JANUARY 12, 1987
VANCOUVER, B.C.

THE REGISTRAR: Order in court. In the Supreme Court of British Columbia, Tuesday, the 12th day of January, 1988, calling Delgam Uukw against her Majesty the Queen, My Lord.
THE COURT: Miss Koenigsberg.

CROSS-EXAMINATION BY MS. KOENIGSBERG, Continued:

Q Mr. Joseph, when we adjourned yesterday afternoon we were talking about fishing activity in the House of Gisdaywa and the House of Madeek, and you told me that you did not have any knowledge of any of the persons who may have applied for fishing -- food fish permits in the House of Madeek; is that correct?
A Yes.
Q Are you not aware generally of the fishing activity of the members of the House of Madeek?
A No. I don't think I have to be there to see every person who goes fishing or who goes hunting. They do that on their own.
Q Right. And you are of course not the chief of the House of Madeek?
A I'm not the chief of the House of Madeek, but I am chief of the Gitdumden clan.
Q And the House of Madeek is one of the three houses in Gitdumden clan in the Wet'suwet'en nation?
A Yes.
Q And is there someone else in the House of Madeek who would be more familiar with the fishing activity of the House of Madeek?
A There again, it's up -- as long as that person is getting fish, Madeek doesn't have to be there all the times or anyone. He's from the House of Madeek. He or she has the right to go to that fishing hole of Madeek. So whenever they take fish, it's always -- it is happening everyday, and not one -- one member can't be in that fishing hole. They all take turns.
Q Okay. Would you be the person today who would have the knowledge that the chief of Madeek's House would have otherwise about the fishing activity?
A I didn't get that.
Q Let me tell you why I am asking you that question. George Naziel was the last chief of the House -- last person to hold the name Madeek, and he died about

December of 1986?
A Yes.
Q And there has been no new chief to take that name?
A No. They are still preparing for, to take the name.
Q I believe you gave evidence that you expected that Russell Tiljoe would be taking that name?
A Yes.
Q And I understand that hasn't taken place yet?
A No.
Q Is there a time at which you expect that to take place?
A Whenever Russell is ready and the people in the House of Madeek are all ready, then they will go ahead.
Q Russell Tiljoe was not the only person who was anticipated would take the name of Madeek; is that correct?
A Well, there is always two or three people that are considered.
Q George Naziel, the previous Madeek, in fact expected that Clarence Dennis would take that name; isn't that so?
A Well, he may have expected Clarence to take it, but there again the elders in the House of Madeek decide whose taking the name. They watch. They watch for qualities in this person and weaknesses, so there is always -- with a membership in Madeek's House, the number of people that are in it, there is always -- they have more people to chose from than any -- like in the House of Kaiyexweniits. So it's pretty hard to see who is serious, who should be the next Madeek.
THE COURT: I didn't get Clarence's surname, I'm sorry.
MS. KOENIGSBERG: Dennis.
THE COURT: Thank you.
MS. KOENIGSBERG:
Q Did George Naziel announce or name Clarence Dennis as his successor?
A Well, he may have talked with Clarence. I don't know that part.
Q Do you know that George Naziel made a will?
A No.
Q You did not hear discussion from George Naziel or anyone else about Clarence Dennis taking the name of Madeek?
A No, I didn't hear.
Q Now, I've asked you about there being no person who has yet taken the name of Madeek, because I want to know if you are the person, because there is no person

who has taken the name of Madeek, who is on an interim basis authorized to speak or monitor the fishing activity of the House of Madeek.

A Not just myself. There is other chiefs, sub-chiefs in Madeek's House that are there, and -- there is always discussion going on. And I was in a Feast House, I sit next to Madeek and Woos and Gyologyet, and there is always -- the presence of a future chief is always noted in the Feast House. You have to see how they -- the chiefs handle themselves at the Feast House.

At that Feast House you -- there is always, at every feast, there is giving, receiving. And the way I can describe a feast is that you give at Christmas once a year, but with us it's a year round thing. So the person -- the happiest person at that Feast House is the host, because he's giving. They seem to be more happier than the people that are sitting around as witnesses and workers. So that is what the House chiefs watch from the host side and the witness side and father side. They all talk, give advice. This is a good person. This is a good person. That one, we think, will make a good chief. So it's not only the House or the clan that decides who the next chief is going to be.

Q Okay. Dealing just with the fishing activity. Is there a sub-chief in the House of Madeek today, that you know of, who would be aware of the persons in Madeek's House who would be food fishing?

A Sub-chief in Madeek's House, yes.

Q Who would that be?

A It would be -- one would be Freddie Joseph. And if --

Q Excuse me just a moment. Does Freddie Joseph hold a name?

A Yes.

Q What is that?

A I just -- which is Wisalop.

Q I'm sorry, I didn't hear it.

A Wisalop is the one.

THE INTERPRETER: 129, which is Wisalop.

MS. KOENIGSBERG: Which is Wisalop. I'm sorry, I think you were about to go on.

THE COURT: I think we were going to get the spelling.

THE INTERPRETER: 129.

THE COURT: Thank you.

MS. KOENIGSBERG:

Q I believe you were still answering the question.

A Yes. Well, when -- are you -- you asked me about

monitoring the House --
THE COURT: The question is who are the sub-chiefs of the House of Madeek.
THE WITNESS: That's the one I mentioned there.
MS. KOENIGSBERG:
Q And Freddie Joseph as Wisalop is the person that you think in the House of Madeek would know about the fishing activity?
A Yes, he's the most active one at Moricetown. There are times, though, when the sub-chiefs of today -- some are elderly, some are sick, so the younger people will go and see who is fishing at where, and they know at all times. Some are -- can't see very well, so there is always -- like I say, Freddie, the younger person, is more active, and that is the persons that are down camping.
Q For those persons of Madeek's Houses who would apply for food fishing permits, Freddie Joseph would be likely to know about that?
A Yes.
Q Is that something that was handled at the Band Council level?
A Yes. The only thing is that the Band Council can reject a permit.
Q I'm sorry, the Band Council --
A Can reject a fishing permit, yes.
Q Now, I would like to ask you some questions about the trapping activity on the territory of Gisdaywa. Do you know the volume of the trapping activity on your territory of the last five years?
MR. RUSH: Perhaps you could explain what you mean by volume. You mean the number first taken off or what?
MS. KOENIGSBERG:
Q We can start with a number first taken off.
A Well, there isn't too much activity because the people that go to Gisdaywa's territory are having problems when they go in to trap an area. There is logging going on, and at one point one of the people that were using the Owen Lake, Owen Creek area sets a trap at a dam, and he heard an explosion, so he went to check it out, and there was his traps blown out of the place where he put it. And the traps were blown across on the other side of the creek, and he couldn't go over to get it. So he asked the people that were there, "What's going on here?"
THE COURT: I really wonder if I should be hearing all of this.
THE WITNESS: You wanted to know how much fur was being taken,

and they are -- come against these things. They can't take very much.

MS. KOENIGSBERG:

Q You're saying that there is very little?

A Well, there is some taken. Exactly what amount, I -- I think you have the -- you can check it out better than I can, because you people are monitoring all these trapping licenses, and I don't.

Q Okay. So you're saying that the persons who require and review fur returns would know better than you do?

A Yes.

Q Okay. Do the persons who do trap from your House or with your permission report to you how much fur they have taken -- how many furs they have taken?

A The only thing I know is that they go there and they tell me they are there and they are trapping, and whatever stuff, like meat that they can't sell, is what is given to us, beaver meat, moose meat or anything like that.

Q Now, you have given us some evidence about uses of your territory, which, I think, have been referred to as non-permitted uses, things like ranching, mining and logging and other things. I would like to ask you a few more questions about that. You have given us in evidence of cabins and I suppose summer homes around Owen Lake. Do you recall that?

A Yes.

Q When did you first notice homes like that around Owen Lake?

A Well, there has always been homes around there ever since the settlers come in.

Q So in your -- all of your lifetime --

A Yes.

Q -- and before as far as you know?

A Yes.

Q And has there been a substantial increase in the number of homes around the lake?

A Yes.

Q When did you notice a substantial increase?

A In the last 10 years.

Q You have referred to the Owen -- I think it's the Owen Lake Resort?

A Yeah.

Q When did you first know that that resort had built its facilities there?

A Well, about 7 or 8 years now.

Q Was it there when you went back to the territory in

1981?
A Yes.
Q And you have given us some evidence of logging activities and, for instance, you gave evidence that there was logging activity around Nadina Mountain?
A Yes.
Q Had that been logged when you went back in 1981?
A Yes.
Q And Pimpernell Mountain?
A Yes.
Q That was there when you went back in 1981?
A Yes.
Q And Poplar Mountain?
A Yes.
Q And can you recall now any other areas of significant logging which you noticed when you went back in 1981?
A Well, there is logging all around the Owen Creek itself, around Owen Lake.
Q Now, you referred to the recreation site and the tourist camp. Is that the same as the Owen Lake Resort, or is that different?
A Well, there is recreation sites at the mouth of Owen Creek and there is recreation sites at the outflow for Owen Creek.
Q Were both of those there when you went back in 1981? Had there been any farms that had gone into your area, into your territory since you went back in 1981?
A Yes.
Q And whose would that be?
A Well, it's -- it keeps changing hands, so I don't know exactly who is in there now. All I know is the original -- the ones that were there before had lived in Owen Lake area.
Q Are you saying that it's not a new farm but a new owner of the farm?
A Yes.
Q I see. Okay. Now, I would like to ask you about another area you gave some evidence on, and it relates to common sites, and you were describing the taking of obsidian for arrow heads from a place -- and you are going to have to help me with the pronounciation -- it's east of Houston and spelled B-u-u-l-a-i. Can you help me with that pronounciation?
A Buulai.
Q You say that's a common site for the taking of arrow heads by Wet'suwet'en people?
A Yes.

