Vancouver, B.C.
February 17th, 1988.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

THE REGISTRAR: In the Supreme Court of British Columbia. This Wednesday, the 17th Day of February, 1988. Calling Delgamuuwk versus Her Majesty the Queen.

I caution you, Mr. Michell, you're still under oath.

MR. GOLDIE: Mr. Rush was here a moment ago.
MS. KOENIGSBERG: I suspect he just went out to get his gown.
THE COURT: Here he comes. Mr. Rush is rushing back.
MR. RUSH: Sorry, my lord.
THE COURT: It's all right. Thank you, Mr. Rush. Yes, please, whenever you're ready.
MR. RUSH: Thank you. Madam Registrar, would you please place Exhibit 184 before Mr. Michell. Thank you.

DAN MICHELL, Resumed:

EXAMINATION IN CHIEF BY MR. RUSH CONTINUED:

Q Mr. Michell, I'm now going to ask you about the territory of Namox at Neel dzii teezdlii ben. Goosley Lake. Have you been to the Namox territory --
A Yes.
Q -- There? And does the territory at Neel dzii teezdlii ben belong to the house of Namox?
A Yes.
Q And how frequently do you go to that territory?
A I go there very regular like.
Q Okay. Did you and Chief Namox, Lucy William, give Alfred Mitchell permission to speak about the territory and boundaries of Namox at Goosley?
A Yes.
Q And you heard his testimony in court?
A Yes.
Q And you read his affidavit?
A Yes.
Q And is what Mr. Alfred Mitchell said about the boundaries correct?
A Yes, it is.

MR. GOLDIE: Well, I know what would have happened if I had asked that question, my lord.
THE COURT: Your friend would have objected.
MR. GOLDIE: Yes.

THE COURT: Well, I think that what Mr. Rush is not asking the witness to do is to verify the credibility of Mr. Alfred but to indicate the witness' concurrence with what he said. At least, I expect that's what you intended by your question.

MR. RUSH: That's correct. It is. I don't intend to go around the boundaries again, and it -- this may have been awkward, but nevertheless I think the expeditious way to deal with the boundaries of the Namox territory with this witness.

MR. GOLDIE: I agree it's compendious. The question that was put to the witness was have you read the affidavit and have you heard the testimony, and I'd like the two distinguished.

MR. RUSH: Very well.

THE COURT: Yes.

MR. RUSH: Could you place before Mr. Michell Exhibit number 1 of the red book which is Exhibit 185.

Q I'm just showing you Exhibit number 1 of the red book, Mr. Michell. It's Exhibit number 185. It is the affidavit of Alfred Mitchell. Have you read that affidavit?

A Yes.

Q All right. And you've heard Mr. Mitchell's testimony in court?

A Yes.

Q And I want to direct your attention to Exhibit 184, which is the sketch map of the Goosley territory. It may be underneath that red book.

THE COURT: He has it.

MR. RUSH:

Q Now, Mr. Michell, you've had an opportunity of reviewing that sketch map, have you?

A Yes.

Q And do the boundary lines that are illustrated on this sketch map reasonably correspond to the boundaries of the Namox territory?

A Yes, from my understanding when they pointed out these territory to me it looks about right for me.

Q And when you say when they pointed out the territory to me who do you mean?

A Like all the elders like Lucy Namox and Alfred himself, Pat Namox.

Q Okay.

A And even at home my mother described these mountains to us.

Q That's your mother Emma?

A Yes.
Q And were you instructed about the boundary by anyone else?
A Yes. Years ago by my grandfather Alfred Namox.
Q He previously held the name of Namox, did he not?
A Yes.
Q Okay. Now, Mr. Michell, do you recall answering questions on an interrogatory on behalf of Chief Namox, Lucy William?
A On what question?
Q The interrogatory.
A Yes.
Q Do you recall that?
A Yes.
Q And do you recall there was a map attached to that?
A Yes.
Q And have you had an opportunity of reviewing that map in relation to Exhibit 184?
A You mean comparison with this?
Q Yes.
A Yes.
Q And is Exhibit 184 correct?
A Yeah, this is -- seems to be a little more accurate than the other one.
Q Okay. And when you answered the questions on the interrogatories in relation to the boundary at Namox and appended the draft map what did you understand to be the case about the boundaries in the draft map?
A The draft map, to my belief, it was just an approximation. That it wasn't a final draft or anything. It was just sort of a --
MR. GOLDIE: I'm sorry. What was that last word?
MR. RUSH:
Q It wasn't a final draft, but then you trailed off.
A But, you know, like to my mind I wasn't satisfied fully with it.
Q Did you do -- did you have discussions with other members of your house after?
A Yeah. After I talk to the knowledgeable people about where the boundaries were.
Q And who were some of those knowledgeable people that you then inquired with?
A Well, it's Lucy, Namox, Lucy William, and my mother Emma Michell, and Alfred Mitchell, and John Namox, and Pat Namox.
Q All right. John and Pat Namox are the sons of Alfred Namox?

A Yes.
Q Thank you.
THE COURT: They are your uncles then, are they?
A Yes, my lord.
MR. RUSH:
Q And when you refer to Lucy you mean Lucy Holland or Lucy William?
A Yes.
Q Because there is a Lucy Namox, isn't there?
A Yes.
Q And Lucy Namox is married to Pat Namox?
A Yes.
Q All right. Thank you. Now, I want to ask you, Mr. Michell, about the authority of the house of Namox to make decisions in respect of the territory. How do you and the other members of your house make decisions about the territory in respect of its use or in respect of what happens there?
A Well, it's an ongoing thing with all our clan, and especially the ones that hold the names, the chief names. We get together and we all have meetings and discuss what's -- what we're gonna do. Like for the use of it, and how it's going to be arranged, who's gonna look after each area of the territory, and how it's to be used.
Q And who -- who is permitted to use the territory?
A All of our house member, the Tsayu clan.
Q And are there other people who are not Tsayu house members but are given permission to use it by the house?
A Yes.
Q And are the decisions about who is given permission to use the territory, are those decisions of the house?
A Yes.
Q And can you tell me how are decisions reached among the house members and the chiefs of the house? How do you arrive at a decision?
A Well, we usually decide that at the feast hall.
Q Okay.
A Where we can speak about it openly at the feast hall with other chiefs listening in as witnesses. And there that final decisions are made to whatever is gonna happen.
Q Within members of your own house, the house of Namox, when you meet with other Namox chiefs are the decisions that are taken by these chiefs, are they by a consensus or by a majority vote? How do you

proceed?
A At times it's depending on how important the -- whatever needs to be decided upon it would be majority or the consensus.
Q Okay. And that depends on the nature of the decision, doesn't it?
A Yes.
Q Okay. Are more important decisions decided in one way or another? How are more important decisions taken?
A Well, then we really have to contact the head. The head chief has to be present.
Q And in that case is that consensus decision making?
A Yes. At times, you know, the head chief would appoint another one next to herself.
Q Okay. In this court action the head chief has appointed you to speak for Namox, is that right?
A Yes.
Q And is it because Lucy, I think you indicated yesterday, was old?
A Yes.
Q And she's not very well?
A Yes.
Q Okay. And do you recall when it was that Lucy Holland or Lucy William was given the name, or received the name of Namox?
A I couldn't remember the year and the date, but I believe that she held that name for the last 30 years or so now.
Q Okay. And does she have difficulty in getting around, in moving about?
A Yes. For about last five years it seems.
Q And was it indicated to you when you were young that you would be a likely successor to the name of Namox?
A Yes. My grandfather Alfred Namox mentioned that to me when they first took me out on the territory.
Q Okay. And at some of the feasts that are held by the Wet'suwet'en people are you designated to speak for Namox at the feasts?
A Yes. There are times when like these two head chiefs Kweese and Namox had appointed me to speak on their behalf, but other times it would be someone else like Victor Jim, Misaloos, or Amos Naziel, Mutt, would speak on behalf of Kweese.
Q Are there occasions on which when there are duties of the chief outside of Moricetown that you are asked to speak on behalf of --
A Yes.

Q -- Namox? And I take it from what you have said there are also occasions when you are asked to speak on behalf of Kweese or Florence Hall?
A Yes.
Q Okay. And was the All Clans Feast in Moricetown on April the 6th of 1986 one of those occasions on which you were asked to speak on behalf of Namox?
A Yes.
Q Okay.
A At that time I spoke for both Kweese and Namox.
THE COURT: I'm sorry.
A At that time I was to speak for Kweese and Namox both.
MR. RUSH:
Q Now, I just want to ask you if you can recall when the decision was taken that you should speak for Namox in the court case. Can you just tell his lordship how the decision was taken on that particular occasion?
A Yeah. At first when it was decided by our clan to be -- to go into this court case, first of all I believe that Kweese would represent both houses, Namox and Kweese herself, but as they continued to have meetings they decided that both house should be represented separately. And at that time Namox felt that she would speak for herself with interpreter, but later felt she was not well enough to do it so it was decided by all our clans that I should go instead of her and speak in her place.
Q All right. Now, was the decision -- were the decisions that were taken by your clan, Tsayu, and the two houses, were these then announced at a feast?
A Yes. It's always announced.
Q And can you just tell us, Mr. Michell, why it's important to announce it at the feast?
A Well, so that we'd have other chiefs knowing what we're doing.
Q Now, I wanted to ask you again about decisions that are made in the house of Namox. If there is an emergency such as an unexpected death of a member of the house can you tell me what the members of your house do in order to make a decision to deal with it?
A Well, they put up a small feast, and they don't really go into all the food and stuff like that, but they have a smoke feast where they invite all the chiefs in.
Q And then are -- what happens there?
A That's where they decide how they gonna take care of whatever business at hand then.

Q Okay.
A That's when they make decision of how to go about to take care of business.
Q Are the chiefs, the sub chiefs of Namox, are they always involved in these decisions?
A They all have to get together.
Q Are the chiefs from -- from Kweese, are they ever consulted about the decisions, or from other clans is there advice that you take about these decisions?
A Yes. In feast hall Kweese and Namox work very close together. They would work as just one, not a separate house when they are in the feast hall.
Q Okay. So that when you host a feast the Tsayu clan works as one?
A Yes.
Q Okay. What about decisions that are made in respect of Namox's territory, do you work as one there or do you work separately?
A Well, they sort of work together on it. You know, they realize that they too are responsible for two territories, Kweese and Namox.
Q Do the chiefs of Namox make the decisions about the Namox territory and the Kweese chiefs make decisions about the Kweese territory?
A No, they don't.
Q How do decisions about territory get made in relation to Namox's territory?
A Well, like when I say they work together in that manner for the territory Namox is the final head chief that makes decision. Kweese would give her advice in order to work with her.
Q I see. Now, on decisions which are major decisions, if I may put it that way, is it -- must all the members of the house be together or must there be certain chiefs present for those decisions to be taken?
A Well, everybody gets involved. You know, even those members that have no hereditary chief names, they are all involved. Those that have names are the responsible people to carry out whatever business that comes about.
Q Okay. Now, I'm going to ask you specifically, Mr. Michell, about decisions concerning the management of the Namox territory. Do you and members of the house of Namox make management and conservation decisions about the Namox territory at Goosley and in respect of its resources too?

A Yes.
Q Okay. And --
A Like now for example that I am left in charge of it and the chief -- our chief knows my ability to look after the territory, so when I manage the territory I do it without having to run back to her all the time, that she would have confidence in me to take care of it. And then we sort of divide the responsibility as has always been done in our area. We have that where it's called -- on the north side it's called Tsee zuul ts'ak, and the south side is Neel dzii teezdlii they call it. So in the past in my experience Alfred Namox used to look after the Neel dzii teezdlii side.
MR. GOLDIE: Is that the north?
A That's the south. And the north side, what I remember, Alfred Mitchell and big Tommy Mitchell, his dad.
THE COURT: I'm sorry. Alfred Mitchell?
A Yes. And big Tommy Mitchell, his dad.
THE COURT: Yes. They looked after the north side?
A They look after Tsee zuul ts'ak side.
MR. RUSH:
Q Tsee zuul ts'ak side is the north side?
A Yes.
MR. GOLDIE: Is there a number for that?
THE SPELLER: 556. And Neel dzii teezdlii is 542.
THE COURT: Sorry?
MR. RUSH: 542.
THE COURT: Thank you.
A And later when Alec Tiljoe took over he looked after the Neel dzii teezdlii side, and same manner Alfred Mitchell and late brother George Michell looked after the north side. That's what I remember.
MR. RUSH:
Q And Alec Tiljoe held the name of Namox?
A Yes.
Q So there was a division of responsibility for the Namox territory?
A Yeah. It's big territory so they divide the responsibility to look after.
Q Now, in terms of today is the territory similarly divided in terms of responsibility for utilizing the resources in the territory?
A Yes.
Q And what -- what's the division today?
A Well, I myself I look after the Neel dzii teezdlii side, the south side, and Alfred Mitchell and Victor

Jim are assigned to look after the Tsee zuul ts'ak side.

Q Okay. Now, was there a meeting among house members about who should look after the north side and the south side in recent times? I don't mean in -- before the time that you're just now talking about, Alec Tiljoe's time or Alfred Namox time, but recently?

A Yes.

Q Could you just tell us how the decision was taken that Alfred and Victor should look after the north part and you would look after the south?

A Yeah. We talked it over with all our chiefs and we decided that that's how it was done before our time and so we felt that was the right way to go about it. That's how we set it up again. We continue it on how it was taken care of.

Q And is this division in place today?

A Yes.

