lake?
A Yes.
Q This was in the course of -- you were preparing boundary information for the court action?
A Yes.
Q And you were told by Emma Michell that she did not know the land in detail because she'd grown up on her father's land?
A Yes.
Q And she referred you to Pat Namox who was living on the land although not the owner of the land; is that right?
A I think it was John Namox.
Q John Namox. In any event, when you went to him he told you he didn't know anything about it and referred you to Emma?
A Yes.
Q And when you told him that you were there because Emma Michell had referred you to him, he then told you what he knew about the boundaries?
A Yes.
Q And in both of the cases of Emma Michell and John Namox they were aware that you were seeking this information for the purposes of the court action?
A Yes.
MR. RUSH: It doesn't explain the accounting in the notes.

THE COURT: Well, I'm not even aware of that, Mr. Rush, because I haven't seen the notes and unless Mr. Goldie's going to tender them.
MR. GOLDIE: Well, I hadn't intended to, but if I misstated something and misled the witness, I'd be glad to be corrected.
MR. RUSH: Just that you understated what the conclusion was in the notes. That's all.
MR. GOLDIE: Well, if I've understated something that will turn out to be the last time I hope. But if there's something that I've misled the witness on -- but I'm content with his --
THE COURT: Well, I may have missed something because I haven't really got any evidence out of it all. He was told by Emma to go and see John Namox and he sent him back to see Emma, and then eventually they both told him what their boundaries were and both knew what the -- what he was seeking the information for, but that's all I've got.
MR. GOLDIE: Well, that's --
THE COURT: Maybe there's something more than that.
MR. GOLDIE: No, the point is that the information with respect to those boundaries was given to the witness by virtue of the fact that he was collecting information for the court action.
THE COURT: Yes. Right.
MR. GOLDIE:
Q And that would be so, would it Mr. Joseph, in respect of all of the informants that you obtained information from and which you've given evidence about here, that they were all aware of the fact that you were collecting this for the purposes of the lawsuit?
A Yes. When you say "outsiders" can't talk of territories --
Q I meant -- I meant, and I'm sorry if I've misstated my understanding of these notes. My understanding is that ordinarily users do not speak to outsiders about the territories, the boundaries of territories, that they are on?
A It's outsiders, but other Wet'suwet'en --
Q They're able to talk?
A No. They -- the other Wet'suwet'en -- when you said "outsiders" I thought you meant a foreigner, but they are very reluctant to talk to other Wet'suwet'en about their territory. That's -- each clan have their own -- own territories like, but

like I as a Gitdumden had to seek permission from Emma to talk about her territory like.
Q Otherwise John Namox wouldn't have talked to you?
A No.
MR. GOLDIE: Yes. All right.
THE COURT: So the reluctance is to talk to other Wet'suwet'ens or anyone?
THE WITNESS: Yes.
MR. GOLDIE: Now, there's been a reference to clans, and I want to show you a photocopy -- or a reproduction, a coloured reproduction in the original colours of a map that was marked on Mr. Sterritt's examination for discovery, Exhibit 11, and I just have the two of these. Perhaps Madam Registrar if you'd hand it up to His Lordship and then I'll ask my friend if I can use this one.
THE COURT: Thank you.
MR. GOLDIE:
Q Have you ever seen a map like that Mr. Joseph?
A Yes.
Q Can you tell His Lordship what you know about that?
A It's one that -- like the wolf clan had one green I think it was, fireweed is red, frog is a lighter green or blue, and the small frog clan is light green. And that is to -- there for -- I think this is one of the first ones made of our territory, and the Gitksan colours I think were the same as the Wet'suwet'en in this.
Q In this particular map?
A Yes.
Q Yes. Well, there is a wolf clan in both the Wet'suwet'en and the Gitksan?
A Yes.
Q You say one of the early ones, you mean after the -- before the court case?
A Yes.
Q After the time that you presented the claim to the Federal Minister, the comprehensive claim, in 1977?
A I don't recall whether that one was coloured. I think it was -- the first one was just the one colour. I'm not sure.
Q And do you know who produced this?
A I think Neil -- Neil Sterritt did.
Q Neil Sterritt?
A Yes.
Q Is -- are the clans of more importance in the Wet'suwet'en community than in the Gitksan community