Q When, to your knowledge, did the Wet'suwet'en people use that site for taking arrow heads?
A Its been used before the coming of the traders because bow and arrows were used and they gave it the name Buulai. Buulai is more of a sort of a trend, like someone starts something, so they -- that's the word they gave that rock that they use for bow and arrow. So they let -- its been around long before white man came in.
Q Does your tradition or your -- do you know about that common site and the taking of the arrow heads because of stories told in the feast?
A Yes.
Q And do those stories say that that -- that arrow heads were still taken from that site after the coming of the white man?
A Well, the -- after guns came in, they no longer went there, but yet some of the people still use this for hunting.
Q Okay.
A And the coast people really like the arrows that the Wet'suwet'en made, because they were -- they made the -- they had the material to make these arrows, so it was -- they still used them for quite awhile after the guns came in, because they could use it without -- it doesn't make any noise if you are hunting elk -- hunting animals in around the sea. So they traded with the coast.
Q So it would be with the coast people, the Ts'imshian, that arrow trades were traded?
A Yes.
Q Anyone else?
A I think the coast and the Nass was the only.
Q I would like to ask you a bit about Rita George. She is an adopted member of your House; is that correct?
A Yes.
Q And she was adopted, was she, before she became a member of the Gisdaywa in another House?
A Yes.
Q What House was that?
A Spookw.
Q And is that a House in the Gitksan nation?
A Well, it's Spookw's -- Spookw had, as I said before, close ties with the Wet'suwet'en, so they had relatives on both sides.
Q Yes.
A On Spookw's House.

Q But it was --
A Gitksan.
Q -- located in the Gitksan area?
A Yes.
Q And Rita George was adopted in 1969?
A Yes.
Q And is she married to Andrew George?
A Yes.
Q And I understand that she holds a chief's name in the House of Gisdaywa?
A Yes.
Q Could you tell us what that name is?
A Gihl lakh Khun.
MS. KOENIGSBERG: Could we have the pronounciation of that again?
THE INTERPRETER: Gihl lakh Khun.
MS. KOENIGSBERG: Gil lakh Khun.
Q Now, Rita George is a holder of a trapline in the territory of Woos?
A I believe she has.
Q And do you recall when she received that trapline?
A No.
Q Did she receive that trapline through an allocation of a trapline workshop?
A I don't know that.
Q Did you ever take part in a trapping workshop that dealt with the allocation of traplines?
A I wonder if there -- whenever there was traplines mentioned, I don't go to any of these things. I believe in Yin tah territory.
Q You don't recall attending a trapline workshop at Moricetown in 1982?
A When it's on -- either in Hagwilget or Moricetown, I go there, but anything of Smithers or anywhere in that area, I don't go there that much.
Q Let me understand. Do you recall attending a trapline workshop? And I can tell you some of the other persons I am instructed were there. Andrew George, I guess it would be Moses -- would be Moses David?
A Yes.
Q Florence Hall, Bernard George I am instructed that were there, and a Mr. McPherson. Do you recall that in June of 1982?
A Mrs.?
Q I think maybe a Mr. McPherson, Eric McPherson.
A Oh, yes.
Q And Roy Morris was there.

A Yes.
Q Do you recall that now?
A Yes.
Q And it dealt with, among other things, the allocation of the Gabriel Louie trapline?
A Yes, I think I remember now.
Q You remember that now?
A Yes.
Q And part of that trapline is the trapline that Rita George received?
A Yes.
Q And that's situated largely in Woos territory?
A Yes.
Q That trapline was not allocated at a feast then, isn't that correct?
A Well, at times, if it's going to a Gitdumden person, they are told that you may use that territory. If Rita was a Gitdumden, she could be instructed, if she wanted to go there, to go ahead.
Q All right. Why would Rita George, who in 1982 was a member of the House of Gisdaywa, be allocated a trapline in the House of Woos?
A The same reason my grandmother, who was in the House of Kaiyweniits, was given permission to use the territory around New Hazelton by Chief Spookw. She was -- my grandmother was a Gitdumden, and Chief Spookw told her you can use that territory around New Hazelton.
Q Well, you're saying, if I understand you, that permission was given and that there was a clan relationship?
A Yes.
Q Now, do you know a Martha Alec who would be married to Joe Seymour?
A Yes.
Q And is she in the House of Madeek?
A Yes.
Q Do you know that she owned a House in Houston and lived there?
A Yes.
Q Yes. And where would -- in whose territory is Houston located?
A I believe it's the -- I think it's Laksilyu.
Q And is there a House?
A There is many houses there.
Q But is there a House as in Gisdaywa's House?
A Oh, yes there is.

Q Within that clan where Houston is located?
A Yes.
THE COURT: Can we have the spelling of that, please?
THE INTERPRETER: 134.
MS. KOENIGSBERG: Laksilyu.
THE COURT: Thank you.
MS. KOENIGSBERG:
Q I'm sorry, is there a House within the Laksilyu clan where Houston is located?
A When you talk about a House, you are talking -- the House is located at Hagwilget or Moricetown, the House that they originate from.
Q What is that?
A Like the House of the Gisdaywa is on Hagwilget, and that is where people originally -- they come from there and they go out into the territory.
Q And then they have designated territories you have told us?
A Yes.
Q With boundaries which have been described by various witnesses, including yourself?
A Yes.
Q Is there a House territory that -- in which Houston is located?
A Yes.
Q And what is that?
A That's -- I think the name that came up often is 'Ah k'ot.
Q 'Ah k'ot?
A 'Ah k'ot, yes.
MS. KOENIGSBERG: Could you help us with the spelling of that.
THE INTERPRETER: 'A-h, K'o-t.
THE COURT: O-t?
THE INTERPRETER: Yes.
THE COURT: And what is that, please?
THE WITNESS: It's a chief's name.
THE COURT: He's the chief of the House of Laksilyu?
THE WITNESS: Yes. No. No. Laksilyu clan from the House.
MS. KOENIGSBERG:
Q And is the name of the House where the chief names a House, also a House?
A No. There I am not too sure what House. It may have come from G'en egh la yex. I don't know exactly.
Q Okay. The last name you said?
A G'en egh la yex. It may have come G'en egh la yex. That one I'm not too sure of.
MS. KOENIGSBERG: Could we have the spelling for the last House

name mentioned by the witness.
THE COURT: Is it a House name or a chief's name?
MR. RUSH: He said a House name.
THE INTERPRETER: G'en egh la yex, G'-en, e-g-h, l-a, y-e-x.
THE COURT: "S" or "x"?
THE INTERPRETER: "x".
THE COURT: Thank you. I'm sorry, I'm not able to follow this. I thought the question was what was the House that claimed the territory in which Houston is situated. I think I have been given three names now.
MS. KOENIGSBERG: And I am going to try and see if I can straighten it out. I'm lost myself, My Lord.
MS. KOENIGSBERG:
Q G'en egh la yex. Am I close?
A Yes.
Q Is that the name of a plaintiff or a House representative?
A It's the name of a House.
Q The name of a House?
A Yes.
Q And is that House represented in this lawsuit?
A Yes.
Q By a person with that name or --
A No, it's the name of the House. Like my House is Kaiyexweniits, and I represent Gisdaywa territory.
Q Yes.
A It's the same way with the other clan. There may be some other person more qualified to answer that. Laksilyu person --
Q Let me ask you if in the House of G'en egh la yex is the House of Hag wil negh, and would Hag wil negh be representing that House as far as you know?
A Yes.
Q And the chief of the House of Hagwilget is Sylvester William?
A Yes.
Q We started off on this journey to find --
THE COURT: I'm sorry, I haven't got that last House yet. Sylvester William is the House of?
MS. KOENIGSBERG: Hag wil negh, H-a-g, w-i-l, n-e-g-h. Mr. Mitchell, could you give us the number?
THE INTERPRETER: There is no number.
MS. KOENIGSBERG: I'm sorry, is this number 29?
THE INTERPRETER: On the plaintiff's list. Yes, on the plaintiff's list.
MS. KOENIGSBERG:
Q I started off asking you about Martha Alec, who was in

the House of Madeek?
A Yes.
Q And she's not a member, as far as you know, of the House of Hag wil negh, as far as you know?
A No.
Q And would it be contrary to the Wet'suwet'en law for her to own a House and live in that House in the territory of Hag wil negh?
A She lives at Houston, you see.
Q Yes. I thought you agreed with me that you knew that?
A Yes. Well, the place like Houston is a junction of a river, is people will live there, the same as they do in Hagwilget and Moricetown. From there they go to their territory. Some people lived right there. It doesn't -- it's not -- Moricetown may be situated in a chief territory, but for the fishing purposes they live there. Same in Hagwilget. And Houston is the same way. There is a junction there and then there is a spawning area right there. So often people stay there.
Q All right. But if Martha Alec actually purchased a home in Houston and lived there in that home, that would not be consistent with Wet'suwet'en law, would it?
A It would be, because it's -- they call it K'yah, where all people lives, all clans live in the area, is K'yah. Same with Hagwilget, Moricetown, Babine, it's all K'yah.
Q I see. And purchasing a home in that area would not be relevant to the Wet'suwet'en law?
A I think anyone is free to purchase a home in wherever they want to live.
Q Okay. It doesn't affect Wet'suwet'en law? Is that what you're saying?
A No.
THE COURT: I didn't get the word where all people live.
THE WITNESS: K'yah.
THE INTERPRETER: K'-y-a-h.
THE COURT: Thank you.
THE WITNESS: That's a village.
MS. KOENIGSBERG: Yes.
THE COURT: That means village?
THE WITNESS: Yes.
THE COURT: Yes. Thank you.
MS. KOENIGSBERG:
Q Now, you have given a considerable amount of evidence about the functions of Band Councils, and you have

told us the kinds of things that Band Councils deal with?
A Yes.
Q And if I can put them in a category, it's primarily functions dealing with large projects for improvements, like sewers and water and that sort of thing?
A Yes.
Q And you have also told us that they deal with allocation of fishing to a certain extent; is that correct?
A Well -- allocations of fishing did you say?
Q Yes. Applications for food fish permits for instance.
A Well, at first band -- you know, there was no Band Councils up until 1950.
Q Yes.
A Well, even up to the sixties the Band Council never -- weren't involved in issuing or getting permits. It was done by the fish warden they called -- whether he was federal or provincial, I don't know. He came into the village and asked people, do you need a fishing permit? People just took them. But that was when the fishing was good at Hagwilget.
Q Yes.
A They fished, I think it was, six days a week, and that's the way its been all the way through.
Q Yes. Since then, and certainly in the eighties, Band Councils have dealt with the allocation of fishing through the permit system; have they not?
A Yes, I think some have been doing that.
Q Well, Hagwilget has?
A Well, Hagwilget has, but where are they going to fish? There is no fish in Hagwilget. You can get a carload of permits in there and you still won't get any fish.
Q Yes. But my question to you is, you have in fact --
A Yes, we did.
Q -- applied for permits?
A We did in '82. We didn't apply. We were given permits. The Fish and Wildlife people come right into the village and keep on shoving that to you. We don't go over there to their offices to get the permits.
Q I see. But you did sign on behalf of the Hagwilget Band?
A Yes.
Q For a permit?
A Yes.
Q For fishing at Hagwilget?