Q Okay. Now, are there other people that work with you on the south side?

A Yes. You see, like all the members are entitled to use the whole area, the whole territory. The division I talk about for the chiefs is just the responsibility. I can go on the north side, and so Alfred and Victor they can go and trap on the south side any time. It's just the responsibility that is -- that they look after that area. They are in charge of it.

Q All right. Does Pat Namox, is he permitted to work or go to the territory?

A Yes.

Q And what part of the territory does he go to normally?

A He usually go with me in the south side.

Q He works in the south side?

A Yes.

Q Okay. And he -- he is Gus ga bagh?

A Gus ga bagh.

Q Thank you. And he's -- he's Laksilyu?

A Yes.

Q So he doesn't have a right to be there. He's permitted by the house members to be there?

A He's permitted.

Q Right.

THE COURT: Is there a number for that?

THE SPELLER: 411.

THE COURT: Thank you.

Q And does Lucy, when she is able, Lucy Holland William,

1 does she go to the south side at all?
2 A Yes.
3 Q And Susan Alfred is one of the chiefs as well. Does
4 she go to the south side, or which side does she use,
5 or does she use and go to the territory on occasion?
6 A Like I say, she can use both sides.
7 Q Okay. Now, Sarah Tait -- you know Sarah?
8 A Yes.
9 Q She is the sister of Pat Namox?
10 A Yes.
11 Q And Sarah, is she permitted as well to use the
12 territory?
13 A Yes.
14 Q Okay. And do you know Sarah Tait's name to be Wee ha
15 lyat?
16 A Yes. Wee ha lyat.
17 THE SPELLER: Wee ha lyat. Wee ha lyat, W-E-E-H-A-L-Y-A-T.
18 MR. RUSH: Thank you, Mr. Mitchell.
19 THE COURT: She would be Laksilyu as well?
20 MR. RUSH: Yes.
21 A Yes.
22 Q And, Mr. Michell, I understand that both Pat Namox and
23 Sarah Tait are both from the house of Kwen beegh Yex?
24 A Yeah. I believe so.
25 Q And Sarah is Alfred Namox's daughter?
26 A Yes.
27 Q Yes. Thank you.
28 THE COURT: Do we have a number or spelling for --
29 THE SPELLER: 413.
30 THE COURT: Sorry. 415?
31 THE SPELLER: 413.
32 THE COURT: 413. Okay.
33 MR. RUSH:
34 Q All right. Now, Mr. Michell, the -- are non-Tsayu
35 members permitted to use the territory, or to be on
36 the territory with the permission of the house, the
37 chief or the chiefs of the house?
38 A Yes, they are allowed with permission.
39 Q And in giving permission to do so is this in any way a
40 violation of a Wet'suwet'en law, or does this have
41 anything to do with the changing of a Wet'suwet'en
42 law?
43 A No. It's not changing of the Wet'suwet'en law.
44 Usually -- or like my children would be allowed to go
45 there as Neg'edeld'es, but they don't inherit the
46 territory like on the mother's side.
47 Q Yes. Now, I understand that there is berry picking,

to your knowledge, on parts of the territory?
A Yes. There's two that I know of there.
Q Yes.
A One is for huckleberries on the south side.
Q And that would be the south side --
A Of the lake.
Q -- Of Goosley Lake?
A Yes. Neel dzii teezdlii.
MR. RUSH: Thank you. Maybe I could just ask you if you would place Exhibit 184 before Mr. Michell again. Thank you
Q Now, I'm just showing you Exhibit 184 again, Mr. Michell. Can you say at which end of Goosley Lake the huckleberry picking occurs?
A Just along here.
Q You're pointing to the southeast end of the lake. And you said there was another kind of --
A Blueberries. Which is straight across from that.
Q Straight across from that point. So it would be the northeast side, would it?
A Yes.
Q Now, have you hunted bear or moose in the late summer or early fall on the territory?
A Yeah. Mostly every year I go out there in the fall.
Q And do members of your house go out and hunt for bear or for moose in those periods?
A Yes, they do.
MR. RUSH: I just want to show you, Mr. Michell -- could you place before Mr. Michell the exhibit book, please. And I'd ask you to turn to tab 3. This is the black exhibit book for Mr. Michell. Yes. Now, my lord, I have the positive of this photograph.
THE COURT: Yes. My copy's not bad. I can make it out.
MR. RUSH: What I'll do is hand this up to your lordship so you have a copy.
Q Now, Mr. Michell, I just wonder if you can identify the two people in the photograph? First the woman.
A That's Lucy William Namox. Yes.
Q Yes. And the man?
A Sylvester William, her husband. Late husband.
Q All right. And can you say about when this photograph was taken?
A Either during late July or August. First week of August.
MR. GOLDIE: '87?
A Yes. Last --
MR. RUSH:
Q Was it last year?

A Yes.
Q Okay. And you see what appears to be a bear in the back of the truck. Is that what it appears to be?
A Yes, it is a bear.
Q You took this photograph, didn't you?
A Yes, I did.
Q Okay. And was the bear shot on the territory?
A Yes.
Q And was it shot there -- who was it shot by?
A Sylvester Williams shot that bear.
Q Okay. And Sylvester is the husband of, or was the husband of Lucy?
A Yes.
Q And he had rights to be there as a result of that, didn't he?
A Yes.
Q All right. And where -- where was -- the truck that's parked here, where was that located?
A It's parked right beside the cabin. It's on the right hand side of the cabin.
Q Okay. The truck is on the right hand side of the cabin, is that right?
A Yes, from where I took the picture.
MR. RUSH: Now, my lord, what I'd like to do is give you the better copy and I'll -- either it can go into the exhibit copy and maybe you can just exchange that for the photocopy that's here.
THE REGISTRAR: You want this as an exhibit?
MR. RUSH: Yes, I would like that to be the next exhibit, please.
THE REGISTRAR: Exhibit 253, tab 3.

(EXHIBIT 253: Photograph)

THE COURT: I think, Mr. Rush, if you don't mind I just like to look at it and keep all the exhibits together. The bear doesn't appear very clear in the photocopy, but I have no doubts from looking at the picture, and if the witness tells me, that it is indeed a bear.
MR. RUSH: I'll take this out. What's the number of the photograph?
THE REGISTRAR: That will be 253, tab 3.
MR. RUSH: Thank you. Okay.
THE COURT: How did you get the bear in the truck, Mr. Michell?
A Pardon?
THE COURT: How did you get the bear up into the truck?
A Had to pull him up.

1 THE COURT: Not by yourself, I hope.
2 A No. I got strong wife.
3 THE COURT: This is a silly question, but I assume the bear's
4 dead?
5 A Yeah.
6 MR. RUSH:
7 Q Now, Mr. Michell, how do you and the other members of
8 your house consider the resources on the territory?
9 What do you consider it --
10 MR. GOLDIE: Could we confine it to the witness at this point.
11 MR. RUSH: Very well.
12 Q How is it that you consider the access to the
13 resources that you have?
14 A Meaning like what resource?
15 Q I'm thinking of the bear, for example, and moose, and
16 other fur bearing animals, or even the berries and
17 roots. What is -- perhaps I should rephrase it. What
18 do you consider your authority to regulate these
19 resources to be?
20 A Well, it's always been that way in the past. It was
21 handed down to us by our forefathers. And we are
22 brought up in those territory which we know that we
23 belong to the land and the land belong to us. That's
24 one way of putting it. And all the resource in it
25 that we are entitled to it. And that is the reason
26 why we are always taught to respect the land and
27 everything that's in it.
28 Q Is there a phrase that you use that describes the
29 resources and your --
30 A Yes. You see like even from experience I learn from
31 our forefathers that we are created by our creator,
32 and the land that we live on was created by the
33 creator. And he provided for us the resources that's
34 on the land, and we look after it. And we look after
35 the resources, as I would explain it, like it would be
36 like money in the bank with the white man. He don't
37 clean it out and get it empty. He always took care of
38 it and just use so much of it and leave the rest for
39 like safe keeping. You look after it, eh. You don't
40 kill off all the moose or all the other animals. You
41 always took just what you need off the land. And the
42 same thing with the berry patches. They really
43 protect that. I believe they were told that the girls
44 in the clan before they come of age, I don't know
45 exactly what year, 11 or 13, when that happens they're
46 not allowed to go into the berry patches otherwise,
47 you know, berry patches wouldn't produce any more

berries for the future. This is what I meant by that's what I was told by our grandparents. That's how they really look after it, and they really believe it. And same thing for the animals too, you know, when at that age they don't -- they're not allowed to eat fresh meat that is killed on the territory.

Q Who are the main people who look after the resources and harvest the resources?

THE COURT: I'm sorry, Mr. Rush, before you ask that. I think the witness gave us a word that wasn't spelled or identified and which I didn't pick up, that I understood him to be saying this word expressed the sense or entitlement that he has just described.

MR. RUSH: Well, the expression money in the bank is --

THE COURT: No. No. It was considerably before that now. I think he said we call it and I left it blank.

MR. RUSH: I don't -- I didn't hear -- I didn't hear the word myself.

Q Do you remember using a Wet'suwet'en word, Mr. Michell, that stated the authority of the chiefs of the house or yourself in respect of the territory?

THE COURT: It was more -- it was -- I understood it was more a word that described the relationship between the people and the land. Now, I thought there was such a word used, but I may have missed it.

A Was it that part I said that we are part of the land?

MR. RUSH: Yes.

THE COURT: Yes. Was there a word you used that describes that relationship?

A Well, see like I said that --

THE COURT: No, I don't want you to restate it. It may be that I thought you were using a word and I just didn't hear you accurately. The transcript will turn up the words. I'm sorry to interrupt.

MR. RUSH: Very well.

Q Mr. Michell, I want to ask you about who the main people are who look after the resources or who harvest the resources on the Namox territory today?

A Tsayu.

Q And you have indicated that you are one of the people who go there and trap?

A Yes.

Q And who are some of the other people. I know that some people perhaps use the territory more than other people, and at different times. Can you say who today is looking after the resources?

A Well, today we got Billy Mitchell, my cousin. Alfred

Mitchell's brother. He's out there trapping every winter for the last few years. And he's out there trapping right now.

Q And is he in a part of the territory to which you have directed him?

A Yeah. He's been trapping on the north side since before Christmas. When I was back home last -- about two weeks ago and I went and seen him to find out how he was doing, and he only got nine martens so far that time. That is discounting the bigger animals. He got some squirrels and weasel. Don't count them. So I told him to move back to the south side and see how he's gonna make out in that area.

Q And you understand he's trapping there?

A Yeah. When -- in the last time I went home again he came to see me again and he told me that on south side they can only set about six traps to each trapline.

Q Is that a few number?

A Yes. Before I know there used to be 35 to 40 traps in those -- on that side of the mountain, Tsee Delk'en, but it's all been logged off now. All those areas used to set traplines is all cleaned up.

Q That's on the south side, isn't it?

A Yes.

Q And does the logging affect the ability to set a larger number of traps?

A Yes.

Q You said that you were out there about -- you were out to the territory about two weeks ago?

A Yes.

Q Did you go to a cabin that was there?

A Yeah.

Q Is that the cabin -- is that your cabin and the cabin of the house members?

A Yes.

Q Okay.

A I went there and Billy was going to move in there so we went in there and we discovered the cabin was broken into.

Q Is that --

A While I was fixing the lock in that cabin and I didn't see these two people approach the house, the cabin, but I just happened to spot them when they were leaving. And I went out to find out who they were. And I called after them and ask them what -- what they were doing there. And they came -- walked back to the cabin. And I figured he had a uniform, top uniform,

the younger guy. I thought he was from fish and wildlife so, you know, I start to joke with him because they always when they impose their regulation on us and they watch us closely all the time. I thought they were investigating us again so I start to tell him, so you got your lawyers with you this time I said to him, because I see a person dressed in suit and top coat was with him. Of course they walk about thousand miles from the road.

Q Thousand miles you said.

A A thousand yards -- a thousand feet from the road where it's not plowed. Just got snowshoes trail and snowmobile trail, but they walked in there. And after I said that, and then I didn't read what was on his shoulder there. It was somebody from the forestry. And then I introduce myself, and I shook hand with them, and I asked them who they were. And the young guy told me he was with the forestry and he's out of Smithers. But the guy I recognized was Mr. Mackenzie, the lawyer from here. I recognize him so I ask him who he was. He gave me the name. And I ask him where he's from, who he's working for, and he told me he was out of Smithers too. But I didn't agree with him and I told him you're out of Vancouver. Then he changed his mind and said "Well, at least I left Smithers this morning anyway", he said. And are you involved with Equity Mine I ask him, and he said, "Well, I'm working for the government." That's all he told me. That was it. He just walked away, and I explained it that cabin was broken into. And I told that forestry guy that every time the logging takes place, you know, they never notify me at all. Not even in letters or anything. And he wrote it down. And like they always say that they will let people know when they gonna do the logging in trapline areas so could get the person to take his trap out, or something, but in our case it's never been done.

Q Mr. Michell --

A Not to me anyway.

Q Has your cabin been broken into on more than one occasion?

A Yes. Several times.

Q Have you -- have you ever been able to determine who's broken into your cabin?

A No.

MR. RUSH: Could you place Exhibit 208, which is tab 8 in the red book, photograph book from Mr. Alfred Mitchell

before Mr. Michell. I think it's right here, Madam Registrar. Maybe it would be just as easy for me to get it. Thank you.

Q Now, the cabin that you've been referring to, Mr. Michell, is that the cabin that is shown in Exhibit 208?