or are you able to make any comparison?
A No, they're just as important in the Gitksan as in the Wet'suwet'en.
MR. GOLDIE: All right. Well, I -- this would be tendered on Mr. Sterritt's discovery, but I'm going to ask that it be received now and marked, My Lord.
THE COURT: Any objection?
MR. RUSH: No.
THE COURT: Yes. Exhibit 107.

(EXHIBIT 107: Coloured map marked Exhibit 11 on Neil Sterritt's exam for discovery)

THE COURT: May I ask please, Mr. Joseph, is the small frog clan a Wet'suwet'en clan --
THE WITNESS: Yes.
THE COURT: -- or both?
THE WITNESS: Yes.
THE COURT: Just Wet'suwet'en?
THE WITNESS: I think it's just Wet'suwet'en. Yes.
THE COURT: Do the Wet'suwet'en also have a fireweed clan?
THE WITNESS: Yes.
THE COURT: And wolf clan?
THE WITNESS: Yes.
THE COURT: And frog?
THE WITNESS: Yes.
THE COURT: But no eagle?
THE WITNESS: Eagle, I think it's Gitksan.
THE COURT: Yes. All right. Thank you.
MR. GOLDIE: My Lord, that concludes my cross-examination, but there are some documents that I have to deal with in the binders.
Tab 1 has been marked.
THE COURT: You're looking at Volume 1 now?
MR. GOLDIE: Yes, I am, My Lord.
THE COURT: Yes.
MR. GOLDIE: Tab 2 has been marked for identification and I won't deal with it further at this point.
Tab 3 has been marked.
THE COURT: Just for identification?
THE REGISTRAR: It's 83.
THE COURT: Oh, I'm sorry, I've got Tab 2. I'm sorry.
MR. GOLDIE: Yes.
THE COURT: That's 83. Yes.
MR. GOLDIE: Tab 4 is --
THE COURT: I don't think it's marked.
THE REGISTRAR: It's 84.

MR. GOLDIE: I think that's the one that I've just tendered -- no, I'm sorry, it's Exhibit 102.
THE COURT: It is? All right.
MR. GOLDIE: Tab 5 has been marked.
THE COURT: Just a moment, please.
THE COURT: Yes. Is that one 210?
MR. GOLDIE: Tab 5 was Exhibit 79.
THE COURT: I'm sorry, yes.
MR. GOLDIE: Tab 6.
THE COURT: I'm sorry, Mr. Goldie, I have to go back. I'm looking at the wrong side of these tabs. What have you got for Tab 3?
MR. GOLDIE: Tab 3 is Exhibit 83. It should be the statement of claim and affidavit.
THE COURT: All right. That map is part of the statement of claim is it?
MR. GOLDIE: Yes, it is.
THE COURT: All right. That explains it.
MR. GOLDIE: You say "that map", the map of the Carrier-Sekani and C territory?
THE COURT: The map that's in the pocket at the back of Tab 2.
MR. GOLDIE: Oh, yes it is.
THE COURT: All right. Yes.
MR. GOLDIE: Tab 4 is Exhibit 102.
THE COURT: Yes.
MR. GOLDIE: Tab 5 is Exhibit 79.
THE COURT: Yes.
MR. GOLDIE: Tab 6 is Exhibit 85.
THE COURT: Yes.
MR. GOLDIE: Tab 7, My Lord, is an extract from Mr. Joseph's response on discovery in his capacity as the Madeek and it -- it was put in to I think identify a map and I would ask leave to file with that the map that accompanied that affidavit. The first interrogatory response was sworn to by Mr. George Naziel and then Mr. Joseph filed the second one and the extract relates to the map that was --
THE COURT: All right. Well, you're seeking to -- you're tendering Tab 7 as the next exhibit?
MR. GOLDIE: Yes, I am.
THE COURT: Any objection, Mr. Rush?
MR. RUSH: No.
THE COURT: All right. That will be Exhibit 108.