A Yes.
Q In 1982?
A Yes.
Q And that is one of the functions of the Band Council?
A It isn't in the guidelines.
Q Or was. My question to you is, is that one of the things that Band Councils do deal with, at least --
A But it's not in the guidelines to deal with that.
Q I see. But you deal with it in any event?
A Yes.
Q And is also one of the functions of the Band Council to resolve disputes concerning competing claims for lands on the reserves?
A On the reserve, yes.
Q Now, I would like to ask you some questions about the Wet'suwet'en laws of succession or inheritance of property. We have had evidence of that with regard to the Gitksan system, and I would just like to have clarified what the laws are in the Wet'suwet'en culture, and the questions -- what I wanted to get at, and I want to do it in parts, if we can, and if that's appropriate, is how the law of succession work in the Wet'suwet'en system for an inheritance of property and titles. First, chief names and the territory of the House and the regalia.
A Yes.
Q How are those inherited?
A Well, when a chief passes on and there is no -- there is a nephew, a niece or a brother of that chief, there isn't too much of a -- everything just falls into place. There is a funeral, the expenses are paid, and the person that -- the nephew, the niece or a brother takes over or a sister. The relatives are all there, and it's -- there is no -- not too much meetings going on. Everybody knows who the successor is going to be. But a problem arises when the chief doesn't have immediate relatives, no nephews, or those nephews just don't participte and don't want to be involved. And that's what often happens. But other than that, a name is given and the feast is -- they have the feast and it is announced that this person will take over the name, and/or wherever the stone is raised or the grave is finished, this person will take the name officially.
Q All right. And with the name -- and are you describing what has been labelled the matrilineal system?

A Yes.
Q And that is the system that the Wet'suwet'en go by?
A Yes.
Q All right. And the territory of the House that goes with the name, that's in the same category?
A Yes.
Q And of course the regalia?
A Regalia.
Q Are fishing sites the same?
A Yes.
Q What about traplines?
MR. RUSH: What kind of traplines are you referring to here, registered provincial government traplines or some other kind of trapline?
MS. KOENIGSBERG:
Q Well, let's ask the witness. Is there another kind of trapline today that you deal with other than a registered trapline?
A They will have always referred to their territories, as I said before, as Yintah.
MS. KOENIGSBERG: Can we just have a spelling for that, Mr. Mitchell?
THE WITNESS: They say at the feast --
THE COURT: Just a moment please, Mr. Joseph.
THE INTERPRETER: Yintah, Y-i-n-t-a-h.
THE COURT: Thank you.
MS. KOENIGSBERG:
Q And Yintah is what?
A Is the land that belongs to the House and the clan. It doesn't say anything about a line. Yintah -- and when they talk of a line they say -- they give it another name, which is Nagidiis d'ak. Means a network of lines. It's not just one, it encompasses the whole territory.
MS. KOENIGSBERG: Could we have the spelling for the network of the traplines.
THE COURT: Is it network of traplines?
THE WITNESS: Yes.
THE COURT: I'm sorry. Thank you.
MS. KOENIGSBERG: Could you pronounce that, Mr. Mitchell, for us as well?
THE INTERPRETER: Nagidiis d'ak, N-g-i-d-i-i-s-d'-a-k.
THE WITNESS: And when they -- oh, are we finished?
MS. KOENIGSBERG:
Q Nagidiis d'ak?
A Yes. The last word I used means snare line, a dead fall or any other traps that our people have used, but

since the leg hold traps were introduced, they gave it another name. They call it Ts'a yiil.

THE INTERPRETER: T-s'-a, y-i-i-l.

MS. KOENIGSBERG:

Q That's a leg hold trap?

A Yes. So that's -- so they -- the trapline is something that may have been first introduced when registrations came along.

Q The Wet'suwet'en people do refer to their traplines? That is something that they would refer to; is that correct?

A Refer to?

Q In designating, for instance, that they hold a registered trapline, do -- all Wet'suwet'en today would know what they meant when they were talking about a trapline?

A They just -- yes, they say the whole territory belongs to this House, and that goes with a name and all regalia that the new chief has inherited.

Q I think the answer to my original question was that traplines are part of the territory or the territory that goes with the name?

A They say line. It's a small part of the territory.

Q And it goes with the name?

A Yes.

Q And is passed down --

A Yes.

Q What about personal property such as cars, trucks or trapping equipment?

A Well, anything, cars and trucks or anything like that can go to the person's family.

Q Their immediate family?

A Yes.

Q Would it be fair to say that falls outside the usual Wet'suwet'en law?

A Yes.

Q Okay. Before the advent of registered traplines, Wet'suwet'en people would have had trapping equipment, would they not?

A Yes.

Q And to whom would the trapping equipment have gone in the Wet'suwet'en system?

A The trapping equipment goes to the person that takes the name.

Q Today would that be different, that the trapping equipment could go to the immediate family?

A Today, no, it would still go to the person that

inherits the name and the territory.
Q All right. That would be the rule as you understand it?
A Yes.
Q I would like to -- in the last category to deal with property outside the territory, farms or ranches which might be owned by a person or a chief which are not on the territory. There are such instances?
A Yes.
Q And what would the rule be as to inheritance of that property?
A Outside the territory -- are you talking about the whole Wet'suwet'en territory or just the chief's territory?
Q Just the chief's territory.
A Well, it's -- if it's outside of his territory, you either make arrangements with his family as to who it was going to -- they leave their instructions with other elders and make sure that they have witnesses.
Q All right. Would that -- if I were to put it in terms of what we have been -- what we have been speaking about, matrilineal system. It does not have to follow the matrilineal system, or it does?
A In some cases it doesn't follow the matrilineal system, because that's where this word Neg'edeld'es comes in.
Q That's the word you gave us for network of trapline?
THE INTERPRETER: 192.
MS. KOENIGSBERG: 192. Could we have the spelling for that, Mr. Mitchell?
THE INTERPRETER: N-e-g'e-d-e-l-d'e-s.
THE COURT: I'm sorry. The last letter, "s" or "x"?
THE INTERPRETER: "s".
THE COURT: Thank you.
THE WITNESS: That's when the person uses the father's territory.
MS. KOENIGSBERG:
Q Yes.
A That's -- it doesn't matter -- matrilineal is not followed when that happens, like Andy George as using Gisdaywa's territory on account of -- because his father and the relatives give him permission to do so.
Q Yes. And Andrew George's son would not use that territory; is that correct?
A In this case his son can, because his House of Kaiyexweniits.
Q That's right. You have adopted his son?

A Yes.
Q Would the rule have been that after Thomas George died that Andrew George should not have used that territory, but you have now given him permission?
A Yes.
Q Okay. And you're saying that the lands which a chief or another member of a House might own, have bought from the Crown, for instance, outside their own House territory, would fall into the category of property which is held during the lifetime of a person who is in the House?
MR. RUSH: I wonder if could you rephrase that question.
MS. KOENIGSBERG: Probably a very good idea.
MR. RUSH: A little lengthy.
MS. KOENIGSBERG:
Q I'm trying to understand why you are using the concept of the father's side and the child using the father's territory, and you have given us the example of Andrew George who was using the trapline of Thomas George.
A Yes.
Q Thomas George was Gisdaywa?
A Yes.
Q But Andrew George is not in the House of Gisdaywa?
A No.
Q But has permission to use that territory?
A Yes.
Q Now, I have asked you about a category of property, property owned in the sense of having been purchased from the Crown by a member of a House which is outside the territory of the member of the House. And is there a system or a rule within the Wet'suwet'en law that says where that property -- how that property should be disposed of or inherited?
A Like Kanoots, before he died, called Woos and myself and some other Gitdumden chiefs into his House.
Q That's Peter Alfred?
A Yes.
Q Yes?
A And told us -- gave us instructions that he gave to these young people. He said I have given permission to these people that they could still use the territory, and that is the way -- they are people -- our people did it in the past. They give the last instruction to members of the clan, so that when a feast comes, if Peter -- when Peter passed on, we -- even before he passed on, we made the announcement that this is what Kanoots said while he was still

alive, or he was unable to attend the feast. When he died it was announced again. So that's the way our people deal with matters like that.

Q All right. If I understand you, it's up to the person who owned the territory or the branch or whatever it is in the first place to designate to whom they wish it to go?

A Yes.

Q And that could be their immediate family?

A Yes.

Q To your knowledge, Thomas George fought in World War II? He's a member of the Armed Services?

A No, his sons did.

Q Just his sons?

A Yes.

Q And which sons were they?

A Andrew and Fred.

Q Did any other --

A Can I get some water?

Q Oh, sure. Did any other members of your House, the House of Gisdaywa or your clan, also fight in the war -- World War II? And when I say fight, I mean were they members of the Armed Services?

A Yes, my cousin, Jack Mitchell, was in the army, and that's in the House of Kaiyexweniits. But in the clan there is quite a few, like John Morris, Dave Alec. That's the only two I could recall from the Gitdumden side.

Q And do you and members of your House make use of the airport facilities at Smithers?

A Yes.

Q And you fly on the airplanes?

A Yes.

Q And you make use of the railroad, travel on the train?

A Yes.

Q The last area I would like to cover with you -- actually the second last area. You told us you were a member of the Tribal Council?

A Yes.

Q And I would like to show you a document and ask you if you have seen this document. Have you ever seen this document or were you aware of it?

MR. RUSH: Is this one of the documents that was divulged in the list on January the 6th?

MS. KOENIGSBERG: It's possible. I notice it's a very late number. It's listed at 10754.