A Yes.

Q That's your house's cabin, is it?

A Yes.

Q And I just want you to compare the photograph in Exhibit 208 and the photograph that we have marked.

THE REGISTRAR: It's 253.

MR. RUSH: 253.

Q Were they taken at the same time?

A Yes. This is a different angle.

Q Okay.

MR. GOLDIE: The bear is still there.

MR. RUSH: The bear is still there.

Q Now, Mr. Michell, you mentioned that you had made a decision about where Billy Mitchell was going to trap. That he was -- you'd asked him to move from the north side down to the south side and trap on the south side?

A Yes.

Q And when -- when was that decision taken by you?

A About two weeks ago, the first time I went back.

Q About two weeks ago. Was that the last time that you were on your territory?

A Yes.

Q And have you been in Vancouver since that time?

A Yes.

Q Okay. And normally how frequently would you go out to your territory say over the winter?

A Well, if Billy's out there I normally just check with him how he's doing.

Q And if Billy weren't out there how often would you go out?

A That would be during the summer months.

Q Okay.

A I try to get out there every weekend.

Q Now, Billy is trapping for what kind of animal now?

A Well, can be marten.

Q Marten?

A Other fur bearing animals.

Q Now, you indicated that you trapped yourself, and your trapping occurs in the spring and the summer?

A Yeah. I go there springtime for beaver trapping.

Q Okay. And are there management and conservation decisions that you take in respect of your trapping for beaver?
A Yes.
Q What's that? What do you do?
A Well, we look after it by experience that's been handed down to us by our grandfathers and our father. And I spoke on it before, like I refer to it as money in the bank. We know by the size of the beaver house. And if there is a smaller house then we know that there is maybe four beaver in there. And the way we are taught to trap them is that we have to set traps further away normally, and the beaver dam below the house is -- that's where you catch the bigger ones. If you set it too close to the beaver house you normally catch the small one, that's what they say, so we don't do that.
Q You don't do that?
A No.
Q And I think you told us as well that you yourself hunted in the summer months in July and August?
A Yeah.
Q And you're aware of the lottery system used by the provincial wildlife department --
A Yes.
Q -- For hunting? Do you participate in the lottery?
A No.
Q When do you hunt, is that before or after the lottery, or do you --
A Before. But I usually stay out there in the cabin. That's when I usually take my vacation. Take my work and I stay out there. A year ago last fall I didn't go out 'cause I was sick, and I was in hospital during that time. Year ago I watch how the hunters been hunting in our territory. The first two weeks, you know, they -- nobody kill anything. And the third week that I was there I went home on Saturday morning, I went back to the cabin for weekend, I went home and I notice it's about three moose and two deer taken. That just in one day by the pick-ups that's going by our cabin, and --
Q Do you know if these were Indian or non-Indian?
A Non-Indians that's got limited entry. And there are so many of them out in that area at that time. And I've noticed later on when I drive around all those areas where it's been clear cut, you know, you can see where there has been moose killed. The remains of it.

1 And some of them they leave the skin and the legs
2 still there. So then everytime the moose comes out in
3 the clearing it's already got shot 'cause all those
4 clear cut area opening is all occupied by hunters that
5 are going out for the moose to come out.
6 Q You indicated that -- was it last year that you used
7 the cabin for your vacation?
8 A Yes.
9 MR. GOLDIE: He said he was sick last year.
10 MR. RUSH: No. The year before.
11 A Year before.
12 THE COURT: I have a note he said he didn't go out there last
13 fall because I was sick.
14 MR. RUSH: Well, maybe we should clear it up.
15 Q Did you mean last year, 1987, or did you mean a year
16 ago?
17 A '86 I was out there.
18 Q Yes. What year were you sick, do you recall?
19 A '87.
20 Q '87. So it was last year that --
21 A Yeah.
22 Q Okay. But you were -- you were out to take these
23 photographs of Lucy and Sylvester in 1987?
24 A Yes. Well, after I went out there about a week later
25 I had surgery. That's how I was sick.
26 Q I see. Thank you.
27 A Kept me from doing much for time.
28 Q Yes. Is the cabin of the house of Namox that you've
29 shown us in Exhibit 208, is that cabin used by other
30 members of your house for recreational purposes?
31 A Yes. My mother and all of my sisters and nephews.
32 Q And do you know what people do when they -- when they
33 go there for recreational purposes?
34 A Well, they just like being out there. They enjoy
35 outdoor living. Especially the older folks. Once I
36 took -- I went out there with Sylvester and his wife
37 Lucy, they went there, and late Peter Alfred and his
38 wife Madeline and all their family. They all gathered
39 up there on the weekend 'cause Peter Alfred was Alfred
40 Namox's son too. He was from his first wife. That's
41 Pat, kind of step-brother to him. They were out
42 there, you know, just enjoy territory. Of course, you
43 know, when they raise up in the territory they feel
44 they're part of it and they just want to spend time up
45 there, you know, without getting anything out of it,
46 but they just want to be out there.
47 Q And when you say without wanting to get anything out

of it you mean without doing any harvesting of the resources?

A No. Without taking anything from the land they still want to be out there.

Q How old were you, Mr. Michell, when you first went to the Namox territory?

A I might have been about 11 or 12 years old.

Q Is that sometime around the early forties; '42, '43, in there?

A Somewhere around '43.

Q And you remember going out to the territory in that time?

A Yes.

Q And who did you go out with?

A That's when I went out with my parents. My mother, Emma Michell, and little Tommy Michell, my dad. They had along my little sister Beatrice who was just a baby.

Q Was Alfred Namox --

A Alfred Namox and his wife Josephine Namox, and my grandfather and grandmother. And Pat Namox went along with them that time.

Q And what was happening at that time? What were you doing and what were your parents doing?

A Well, they went out there to trap before Christmas. They stayed out there from late October until Christmas time. And that's when my grandfather and grandmother used to tell me story about the past, and sort of teaching me, you know, about how to respect the animals and the territory. And they took me along on their traplines on occasion. And they showed me how to set traps and snares. Snares were for the wolf and fox.

THE COURT: For the wolf and the fox?

A Yes.

THE COURT: Yes.

A Or pardon me, coyote and fox.

THE COURT: Coyote.

A Never seen wolf get caught in a snare yet.

MR. RUSH:

Q It's a bit too wily for that. When you were there at that time when you were 11 or 12 do you remember where you stayed?

A Yeah. It was a cabin that belonged to a settler. I believe he calls John Ericson was the name that had the cabin before.

Q Did he abandon it?

A Yeah, he left it there. And my grandfather knew this guy pretty well while he lived there. He was -- my grandfather was still trapping in the area when this guy lived there. And after he left I don't know what the arrangement was, but I know my grandfather was using that cabin.

Q Okay. Do you remember -- do you remember what part of the territory that cabin was located in?

A Yes. It's below Neel dzii teezdlii ben, Sam Goosley, about a mile and a half down that -- following that creek.

Q Okay.

A You call that Tloogh Tee Teet.

Q They call it Tloogh Tee Teet?

A Tloogh Tee Teet.

THE COURT: Could we have the spelling of that, please.

THE SPELLER: 567.

THE COURT: I'm sorry?

THE SPELLER: 567.

THE COURT: Shall we take the morning adjournment, Mr. Rush?

MR. RUSH: My lord --

THE COURT: Yes. All right. Go ahead.

MR. RUSH: Just let me complete this one line of questioning, if I may.

THE COURT: Yes.

MR. RUSH:

Q I just want to ask you, Mr. Michell, if Tloogh Tee Teet -- just look at Exhibit 184. Is that located where the 1 or an I is located?

A It's right about here.

MR. RUSH: Okay. My lord, he's pointing about a millimetre or two to the right of the 1.

THE COURT: Right.

MR. RUSH: Which is, as you'll see, between the N and the 4 on 184 to the southwest of Goosley Lake. Do you see that? It's a small maroon 1 or I.

THE COURT: Southwest or southeast?

MR. RUSH: Southwest. It's difficult to make out, but it's right here.

THE COURT: All right. Yes, I have a 1 there.

MR. RUSH: It's maybe to the west, but slightly to the south.

THE COURT: All right. I was looking at the other one down there. Southeast one. All right.

MR. RUSH: Thank you.

THE COURT: Thank you.

THE REGISTRAR: Order in court. Court will recess.

(PROCEEDINGS ADJOURNED)

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

_____

Peri McHale, Official Reporter
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(PROCEEDINGS RESUMED PURSUANT TO A SHORT ADJOURNMENT)
THE REGISTRAR: Order in court.
THE COURT: Mr. Rush.
MR. RUSH:
Q Mr. Michell, you said that your parents and your grandparents told you about the territory when you were first out there as a young boy, age 11 or 12. How did you learn about the places on the territory?
A Well, they usually tell me about those mountains that are on the boundaries and some places where they have their traplines, they have names. I can remember some of them.
Q Were you taken to parts of the territory by your --
A Yeah. By my father and my mother. They went as far as Leeyin Diint'ai. They travel alongside the lake from Tloogh Tee Teet onto -- and we camped once before we got to the cabin, trapping cabin. By the way, it's located in Leeyin Diint'ai.
Q Where is the trapping cabin at Leeyin Diint'ai?
A It's east of Sam Goosley by the creek.
Q Is it approximately where the number 2 is located on Exhibit 184?
A Yes.
Q Is that Alec Tiljoe's cabin?
A Yes.
MR. RUSH: Leeyin Diint'ai.
THE SPELLER: I've got that, 565. Tloogh Tee Teet, 567.
MR. RUSH:
Q Now, Alec Tiljoe's cabin, is that still standing?
A No.
Q And did you -- were you told about the places in the northern side of the territory?
A Yes.
Q And were these places told to you by your parents and grandparents?
A Yes.
Q And what places were you told about in the north?
A Well, they call Tsee zuul ts'ak.
Q That's a lake, is it?
A They call the lake up there Tsee zuul ts'ak ben.
Q And is that located where the black "F" is located on the Exhibit 184?
A Yes. I didn't go there at that time, but I went in there later with Alfred Mitchell.
Q And were you told about -- there's a name on the map, C'enexw Dzel ts'aay?
A C'enexw Dzel ts'aay.

Q Were you told about that too?
A Yes. They told me that was our boundary.
THE SPELLER: 552, C'enexw Dzel ts'aay.
MR. RUSH:
Q That name was located on the north-east boundary of the Namox territory?
A Yes.
Q Now, you told us, Mr. Michell, that you were instructed and trained about the territory by your parents and grandparents. Are you yourself training your nephews and nieces?
A Yes.
Q And other members of the house?
A Yes.
Q And can you just say who it is that you're instructing about the territory and what you're telling them? First, who are you telling?
A Victor Jim, my nephew, and his brother, Peter Jim Junior, and my sisters, mostly every one of them that want to come out there with us.
Q Okay. And are you telling them about the territory?
A Yes.
Q And what else are you telling them when they come out?
A Well, we pass on our experience to them, like how to manage the resource, such as moose hunting and beaver hunting.
Q Do you tell them about the --
A We tell them how we don't kill off all the animal at one time. We always use our own judgment, like, to conserve what's there. For example, my sons too, they go out with me, Roger and Brian. Once we went hunting. It was Alfred Mitchell, myself and Brian Michell, my son. We went hunting west end of the lake where we know the moose usually come out towards the evening or early in the morning. When we got to end of that lake, Alfred went hunting towards north. He walked in a bush to hunt, and me and my son, we stayed by the lake. While we waited there, one moose came out with the calf, so we didn't bother shooting it. We just let it be, because it had a calf. It was a cow moose. And I was watching how they were behaving and I just hide there. It made some kind of a noise to the calf there and they wanted to go swim across the lake there, narrow part, and the little one just keep going back to the site where he came from and pretty soon that cow moose just give him a push and somehow it making some kind of noise to it and they

both swam across to the other side. And while they were at the other side there, I could hear Alfred walking back from his hunt. I could hear him through the bush. I stood up and watch out for him. As soon as he came out in the open, he seen these moose, eh. I seen them. Seems like he aimed his gun, so I hollered at him. I told him, "Alfred, it's cow moose. It's got a calf". And he hollered back, "I was just looking at them with my scope". He knew that. He wasn't going to shoot them too. That's how we teach our children when they're with us.

Q Mr. Michell, I asked you about when you first went out to the territory and you talked about the period the early forties. Did you go out again when you were a little older with your father in about '47, '48?

A Yes.

Q And was Alec Tiljoe there at that time?

A Yes, he was, that cabin again in Tloogh Tee Teet.

Q And you were out with your father and --

A My father, yes. He knew the territory too. He been out there with my grandfather before, my father and my mother.

Q Okay. And later were you -- after '47, '48 were you back?

A At that time, you know --

Q Sorry.

A -- we went and checked out all the areas where there's beaver houses and there didn't seem to be any worthwhile hunting, so we decided to go back at the certain date. We stayed there for a while and Alec decided to go back with us at the same time. I guess they arranged that they all going to meet at Neenlii Wek'ut boundary.

Q That's the boundary between Namox and Kanoots Madeek?

A Kanoots. At that time they arranged it so that we met Peter Alfred, late Peter Alfred, late George Naziel, and Peter Jim was with them and they met there at Neenlii. When we walking back, first of all, I guess they told them that they going to need some signs on the trail for them, that they going down to Neenlii, so we follow them down there and that's where they met.

Q And then did you --

A And from there we all went home.

Q Together?

A Together.

Q Were you -- were you back again to the territory with

Alfred Mitchell and Thomas Naziel in the early fifties?