(EXHIBIT 108: Volume 1, Tab 7, Extract from Mr. Joseph's response on discovery)

THE COURT: Now, you said something about a map?
MR. GOLDIE: Now, yes. Your Lordship will see that question -- or 6 --
THE COURT: Yes.
MR. GOLDIE: No, it doesn't, but the answer to the question says "schedule B attached to these answers", and those are the boundaries of the territory of Madeek and that I wish to file with that and I will do so tomorrow morning.
THE COURT: All right. And that will be part then of exhibit --
MR. GOLDIE: Part of that exhibit.
THE COURT: -- Exhibit 108. Yes.
MR. GOLDIE: And Tab 8 is Exhibit 82. Tab 9 is the overlay from Exhibit 24 A over the -- a photograph of part of my friend's territorial boundaries, Exhibit 5. I would think it would be a matter of convenience if that was marked, but if my friend is objecting to it I'll take it out.
MR. RUSH: What are you marking here, just the overlay?
MR. GOLDIE: No -- well, both the -- what is the blue ink base from Exhibit 5, and the overlay is from Exhibit 24 A.
THE COURT: There was a question the other day, as I recall it, that Mr. Rush hadn't had a chance to compare the boundaries of the trap lines as shown in the blue ink overlay.
MR. GOLDIE: I think that may be the case.
THE COURT: And I doubt if he's in any better position to deal with that now, but we'll let Mr. Rush --
MR. GOLDIE: I'm content to leave it. Tab 10, there are a variety in there and I think they are --
THE COURT: The number -- that's Exhibit 86 and there's 86 A.
MR. GOLDIE: A, B -- well, B and C are reversed.
THE COURT: I don't have a C. I don't have a C or a D.
MR. GOLDIE: Well, C is the map of Andrew George's trap line.
THE COURT: Oh, yes. I have it. Yes, that's C. You're quite right.
MR. GOLDIE: And --
THE COURT: And B is the application?
MR. GOLDIE: Yes. I don't -- I don't think I need to go any further than saying that there are no documents to be taken out under that tab that I'm aware of.
THE COURT: That can also be marked.
MR. GOLDIE: Under the Tab 11 the document -- the only document that my friend objected to was D., the return of the registered trap line holder of William Boucher and --

1 THE COURT: Well, I'm taking that at the moment as not being
2 proven.
3 MR. GOLDIE: That's right. And I was going to take it out.
4 THE COURT: Well, you're welcome to do that if you wish. I'll
5 give you back your copy, Mr. Goldie.
6 MR. GOLDIE: Yes. I'm just doing this in order to take out
7 documents that shouldn't be in Your Lordship's
8 book -- oh, no that stays in. It's the return
9 signed by Mr. Boucher.
10 THE COURT: Oh, yes. I'm sorry. What does it look like?
11 MR. GOLDIE: That's what comes out.
12 THE COURT: Oh, yes, I'm sorry. I see nothing under Tab 12 that
13 comes out.
14 MR. GOLDIE: Under Tab 13 is unnecessary because Mr. Joseph has
15 brought the house list up-to-date so that can come
16 out of Your Lordship's book.
17 THE COURT: All right. Tab 13's out.
18 MR. GOLDIE: Under Tab 14 there are two documents there that I
19 have a question mark about. One is the will of Matt
20 Michell and the other's the trap line map, and I
21 wrote my friend to say that the trap line map is the
22 same as Exhibit 24 A, so I think that takes care of
23 that.
24 THE COURT: 24 A.
25 MR. GOLDIE: C under Tab 14 is just a photograph of part of 24 A,
26 which has been proven.
27 THE COURT: All right.
28 MR. RUSH: I'm sorry, I had a different listing here. I
29 understood there were one, two, three, four
30 documents under your Tab 14 and the first one was
31 marked Exhibit 90.
32 THE COURT: Yes.
33 MR. GOLDIE: Yes.
34 MR. RUSH: The second one in line was not exhibited. Your
35 Lordship made a ruling that it was not to be
36 included.
37 MR. GOLDIE: That's the will.
38 THE COURT: No.
39 MR. RUSH: No.
40 THE COURT: There's another document.
41 MR. RUSH: There's another page.
42 THE COURT: B.C. Game Department.
43 MR. GOLDIE: It's just the reverse of the application.
44 THE COURT: Oh, is it?
45 MR. GOLDIE: Yes.
46 THE COURT: Well, if your friend is satisfied --
47 MR. RUSH: Do you have that?