Q Have you ever seen this document or were you aware of

it?
A No, I haven't seen that document.
Q All right. Were you aware of it -- or its contents? In particular, a direction to the elected representatives of Gitksan-Carrier Tribal Council --
A Pardon?
Q In the second paragraph you will see it refers to a resolution for a direction to the elected representatives on the Gitksan-Carrier Tribal Council to make land claims a priority. Do you see that?
A Yes.
Q Yes. Were you aware of it in that way?
A I have been aware of land claims priorities, but this particular document I have never seen. I have heard of it.
Q You have heard of it, but you have never seen it?
A Yes.
Q All right. I want to just ask you some questions about it, about what you may have heard. You were aware that the Gitksan chiefs directed the Tribal Council to make land claims a priority at this time, and this document is dated April 3rd, 1975?
A Yes.
Q As a result of a Nishga claim which involved a substantial overlap in the Gitksan-Wet'suwet'en territory?
A Yes, I have heard of that.
Q And were you aware that the Gitksan hereditary lands were defined at that time by all their registered traplines?
A All I heard is that there was an overlap, but how it was defined, I have no -- I haven't been aware of that part of it.

MS. KOENIGSBERG: All right. I wonder, My Lord, if we can mark this for identification as the document we have been discussing, and it can be identified later, if my friend has no objection.

MR. RUSH: I don't think it proved anything with the document. My friend is saying they are going to prove it later, I don't have a problem with identification either. Put it in for identification, but there is no proof of this document.

MS. KOENIGSBERG: No, I am not suggesting there is.

THE COURT: 116 for Identification.

(EXHIBIT NO. 116 FOR IDENTIFICATION - DOCUMENT 10754)

MS. KOENIGSBERG:
Q Did the Wet'suwet'en -- I'm sorry, Mr. Joseph. Did the Wet'suwet'en ever make any representations to the Tribal Council for directions or resolutions with regard to the Carrier-Sekani overlap?
A You say make a resolution?
Q Yes. Are there any resolutions of the Tribal Council or to the Tribal Council?
A On the overlap from the Sekani-Carrier, yes.
Q Yes.
A Yes. Well, they've been told that there was quite an overlap, and the Wet'suwet'en, of course, wanted it cleared up. They brought it up at quite a few meetings, or it was also brought up through chiefs in their conversations.
Q Are you saying you are not aware of any specific resolutions or directions?
A I may have seen something. But if I see it, I would recognize it.
Q All right. Lastly, I would like to deal with the concept of the definition of a Wet'suwet'en person for the purposes of this lawsuit. In order to be a Wet'suwet'en person, do you need to speak the language?
A No.
Q And there are persons that you would classify as Wet'suwet'en who have never lived on Wet'suwet'en territory as defined in this lawsuit; is that correct?
A Yes.
Q And there would be persons who you would say were Wet'suwet'en who may never have participated in a feast?
A Yes.
Q Could there be persons who are Wet'suwet'en, who would be unable to trace their ancestry to a female person, who you would call Wet'suwet'en, who does live on the territory and who does speak the language?
MR. RUSH: Well, can you break that up a bit? I mean, several questions there, aren't there?
MS. KOENIGSBERG: Well, I am trying to narrow the definition, actually, but I'll give it another try.
MS. KOENIGSBERG:
Q If no ancestor can be said to be Wet'suwet'en, can you still be a Wet'suwet'en person today?
A No ancestor -- I don't know if a person can be alive if he had no ancestors.

Q No ancestor who was a Wet'suwet'en person.
A Well, they would still be considered Wet'suwet'en if they are living on the reserve and a father or mother is a Wet'suwet'en.
Q Is a person a Wet'suwet'en person whose adopted into a House but who has no blood relationship in that House?
A If adopted, he could be considered Wet'suwet'en.
Q Are there persons whom you would say were white, who have been adopted into a House and are considered to be Wet'suwet'en?
A Yes.
Q Is there any particular religion which would define a person as Wet'suwet'en or could be any religion?
A Could be any religion.
Q Is it necessary for a person to be buried on the territory of the Wet'suwet'en people as defined in this lawsuit in order to be Wet'suwet'en?
A No.

THE COURT: It's the usual adjournment time, Ms. Koenigsberg. Would you like to adjourn now?

MS. KOENIGSBERG: Yes.

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

(PROCEEDINGS ADJOURNED FOR A SHORT RECESS)

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

LORI OXLEY
OFFICIAL REPORTER
UNITED REPORTING SERVICE LTD.

(PROCEEDINGS RESUMED AT 11:30)

THE REGISTRAR: Order in court.
THE COURT: Ms. Koenigsberg?
MS. KOENIGSBERG: Second wind, my Lord. I just have a few short questions.
THE COURT: I was afraid of that.
MS. KOENIGSBERG:

Q We were dealing with defining or what you would consider to be a Wet'suwet'en, and there's one area I didn't ask you about and I would appreciate your assistance. I would like you to imagine a situation where the father of a child is Wet'suwet'en, the mother is white; is the child Wet'suwet'en?
A Yes. We consider him Wet'suwet'en.
Q All right. I would also like to ask you when we were dealing with succession or inheritance of property, I think I covered this generally but not specifically, are the lands which a person may hold on the reserve, on the reserve of where they live, are there any laws of the Wet'suwet'en which deal with the inheritance of those lands?
A I think that area is mostly handled by the D.I.A. office.
Q All right.
A On reserve land.
Q On reserve lands?
A Yes.
Q Are you saying then that there are no Wet'suwet'en rules or law which you know of which deals with who can inherit those lands?
A Well, there again it is -- instructions are given by the person that owns it to people that -- how they want their belongings or land distributed.
Q And is there no rule in the Wet'suwet'en law that says how the person should allocate it, that is the matrilineal system or to their immediate family?
A Well, it's -- before the reserve system was there they handled it through the matrilineal system, the Houses that were on the reserve were always on the mother's side. Like the House of Kaiyexweniits, all the different House chiefs would be living there.
Q You're speaking now of the longhouses?
A Yes. And they never -- that House never went to the father.
Q It followed the matrilineal system?
A Yes.
Q Now that there are reserves do I understand that

you -- the matrilineal system may not be followed for reserve land?
A In some cases, yes.
Q Would it be contrary to the Wet'suwet'en law if a House and land on a reserve were willed or otherwise went to the son of a father, from the father?
A Yes.
Q All right. It would be contrary to your law?
A Contrary to the law, yes.
Q Even though it's on the reserve?
A Yes.
MS. KOENIGSBERG: All right. Now, I asked you if you made use of the trains and you said yes.
MR. RUSH: Sorry, I can't hear you. Made use of the --
MS. KOENIGSBERG:
Q Trains, and members of your House -- to your knowledge did members of your House, that is the House of Gisdaywa, or members of your clan, the Gitdumden clan, work on the railroad in building it?
A Yes.
Q And is that yes in both counts, members of the House of Gisdaywa?
A Yes.
Q And did any part of the railroad go through the territory of Gisdaywa?
A No.
Q How about any other House in your clan?
A Yes. I think it went through some Gitdumden territory.
Q And some members of the clan who are not members of the House of Gisdaywa also worked on the railroad, to your knowledge?
A Well, I think the members of the clan worked on the railroad and have worked to keep the railroad going through tie contracts and different --
Q Tie contracts?
A Yes.
Q Yes. Supplying ties for the building of the railroad?
A Yes.
Q Yes. And I asked you about military service as well, but were you aware of an army camp that was built at Telkwa?
A No.
Q You don't know about that?
A No.
MS. KOENIGSBERG: Those are all my questions. Thank you.
THE COURT: Mr. Joseph, is every person born of a Wet'suwet'en

woman for that reason automatically a Wet'suwet'en?
A Yes.
THE COURT: All right, thank you. Mr. Rush.

RE-EXAMINATION IN CHIEF BY MR. RUSH:
Q Thank you, my Lord. Mr. Joseph, I'm going to refer you to some passages of the transcripts of the cross-examination both by Mr. Goldie and by Miss Koenigsberg, and I will be asking you certain questions concerning that. I will in some cases refer you to the page. You don't have any of that in front of you, so I will be reading the part of the transcript, this will be for the Court's assistance. And I refer first to 2193, my Lord, and I'm going to refer at line 15 these questions were asked and answers given:

"Q Now, do you know how big that territory is of Gisdaywa in terms of square miles? Just approximately.
A Yes. 40 square miles.
Q Around 40?
A Yes.
Q I thought it was larger than that.
A It is larger than that, but we don't use for hunting and trapping. We only use the valleys and the lakes, and the plateaus and the mountains are for summer and fall hunting."

And I want to ask you here, Mr. Joseph, you say that "We only use the valleys and the lakes" in part of this answer. What do you use them for?
A Well, the valleys and the lakes are used for fishing year round, and the valleys, the -- our people take -- go hunting, berry picking in the summer, gathering material for putting up fish and gathering material to make snares, rope.
Q Are these valleys and lakes also used for trapping?
A Yes.
Q All right. You then went on to say:

"And the plateaus and the mountains are for summer and fall hunting."

And I want to ask you, hunting what?
A The plateau in the mid August are used for groundhog,

goat, around September, and --
THE COURT: I'm sorry?
A Goat, mountain goats and cariboo later in the fall, but the cariboo is also taken at any season, winter, like in winter months they still hunt cariboo.
Q Anything else?
A The plateau is also used for like in the summer, like I said, and berries, and gathering food that just grow on the summit.
Q All right. Now, is there any part of your territory that is not comprised of the valleys, lakes, plateaus and mountains?
A There are a lot of meadows, open areas, like the open area was mostly meadows.
Q And would they be used --
A They used them for, like --
MR. GOLDIE: My Lord, I wonder, before the witness completes his answer, it's not clear to me whether this examination relates to present use or past use.
MR. RUSH:
Q All right, fair enough. Are the meadows and the open areas to which you've just recently made reference, are they being used today by members of your House? I think that's the context we're interested in.
A Yes.
Q All right. Can you tell us how?
A It's an area where most plants are taken in the spring, an area like when you -- when they dig for roots or sap, but open areas in the -- are used for taking plant we call g'uus.
Q G'uus?
A G'uus, yes.
MR. RUSH: Mr. Mitchell.
THE INTERPRETER: G'u-u-s.
THE COURT: Thank you.
A That is what's called the wild rhubarb, I think, and that's a very important plant for our people in the spring, and they also get the -- take -- in the springtime they take sap from the Jackpine, and that is the first food of the season.
THE COURT: All right.
A So that is --
MR. GOLDIE: Well, I'm going to object to this, my Lord. The use of this was -- this does not arise out of my cross-examination, and my friend had ample opportunity -- in fact, he went into considerable detail and I cross-examined to the extent that we're

hearing the material we didn't hear in the examination in chief.