A Yes.

Q Thomas Naziel was married to your sister, Bernadette?

A Yes.

Q Do you remember how long you were out with Alfred Mitchell and Thomas Naziel on that occasion?

A We stayed out there for about a month. At that time we walked in. It'll be over 30 miles' walk in snow-shoes right from Houston on. There was still heavy snow at the time in the spring, and from -- we did the same thing. We camped at Tloogh Tee Teet for a while. We went up to Niss tsee Diizdlee Kwe, the boundary.

Q That's on the east side of the territory?

A Yes. That's where Alfred showed us the -- a big tree, that the bark was peeled off and there was writing on it in -- in Indian writing. We don't understand what it says. There was writing on it. And Alfred told us that was the boundary.

Q Was that the time when Alec Tiljoe was the chief who held the name Namox?

A Yes.

Q And after that time that you were out with Alfred Mitchell and Thomas Naziel, did you go out every so often with your family after that time?

A At that time, after that, even at that time Alec Tiljoe looked after the territory.

Q Okay.

A Along with Alfred Mitchell looking after the north side.

Q Okay. And when you went out to the territory, was it namely in the springtime that you went for the beaver trapping?

A Yes.

Q And did you take turns going out or did you go out every year?

A Well, whoever decides to go out usually go out there and trap.

Q Alec Tiljoe passed on in the early seventies, I understand; is that right?

A Yes.

Q And when -- when Alec passed on, how frequently after that time did you go out to the Goosely territory?

A I go out there very regular after that.

Q Now, the -- are the resources that you have taken from the territory, are these used by you and other house

1 members at your feasts, feasts hosted by Tsayu?
2 A Yes.
3 Q And I understand that an example of a feast where
4 resources have been used was the feast for -- that
5 Lucy Holland, Namox, put up for the gravestone of her
6 brother, Donald Mitchell?
7 A Yes.
8 Q That was in 1978, was it?
9 A Somewhere around there.
10 Q And since that time has -- have meats and resources
11 been saved and used at Tsayu-sponsored feasts?
12 A Yes. Well, for that example there, you know, that --
13 we had the older cabin at the same site where we got
14 the new cabin. That's where Lucy and Sylvester stayed
15 while they hunted for beaver.
16 Q Is that -- is that where number 3 is marked on Exhibit
17 184?
18 A Yes.
19 Q Okay.
20 A I went in there at that time and did some hunting for
21 them for beaver. Everything I hunted I give it to
22 Lucy for the feast.
23 Q Now, the Neel dzii teezdlii territory.
24 A Yes.
25 Q Goosely territory. Why is this Namox's territory, Mr.
26 Michell?
27 A Well, it's been handed down from generation to
28 generation. Everytime, you know, like, another head
29 chief passes on, then it -- the successor has to bank
30 up material and meat for the feast, get ready for the
31 feast to take over the name. It usually takes about
32 three feasts, I think, before it's completed.
33 Q Now, the crest of the -- of Namox is the beaver crest?
34 A Yes.
35 Q And does the crest indicate the history of the House
36 of Namox?
37 A Yes.
38 Q And there's also a -- the eagle crest --
39 A Yes.
40 Q -- for the house; is that right?
41 A Yes.
42 Q And do you understand that the crests of the house of
43 Namox originated with the Kweese raid on Kitimat?
44 A That's what I was told.
45 Q And the -- and those crests have been handed down over
46 the generations?
47 A Yes.

Q Now, are there steps which you have taken to manage and protect your land in the time that you've held the name of Wigetimstochol and even before, I suppose? Are there things that you have done to protect your land?

A Yes. By being out there. First of all, you know, we go in there. We know, like with Wet'suwet'en people, there are other Indians who might come into our territories, so we watch out for that and they too know that they are not supposed to go in there without permission. And then whenever there are nonIndians come into the territories, we always go to them and let them know -- let them know that is our territory and we tell them that we occupy it all the time, like going in there. Even if we don't live there permanently, we still go out there. And anybody who settles -- like, there's one settlement where Tloogh Tee Teet is now. Somebody moved in there. I couldn't recall what year it was, four or five years ago when he first moved in there, and me -- and Pat Namox was with me and our children were with us and we went in there. He had this no trespass sign on there on the road. So we left our vehicle there and we walked in and met with this man and we told him that it was our territory and we normally walk through the area and we used to occupy that cabin that he's taken over. And we told him that, you know, and then he change his mind about us going through his property. He said as long as he know that it's us, he said we could walk through his property, and the reason why he had no trespass sign was that he said his tools have been stolen while he's building a house there. That was what he told us anyway. But after he completed his house, I believe he still had no trespass sign there. It says "Keep out". And we ask him what was his reason for moving out there, where there don't seem to be any civilization there, and he told us that it was for his wife's health reason that -- for a climate condition or something that he chose to be out there. That's what he told us at the time. But since then somebody else has taken over the place again from what I heard, but I never met this guy yet.

Q Did you and Alfred Mitchell pass through this -- the place where he had his no trespassing signs?

A Yeah. It's right on the turn-off on the main road to access.

Q Did you -- you're, of course, aware of Equity Silver

Mine's territory?
A Yes.
Q Did you have any occasion to draw to the attention of Equity Silver Mines and their personnel your concerns about the territory?
A Well, my mother keep writing them a letter about the concern of our people, and at one time there was an acid spill there.
THE COURT: I'm sorry. What type of spill?
THE WITNESS: Acid.
THE COURT: Thank you.
THE WITNESS: So we were quite concerned about what was happening at the time, because that creek coming from that area, from that mine area, that was the creek we use for drinking water. It flows right beside our cabin.
MR. RUSH:
Q I'll just ask you to stop there, Mr. Michell. Are you able to find that creek on Exhibit 184? Does it show there?
A This is the one.
Q If I indicate to you that the "X" on 184 has been identified as the place of Equity Silver Mines and number 3 is the place of your cabin --
A Yes. I believe this is the creek that flows onto the creek over here and then flows into Neel dzii Ben.
Q This creek?
A Yes.
Q Mr. Michell is pointing to the line just below the two triangles, one filled in triangle and the other one an open one, and identifies that as the creek that he's made mention of. And what did you -- what did you do about your concerns?
A Me and Alfred, we went up into Equity Mine and went into their office.
Q Do you remember when that was, Mr. Michell, what year?
A It's 19 -- this happened in 1982, late in the fall.
Q All right.
A That spring we went into the office and we went to trap beaver that spring.
MR. RUSH: The spring of '82, is it?
MR. GOLDIE: '83.
THE WITNESS: '82.
MR. RUSH:
Q It was the spring of '82?
A Yes. This happened in the -- late in the fall of '81, so this hunting season for beaver was in the

springtime.
Q All right. So you and Alfred -- is that Alfred Mitchell?
A Yes. Alfred Mitchell.
Q You went to the mine?
A Yes. To meet with the personnel or anybody that was in charge there, but they were not there, just the office clerks or whoever they were. The girls were there. And we left a message there, the reason why we wanted to meet with them. We were concerned that beaver we take out might be contaminated from that acid spill that flows into that lake and that creek where we do our hunting for beaver. So we told them that was the reason why we wanted to meet with them. And after we went home that time, next morning I get a phone call from Doug Pearce from fish and wildlife branch in Smithers. And the information that he got from the mine was that we told them that we found dead beavers in the lake, in the creeks, which wasn't the case. We did not say that. And I explained to Doug Pearce our concerns too, that we -- when we do our hunting, we eat that meat, you know, beaver. We use that for food. We was afraid that it was contaminated by that acid spill. We want to be sure if it was safe to take the meat for food that particular season. That was the reason why we want to meet with them, but we didn't get to meet.
Q Did you have any concern about the water itself and the --
A Yes.
Q -- ability to drink, your ability to drink it?
A Yes. Since then I usually take water with me from home everytime I go in there, and even today Billy still doing that, bring water from Houston.
Q Is it still a present concern for you about the -- the acid spill?
A Yes, it is.
Q And why is that?
A Because you don't know when they -- when they say they put other chemical in such as lime to neutralize that acid, you still don't know what effect it will do to human being after you consume that over the years, so that's the reason why we can't take a chance. That might affect our health later in the years.
MR. RUSH: Mr. Michell, have you been contacted, or to your knowledge anyone in your house been contacted by Equity Silver Mines or any government official?

MR. GOLDIE: Well, let's keep them separate, please.
MR. RUSH:
Q Yes. By Equity Silver Mines concerning the concerns that you've raised about --
A No.
MR. GOLDIE: Well, I thought he just testified about somebody from fish and wildlife.
MR. RUSH:
Q Well, you asked me to keep them separate.
Now, apart from Mr. -- your contact with Mr. Doug Pearce of fish and wildlife, has any other representative of the government, the environmental branch of the government or any branch of the government contacted you regarding your concerns?
A Well, at that time Doug Pearce, the only one that responded to us, told me to -- any beaver that I catch, to freeze it right away and bring it to them so that they can send it away for testing or something. And that particular year it's been really cold that winter and the weather itself didn't warm up too good that spring. The ice was still frozen in the area when the -- after May the 24th. That ice was still there until June. We didn't do any hunting. We didn't get a chance to do any hunting for the beaver.
Q Mr. Michell, are you familiar with a concern that's been expressed about acid mine drainage?
A Yes.
Q What do you understand that to be in relation to Equity Silver Mines?
A Well, you see, to my understanding, they say that the mine is only going to be there, by reading the papers and Interior News, to maybe 1991 or something like that, I believe, that I read one time. What's going to happen after they left that mine? You know, usually all that acid and stuff like that, you know, that remains there. They might cover it up when they leave, but any case, you know, that never goes away. It's there and it's going to leak out, seep out. It's going to continue to be there. That is our concern.
Q And in this respect do you also have a concern about the water of Goosely Lake and the fish in Goosely Lake?
A Yes.
Q Mr. Michell, you mentioned that your concerns were, I guess -- that your knowledge, rather, about what was happening was due to what you read in the newspapers; is that right?

A Yes.
Q And were you aware of a recent newspaper article in the Vancouver Sun on February the 12th, 1988, which addressed the question of the acid mine drainage at Equity Silver Mines?
A Yes. That exactly just brings out what our concern was.
Q And did this article heighten your concern?
A No. It just verifies that that's what's happening up there.
Q Perhaps I should rephrase it. When you read the article, were you more concerned?
A Yes. I am more concerned.
MR. GOLDIE: He just finished saying no.
MR. RUSH: I think he didn't understand the question.
MR. GOLDIE: He answered very clearly. He said it clarifies our concerns.
THE COURT: He said it didn't heighten his concerns, just clarified it. I'm sorry. Did he say clarified or verified?
MR. GOLDIE: I thought he said clarified.
MR. RUSH: I thought he said clarified, but I also --
THE COURT: I wrote verified, but I'll take your word for it. You can put it again, Mr. Rush.
MR. RUSH:
Q Thank you. As a result, Mr. Michell, of your having read the article in the Vancouver Sun, did you have more concerns about the acid mine drainage?
A Yes.
MR. RUSH: Now, I'm going to ask you a --
THE COURT: I'm sorry, Mr. Rush. Was the article Thursday or Friday?
MR. RUSH:
Q It was Friday, February the 12th, 1988.
I'd like to ask you some questions about another subject now, Mr. Michell. You are registered with the provincial government trapline in the area of the Neel Dzii Teezdlii?
A Yes.
Q And you're registered with a company of other individuals?
A Yes.
Q And those other persons are on the registered trapline, are they Alfred Mitchell?
A Yes.
Q Victor Jim?
A Yes.

Q And Susie Alfred?
A Yes.
Q And Sarah Tait?
A Yes.
Q And is Gloria Mitchell and Lillian Michell also on your registered trapline?
A Yes.
Q And Patrick Namox?
A Yes.
Q Now, you -- there has been entered as an exhibit here Exhibit 245, my lord, which is part of Tab 17 of the black binder that was submitted by the provincial defendant in its cross-examination of Mr. Alfred Mitchell. Yes. I think that's it. Thank you.
I'm just showing you now Exhibit 245. This is an application for a registration of a trapline and you see that the applicant's signature, there's the name Dan Michell. Is that your signature?
A Yes.
Q All right. The people that are registered there as a group, are any of those persons deceased?
A Yes. Pauline Naziel.
THE COURT: I'm sorry?
MR. RUSH:
Q Pauline Naziel.
Mr. Michell, when you signed as the applicant here, what did you believe that you were registering when you signed this?
A First it is for transferring the registration over to me, and to my belief is that to protect that territory from somebody else taking it.
Q Now, the list of people that are registered as a group or a company, are they the only ones that are permitted to trap on your registered traplines, so far as you're concerned?
A No.
Q Who else may go there?
A All the Tsayu clan and their children.
Q And are people who are not Tsayu clan members permitted by your house to trap there?
A Yes.
Q And these are ones whom you wish to permit to trap there; is that right?
A Yeah. It would be the husband of the Tsayu clan or, like, for example, my sons can go there by permission.
Q And Billy Mitchell's name is not here on this list, but he is permitted by you to trap there?