1 MR. GOLDIE: No. I think this was --
2 MR. RUSH: It could be the court's copy there. An original may
3 have been --
4 THE COURT: Well, unless Madam Registrar has the original?
5 THE REGISTRAR: I don't have the original.
6 MR. GOLDIE: Not of that one.
7 THE COURT: I notice it has Mathias Michell's signature on it.
8 I don't have it as being marked, maybe because it
9 was the back. If that was explained I don't
10 remember.
11 MR. RUSH: Well, my note here was that it wasn't exhibited and
12 I've been writing that on --
13 THE COURT: Well, can you satisfy your friend Mr. Goldie that
14 that's the back of Exhibit 90?
15 MR. GOLDIE: Well, I believe I can, My Lord.
16 MR. RUSH: If it is I don't have a problem with it.
17 THE COURT: All right. I will leave it for the moment.
18 MR. RUSH: And then the will was not exhibited. You ruled that
19 not to be.
20 MR. GOLDIE: Well, yes. I now have the original.
21 MR. RUSH: Fine. All right. That's the application.
22 MR. GOLDIE: So the application is 90 B.
23 MR. RUSH: Yes.
24 THE COURT: Yes.
25 MR. RUSH: I thought the map was 90 B?
26 MR. GOLDIE: All right. I'm happy to --
27 MR. RUSH: It's just been -- I thought it was marked.
28 THE COURT: I think I have a note 90 B as well.
29 MR. GOLDIE: On the map?
30 THE COURT: Yes.
31 MR. GOLDIE: All right.
32 MR. RUSH: And then the application was 90 A.
33 MR. GOLDIE: Yes.
34 MR. RUSH: And the will was to come out.
35 MR. GOLDIE: Well, I would like to -- I'd like to leave the will
36 in there for identification.
37 THE COURT: All right.
38 MR. GOLDIE: I may tender other evidence with respect to that.
39 THE COURT: Yes.
40 MR. GOLDIE: Might that be 90 C for identification?
41 THE COURT: 90 C, yes, for identification. Yes.
42 MR. GOLDIE: Yes. Now, under Tab 15 those documents have now
43 been marked.
44 THE COURT: Yes.
45 MR. GOLDIE: At tab --
46 THE COURT: That whole document is 106?
47 MR. GOLDIE: Yes, that's correct. Tab 16 is -- there are two