THE COURT: It seems to me, Mr. Rush, that the cross-examination opened up for the first time only the areas in terms of square miles that were mentioned for the first time during the cross-examination. The use of the territory was practically the major subject of your examination in chief, was it not?

MR. RUSH: Well, here, my Lord, there was a distinction made between the valleys and the lakes and the plateaus and the mountains, and that was the direction of the redirect, and then in the course of his testimony just now he then added meadows and open areas, and it was that that I was following up, so I'm really following up something that has now just been mentioned, but my concern is understanding, which I thought in my view was unclear in this answer, about how these valleys and lakes and then the plateaus and the mountains distinguishment or distinction was being used.

THE COURT: Well, the more you ask him at this point the less understandable the evidence becomes, because in view of what's being said now there's no basis for the distinction at all.

MR. RUSH: Well --

THE COURT: He said, and I think it was -- I think it's a matter of probably very limited consequence, because as soon as you've said 40 square miles Mr. Goldie challenged him and said "I thought it was much larger", and it turned out it was much larger. Is it a real issue that we have to trouble ourselves about?

MR. RUSH:

Q Well, I'm happy to move on. I simply wanted to be clear from his evidence how the various parts that he distinguished here were being used by Gisdaywa and his House, so let me carry on then.

Mr. Joseph, I want to read to you another passage at the bottom of page 2193 at line 42. The question was:

> "Q So that you -- now, what about the territories of other Wet'suwet'en chiefs, do you make any claim with respect to that territory?"

And the answer you gave was:

> "A Times I will be invited to those territories

by the owners, but the Gisdaywa territories are the only ones I have to protect."

And my question to you is do you have any rights in respect of other Wet'suwet'en hunting and trapping territories?

A Do I have any right?

Q Other than your own?

A Yes, yes, I --

MR. GOLDIE: Excuse me. If you're going to ask that question, that is cross-examination on his subsequent answers, because I put to him:

"Q It is only the territory of Gisdaywa that you have, or you claim to have any jurisdiction?

A Yes.

Q Am I right in my understanding that Wet'suwet'en law does not recognize any right on the part of anybody but you to the ownership of the territory of Gisdaywa?

A Me and my House members."

And my friend is now seeking to cross-examine the witness on those answers.

MR. RUSH: No. I don't agree at all. What we're trying to do here is determine whether or not there are any rights in respect of other territories other than Gisdaywa's territory, and this question was aimed at what claim you make in respect of your territory.

MR. GOLDIE: Exactly. What claim does he make in respect of his territory.

MR. RUSH: And he says: "They are the only ones I have to protect", but the question is are there other ones to which he has rights.

MR. GOLDIE: Well, that doesn't arise out of my cross-examination, and the question was:

"Q And it is only the territory of Gisdaywa that you have, or you claim to have any jurisdiction?

A Yes."

And with that I confined my questions to his territory.

THE COURT: There's always far more difficulty about re-examination than there is about any other part of

the evidence. The intent of the rule is to clear up matters where there is possible misunderstanding or explain something that's been given, but the witness has said very clearly that he had -- he has no claim to any other territory. How can anything be required to explain that, unless that's an answer that's given that counsel from his brief knows is wrong, in which case it seems to me it can be put to him in a way that is completely leading and see if the answer is wrong, but you're not suggesting that answer is wrong in any way, are you, Mr. Rush?

MR. RUSH: No. I'm not suggesting the answer is wrong, I'm saying that it doesn't go to explain the totality of what there is to be said. And I say --

THE COURT: Additional to what he's been asked in chief?

MR. RUSH: I think I'm entitled to ask questions of clarification, and I think that where there is a suggestion in cross-examination that something in his examination in chief is to be undermined or qualified, that I'm entitled to rehabilitate or to cross question on that, and that's precisely what I'm doing, and I say that I am entitled to seek, if there is an explanation or clarification, that in the redirect.

MR. GOLDIE: My Lord, my cross-examination of course is confined -- or is confined to the answers that I get, and when I say that I mean I take an answer about what he's claiming in this lawsuit as being a correct answer, and at the bottom of that page, line 41:

> "Q So would I be right then in concluding that in this lawsuit you claim only the territory which is shown in the map included with Exhibit 62, and that's the map that shows in outline the territory of the House of Gisdaywa?
>
> A Yes."

Now, that answer dictated the balance of my cross-examination. I mean if my friend had led in his evidence in chief evidence with respect to the rights of other territories or of Mr. Joseph and said to me "Well, I claim to exercise jurisdiction over other territories because I have certain rights", that would have led to another line of cross-examination, but this is not clarification of my cross-examination, the question of rights and other territories, if there are any.

THE COURT: My problem is that I'm not able at the moment to grasp what it is that is unclear about that answer that would give rise to a right of re-examination. Perhaps you can persuade me, Mr. Rush.

MR. RUSH: Well, I say what's unclear is what follows over to the next page, 2194, question 7:

> "Q And it is only the territory of Gisdaywa that you have, or you claim to have any jurisdiction."

And I say that the question of what you claim and what jurisdiction is is a function of what Mr. Joseph perceives to be his rights or his responsibilities. And if he has rights or responsibilities in respect of other Houses it may very well affect the nature of his claim to jurisdiction.

THE COURT: In the pleadings does this witness allege responsibility for the House of Madeek or any other House, is it one of those situations?

MR. RUSH: Not in those terms. It is not framed in terms of -- it says:

> "The plaintiffs continue to own and exercise jurisdiction over lands within the territory in accordance with Gitskan and Wet'suwet'en laws."

MR. GOLDIE: Well --

MR. RUSH: And that doesn't apply simply to the territory that's involved of a particular chief.

MR. GOLDIE: Well, yes. But I think more responsively to your Lordship's question, the paragraph 2 reads:

> "The plaintiff, Gisdaywa, is the hereditary chief of the House of Gisdaywa and is bringing this action on behalf of himself and the members of the House of Gisdaywa."

He is not one of those who speaks for other houses.

MR. RUSH: Well, that's a conclusion my learned friend comes to on his reading but --

MR. GOLDIE: I was just reading the pleadings.

MR. RUSH: I am too, and let's read paragraph 58, which says:

> "The Plaintiffs continue to own and exercise jurisdiction over the territory to the present time."

And Mr. Joseph is one of those Plaintiffs, according to paragraph 2. And then I read paragraph 62, which reads:

"Within the territory" --

And the territory is defined as the whole of the map that is filed as Exhibit B.

MR. GOLDIE: Well, I read that paragraph to the witness at the outset of my examination, that's at page 2192.

THE COURT: Well, I have the -- I am of the view that this is -- this is not proper re-examination, but I also have an uneasiness that there may be something of significance that I have not yet grasped. For that reason I'm inclined to allow Mr. Rush to proceed, subject to Mr. Goldie's objection. My greatest reluctance in proceeding that way is the possible fall out that will lead to this re-examination becoming a full-scale further examination in chief, and I think for the moment I will rely on Mr. Rush to make sure that doesn't happen and Mr. Goldie to object if it does, but I really have to -- I have to confine the re-examination within some limits, Mr. Rush, and I'm going to let you do it on this particular occasion, but I'm going to have to at some point, if it looks like we're going to get into this sort of thing in a number of areas, I'm going to have to be much more strict in my ruling.

MR. GOLDIE: Before my friend continues, I ask your Lordship to look at the very outset of my cross-examination, and my first question -- this is page 2191, my first question was:

Q Mr. Joseph, I want to read to you a paragraph of the Amended Statement of Claim. You're familiar with that document, are you?
A Yes."

And I read to him paragraph 58.

THE COURT: Yes.

MR. GOLDIE: And then I directed his attention to the map, which is filed May the 11th:

"Q -- and you're familiar with that map?
A Yes.
Q There are no House boundaries on that map;

is that correct? Would you like to see the --

A Yeah.

Q The map. I just want you to confirm there are no House boundaries."

And that was done. And then question at line 37:

"Q Would you tell me, please, or tell his Lordship, please, how you as a plaintiff own the territory that is shown on that map? And the point of my question, Mr. Joseph, is that the map doesn't show any internal or House boundaries, and I want to understand whether you are claiming ownership over any part of the territory outside of the House of Gisdaywa?

A The House of Gisdaywa have always used the boundary of the area beyond about Biiwenii and Nadina" --

And that's where he goes on to describe that, and on the next page we get into the -- into the geographical boundaries or the square mileage, but that of course wasn't the purpose of the cross-examination at all. The purpose of the cross-examination was to determine in respect of Mr. Joseph what he claims on this lawsuit, and as I said to your Lordship a minute ago, what I determined what he claimed in this lawsuit I have confined my questions thereafter as to control all of these things. We were all confined to the territory, given the nature -- given the answer. I didn't ask him any questions about rights and other territories, and the -- that's why I say my friend is cross-examining him on those answers. There's no clarification required at all.

MR. RUSH: I don't agree with that as you've --

THE COURT: I almost agree with it, Mr. Rush. In fact, I do agree with it. On the other hand, it may be that I missed something that hasn't been made clear to me yet. I'm going to allow to you proceed, but I'm going to limit the re-examination, because we've had a lot of evidence and I think there have to be limits, and I think that I will -- I will not reverse myself, although Mr. Goldie has come very close to persuading that I should. Go ahead.