A Yes.
Q Mr. Michell, you'll notice on the left-hand side of the lower portion of Exhibit 245, it says that "Formally the trapline of Alec -- or Tiljoe Alec and Company, Moricetown, B.C." and then below that it says, "Alec Tiljoe is deceased. Emma Michell was made head man. Line is being transferred to Daniel Michell and Company as per band council resolution January 21, 1976". And then in brackets it says, "TL1/76". Now, I want to ask you about the statement there as per the band council resolution January 21st, 1976. Can you explain what relationship that has, if any, to the transfer of the trapline, the transfer of the registered trapline?
A You mean the band council resolution?
Q Yes. The reference to the band council resolution, what does that mean?
A Well, as far as I can remember back, being the chief and even before that when Johnny Mack was the chief, I remember one incident when Louie Joseph was selling a trapline that belonged to his late father, it was registered into, and he was a member of his father's trapline. When his father passed away, he made a deal with one nonIndian by the name of -- Forsythe was his last name. I forgot his first name.
MR. GOLDIE: What's his name?
THE WITNESS: Forsythe. I believe he gave him some money in payment of that trapline, but when the company found out, like, the game warden, Les Cox, would not transfer that into that nonIndian's name before he made sure that this is what the people wanted, so he notified the band council.
MR. RUSH:
Q That is Les Cox did?
A Les Cox.
Q He was the fish and wildlife officer for a number of years in Smithers?
A Yes. And when the people found out, the Laksilyu clan, they put up a meeting where they invited Les Cox in too and all the family of Louie Joseph, all his sisters and his mother. As a result of that meeting, they put a stop to that sale of trapline, and that's when I first seen that they use band council resolution to accompany any transfer of trapline. And I believe that was just to prevent something like that from happening. You know, the hereditary chief usually make a decision in a feast hall. They talk

about what's going to happen. They let all the other chiefs know when the transfer's going to take place. When everybody agree, nobody disagrees with it, then they accompany it with the band council resolution before transfer takes place.

Q So do the hereditary chiefs after the discussion in the feast give instructions to the band counsellors to --

A To the band counsellor, yes.

Q -- to pass the resolution?

A Yes.

Q And the example that you've been talking about in respect of -- is it Louie Joseph?

A Yes.

MR. RUSH: I want to ask you to look at Tab 4 of the black binder that's in front of you. And there's an exhibit under Tab 4 called 223. I'd just ask you to look at the first document under 223. I'm sorry. Your first document is different from my first document in my book. I'm just going to ask you to look at the fourth document in the line. And I'm not sure, my lord, whether or not it's the same fourth document that you have.

THE COURT: It's got a --

MR. RUSH: It's in relation to --

THE COURT: -- document's number.

MR. RUSH: It relates to the -- specifically to the Louie Joseph and Company, George Joseph line. It's dated January 18th, 1975.

THE COURT: Does it have a document's number at the top?

MR. RUSH: It does, but it's difficult to read. It's XRTL14/75.

THE COURT: Oh, under Tab 4. I'm sorry. Yes. I think I have it. Yes. I have it. Thank you. It's Exhibit 223.

MR. RUSH: Yes, it is, but there are four documents under 223.

THE COURT: Oh, all right.

MR. RUSH:

Q And I'm only referring to one of them at the moment. It's the one in relation to the Louie Joseph and Company.

Now, Mr. Michell, is that the band council resolution that you have just made reference to that was passed --

A Yes.

Q -- following the instructions of the hereditary chiefs?

A Yes.

MR. RUSH: Was that -- I'm not sure whether that actual document

was included in Exhibit 223.
THE REGISTRAR: Yes. All four.
MR. RUSH: All four.
THE COURT: All four were.
MR. RUSH: Thank you.
THE COURT: Maybe in view of what's happened, we should mark them 223A, B, C and D.
MR. RUSH: We should be sure which ones are which because they -- my lord, the -- the numbering or the sequencing in this volume is different, so it may be that they're all different. The one that I have is -- the first one is --
THE REGISTRAR: 223, the first date is June the 7th, 1982.
THE COURT: Yes. That will be A.
(EXHIBIT 223A: Band council resolution dated June 7, 1982)
THE REGISTRAR: Second date is September 10th, '79.
THE COURT: That will be B.
(EXHIBIT 223B: Band council resolution dated September 10, 1979)
THE REGISTRAR: Third date is September 10th, '79.
THE COURT: Yes. That will be C. And that one, is the number at the top 97/08/99?
THE REGISTRAR: Yes.
(EXHIBIT 223C: Band council resolution dated September 10, 1979)
THE REGISTRAR: And the last one is January the 18th, 1975.
THE COURT: The one that we were just looking at identified as 223D?
THE REGISTRAR: Yes.
(EXHIBIT 223D: Band council resolution dated January 18, 1975)
THE COURT: All right. Shall we adjourn, Mr. Rush?
THE REGISTRAR: Order in court. Court is adjourned until two.

(PROCEEDINGS ADJOURNED)

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

Kathie Tanaka, Official Reporter
UNITED REPORTING SERVICE LTD.

1 (PROCEEDINGS RESUMED PURSUANT TO LUNCHEON RECESS)
2
3 THE COURT: Mr. Rush.
4 MR. RUSH: Thank you.
5 Q Mr. Michell, before you I've placed Exhibit 223A, B, C
6 and D, and prior to the luncheon break I had asked you
7 about Exhibit 223D involving the band council
8 resolution for Louis Joseph and Company, and you've
9 told us about that. And I want you to look at the
10 other band council resolutions. If you look at 223A
11 this involves the Alexander Dennis and Company
12 trapline. Was this -- was this BCR or band council
13 resolution passed pursuant to directions from the
14 hereditary chiefs?
15 A Yes.
16 Q And did -- did this BCR in this form, did that reflect
17 the transfer of the trapping rights according to the
18 mater line or mater linear line or the traditional
19 trapping rights?
20 A Yes.
21 Q I'd ask you to look at 223B which involves the Matthew
22 Sam and Company trapline. Was that band council
23 resolution also passed pursuant to instructions from
24 the hereditary chiefs?
25 A Yes.
26 Q And did this also conform to the traditional trapping
27 system?
28 A Yes.
29 Q And Exhibit 223C, which is the next in line, the Louie
30 Tommy and Company trapline, was this passed pursuant
31 to instructions from hereditary chiefs?
32 A Yes.
33 Q And did that also conform to the trapping of the
34 traditional system?
35 A Yes.
36 MR. GOLDIE: Well, excuse me. By that does my friend mean the
37 mater lineal line?
38 MR. RUSH: I think so.
39 Q We understand that, do we, Mr. Michell, that when I
40 say traditional according to the mater lineal line?
41 A From our proper inheritance on the mother's side it
42 comes.
43 Q Now, I want to go back to the application for
44 registration of a trapline that is found in Exhibit
45 245, or at tab 17 of the same book. Just move
46 forward, Mr. Michell. Take you to tab 17. Now, you
47 see the bottom left hand corner the reference to the

fact that the transfer to Daniel Michell and Company as per band council resolution. Was that band council resolution passed pursuant to the instructions of hereditary chiefs of Namox in the clan of Tsayu?

A Yes.

Q And did this too conform to the passing of the trapping area in accordance with the mother's line?

A Yes.

Q Now, Mr. Michell, were you -- these band council resolutions, to your knowledge, are such documents used today?

A For the last two years that I was in council I don't remember of any requests was made to us for band council resolution.

Q Who requested these of you when these band council resolutions were provided? Who made those early requests?

A I believe the fish and wildlife wanted that company transfer of registered trapline.

Q Did they require it?

A I do not know how it came to be, but when I got elected, and even before I got elected I seen them doing it that way.

Q The fish and wildlife wanted this though, did they?

A Yeah.

MR. GOLDIE: I think he said they wanted something about the company.

THE COURT: Yes, he said that.

MR. RUSH:

Q Do you know, Mr. Michell, if they wanted the band council resolution to accompany is what I thought he said. Accompany.

MR. GOLDIE: No.

A Anyway --

THE COURT: Shall we have it read back?

MR. RUSH: I'm happy to have it read back.

THE COURT: What have you got, madam reporter?

(REPORTER READS BACK)

MR. RUSH: Well, that answer doesn't make any sense if it isn't accompany.

MR. GOLDIE: It made perfect sense to me, because the initial discussion was with respect to a company.

THE COURT: Yes. That's how this question was introduced.

MR. RUSH:

Q You've heard the discussion, Mr. Michell, what did you

mean by what was just said?
A I meant that these BCR is required to go along with the transfer that's being made.
Q To go along with it?
A Along with it. That's what I meant by company.
Q All right. Mr. Michell, thank you. I'm not going to refer you to those further. I want to ask you -- yes. Thank you. I want to ask you again about the Namox territory at Neel dzii teezdlii, Goosley Lake. Can you tell his lordship what the effect has been, if any, on your rights of access or to use of your territory as a result of the logging on that territory?
A Did you say the rights of access or --
Q All right. Can you tell me what the effect of the logging has been on the territory of Namox at Goosley Lake?
A Yes. Years ago when my grandfather Alfred Namox did his hunting and trapping in the area, you compare that to today when Billy Mitchell is trapping in the area, whereas Alfred Namox usually gets somewhere in the neighbourhood of hundred marten and other fur bearing animal, and today Billy can only come up with nine. And I remember back when Alec Tiljoe took over. That's when they really started logging in that area on Neel dzii teezdlii side, south side. And he was unable to trap that area because of the logging. And all through that time he tried to go out and trap, but he was not successful. And he's been complaining about it. At that time if you complain to anyone you have to go through Indian agent in our district in order to get to the government 'cause they usually write up letters for the individual such as the chiefs, the hereditary chiefs, and people that live in the villages. On their behalf the Indian agent used to write letters for them. So they have to write letter to him to complain about these matters like logging.
Q Do you know how long ago it was that Alfred Namox took upwards of a hundred beaver?
MR. GOLDIE: Or was it marten?
MR. RUSH: Yes, that's right, it was marten.
MR. GOLDIE: I think it was marten --
MR. RUSH: Yes, it was marten.
MR. GOLDIE: Marten and other fur bearing animals.
MR. RUSH:
Q Well, Mr. Michell, let's -- when you referred to the

hundred of the Alfred Mitchell, or excuse me, Alfred Namox, were you referring just to marten or were you referring to marten and other animals?

A Well, he usually gets a hundred marten and then got other fur bearing animals besides

Q Was there additional fur bearing animals?

A Yes.

Q Do you know what the number would have been of the other animals?

A I don't know, because they don't -- when they come and report back -- you know, like in the feast hall they would mention how many they got. They don't really mention all the other fur bearing animals. They usually use the marten or the beaver.

Q How long ago was that?

A It was in between early forties and maybe late thirty.

Q I'm going to ask you about another area now, Mr. Michell. Your wife is Catherine?

A Yes.

Q And she is in the house of Knedebeas?

A Yes.

Q And have you gone to your wife's territory with her?

A Yes.

Q And is this the Knedebeas territory that's generally located at Poplar Lake?

A Yes.

Q Okay. And does Poplar Lake, do you know what name that goes by on government maps?

A Well, in our language they call it Tac'ets'ol'een.

THE SPELLER: 325.

MR. RUSH:

Q And have you also been with your wife to a lake called Pack Lake?

A Yes.

Q Which is in the -- is that also in the Knedebeas territory?

A Yes.

Q What is the name of that lake in Wet'suwet'en?

A Xel ben.

THE SPELLER: 363.

MR. RUSH:

Q Have you been with your wife at either Poplar Lake or Pack Lake and harvested any of the animals there?

A Yes.

Q And what have you harvested?

A Well, in there all I hunted is beaver in spring, and moose, bear, deer. I usually go fishing for lake fish

like white fish, char and trout.
Q Were you on that Knedebeas territory with your wife's permission?
A Yes.
Q And have you been there with other members of the Knedebeas house?
A Yes.
Q Who are they?
A My wife's grandmother Christine Holland.
Q Did she hold the name of Knedebeas herself?
A Yes. One of her son, Ben Holland. And my wife's cousin Sam Seymour, and my father-in-law Sylvester William.
Q Have you been out there with Namox? Have you been there with Lucy Holland?
A Yes. Sylvester, he was told to look after the area, same as Alfred Mitchell, for his children like my wife, and all the rest of the children like Helen, Doris, Warner and Gerry.
Q That's Warner Williams, isn't it?
A Yes.
Q And Gerry?
A Gerry Williams.
Q Was this indicated at a feast?
A Yes.
Q Was that by Christine Holland?
A By Christine Holland.
Q And Warner Williams, is he -- what name does he go by?
A Noostel.
Q That's in the house of Knedebeas?
A Yes.
Q And Sam Seymour, do you know which house Sam is in?
A Yes. He's brother of the present Knedebeas, Sarah Layton.
THE COURT: I didn't get Warner Williams.
MR. RUSH: Noostel. I believe N-O-O --
THE SPELLER: 188.
THE COURT: 188. Thank you.
MR. RUSH:
Q So Sam would be a Knedebeas as well? Sam Seymour.
A Same house, yes.
Q Yes. Thank you. Now, Mr. Michell, I'd like to place before you the red photograph binder, and I'll ask you to look at tab 21 of this binder which is marked as Exhibit 221. And do you recognize the people in this photograph?
A Yes.