1 documents. Those have been marked.
2 THE COURT: Yes. It's 93 A and B.
3 MR. GOLDIE: Seventeen, there have been --
4 THE COURT: I don't think the first two documents were.
5 MR. GOLDIE: The first two documents were -- we didn't take any
6 further step on them because my friend wanted to be
7 satisfied they were archival. I've written him a
8 letter on that and I'll await his response. The
9 balance of the --
10 THE COURT: All right.
11 MR. GOLDIE: -- documents I believe are proven.
12 MR. RUSH: Except for one question that I had to ask about the
13 application for registration of a trap line. I had
14 agreed that the application, the original
15 application should be filed, and I was told that
16 they didn't have the original and it wasn't in the
17 file.
18 THE COURT: That's right.
19 MR. RUSH: This is the application for registration of a trap
20 line. It's the third -- well, it's -- yes, it's the
21 third page along.
22 THE COURT: Yes. I don't have that marked yet, Mr. Goldie. I
23 remember there was some talk about the original.
24 MR. GOLDIE: My understanding is that that is part of the
25 archival material, but I -- this is not a provincial
26 document and I can't do anything further than that.
27 THE COURT: Well, I don't have it marked as an exhibit yet.
28 MR. GOLDIE: I'd like to then mark it as for identification.
29 THE COURT: Yes. All right. That will be 94 D for
30 identification.
31 MR. GOLDIE: Yes. And Tab 18 I didn't put to the witness. It is
32 a letter from Mr. Andrew George and I'm content at
33 this time to take it out.
34 MR. RUSH: Which one is that?
35 MR. GOLDIE: Tab 18. Tab 19 is -- I didn't tender, My Lord.
36 That is evidence before the Royal Commission on
37 Indian Affairs. It is an extract from an archival
38 document dated May 20th, 1914, and at sometime the
39 whole document is going to have to be filed. It
40 is -- either tender this excerpt now, or reserve the
41 number to file the entire transcript of evidence,
42 which is quite a bulky document, but it's got to go
43 in sometime.
44 THE COURT: Any objection, Mr. Rush?
45 MR. RUSH: I think the proper course here is to have the whole
46 document filed and I agree that a number should be
47 reserved and the whole document should go in.

THE COURT: All right. Exhibit 110.
MR. GOLDIE: The affidavit --
THE COURT: I'm sorry. Well, then should I take it out of this?
MR. GOLDIE: Yes. It can be taken out of this.
THE COURT: All right. I'm sorry, I'll make a note.
MR. GOLDIE: The evidence before the Royal Commission on Indian Affairs relating to the Stuart Lake Agency.
THE COURT: This won't just be May 20th, 1914?
MR. GOLDIE: No, it won't be.
THE COURT: Yes. All right. That number is reserved at 110.
MR. GOLDIE: The next is one that I did not refer to. It is part of the interrogatory response of Lucy Namox and the question that is extracted, questions 47, 48 and 49 when she identifies Felix George as chief of her house who gave evidence before the Royal Commission, I would ask that that stay in this collection and be marked as an exhibit.
THE COURT: This is the response of?
MR. GOLDIE: Of a plaintiff.
THE COURT: Of a plaintiff.
MR. GOLDIE: Yes.
THE COURT: Any objection, Mr. Rush?
MR. RUSH: No.
THE COURT: It will be Exhibit 111.

(EXHIBIT 111: Excerpt of interrogatory response of Lucy Namox, questions 47, 48 and 49)

THE COURT: All right.
MR. GOLDIE: The -- under Tab 21 what was marked was Mr. Thomas George's letter of September 7th, 1945, and what was not marked was Mr. Bryant's letter and Mr. Mallinson's letter. I ask that those be marked for identification as part of the 88 B and 88 C for identification.
MR. RUSH: Now, I don't have the Mallinson letter.
THE COURT: I only have one of the documents.
MR. GOLDIE: Well, at the bottom of the Bryant letter it has been photocopied on the same sheet of paper. It's a letter from Mr. Mallinson.
THE COURT: I see. Yes. All right. The top document, Mr. Bryant's letter, will be 88 B. Is it 88 B?
MR. GOLDIE: Yes.
THE COURT: Then the bottom one will be 88 C.
MR. RUSH: That's for identification.
MR. GOLDIE: For identification.
THE COURT: Yes.