MR. RUSH:

Q Just to come back to my question, Mr. Joseph, do you have any rights in respect of other hunting and trapping territories other than that of Gisdaywa?
A I could seek permission or be invited to go to another Gitdumden chief's territory on a hunt.
MR. RUSH: All right. Now, Mr. Joseph, I want to show you a map that was marked -- shown to you for the first time and marked as Exhibit 76. I wonder if you could produce that. It's a loose exhibit. It's the map of Owen Lake, my Lord. It was introduced, I think it was the first or second exhibit.
THE COURT: 56 or 76?
MR. RUSH: 76.
THE COURT: Yes. Here it is here.
MR. RUSH:
Q Mr. Joseph, I think you've told us that there was hand printing on this map?
A Yes.
Q Do you recognize any of the hand printing on the map as Wet'suwet'en words?
A Yes.
Q And the hand printing on the map, does that hand printing correspond with what you know to be on the ground of Gisdaywa's territory?
A Yes. I recognize some.
Q All right, thank you. I now want to show you the blue booklet of photographs that was produced and shown to you, Exhibit 77. It's this small blue six-tab booklet. I just ask you to look at tab 2, and I think you told us that this shows logging in your area of Owen lake?
A Yes.
Q And I want to ask you if that, to your understanding, shows current clear-cutting practises of which you're aware?
A Yes.
Q Under conditions such as those is it possible to trap or hunt on lands such as that?
A No.
Q I want to show you tab 4. You have the photograph? It's the photograph of a building which has a sign on its roof, "Owen Lake Resort"?
A Yes.
Q And the -- I think you said this was on Owen Lake?
A Yes.
Q And to my eye the buildings appear to be closed. Do you know whether or not the resort is an

all-year-round resort, or is it a summer resort, or is it a winter resort? Do you know for what period of time it is open?

A I've never gone into the -- seems like every time we came by there it was closed, so I can't say whether it's a summer or winter resort.

Q What time of the year did you come by the resort when it was closed?

A In spring and summer.

Q Okay. Have you ever seen the resort open?

A No. It's -- it seemed to me, like I said it's -- I may have come by at the wrong time, but it was closed, I never got a chance to go into the place.

Q All right. Now, I just ask you, if you would, to look at tab 5. I think you told us this referred to -- this is a photograph of Nadina Mountain?

A Yes.

Q And the upper part of the mountain appears to be covered in snow?

A Yes.

Q Is the upper part of the mountain the part of the mountain you refer to as the alpine area?

A Yes.

MR. GOLDIE: I don't recall that reference. Alpine area and Nadina Mountain, is that in his evidence in chief?

MR. RUSH: No. It's not in respect to Nadina Mountain, but it is in respect to other mountains, and I wanted to ask him if when he refers to Alpine in this photograph, does Nadina Mountain show an alpine area, and I think he said yes to that.

THE COURT: Could I ask the witness this, if you will forgive me, Mr. Rush. On the lower reaches of Nadina Mountain, just before the area covered by the tree line, and particularly on the right-hand side of the photograph there's a lighter shaded area. Is that natural or is that logging?

A I think that's logging.

MR. GOLDIE: Or clouds.

THE COURT: Or reflections.

MR. GOLDIE: Well, I --

THE COURT: Shadows.

MR. GOLDIE: Shadows, yes.

A On the right side you can see the logging. I know this shaded area is clouds, but on the right --

THE COURT: Do you know when that logging was done?

A That's -- that logging has been going on since the late 40's.

THE COURT: All right, thank you. Sorry, Mr. Rush.
MR. RUSH: All right, thank you. I would ask you to refer to another matter, Mr. Joseph. I'm finished with the photographs. Thank you.
THE COURT: Well, can I bother you then once more, Mr. Rush. Looking at tab 6, there's logging in the rear ground, but what about the right shoulder of Nadina Mountain; is that logging or is that something else?
A That is logging.
THE COURT: Sorry, Mr. Rush.
MR. RUSH:
Q All right. Perhaps just to follow that up with a question that your Lordship asked previously, are you able to say when that was done, or do you know?
A It's all been done in 50's, late 50's on. They -- at first the logging was just around Houston, and they kept on pushing south, and I think the logging goes onto about 77 kilometres south of Houston, as far as the logging goes.
MR. RUSH: All right, thank you. I'm through with the photograph book.
THE COURT: Thank you.
MR. RUSH: All right. Mr. Joseph, in your evidence you mentioned at page 2219 that there was a garbage hole used by the Parks branch at the mouth of Owen Creek, and I just wanted to ask you what you meant by the mouth of Owen Creek.
MR. GOLDIE: He extensively described that in his evidence in chief, my Lord. He told us how he got there and that's where he and his family had camped, and I was just -- that was no part of my cross-examination.
MR. RUSH: Well, I think that it's not clear to my reading of question at 26, 2219, the large question that follows through to line 40 where the witness is referring to -- when he's saying the mouth of Owen Creek, because there is two references. One is of outflow of Owen Lake and the other is the mouth of Owen Creek, and I'm trying to establish are these -- is he referring to the same place, or are these different places, and --
THE COURT: Well, I see no harm in that.
MR. RUSH:
Q When you referred to the garbage hole there, Mr. Joseph, being at the mouth of Owen Creek, what did you mean in terms of the location?
A Yes. The -- that is the only way that they described the mouth of Owen Creek as a meeting place, and my

grandfather's camp, winter camp is always referred to as Biiwenii C'eek.

Q Wet'suwet'en for the mouth of Owen Creek is Biiwenii C'eek?

A Yes.

MR. RUSH: Thank you.

THE COURT: And that's where the lake flows into Owen Creek?

A No. The creek flows into Morice River.

THE COURT: Morice River?

A Yes. Mouth of Owen Creek.

MR. RUSH:

Q So when you refer to the mouth of Owen Creek, you mean where it's the junction of Owen Creek?

A Yes.

Q And the Morice River?

A Yes.

Q Thank you. Now, Mr. Joseph, I'm going to ask you a question that arose out of an answer that you gave on page 2214, and I'm sorry for jumping back here, my Lord. This arises out of an answer that was given at line 25, and in particular at line 38 through 41, and my question for you, Mr. Joseph, is that you told us of an event on your territory when one of the elders told us that logs being taken out by truck were protected by Gyologyet, and do you remember giving that evidence?

A Yes.

Q And I wanted to ask you whether you were told or did you note where those logs were coming from?

A Well, the only territory next to Gisdaywa is Hagwilget, to the west was Gyologyet's territory, and the elder that told me that knew the directions those logs were coming from, and that's when he made that comment.

Q So you took it to mean it was coming from Gyologyet's territory?

A Yes.

Q All right. At page 2221 you were asked if your Uncle Thomas George lived at the George Ranch, and you said that he lived there, you agreed with Mr. Goldie's question on that. I wanted to ask you if he lived anywhere else on the territory?

A Well, I always came back to Telkwa for the holidays, Christmas, and they also came back to Hagwilget for different feasts that were held there in the summer, and fishing.

Q All right. Next, still in the same volume at line

22 -- excuse me, page 2226 at line 33, here you were being asked questions as to the trapping returns of Leonard and Andrew George, and you said -- the questions were these, Mr. Joseph:

> "Q The reason why they keep moving is that if they stayed there their trapping returns would go down?
> A Yes.
> Q Wouldn't they?
> A Yes.
> Q And they trap there because of the money?
> A Yes.
> Q And they do -- and this is all within their registered trapline, they move around within that area?
> A Yes."

And my question to you is to your knowledge were there other reasons why they trapped there other than because of the money, as you indicate in there?

A They trapped there because of their father, and another reason is that Leonard's and Andrew's mother's territory was used by someone else.

MR. RUSH: All right, thank you. That, my Lord, concludes the questions I want to ask from that volume. I will now refer to volume 35. And I make reference to a passage at 2239. You were asked some questions about the berry ground here, Mr. Joseph, and I will just read the questions and the answers. It begins at 35:

> "Q When -- to your knowledge, when were these common berry grounds ceased to be used for that purpose?
> A They -- like I said, it requires a burn, and a burnt out area, I think, would produce for about ten years or even less. After that it grows in and you can't pick in the area anymore.
> Q Yeah. It's just like logging, is it not, effect of the burn?
> A Yes."

And my question to you, Mr. Joseph, is can you pick berries in an area that has been logged off?

MR. GOLDIE: Well, the answer -- the question and answer that my friend didn't read explains precisely what the context

is:

"Q Within ten years of an area being logged over, the second growth starts coming in?
A Yes."

That's what it was all about. In other words, in ten years either a burn or a logged-off area is no longer suitable for berry picking.

MR. RUSH: Well, the suggestion here, or suggestion that came from Mr. Goldie was that a logged-off area was equivalent to a burned area in the sense that you could get berries from both places, and my question is is that so, is the effect of a burn and the effect of logging the same?

MR. GOLDIE: Well, that's --

MR. RUSH: So far as availability of berry picking goes.

MR. GOLDIE: Well, with great respect, I don't see any ambiguity about the question and answer.

THE COURT: Well, I don't have any difficulty with it. There is a possibility, I suppose, that logging is said to be equivalent to burning. I don't think that's what the witness meant.

MR. RUSH: I don't think that's what he meant either.

THE COURT: I don't think that's what he said, although he may have been under some misunderstanding or misapprehension about that. Again, I don't think it's -- I don't think the case is going to turn on it, but I will allow you to clarify that, if you wish, if it isn't already clear.

MR. RUSH:

Q Mr. Joseph, can you pick berries on an area that's been logged off; is that an area that's suitable for berry picking?

A No. You need a burn to -- for berry picking, an area that's logged off is -- I've never -- I've tried going to places like that, but have never got -- never found any huckleberries in a logged-off area, and I don't know whether it's -- whether it's been sprayed or -- so that huckleberries can't grow, but you need a burn to get huckleberries to grow.

THE COURT: And of course if a logged area is burned it will then produce huckleberries, won't it, for about ten years?

A Yeah.

MR. RUSH:

Q Is that your answer?

A We've never used a logged -- no one has ever -- I haven't heard of anyone using a logged-out area as a berry patch, because it's -- I don't know what it is, but it never produces like a burned area.
Q All right. I want to refer you to a question that was asked of you on the next page, 2240 of volume 35. It appears at line 26, and it is this:

> Q Now, Mr. Joseph, I think you may already have answered this question, but I just want to be sure about it. The Statement of Claim alleges that you -- the Plaintiffs govern themselves according to their laws. You are there referring to the feast, are you?
> A Yes."

The question that I have is when you agreed with Mr. Goldie that you were referring to the feast, what is it of the feast that you were referring to? Do you want me to read it again?
A Yes.
Q Okay. The question was:

> Q Now, Mr. Joseph, I think you may already have answered this question, but I just want to be sure about it. The Statement of Claim alleges that you -- the Plaintiffs govern themselves according to their laws. You are there referring to the feast, are you?
> A Yes."