MR. RUSH: The Polaroid shot is in the witness' copy, my lord.
THE COURT: Yes. All right.
MR. RUSH: It's dated May 1980.
Q Who are the people there?
A Sylvester and Lucy.
Q Lucy?
A Williams.
Q Lucy Williams is Namox, and that's Sylvester Williams?
A Yes.
Q And they're standing in front of a cabin?
A Yes.
Q And can you say where that cabin was located?
A Yes. It's -- I don't know. I never tried a compass in that area, or anything but --
Q Perhaps it's just the lake.
A It's just the lake. It's on -- could be on the north side 'cause it's --
THE COURT: I'm sorry.
A Could be on the north. As I said, I'm not too sure because I don't --
THE COURT: Of what lake, please?
A It's Poplar Lake. It's Tac'ets'ol'een. And right near the end -- the end of the lake there is the outflow of the lake.
MR. RUSH:
Q Have you seen that cabin?
A Yes.
Q Okay. Now, I'd like to refer you to tab 4 of the black photograph or document book that was introduced. I just ask you if you can recognize in this copy there's a photocopy, but in my copy there is an original. Do you recognize what is shown in that photograph?
A Yes.
Q What is that?
A That is the remains of that cabin that was sitting on before it burned down. It's kind of a float thing.
Q When you say the remains of the cabin, is that the same cabin that's shown in Exhibit 221?
A Yes, that's the one.
Q And who is the person that's in that photograph?
A It's Catherine Michell, my wife.
Q Okay. And do you recall when that photograph was taken?
A Last year was '77. I believe it was '76.
Q That would be '86?
A '86. Pardon me. I'm ten years behind.

MR. RUSH: Does your lordship want to see the --
THE COURT: Oh, I think it's all right. Yes -- well, yes. Perhaps I should. Yes. Thank you.
MR. RUSH: Thank you. I'm going to place the original print in the witness copy, my lord, and I'm going to ask that be marked as the next exhibit, please.
THE REGISTRAR: Exhibit 254, tab 4.

(EXHIBIT 254: Photograph)

MR. RUSH:
Q Mr. Michell, do you have any knowledge as to how that cabin burned?
A Well, that summer -- like my father-in-law and Lucy, his wife, they trap in that area every winter. They looked after the territory. But during the summer they still go back up into the territory just to live out there 'cause they enjoy being out there, and they do fishing in summertime too in the lake. And they keep all their gears in there for trapping and fishing. And they usually keep that cabin locked. And it got broken into it maybe couple of times for all these years that it's been sitting there. Once when it was broken into they had a 20 horsepower outboard motor was taken out of there, and it's never been recovered. And that last time they went there that's when they discovered that the cabin was gone, was burned down. And they intended to live out there and do some fishing. When they went back they found that cabin was gone.
Q Do you know when that was?
A It's in 1976 during the summer months.
Q Okay. You said --
THE COURT: I think '86, isn't it?
A '86.
MR. RUSH: Yes. Thank you, my lord.
A And they had to go home. And they told us about it. And later me and the wife went with Sylvester and we went back there to see what had happened. And that's when I took this picture -- photo. And we've inquired about it with the forestry, and they deny burning it. This was during the hot summer when the fire closure was on. Nobody was allowed to do any burning. So we assumed that it was the forestry that did it because all the area was pretty dry so whoever decided to burn that to prevent forest fire. I believe they had pump and everything set up before they burn it down, but

they deny it.
Q Mr. Michell, were any of the contents of what used to be in the cabin, were any of those found?
A I'm coming to that.
Q I'm sorry.
A 'Cause we had a cook stove in there, and a heater, and the place had a metal roof on, and there was some beds, spring beds, and as you can see we don't find any of the remains there. It's all cleaned up. If someone else had accidentally burned this the remains could have been there.
Q Did you find any of the contents of it?
A No.
Q All right. Now, Mr. Michell, I'm going to ask you about another area now. Thank you. You were the chief councillor at Moricetown for 12 years?
A Yes.
Q And can you tell the court what types of decisions the band council primarily makes?
A Well, I look at it this way, we don't have much of authority. Like the band council we get elected under the Indian Act, and when we carry out business in the band level, which means in the village, we usually go by the regulation from Department of Indian Affairs. It doesn't matter what kind of project we undertake we usually go by what the Indian Affairs tell us to do. Mostly the decision that are made are always seem to be made by somebody in Ottawa by the treasury board they tell us. It always goes down the line from regional and then to our district office and then to us, and we just carry out what they tell us to do.
Q What kinds of decisions are made by the band council of the village? Could you give us some examples. I don't --
A Any project we're gonna take on or any kind of a decision usually is brought out at the general meeting by all the band members, interested band members I should say, and there are always some hereditary chiefs in it. And they sort of give us direction on whatever project that's needed in the village such as use an example, for building a school. See they wanted a school right in the village rather than our children travelling 20 miles every day to school in Smithers, so it was decided over a five year period before the construction went ahead that that's when they give us this direction and it's up to the band council to work on it along with the band manager.

Q Does the Village of Moricetown maintain a fire department?
A Yes.
Q And is there a volunteer group of members of the Village of Moricetown that staff the fire department?
A Yes.
Q And can you tell his lordship does the fire department also operate an ambulance service?
A Yes.
Q Does that fire -- does your fire department and the ambulance service serve the village?
A Yes.
Q Does it serve people who are off the village who are not members of your village?
A Outside of reserve too, yes.
Q Including non-Indian people?
A Surrounding area of Moricetown.
Q Including non-Indian people?
A Yes.
Q Are there hereditary chiefs who sit as the councillors --
A Yes.
Q -- Of the band?
A Yes.
Q Is it -- is it customary for there to be hereditary chiefs who are councillors or chiefs of the band?
A Customary?
Q Well, for example, you have -- you have been a -- or you have been a band chief for 12 years, and you are a hereditary chief?
A Yes.
Q Prior to you I understand it was Johnny Mack who was a chief councillor. Was he a hereditary chief?
A Yes.
Q Are there hereditary chiefs, to your knowledge, who are presently on the band council?
A There was always one or two.
Q Right.
A Or more at times.
Q Okay. Do you -- can you recall who are the present members of the council?
A My last term I could remember them.
Q Yes. All right. Let's go to your last term.
A There was Warner William.
Q Warner William?
A Yes.
Q And I think you've said that he holds the name of

Noostel.
Q Yes.
A He's in Knedebeas house?
A Yes.
Q Yes?
A Doris Michell.
Q Does Doris hold a hereditary chiefs' name?
A Yes.
Q Do you recall what that is?
A Just slips my mind now.
Q All right. Who else was on that?
A Yes. She holds a name, but I just couldn't remember right at the moment.
Q All right.
A Alfred Mitchell.
Q Okay. Who else was on there?
A Ronnie Mitchell.
Q Yes.
A Victor Jim.
Q And Victor Jim holds an hereditary chiefs' name?
A Yes.
Q That is Misaloos?
A Yes. Misaloos. And Antoinette Austin.
THE COURT: Sorry?
A Antoinette Austin.
MR. RUSH:
Q And did she hold an hereditary chiefs' name?
A Yes.
Q Do you recall what that is?
A No.
Q Okay. Now, Mr. Michell, I want to ask you if when you were chief councillor you were aware of a proposal which has been called the blanket trapline proposal to set up a registry of traplines under the Gitksan Wet'suwet'en Tribal Council?
A Yes.
Q And can you advise whether to your knowledge the chiefs of Moricetown, the hereditary chiefs of Moricetown participated in this project?
A Yes.
Q And how did they participate? What did they do to your knowledge?
A Well, there was several meetings were called in different villages. I believe once they were invited into Hagwilget village, and then there was other time that I was there too in Kitsegukla village. And there was -- I can remember one in Moricetown.

Q And were these the meetings -- meetings of chiefs and house members to discuss the proposal?
A Yes.
Q And can you tell his lordship what the purpose of the blanket trapline proposal was, as you understood it?
A Well, that -- at that time we were -- then we were informed that the change of legislation was taking place, and the fish and wildlife branch were -- says that you have to harvest a fur bearing animal every year. If you don't do that within two years that the fish and wildlife will transfer the trapline to anyone else that's going to use it. That was one reason. And the other reason would be for some areas of the trap -- registered trapline some of the trapline, the territory, the owners of the territory feels that, you know, the map is not accurate in most cases. See like our elders, they know their boundaries by mountains and streams, but when the white people came with their maps and their surveyors they drew the lines in conjunction with the numbering that they put on the maps. And when they registered those trapline they have to follow those surveyors' line. And most of our hereditary chiefs they didn't agree with those lines, but they only went along with it because it was -- they figure it's close enough, but they themself know where their boundary is, so -- 'cause I listening to their meetings they say if they put the blanket registration trapline on they would then later on sort out their boundaries themselves within themselves, and it would be managed by Gitksan and Wet'suwet'en Tribal Council, and all the files would be kept in their office it was decided by the chiefs.
Q And do you remember the year that the project was first proposed? Do you remember when it was?
A I believe it was 1983, or something like that.
Q Okay. And did -- was part of the project that the Wet'suwet'en chiefs were to assign their interest in the registered trapline to the Gitksan Wet'suwet'en Tribal Council to manage that trapline on their behalf?
A Yes.
THE COURT: Who proposed it?
A The chiefs.
THE COURT: The tribal council or the chiefs apart from the tribal council?
MR. RUSH: He said the chiefs.
A The hereditary chiefs.

THE COURT: The hereditary chiefs.
MR. RUSH:
Q Now, what was the -- I want to show you, Mr. Michell, a document which is at tab 5 of the book.
THE REGISTRAR: Black book.
MR. RUSH: Yes, the black document book.
Q Okay. I just want to refer you first to the second of the two pages. This is the document which appears to have your signature on it, is that right?
A Yes.
Q And that's in respect of a trapline registered in the name of Dan Michell?
A Yes.
Q And it says:

> "I, Dan Michell the holder of the above mentioned registered trapline hereby authorize the transfer of my interests in the registered trapline to the Gitksan Wet'suwet'en Tribal Council Association. For the purposes of this transfer, I agree to the cancellation of the boundaries of my registered trapline from Trapline No. 0609T064 Grid 93L/East to a blanket registry held in the name of the Gitksan Wet'suwet'en Tribal Council Association."

And then signed by yourself. Was that -- was -- does that state what your understanding as to what was to happen?
A Yes.
Q And then the -- will you look at the other page there, the first of the two pages under that tab number five. This is a document that is dated May the 8th, 1984 after the one that you signed. Did you receive a copy of that -- of that document, Mr. Michell?
A Yes.
Q Okay. And did you understand that the persons who had signed this document were the officers of the Gitksan-Carrier Tribal Council at that time?
A Yes.
Q I noticed, Mr. Michell, that under the name of the vice president it's G.W.T.C.A.. Can you -- can you recall whether or not at the time of this letter the tribal council was known as the Gitksan Wet'suwet'en Tribal Council? That's in May of 1984.
A I didn't get --
Q I'm just wondering, the letterhead says

Gitksan-Carrier Tribal Council. See it at the top?
A Yes.
Q And the authorization is to the Gitksan Wet'suwet'en Tribal Council, and then you'll see the first line of the letter indicates that it's Gitksan Wet'suwet'en Tribal Council.
A Yeah.
Q And was it your understanding that the name had been changed by that time to the Gitksan Wet'suwet'en Tribal Council?
A Yes. They used to use Gitksan-Carrier before. The reason --
Q Do you know -- sorry.
A The reason why it's changed was that we were called Wet'suwet'en in the beginning, always been called Wet'suwet'en, and that Carrier -- I guess they call us Carrier, the white people call us Carrier people because of all along the valley there all the way up even to Prince George and east there they're called Carrier at that time.
Q All right. Now, Mr. Michell, do you know what happened to these documents?
MR. GOLDIE: Well, before you answer that question, my lord, I'm not sure what the relevance of this is. When I sought to examine, I think it was Mr. Sterritt for discovery on this I was told this wasn't a relevant matter.
THE COURT: On what basis are you putting it forward, or for what purpose, Mr. Rush?
MR. RUSH: Well, I'm putting it forward to demonstrate the efforts taken by the hereditary chiefs to influence and direct their authority in respect of their traditional trapping areas and trapping areas which have been defined for them by the Fish and Wildlife Department as registered trapline -- traplines. And the relevance of this is to demonstrate the efforts taken in 1984 by them to respond to the system that they were under at the time, and a system that was threatening to have their traplines taken out from under them if it were not for the fact -- if they were not trapping within a two year period. And in my submission what this demonstrates is the response of the hereditary chiefs to what is essentially an act of -- an arbitrary act which goes to their very -- one of the very key features of their livelihood. That is to say their trapping authority. And this was the response. And in my submission you've heard at considerable length about the registered traplines,

the registered trapline boundaries, the regulations of the Fish and Wildlife Department in relation to the registered traplines. We are -- it is suggested again and again that these traplines represent alienations of some form or another, although I think that is a misdesignation. But I think that what it will be proposed at the end of the day by my learned friend is that here is a demonstration under the fish and wildlife legislation of the exercise of provincial authority through the Fish and Wildlife Act, or the Game Act, its predecessor. And that this in some way or another was a supplanted or removed the authority of the hereditary chiefs. And we say that we take issue with that. And we -- I think there is no understating the clash of two legal approaches, one pre-supposed by the province, and the other by the hereditary chiefs. And in my submission what this demonstrates is a response by the hereditary chiefs to a situation where they were going to lose their traplines, and I think it's highly relevant in the litigation.

THE COURT: Mr. Goldie.

MR. GOLDIE: Well, if that explanation had been given to me and I had been allowed to continue my examination for discovery I would have continued it. As far as I'm concerned if that's what my friend's position is I think he ought to be allowed to proceed.

THE COURT: So do I. I think you should have brought an application, Mr. Goldie. Go ahead, Mr. Rush.

MR. GOLDIE: I should say this, that the reason I didn't was that at the time the position was taken that the Gitksan Wet'suwet'en Tribal Council was not a plaintiff.

MR. RUSH: And that's still the case today. They're not a plaintiff.