MR. RUSH: Because I think I objected to those and Your Lordship found with me on that objection.
THE COURT: All right.
MR. GOLDIE: Under Tab 22 there is a map of the Gisdaywa territory which is dated May the 22nd, 19 -- I'm sorry, dated May 12th, 1987, but it is different in the outline of the territory than the one that has been marked as part of Exhibit 62 and I would like this one marked.
THE COURT: Mark it as 112.

(EXHIBIT 112: Map of the Gisdaywa territory dated May 12, 1987, Tab 22)

MR. GOLDIE: Yes. Under Tab 23 is a map to which I referred in my examination of Mr. Joseph. It is the map that was presented to the government of Canada on November 7th, 1977, and the witness I believe stated that he was there and was able to identify this as a copy of the map. I neglected to tender it at the time and I do so now.
THE COURT: All right. That will be Exhibit 113.
MR. RUSH: That's marked, isn't it?
MR. GOLDIE: I thought it was but I was told it wasn't.
THE COURT: I don't have it marked.
MR. RUSH: It wasn't marked. It was shown to the witness.
THE COURT: That will be -- all right. It will be Exhibit 113.

(EXHIBIT 113: Tab 23, Map presented November 7, 1977)

MR. GOLDIE: Yes. Under Tab 24 are two letters, one of Mr. Ditchburn of the 25th of April 1923, the second of Mr. Ditchburn of October 21st, 1931, and then there's a third, Mr. Felix George's letter to Mr. Ditchburn of December 12th, 1931. I think all three were objected to.
THE COURT: Yes.
MR. GOLDIE: And I ask that a number be reserved for each of them A, B, and C, as I intend to submit that, and I have written to my friend about the archival source of these, and after he's had an opportunity of checking that I will submit that they should be marked under our agreement.
THE COURT: All right. They'll be reserved as Exhibit 114 A, B and C for identification.
MR. GOLDIE: Thank you. The next document which was part of -- well, Exhibit 25, the next one is Exhibit 80,

they're under Tab 25.
THE COURT: I don't have anything under Tab 25.
MR. GOLDIE: It was taken out, My Lord, and not put into your book. It was tendered before Your Lordship was given a book. It's Order in Council, 911, on July 26th, 1923.
THE COURT: Thank you.
MR. GOLDIE: And the balance of the tabs have all been marked with the exception of the trap line document of Bardon which is 96 for identification and I will write to my friend about that.
THE COURT: Thank you.
MR. GOLDIE: I will ask my friend -- my friend produced the original photographs that accompanied the notes the witness made of the feast at Burns Lake in April 1987. Having looked at the original photographs I'm going to ask him to furnish a copy to be marked as part of those notes.
THE COURT: Do you recall what number the notes were?
MR. GOLDIE: 104 My Lord.
THE COURT: Yes. All right. And so you want the photographs -- how many photographs?
MR. GOLDIE: There is --
MR. RUSH: Eight. No, there's nine.
MR. GOLDIE: Nine, yes.
THE COURT: All right. To be furnished, and they will be 104 A, or such other sequential letters as may be required. All right.
MR. GOLDIE: That -- subject to omissions, errors and otherwise, that completes my cross-examination.
THE COURT: Thank you. Miss Koenigsberg.

CROSS-EXAMINATION BY MS. KOENIGSBERG:
Q Mr. Joseph, I'll be brief, but no matter how fast I try to go, we will not finish in the next ten minutes.
I'd like to ask you first some questions about fishing sites, and you've given us evidence way back in June in Smithers about two of your fishing sites near Moricetown, and I believe your evidence was along the lines that they were on the north side of the canyon up river from the Moricetown Bridge?
A Yes.
Q Do you recall that?
A Yes.
Q And I also recall that your evidence was that members of your house use those fishing sites and members of