And my question to you is that when you said to Mr. Goldie that you were there referring to the feast, what is it of the feast you were referring to?
A Well, it's the same at a feast. You always -- the chief always refers to the area that the meat came from, and the berries, or any materials that he used all came from the territory, and that always happens at a feast, where everything came from, and each member of the House, the women, that anything they donate always announce that this meat came from that area, and it always refers to the land that it came from and who got it. And if it's a gift from another person from the father's side, that is announced too, so at a feast in the Feast House you are always informed of events or things that have happened around within the territory. A feast is -- a feast is to

settle deaths, even though if the funeral or -- funeral that is held, a person has been -- who died out of the territory is brought back, even if it involves someone in Vancouver here or wherever, that -- the father's side always are the ones to make the arrangements for this person, so that is why our feasts are always -- the purpose for a feast is always something to do with your House, and they also say that the feast system is a place where you show your -- your regalia and material that you have, and it keeps the material and money in circulation within our society today, so that is how I -- our people see the feast system.

MR. RUSH: All right.

THE COURT: Is this a convenient place to adjourn, Mr. Rush?

MR. RUSH: Yes, thank you.

THE COURT: All right. Two o'clock, please.

THE REGISTRAR: Order in court. Court is adjourned until 2:00 p.m.

(PROCEEDINGS ADJOURNED AT 12:30)

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

Graham D. Parker
Official Reporter
United Reporting Service Ltd.

(PROCEEDINGS RECOMMENCED AFTER LUNCHEON RECESS)

THE REGISTRAR: Order in Court.
THE COURT: Mr. Rush.
MR. RUSH:

Q Just refer Your Lordship to Volume 35 at page 2247. Mr. Joseph, I am going to read again another passage from the transcript, and 2247, My Lord, beginning at the bottom of the page. This is what you were asked and the answers you gave:

"Q And what about people who came up from the south, would they also travel with the permission of Gisdaywa?

And then I interjected.

"MR. RUSH: Do you mean other Wet'suwet'en people?"

And Mr. Goldie continued:

"MR. GOLDIE:

Q Anybody -- well other Wet'suwet'en people, yes?

A Yes. They -- well if you're travelling through one's territory, you -- it's a road that has to be used and as long as they are not trapping, I don't -- they, I don't think, need the permission of the chief.

Q No. In other words, that there would be movement?

A Yes.

Q And quite freely free movement?

A Through the territories.

Q Whether Wet'suwet'en or whether the people beyond the Wet'suwet'en who were the Carrier --

A Yes.

Q -- people? But what was respected, if I followed your evidence correctly, is the -- are the traplines?

A Yes.

Q The streams and lakes where the beaver were found?

A Yes.

Q But otherwise, people moved around pretty freely?

And you answered "yes". And my question, Mr. Joseph, is, when you answered the question and agreed with Mr. Goldie that people moved around pretty freely, what did you mean?

A Well, they were free to cross over the territory, because it's a trail going through there, and they are free to use it, except that if they come upon a snare or a trap or anything like that, they never went near it, they just went around, made a small detour.

Q And that's what you meant by those words?

A Yes.

Q All right. Now, I would ask Your Lordship to direct your attention to 2272 at line 40. Again, Mr. Joseph, I will read from the transcript here. Line 40:

"Q Well, now speaking to you then as a person who was responsible for the Madeek territory in which Broman Lake is located, if the court grants a declaration that the holder of the name of Madeek is entitled to ownership and jurisdiction of that territory, that would stop the Broman Lake Indian Band from carrying on fish farming in Broman Lake, would it not?

A That would stop if Madeek was -- wasn't consulted.

Q Yes. And gave permission?

A Yes."

And my question is -- to you, is it likely that permission would be given to the Broman Lake people to continue their fish farming?

MR. GOLDIE: Well, My Lord, I don't know on what basis that question was asked, because I didn't pursue who the Broman people were to any extent. He said they would give permission. I don't know what -- the qualification that he puts on it will depend on who they are, if I understand these matters correctly.

MR. RUSH: Well, I think that may be true, but I think --

THE COURT: Does it really matter -- dealing in a question of law, does it matter what this witness would do with -- in a particular situation? I'm asked to make declarations of jurisdiction, and presumably if someone has jurisdiction, maybe they can allow almost anything they want or refuse it. Would it matter what he would likely do or not?

MR. RUSH: Well, I thought what was a matter of lack of clarity here is the suggestion that with the jurisdiction to

make the decisions in respect of that part of the Wet'suwet'en territory, that there wouldn't be other considerations, and if Your Lordship isn't concerned about that, I won't pursue it.

THE COURT: I'm not going to be helped by the answer.

MR. RUSH: All right.

Q At 2275, then, the top of the page, My Lord. Now, again, Mr. Joseph, there was some questions about helicopter flights that you had with Mr. Neil Sterritt and Mr. Eddie John. The question -- I'll start perhaps over the page, because I'm sure Mr. Goldie won't want me to start with a "mm'hmm".

MR. GOLDIE: Oh, well.

MR. RUSH: Might help.

THE COURT: He might prefer it.

MR. GOLDIE: Yes.

MR. RUSH:

Q 2274, then. The question at 29, perhaps, would give us the context. Mr. Joseph, the question that was put to you was this, in and about halfway down that paragraph, and he is reading here from the All Clan Feast transcript of Moricetown on April 6th, 1986, which starts off with:

> "Merci. (Thank You) (in Nutseni), N-U-T-S-E-N-I, I see this sentence: I was invited by Neil Sterritt and Alfred Joseph. We flew over our boundaries. We understand, all three of us, where our boundaries are. We went by helicopter for five days to Tatla Lake, Pincher lake and Tachy Lake."

Now, just pausing there. Does that refresh your recollection of the lakes and the five day helicopter trip?

A No. We flew into Tatla, Bear Lake on two different occasions, and each time I went in I went along as an interpreter for Neil or whoever, Gitksan people, to tell the people -- the non-Gitksan speaking people what we were there for.

Q Right, um-hmm?

A And there were times Neil and Eddie went out by helicopter, but I accompanied them on one trip up the mountain.

Q I see. Right, thank you. But did you

understand that the purpose of the helicopter flights was to -- for Neil Sterritt to show the boundries of the Gitksan Wet'suwet'en claim and for Mr. John to show the boundries of the -- of the Carrier-Sekani claim?

A Yes."

And my question to is you is first you mentioned Tatla and then you said Bear Lake. Are Tatla and Bear Lake different or is it the same area?

A Different.

Q They are. Where is Tatla?

A Tatla Lake is just east of Babine Lake, and Bear Lake is north of Tatla Lake.

Q All right.

Q Now, on these helicopter flights were there other people who accompanied you and Mr. Sterritt and Mr. John?

A I know David Gunanoot was at Bear Lake and David Green.

Q Are these Gitksan people?

A Yes.

Q Are they or were they Gitksan chiefs?

A Yes.

Q All right. And were there non-Gitksan or non-Wet'suwet'en chiefs who accompanied Mr. John, Mr. Sterritt and yourself?

A Non-Gitksan or non-Wet'suwet'en?

Q Yes. You made reference to Nuu't'sanii. Were there any Nuu't'sanii chief or chiefs from the Carrier-Sekani Tribal Council area?

A I think he was the only one that I remember.

Q All right.

A The rest were from Tatla and Bear Lake.

Q All right. And were you -- did you yourself accompany David Gunanoot and David Green on one of these trips?

A No.

Q All right. Were you present there with them when they were there on one of the trips?

A We -- when the Gitksan people and Eddie and Neil -- it was just the Gitksan chief along with Eddie John and Neil John Sterritt went out on these boundary trips. We only went up one mountain where the -- one of the Tatla chief demonstrated setting this snare for groundhog. That was the only one we went on.

Q Who is the Tatla chief?

A William George.
Q Would the Tatla chief have been a member of the Carrier-Sekani Tribal Council?
A Yes.
Q All right. I now direct you to page 2282. There is some other questions here, Mr. Joseph, I'll ask you. Beginning at line 17. This deals with the all clans feast at Burns Lake, and you were asked some questions and these were they:

"Q Yes. The feast at Burns Lake, the change in the boundary at Chapman Lake was made before the feast?
A We told -- our people told them that -- where the boundary was to the Sekani-Carrier, and they agreed with it.
Q Well, they just didn't -- they just heard you and didn't say anything; is that right?
A Well they agreed that that's where the boundary was.
Q For Chapman Lake?
A Chapman Lake, yes."

And my question is, did they agree at the time where the boundary was for other places other than Chapman Lake?
A Yes, they agreed to the eastern boundary of the Wet'suwet'en territory.
Q And the eastern boundary, could you give us a place to help us site what you are referring to as the eastern boundary or places?
A It's where the Burns Lake sawmill sits today, and the hill south of the sawmill is called Needii bil.

MR. RUSH: Could you spell that for us, Mr. Mitchell?
THE INTERPRETER: N-e-e-d-i-i, b-i-l.
MR. RUSH:
Q All right. Was there any other part of the Wet'suwet'en boundary that was agreed to other than Chapman Lake and Burns, the area you have mentioned, Burns Lake?
MR. GOLDIE: Well, I think my friend illicited from the witness those two changes on his examination in chief, My Lord.
THE COURT: I don't recall it.
MR. GOLDIE: I think he illicited both the reference to Chapman Lake and the -- I think it was described by the witness in his evidence in chief as a boundary of a chief for whom he spoke with Silena John.