MR. GOLDIE: Well, my friend is saying that they are. That they cats paw the hereditary chiefs. That's what he's saying.

THE COURT: Well, we'll see.

MR. RUSH: If that can be taken out of my words I would be amazed, but I've been amazed before.

MR. GOLDIE: And you will again.

MR. RUSH: No doubt.

THE COURT: Want to mark these?

MR. RUSH: Yes, please.

THE REGISTRAR: There are two documents. Which ones do you want?

MR. RUSH: I think I'll mark them separately. If we could mark the first of the two, April 19th, 1984.
THE REGISTRAR: Which one is that?
MR. RUSH: That's the second of the two in order. I would like them switched in order.
THE REGISTRAR: That will be Exhibit 255, tab 5, and Exhibit 255A.
MR. RUSH: Yes, please. Thank you.
THE REGISTRAR: And 255B the May 8th, '84.

(EXHIBIT 255A: Letter dated April 19, 1984)

(EXHIBIT 255B: Letter dated May 8, 1984)

THE COURT: Yes. All right. What do you think, Mr. Rush, is this perhaps a better time to adjourn than in the middle of your next question?
MR. RUSH: Yes, I think it might be.
THE COURT: All right.
MR. RUSH: Thank you.
THE REGISTRAR: Order in court. Court is adjourned.

(PROCEEDINGS ADJOURNED)

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

_____
Peri McHale, Official Reporter
UNITED REPORTING SERVICE LTD.

(PROCEEDINGS RESUMED PURSUANT TO A SHORT ADJOURNMENT)
THE REGISTRAR: Order in court.
THE COURT: Mr. Rush.
MR. RUSH:
Q Mr. Michell, before signing Exhibit 255A that's in front of you, were there any meetings of the members of your house, the House of Namox, regarding the blanket trapline proposal?
A Yes.
Q And was there discussion about the proposal?
A Yes.
Q And were you authorized to sign the document here on behalf of your house?
A Yes.
Q And do you have knowledge about whether or not other Wet'suwet'en chiefs sign similar documents?
A Yes. Like, each representative, each clan, you know, they usually go back to their head chiefs and -- who are not present at times, you know, several meetings. At times, you know, even when they're present, some of them don't really understand. Then we explain it to them, what it's all about, and then, in turn, they tell us, you know, in their own mind how to go about it and then we -- that's how we arrive at the decision.
Q Do you know whether or not these documents were sent to the fish and wildlife office?
A Yes.
Q Do you know if there was a response by any officer of the fish and wildlife office?
A Well, not directly to us.
Q Pardon me?
A Not directly to us.
MR. GOLDIE: Well, is my friend going to pursue that?
MR. RUSH: I can only go -- pursue it as far as the witness' knowledge and if he doesn't know about a response, I can't go any further.
MR. GOLDIE: He said not directly to us, but he has also identified the tribal council as the hereditary chiefs. I used the words "cat's paw" a few minutes ago, to which my friend objected, but I'll use the word "agent".
MR. RUSH: I --
THE COURT: I think that it is at least at worst a matter for cross-examination, Mr. Goldie. I don't think your friend is required to pursue it.
MR. GOLDIE: No. It's just going to extend the

cross-examination, obviously.
THE COURT: All right.
MR. RUSH:
Q I had been trying to avoid that and out of consideration for that.
Mr. -- Mr. Michell, do you know whether or not there was a response to the tribal council or any of the chiefs who make up the tribal council to the proposal of the -- for the blanket trapline?
A Well, to my knowledge, I think it's been turned down.
Q All right. Thank you. Mr. Michell, I'm going to ask you about another subject now. Do you have knowledge of a fishing site in the Moricetown Canyon that belongs to the House of Namox?
A Yes.
Q And were you -- do you have knowledge about the -- about that fishing site prior to the building of the fish ladders which are in the Moricetown Canyon?
A That means before --
Q Yes.
A -- fish ladder?
Q Yes.
A Yes.
Q And in order to build the fish ladder, was blasting required of rocks in the canyon?
A Yes.
Q Okay. Now, were you -- or do you have knowledge of the response of other chiefs or people in the village of Moricetown to the blasting of the rocks in the building of the ladders in the Moricetown Canyon?
A What is --
MS. KOENIGSBERG: Before my friend pursues this, maybe this is an appropriate time to suggest if this line is directed to the jurisdiction of the federal government as opposed to what has been loosely referred to as the limits of the jurisdiction of the federal government -- we seem to be going at damage caused by or unlawful or inappropriate acts of the -- of fisheries. In my submission, that's not covered by the pleadings and my friends ought to seek to amend their pleadings if they want to adduce this kind of evidence. It did come up when we were in Smithers and I think it sort of wandered off with regard to fisheries at that time.
THE COURT: What is the purpose of this evidence, Mr. Rush? What is it aimed at?
MR. RUSH: Well, may I first say that in response to my learned

1 friend, that Mr. Macaulay just the other day, I think
2 it was last Friday, conceded that the question of the
3 fishery was -- was an issue in the trial, and I mean
4 if my friend is now saying that it isn't an issue in
5 the trial, then I see that as somewhat of a
6 contradiction between what her colleague said last
7 Friday and the present position.
8 MS. KOENIGSBERG: Well, lest my friend worry that I'm going to
9 contradict Mr. Macaulay, I certainly don't seek to do
10 that. I think Mr. Macaulay and I would both agree if
11 my friend is leading this evidence such that he is
12 going to be arguing that it goes to the jurisdiction
13 of the federal government as opposed to any limits
14 which he might argue are placed on the jurisdiction of
15 fisheries, then, in my submission, the pleadings do
16 not cover that, and because of the way he's going at
17 this evidence, I think it raises the reasonable
18 suspicion that it is not directed at whether fisheries
19 is exercising their jurisdiction in one way or
20 another, but whether they have jurisdiction.
21 THE COURT: Well, I -- I wonder if this touches the question we
22 talked about on Friday. That is whether there's any
23 challenge in this action at all to federal presence in
24 the territory. I hope to be able to deliver some
25 reasons for judgment tomorrow that -- that deal with
26 that question, and I have reached the conclusion that
27 the pleadings as they stand do not challenge federal
28 jurisdiction within the territory, but I don't think
29 that that's a problem that we have to be too concerned
30 with now. We've heard this on a number of occasions
31 from other witnesses and the pleadings may be amended,
32 so it seems to me that we're going to hear this
33 evidence, I suspect, in one form or another. I
34 confess I'm not sure what it relates to. I'm not even
35 sure I understand the dichotomy counsel just described
36 here this afternoon. Are you talking about limits of
37 jurisdiction?
38 MS. KOENIGSBERG: Well, my lord, it actually is rather
39 confusing, but what I understand the issue to be, when
40 Mr. Macaulay said we understood after delivery of an
41 expert report that fisheries -- that the limits of
42 fisheries' jurisdiction were being put in issue, not
43 whether fisheries has jurisdiction, but, for instance,
44 when we're to use the sparrow analogy, it does not
45 challenge that fisheries has jurisdiction or that
46 decision doesn't stand for the proposition that
47 fisheries does not have jurisdiction over fishing, but

rather are they exericising their jurisdiction within certain limits.

THE COURT: Is there activity within the jurisdiction?

MS. KOENIGSBERG: Yes.

THE COURT: All right.

MS. KOENIGSBERG: Now, I, frankly, don't believe my friends have even raised that issue on the pleadings, but we couldn't say that we weren't aware that they were raising the issue, whether they had properly raised it on the pleadings or not. When we get into the issue, any other issue -- in our submission, we had no idea until Friday the extent to which our friends are purporting to put in their case as it seems to be directed against the federal government, railways, airports or the activities of Indian affairs in administering their jurisdiction under the Indian Act. That seems, from what my friends say, to be an issue. It is not raised in the pleadings. Now, when we're dealing with evidence again which doesn't seem to be going to conservation but the reaction of the plaintiffs to the exercise of fisheries' jurisdiction, it seems to me that -- and it doesn't seem to be directed to conservation or anything else. It raises the issue again and, in my submission, the only way we can deal with whether the pleadings are going to be amended and we can have this issue squarely out and know the case that we have to meet, we have really no choice but to object as this evidence goes in, and if my friends want to go ahead and lead this evidence, then, in my submission, they should amend their pleadings to be able to do so, and if they're not going to amend their pleadings, this evidence ought not to continue to clutter up the record.

THE COURT: Mr. Rush, what are you saying about these fish ladders? That they're improperly there and should be removed or that they've had an adverse effect on fishing or what?

MR. RUSH: Well, I think we've tried to bring forward evidence that said a number of things. Certainly one of them isn't that they're there and they should be removed, although I haven't canvassed that with my clients. Maybe they'd like to see them removed. But I do think that there has been a -- a number of serious adverse impacts of the building of the fish ladders. These adverse impacts are advanced to the Moricetown people as benefits and so are said to be under the jurisdiction of the federal fishery power, and of no

1 doubt it will be argued that -- and I think there's a
2 distinction here without a difference. Federal
3 fisheries will say they can do anything in respect of
4 the fisheries. They would say they could put a dam
5 there. And I say, with respect, that building a fish
6 ladder for the people at Moricetown was akin to
7 putting a dam there.
8 THE COURT: Well, I'm not sure if it was put there for the
9 benefit of the people at Moricetown either. I really
10 don't know what it was put there for, but it might
11 have been to enhance the salmon stocks for coastal
12 fishing for all I know. That may have been the --
13 that may have been the purpose. I'm not sure we're
14 going to investigate that issue. Maybe we are.
15 MR. RUSH: Well, I think, my lord, that you've heard some
16 evidence about the impact on the way of life. What I
17 think is important in respect of the evidence is that
18 there is a way of life that's led by the Wet'suwet'en
19 people.
20 THE COURT: Yes.
21 MR. RUSH: And one of the ways of life is that fishing sites
22 were separately owned by the houses and the chiefs in
23 respect of the Moricetown Canyon, and that that -- the
24 blasting of the ladders or the rocks and the creation
25 of the ladders has had a serious impact on the ability
26 of the chiefs in the exercise of their way of life, in
27 the exercise of their authority in respect of their
28 own community and in respect of their fishing
29 community, which is essential to their way of life in
30 terms of the way that they can carry out their fishing
31 today. And you will -- I think that it's a very
32 serious question for the people at Moricetown to deal
33 with the -- their regulation of their fishery and,
34 therefore, the exercise of their jurisdiction in
35 respect of the fishery, and I think that because of
36 the distinctions drawn in the -- in terms of
37 jurisdictional powers, it doesn't mean to say that in
38 respect of those jurisdictional powers that the
39 Wet'suwet'en people exercise their life in along the
40 boundary lines, if you will, of those jurisdictional
41 powers. In fact, the people have an integrated and
42 holistic way of life and I say that you can't cut out
43 the way that people fish and exercise their authority
44 over their fishing sites from their authority in their
45 house, from their authority in respect of their land,
46 and I say that it is very important for your lordship
47 to hear the adverse effects upon the people, their way

of life of such major interruptions, such as the blasting of the Hagwilget rock and as the blasting of the rocks in the Moricetown Canyon.

THE COURT: I'm not going to stop you, Mr. Rush, because you've said enough to satisfy me that there may well be a -- and even on the pleadings as they stand now, a relevance to this evidence in the areas you've just described. I think that it's safe to leave for future consideration the extent of the usefulness or applicability or even admissibility of the evidence that -- that I've been hearing you mention, these fish ladders. At the moment it's my view that the facts of the ladders being present is a neutral fact except to the extent that you've just described. That is the impact that it has on Wet'suwet'en life. I am not at the moment convinced, simply because I haven't pursued it very far, whether a change of that kind, as recently as 1950's, would mean all that much in this case, but this isn't the time to make a decision. Those matters are pretty much in my mind at least. I think you may proceed. I think we're going to have to spend some more time on this very subtle area. I look forward to hearing from counsel further after.

MS. KOENIGSBERG: Just so I can understand your lordship so we can have maybe a bit of direction as to when this might be raised again --

THE COURT: Oh, you can bring it up any time,

MS. KOENIGSBERG: My friend, as I understand it, is saying one way or another that the jurisdiction of fisheries is being challenged and that while this evidence may go to argue the social structure, if you will, or the economic structure, traditional structure of the -- of the plaintiffs, it also is for the purpose of establishing that the federal government does not have lawful jurisdiction over fisheries in the claim area. If that is the case, I have to simply say that the evidence should not be going in on the present pleadings and we'll have to object each time until there is an amendment so that we have some way of dealing with what the issues are as against the federal government.