your clan use those fishing sites; is that correct?
A Yes.
Q And when asked which members specifically used it, you gave the name Roy Morris. I believe his chief's name is Woos?
A Yeah, Woos.
Q Woos. And Peter Alfred, Kanoots?
A When he was alive. Yes.
Q Yes. And their children?
A Yes.
Q But you did not give any names from your house. Those two persons and their children would not be members of your house; is that correct?
A No.
Q Are there any particular members of your house, that is, the House of Gisdaywa, that use the fishing sites of Gisdaywa?
A My uncle himself, Gisdaywa, used the fishing site when he was alive.
Q That's Thomas George?
A Yes.
Q Since he died, has no member of the House of Gisdaywa used those particular sites?
A Well, the -- I've had not too many members of Kaiyex weniits living there. The one that I recall who used -- who lived at Moricetown is no longer alive either, so the only living member of Kaiyex weniits that lived in Moricetown is passed on. So right now I don't recall any Kaiyex weniits members living around Moricetown.
Q All right. So your evidence is that no members of the House of Gisdaywa any longer live in Moricetown?
A Yes.
Q And no members, as far as you know, are using those particular fishing sites?
A No.
Q And so when you said that you got your fish now from Roy Morris?
A Yes.
Q The reason you don't get fish from members of your house is because none of them are fishing there; is that correct?
A The reason I don't get any fish?
Q I believe your evidence was that you got your fish from Roy Morris?
A Yes.
Q And I take it that the reason you don't get fish from

other members of your house is because they are not fishing at those fishing sites?
A No.
Q I'm not correct?
A Well, none of my members are living there today.
Q And you don't get any fish --
A No.
Q -- from members of your house?
A No.
Q Now, members of the House of Gisdaywa have from time to time applied for and received food fish permits from the Department of Fisheries; isn't that correct?
A Not -- not lately. I don't -- I never. We haven't got any fish permits lately.
Q All right. But you know that in the past members of your house have?
A When you say "past" --
Q The last five years?
A No, none of -- I don't think any of our members applied for permits.
Q All right.
A Like in Hagwilget right now we -- we don't see any use of getting permits because you can't get fish at Hagwilget.
Q Well, on behalf of the Hagwilget band you have applied --
A No.
Q -- for a permit have you not?
A No. No.
Q I want to show you two documents. I'll just put them in front of you and perhaps you can tell me, the copies are not very good, but do -- is that your signature?
A Yes.
Q And is it an Indian food fish licence application for the Department of Fisheries and Oceans for the Hagwilget band members?
A Yes. It's more than five years ago so --
Q Well, I guess you're right. It's for 1982 and we're now in 1988. And you did apply in 1982 on behalf of the Hagwilget members for a food fish licence?
A Yes.
Q For two seasons in fact. We have two licence applications here?
A Yes.
Q For the spring or May season to expire June 11 and one

for July. I believe you applied in July and that would be until November?

A Yes.

MS. KOENIGSBERG: Could we have those marked as the next exhibit, next two exhibits, the first one dated May 25th '82 is document number 5136.

THE COURT: That will be Exhibit 115 and the other 115 -- 115 A rather, and the other 115 B.

(EXHIBIT 115 A: Indian food fish licence application beginning May of 1982)

(EXHIBIT 115 B: Indian food fish licence application beginning July of 1982)

MS. KOENIGSBERG:

Q Thank you. Now, is there a person in your house by the name of J.B. Tom?

A Yes.

Q And might he also be known as Joseph Tom?

A No.

Q No. Just J.B. Tom. And he's the grandson of Mary Michell? Is there a grandson of Mary Michell named Joseph Tom in your house?

A Oh, yes. There's Joseph Tom. Yes, it's Joe junior.

Q I see. To your knowledge has he applied for a food fish licence?

A No, I don't -- he may have applied in Moricetown, but I don't know.

Q All right. But would it be fair to say if members of your house had applied in Moricetown, you might not know about it?

A No.

Q You would not know?

A I would not know. No.

Q You have been a member of the Gitksan-Wet'suwet'en Tribal Council?

A Yes.

Q And when were you -- when did you first become a member?

A Of the Tribal Council I think about '77.

Q All right. And you're aware of an enterprise known as the Northern Native Fishing Corporation?

A Yes.

Q And that's formed by three tribal councils including the Gitksan-Wet'suwet'en Tribal Council?

A Yes.

1 Q And one of the purposes of that corporation is to hold
2 fishing vessels and for the purposes of commercial
3 fishing at the coast; is that correct?
4 A Yes.
5 Q Were you aware that in 1982, 79 salmon fishing vessels
6 were owned and operated by persons covered by the
7 jurisdiction of the Gitksan-Wet'suwet'en Tribal
8 Council?
9 A 19 --
10 Q 1982, 79 of the fishing vessels of that corporation
11 belonged to Gitksan-Wet'suwet'en people?
12 A Yeah, I think I heard something about it.
13 MS. KOENIGSBERG: Okay. And I understand 21 herring gillnet
14 licences through that organization were held in
15 1983?
16 MR. RUSH: Could we determine the witness' source of
17 information?
18 MS. KOENIGSBERG:
19 Q Sure. Let me first ask you if you know about herring
20 gillnet licences being part of that?
21 A No, I don't.
22 Q Do you know --
23 A All I know is it's the sockeye and spring gillnetting.
24 That's all I'm aware of.
25 Q All right. You're not aware of the herring gillnet
26 licences?
27 A No.
28 Q How do you know about the salmon fishing vessels?
29 A Well, I -- the members of the Northern Fishing
30 Corporation come to some of our meetings and report
31 of their -- of the meetings that they've been to,
32 but I'm not too much involved in the fishing --
33 commercial fishing part.
34 THE COURT: Mrs. Koenigsberg, I'm not sure if I've got it right.
35 Are you saying that 79 vessels that are licenced in
36 some way or connected with the Northern Native
37 Fishing Corporation were owned by members of the
38 Gitksan or Wet'suwet'en --
39 MS. KOENIGSBERG: People.
40 THE COURT: -- people?
41 MS. KOENIGSBERG:
42 Q Is that correct?
43 A I don't know whether it's just Gitksan-Wet'suwet'en
44 people. Aren't they three different parts?
45 Q Yes. I'm instructed that 79 of -- there are many more
46 vessels --
47 A Oh.

Q -- as part of that organization, and that 79 of them as of 1982 were owned and operated by persons from the Gitksan-Wet'suwet'en?
A Could be.
Q It's a fairly large number?
A Yes.
Q And can you tell me if you know of any of those who are Wet'suwet'en people?
A There is one or two from Moricetown I think that are involved in commercial fishing.
Q Okay. You are here to assist us with information about the House of Madeek?
A Yes.
THE COURT: Miss Koenigsberg, if you're going to a new subject perhaps we might --
MS. KOENIGSBERG: I'm not, My Lord, and actually this is the last, I hope, short series of questions on this particular topic.
THE COURT: By all means go ahead.
MS. KOENIGSBERG:
Q You're aware that many members of the House of Madeek have held food fish licences including George Naziel, who was the previous Madeek? Are you aware of that?
A No.
Q Do you know anything about members of the House of Madeek holding food fish licences? Do you know any of them who do?
A No. It is handled through the band offices and I'm not involved with Moricetown band offices. I'm just with Hagwilget band.
Q And likewise you would not -- would you have any information about persons in the House of Madeek holding commercial licences to commercially fish?
A No, I don't -- never heard of any.
MS. KOENIGSBERG: That will be a convenient time for me to stop.
THE COURT: Yes. All right. We'll adjourn then until tomorrow morning. Thank you.
THE REGISTRAR: Order in court. This court stands adjourned until 10:00 a.m. tomorrow morning.

(PROCEEDINGS ADJOURNED TO JANUARY 12, 1988 at 10:00 a.m.)

I hereby certify the foregoing to be a true and accurate transcript of the proceedings herein to the

1 best of my skill and ability.
2
3
4 Tanita S. French
5 Official Reporter
6