THE COURT: I have concluded that the evidence is admissible on the basis just described by Mr. Rush. I think that's all that's necessary for the evidence to -- to be heard. The effect of it is another matter and I'll -- I'll no doubt hear from you in due course during the trial or during argument whether that evidence can be

1 used for any other purpose. I'm admitting it now for
2 a limited purpose. That's what Mr. Rush has
3 described. But I don't think you're under any
4 misapprehension, Miss Koenigsberg, about the position
5 of the plaintiffs. Mr. Grant made that abundantly
6 clear on Friday, that the plaintiffs are saying that
7 the jurisdiction of the chiefs supersedes the federal
8 power in the territory in relation to fishing and
9 transportation. That's what I understood him to say.
10 MS. KOENIGSBERG: Yes. And I did understand him to say that,
11 and I think I understood your lordship also to say
12 that at the end of the day you would be unable to make
13 such a declaration even if the evidence were to
14 somehow convince you that was the case because it was
15 not on the pleadings.
16 THE COURT: If I indicated that -- I don't think I went that
17 far. I think I'm going that far in my writing.
18 MS. KOENIGSBERG: That was my understanding. So I guess I'm
19 slightly nonplussed as to the meaning of the pleadings
20 in this particular action.
21 THE COURT: Well, I'm sure you'll be able to control yourself
22 for the rest of the afternoon.
23 MS. KOENIGSBERG: I'll try to get plussed.
24 MR. RUSH:
25 Q Now, Mr. Michell, as a result of the blasting of the
26 rocks in the Moricetown Canyon, was there an impact on
27 Namox's fishing site in the canyon?
28 A Yes, there was.
29 MR. RUSH: What was that?
30 THE COURT: I'm sorry. Your questions related to the impact of
31 blasting. I think you meant to go on to include the
32 construction of the ladder, did you not, or did you?
33 MR. RUSH:
34 Q Well, I can frame it up as a conjunctive.
35 Mr. Michell, I'll just rephrase my question. In
36 terms of the impact of the blasting of the rocks and
37 the building of the fish ladders, has there been an
38 impact on Namox's fishing site in the Moricetown
39 Canyon?
40 A Yes.
41 Q Can you just tell us what that has been?
42 A Well, before the fish ladder, Namox fishing site
43 called Ooyuk'een. We used to fish there for spring
44 salmon. And after the fishing ladder was put in, it's
45 not -- that fish ladder was not erected right over the
46 fishing site, but the blasting fill up the hole where
47 they used to catch fish and that fishing site is not

usable anymore after that.

Q Were there other fishing sites at the canyon, so far as you know, that were impacted by the blasting of the rock and the building of the ladders, other fishing sites of other chiefs?

A Yes.

Q Now, prior to the blasting, do you -- are you aware of the response of the people at the village of Moricetown to the proposal to blast the rocks and build a fish ladder?

A Yes. There was quite a few meetings before that fish ladder was put in by the people of Moricetown and Hagwilget, and at that time I believe that was Harold Morgan or somebody from Kitwanga was the man that was speaking on behalf of the Moricetown people.

THE COURT: Was that Carl Morgan?

THE WITNESS: Harold.

MR. RUSH:

Q The late Harold Morgan?

A Maybe I got the name wrong, but that's what I remembered. And the Indian Nation was always involved.

Q Now --

A And they would tell our people that it would be a benefit to them, and they put it to them like they would put in a fish trap at the end of the fish ladder or something; that they would have more access to the fish when they needed it, and they will even put in walk-in freezers for them. But people still didn't go along with it. They still think that in the future there wouldn't be as much fish as there used to be on account of the fish ladder. But then again they promised them that they would bring in a carload of fish if they have to to the village if the people don't get as many salmon as they used to. I believe all along the people knew. The way they protested is that God had created this canyon in order to regulate it, or the salmon is regulated according to God's plan, they say, these old people. See, like, before that fish ladder was put in, as far back as I can remember, you can see all those streams from Sus Kwe all the way up to the Moricetown Fall. There was creeks that coming in into the Bulkley. In the fall you used to see them just full of coho salmon spawning in those creeks. But after that fish ladder was put in, you see there is no more fish into those streams. There's none in them. They're all filled up with

leaves, whereas when it was a spawning bed, you see all the sand on the bottom just full of fishes. So I guess the old folks knew that that's what would happen, so they really oppose that on that basis. And we seen the result after, because I know the old people. Like, the old ladies from Hagwilget is one of my grandmother, Rosalie Austin. He spoke up and said in our own language, he said, "Don't blast that rock because God put it there for a reason". And like I said, I've complained a lot of times myself too against the completion of Kemano Dam. I spoke in that meeting for our people and I told them that the government keep fooling around with nature. Pretty soon they're going to destroy everything, whereas we say that God created everything and he had a plan for everything, but the government thinks they're going to change it and make it different. Anything artificial don't work.

Q Mr. Michell, from your own experience can you -- can you say whether there has been a reduction on the number of -- or strength of the runs, the number of fishing or strength of the runs that pass through the Moricetown Canyon since the building of the fish ladder?

A Yes. Quite a bit. One thing it did do, like, all those fishing sites were destroyed. That's how our hereditary chief had their -- sort of regulate the fishing in the area. They controlled it. But it's not there anymore now.

Q Are the hereditary chiefs regulating the use of the fishery at the Moricetown Canyon today?

A In a way they've -- they had meetings about this by telling us at the meetings their concerns about how to regulate the fishing, because of some of the families don't get any salmon, whereas just a few people usually catch salmon and most of the families don't get any, and that was brought up. So they made the recommendation, the chiefs themselves, that we put someone in charge; that they should try to give some salmons to all the elders in the community and try to sell all the salmon that's caught there.

Q Are there certain people who are designated fishermen to fish for the elders?

A Well, it was decided that people only under the age -- like, no one under the age of 16 should be allowed to fish.

Q This was the chiefs that decided this?

A Yes.
Q Yes.
A Because it was too dangerous for the younger one to go fishing there, and so only the able-bodied person to do the fishing. Like, even myself now, I'm too old for that, fishing there, fishing site.
Q Did you -- did you get fish in the last fishing season?
A Yes.
Q From whom did you get your fish?
A I got some from Roy Morris and my -- one of my nephews. Peter Jim Junior gave us some.
Q Do you know if Roy Morris and Adam Gagnon were fishing for fish for the elders?
A Well, I know they fish, but I don't know who they give the fish to. I don't keep track of that.
THE COURT: Excuse me. I take it that you didn't -- you can't answer Mr. Rush's question that Roy Morris and Adam Gagnon fished for elders. You just know they fished for some other people, do you?
THE WITNESS: Yeah. They said they did, but I didn't -- I didn't witness them giving it to a certain person, but I know they did fish for some elders.
THE COURT: Do you know if it was for elders or was it just for others?
THE WITNESS: Well, a lot of elders were thanking them after in the feast hall.
THE COURT: I see.
THE WITNESS: Getting fish from them.
THE COURT: Thank you.
MR. RUSH:
Q Are there -- are there meetings of the people who fish in the canyon and the chiefs during the fishing season concerning the fishery?
A Yes.
Q Was there an attempt by the hereditary chiefs to regulate the fishery through a by-law?
A Yes.
Q And are you able to say when that occurred? Do you know what the date of that was?
A Could have been 1983.
MR. RUSH: All right. Now, I'd like to refer you, Mr. Michell, to the black document book.
THE COURT: Big one or small one?
MR. RUSH: The large one.
THE COURT: Thank you.
MR. RUSH:

1 Q It's the one the provincial defendant used in the
2 evidence of Mr. Mitchell. I'll just refer you to Tab
3 19 of this book and at Tab 19 is Exhibit 248, which is
4 a by-law for the preservation, management,
5 conservation and use of fish on reserve and
6 traditional lands, rivers and waterways of the
7 Moricetown band. Do you recognize that document, Mr.
8 Michell? It's a document of several pages.
9 A Yes.
10 Q I think if you look to the back of this, your
11 signature is shown there as a signator to the band
12 council resolution passed on the 28th day of February,
13 1983. And if you'll -- that is your signature, isn't
14 it?
15 A Yes.
16 Q And will you just look at the recitation clause?
17 There's the three whereas clauses at the beginning of
18 the by-law. Now, Mr. Michell, were there meetings of
19 the chiefs and members of the houses in respect of
20 this by-law?
21 A Yes.
22 MR. RUSH: And can you say to his lordship, or explain to his
23 lordship what the purpose of the by-law was to be?
24 MR. GOLDIE: Isn't it self-evident?
25 MR. RUSH: Go ahead, Mr. Michell.
26 MR. GOLDIE: Well, is it necessary for a witness to tell your
27 lordship what a resolution -- what its purpose is?
28 Surely it's self-evident, unless my friend tells us
29 that it's colourable and has another purpose that is
30 hidden.
31 MR. RUSH: Well, I think the witness can explain what he
32 understands to be the purpose of the by-law.
33 THE COURT: Well, as usual, both parties are right. The
34 document speaks for itself unless it doesn't state its
35 purpose. On the other hand, in order to lead into the
36 evidence of a witness, it may be useful to ask him a
37 general question of that kind. I suppose what you're
38 asking the witness is what was the evil the by-law was
39 aimed at curing.
40 MR. RUSH: Yes. I'm happy to put it that way.
41 THE COURT: You don't have to put it that way.
42 MR. RUSH: I think we should know.
43 THE COURT: I don't think we should embark upon a construction
44 of the document.
45 MR. RUSH: I'm not asking to do that. It's a very
46 straightforward question, my lord. It might be that
47 there were additional purposes in the mind of this

witness. It may be there were fewer. It may be that he can reflect on the house's -- his house's view of the document. I don't think it -- I think it is also aimed at in terms of --

THE COURT: Well, I've read the preamble. They say it all, don't they?

MR. RUSH:

Q All right. Now, Mr. Michell, what happened with this document after it was passed?

A Well, we worked on it for I don't know how many years, but after it was passed by the Minister of Indian Affairs, David Crombie. In the first place, the by-law was intended that we take and exercise our aboriginal rights, the jurisdiction over our resources that we take from the canyon, which is salmon. We want to regulate that -- you know, like, our people wanted it that way, like the way it was before, because every meeting they talk about -- and they all agree that when the pink salmon runs, some of them fish by net. They will take their nets out, and those that use gaff hooks, they would not use the gaff hook when the pink salmon was running. They use dip nets. And --

THE COURT: What Mr. Rush asked is what happened to this by-law?

THE WITNESS: But I'm explaining what was the purpose of it first in case you didn't really understand our point of view.

THE COURT: Yes. All right. Go ahead.

THE WITNESS: And at that same time, I believe Adam Gagnon made the fish way for the -- above the ladder, at the upper end of the ladder where when the fishermen catches pink salmon in the dip net, it would release it right in that little fish way without harming that pink salmon. That was part of the project too. And it was our intention of just start regulate our own fishing site again, and it was after a group of people start protesting against it, and I think the attorney general supported their injunction and our by-law didn't work out the way we want it to.

MR. RUSH:

Q I just wanted to ask you, Mr. Michell, before the by-law was passed or before the meetings occur about the by-law, were there any Moricetown fishermen charged with offences under the Fisheries Act?

A Yes.

Q Were -- was that a concern to you?

A Yes. Because in those days, you know, like, the

Department of Fisheries, they really imposing more restriction on our people each year. One summer I believe there was about 18 charges laid against our Indian people in the area.

Q Was the by-law related to those charges and the enforcement by the fisheries officer?

A In what way do you --

Q Well, was the by-law intended to avoid the charges under the Fisheries Act?

A Yes. It was -- in a way we set it up that we would have control like -- I mean regulation which the fish and -- fisheries department has. When they got their law into the villages there, and people, they don't agree with their regulation, so they go against it. They fight against it. And it makes it harder even for them to have any control over any regulation. So our people, the chiefs tell us that we ourselves will have a better control and our own people will listen to us than listening to the Department of Fisheries and their regulation. This is what was discussed at the meetings.

Q The by-law was passed along with three other bylaws of Gitksan bands; is that correct?

A Yes.

Q And these were not disallowed by the Minister of Indian Affairs, David Crombie; is that your recollection?

A Yes.

Q And then an injunction was obtained against the bylaws; do you recall that?

A Yes.

Q And that has been appealed, has it?

A Yes.

Q And is the appeal, to your knowledge, pending before the Supreme Court of Canada?

A Yes.

THE COURT: Does the injunction relate to the by-law of the Moricetown band or --

MR. RUSH: Yes.

THE COURT: All of them?

MR. RUSH:

Q All four of them.

Mr. Michell, can you say whether or not prior to the Minister of Indian Affairs, David Crombie, allowing the by-law, were there previous by-laws which were not allowed by the Minister of Indian Affairs, previous drafts of by-laws which were not allowed?

A Different from this one?
Q Yes.
A You're talking about by-laws --
Q I mean, I should -- similar by-laws that were in respect of the regulation and preservation and conservation of fish at Moricetown. Let me put it this way: Similar in kind but not the exact same one that was subsequently allowed. Do you know if various -- if different drafts went to the minister and were disallowed?
A For the same purpose as --
Q Yes.
A It was -- changes was recommended in the by-law, and there has been changes made before it was passed by the minister.

MR. RUSH: Do you remember the year it was passed?
THE COURT: This one?
MR. RUSH: No. The year the by-law was passed.
THE COURT: Passed by the then council but disallowed.
MR. RUSH: Passed by the then council and passed by the then minister.
THE COURT: Oh. I thought -- sorry. I thought you said the previous ones were -- were disallowed.
MR. RUSH: Yes. But, my lord, I think the evidence is that the one in 1983 that's exhibited here was one of those that was disallowed. That's my understanding.
THE COURT: Oh, well, I'm sorry. I didn't understand that. I understood this one was -- I understood this one was not disallowed. I have a note, Mr. Rush, three other Gitksan bands passed by-laws, four altogether, not disallowed. Is that wrong?
MR. RUSH: No. That is not wrong, but I'm advised that the precise form of the by-law that was allowed is not in exactly the form that is here in Exhibit -- Tab 19, but if your lordship will allow me the evening to clarify that, it might be easier tomorrow morning through the evidence.
THE COURT: All right. Thank you. Ten o'clock.
THE REGISTRAR: Order in court. Court will adjourn until ten.

(PROCEEDINGS ADJOURNED UNTIL FEBRUARY 18, 1988 at 10:00 A.M.)

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

Kathie Tanaka, Official Reporter
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