MR. RUSH: Gitumskanees.
MR. GOLDIE: Gitumskanees who was ill and not able to attend. And my understanding was that his evidence in chief was that those were the two changes.
MR. RUSH: Yes, I agree that that's the evidence. What I am seeking here is -- based on this question, that where the answer to Mr. Goldie was that there was agreement as opposed to simply the chiefs saying nothing. And I -- here we have an agreement on Chapman Lake, and now Mr. Joseph refers to an agreement about Burns Lake, and I think it's a fair question to ask, if there are any other areas of the boundary for which there was agreement.
MR. GOLDIE: I disagree, My Lord. The evidence in chief was there were two boundaries, and I --
THE COURT: There was an agreement on them both?
MR. GOLDIE: That was my understanding of the witness's evidence. He will put it -- I thought he put it this way in his evidence in chief, that they stated it, and there was nobody raised a voice in dispute, and that was the way in which the agreement was measured. Now, I chose to illicit from him of those two, Chapman Lake, but I certainly didn't understand that there was any suggestion that there were anything else other than those two areas, and I think it is introducing into the re-examination something which is not suggested in the cross-examination.
MR. RUSH: Well, if my friend and I understand each other, and it sounds to me as though we do, that the disputed areas so far as the Wet'suwet'en were concerned at Burns Lake, were the ones for which the agreement was reached, then I'm content to leave the question.
MR. GOLDIE: That's a matter of argument from the evidence.
THE COURT: Yes.
MR. GOLDIE: All I am saying is that the only evidence of anything related to those two places.
THE COURT: Well, Mr. Rush, if you illicited evidence in chief that there was discussion about the Burns Lake portion of the boundary, then surely you can't re-examine on the same subject you examined in chief about whether there was an ambiguity or not, can you?
MR. RUSH: Oh, yes, I think I can. I think I can, especially if there is a suggestion in the cross-examination that something said in direct --
THE COURT: There is nothing in the cross-examination that has anything to do with Burns Lake area, is there?
MR. RUSH: My Lord, the distinction I was trying to draw was

this, that in chief Mr. Joseph said that there had -- there was no voices raised to dispute what was said, and as Mr. Goldie said, that was the measure of agreement. Here, in my view, he states something more positively with respect to the Chapman Lake, mainly that there was stated agreement.

THE COURT: Yes.

MR. RUSH: In respect of Chapman Lake.

THE COURT: Yes.

MR. RUSH: Now, I see it may not be a mountainous difference, but I think that there is some distinction between standing by and having that stand as an agreement and saying something that is positively an agreement, and so here I say that I can illicit evidence on redirect as to whether or not, if there was something positively said about Chapman Lake, was there also something positively said about Burns Lake, and he said there was.

MR. GOLDIE: With great respect, I have now turned up the evidence in chief. It's at volume 33, and it goes on for some pages, but at page 2120.

THE COURT: That's in chief.

MR. GOLDIE: Page 2120:

> "Q Is the first of the two territories that you mentioned, Mr. Joseph, the Gitumskanees' territory, is that -- is that close to Burns Lake itself or at Burns Lake?
>
> A It's close to Burns Lake.
>
> Q Okay. And is Burns Lake east or south-east of Smithers?
>
> A Southeast.
>
> Q All right."

And then he goes on it to say:

> "Q All right. Now, did somebody who was in attendance at the all clans' feast in Burns Lake, speak about Gitumskanees' territory?
>
> A Yes.
>
> Q Who was that?
>
> A This is Silena John.
>
> Q Did she speak about the boundary to you beforehand?
>
> A Yes.
>
> Q All right. Did she state to you where the boundary was located? And where she said

the boundary was located, was that the same as knowledge that you had?
A Yes.
Q And did she then speak about the place of the boundary of the feast?
A Yes.
Q And did you hear her speak about it?
A Yes.
Q And was that -- what she said, was that the same as the knowledge which you had received earlier?
A Yes.
Q Okay. And you had been told, had you not, by Gitumskanees about the boundary?
A Yes."

So it goes on like that for a couple of pages. Now, what the effect of that is, is a matter of argument, and if I in my cross-examination deal with only one of these two territories, it doesn't give, in my submission, my friend the right to go back and go through it all over again and seek a conclusion that perhaps the witness didn't state in the words that he wants him to state.

THE COURT: Anything further, Mr. Rush?
MR. RUSH: No.
THE COURT: Well, I don't think that you are entitled re-examine on the Burns Lake matter. It wasn't cross-examined upon, and I don't think the cross-examination on the other matter opens up further evidence in chief on the Burns Lake matter.
MR. RUSH: All right.
Q I refer you to 2296, line 46. This had to do, Mr. Joseph, with the map that was submitted to the Honourable Hugh Faulkner, the Minister of Indian Affairs at Kispiox, November 7th, 1977. You were asked some questions about that, and the question at line 41 at page 2296 is this:

"Q Did you have anything to do with the preparation of that map?
A I was asked about where Gisdaywa's territory was, and I gave some information on it.
Q At that time, then, 1977, the only contribution that you made with respect to this map was to tell who, Mr. Sterritt?
A Yes.

Q About where your territory was?
A Yes.
Q You didn't have any maps at that time, did you?
A No.
Q What did you do, simply describe to him where Owen Lake was and --
A Yes."

And my question to you, given that, Mr. Joseph, is what did you tell Mr. Sterritt?

MR. GOLDIE: Well, what possible -- well, I object to that question.

MR. RUSH: I am asking this, My Lord, because I don't think that the suggestion that was made to Mr. Joseph that they just simply described where Owen Lake was "and" is an answer that at all reflects what it was that was done by Mr. Joseph. I think that it is not clear by any stretch of the imagination what it was that Mr. Joseph said to Mr. Sterritt. I mean, the vague and general words about, "Well, did you say where your territory was?" "Yes, I did", and he agrees to just simply describe to him where Owen Lake was "and". Well, was he agreeing with the "and" or Owen Lake, or what was being agreed to? And I say that Mr. Joseph ought to be able to say what it was that he said.

MR. GOLDIE: I don't think I opened the door to hearsay, and besides, it's completely irrelevant, that that map has no internal boundaries on it. And my questioning was to determine whether Mr. Joseph had any contribution to make with respect to the external boundaries, and the answer was he told him about the boundaries of his territory, which are -- not one yard of which forms part of the external boundaries. So in terms of the examination with respect to the map, his answers were that -- whatever he said was irrelevant.

MR. RUSH: Well, firstly, it's not a question of hearsay. What somebody says is not hearsay. It's what somebody says back to him that is the hearsay. And if we were going to judge --

THE COURT: I don't agree with that, but that's a dialogue that's going on all the time about the one-sided hearsay, and I am of the school that says that one-sided hearsay is just as objectionable as two-sided hearsay, but that's not this question.

MR. RUSH: That's not this question, but I also -- what I say is that here it's by no means clearer what it was that was said, and I think that clearly Mr. Goldie was

attempting to suggest to the witness that he said certain things in a general way, and I think that this witness ought to be allowed the right to explain what he said, if there was something that was more particular.

THE COURT: I have always had the view that if cross examining counsel says "Did you say something to a witness", and he answers in re-examination, the witness would be asked "What else did you say?" And I think that this falls within that general area of permissible re-examination, as long as it's relevant. Are you sure it's relevant? Is it going to be of any use when the final solution -- if the maps don't deal with internal boundaries?

MR. RUSH: Well, it doesn't deal with internal boundaries, but on the other hand, I think it doesn't only go to that question. It also goes to the question which I think is unstated by my learned friend about what it is that you say when you say something about your territory and how do you describe it. Do you describe it in general language as being suggested throughout by my learned friend, or do you describe it in other more particular ways? Are there shorthand ways that you describe your territory? On some occasions do you say one thing to a map maker and another thing to your House members and your people who attend the Feast?

THE COURT: I am going to allow you to ask the witness what he said to Mr. Sterritt about this map, about the preparation of this map, but confined to the Owen Lake situation.

MR. RUSH: Yes.

THE COURT: Go ahead.

MR. RUSH:

Q You have heard the discussion here, Mr. Joseph. I would ask you to think back as best you can to that time, and what was it that you said to Mr. Sterritt regarding the Owen Lake area with regard to the preparation of the map?

A Well, I had to tell him where our territory was and where the boundaries were south and north, west and east, so Mr. Sterritt wasn't aware who was in the territory at the time. He was just going into Wet'suwet'en territory and Wet'suwet'en Houses. He wasn't too familiar with what territory were involved. So this is why I explained to him where our territory was and who was the neighbour. That is what I said to him. This is the neighbours to the east and the

neighbours to the south, and that's what I said to Mr. Sterritt.

Q All right. And later in the same page, Mr. Joseph, there was another question that was asked of you, only in this respect it was asked about Marvin George. Now, just carry on with the questions and answers.

"MR. GOLDIE: I don't think I need to have that marked now. It's going to come in at a later time.
THE COURT: Shall I return it to you?
MR. GOLDIE: Yes. Thank you.
Q The sources of information that you had when Mr. Sterritt asked you about the territory of Gisdaywa in 1977, were what you had heard at the feasts?
A Yes.
Q And you have identified, and it's under tab five of the document book, marked as exhibit, as part of Exhibit 79, the map that accompanied your response to the interrogatories in August of 1986. And you said that, you said at that time, that the approximate boundaries of your territory are included in your -- are included in the map which is set out in Schedule 'B', except for your fishing sites, and I want to get a better idea of the background to that map. Who did you -- you didn't draw the map that we are talking about, did you?
A Of the Gisdaywa territory?
Q Yes.
A No, I didn't draw it.
Q Who did?
A Marvin George.
Q And you gave him the kind of information that you gave to Mr. Sterritt?
A Yes."

And my question to you is what were you referring to when you said the kind of information that you gave to Mr. Sterritt?

A About the map, the kind of information you say?

Q Yes. This related to the kind of information in respect to the preparation of the map that was in the part of the interrogatories response in August of 1986?

A Well, like I said, I gave him the name of the creeks, the lakes and the rivers that flowed through Gisdaywa territory, and all the mountains that were in the

territory, the boundaries, the ridges, and I also told him who the neighbours were to the south, and those neighbours would know -- how they were known at Hoones too t'en that they were the keepers of the head waters of the outer boundaries of the Wet'suwet'en territory.

Q All right. I would like to go to Volume 36. Now, Mr. Joseph -- for your reference, My Lord, it's at 2236. And I'm going to ask that the document book, document book number 1, Tab --.

THE COURT: I'm sorry?

MR. RUSH: This is the first of the two document books, My Lord, and Tab 8, which is the transcript of the Wet'suwet'en Sekani-Carrier Overlap Feast. If that could be placed before Mr. Joseph. I would like to turn you to page 19. You were asked some questions about this page.

THE COURT: I'm sorry, what page was it?

MR. RUSH: It's page 19, My Lord. Do you have it there?

THE COURT: Yes.

MR. RUSH: Thank you.

Q Now, you were asked a number of questions about this, Mr. Joseph, and the first question that I would ask you is in relation to the geographic point which you identified at line 22 on page 2338. At 22 the question was:

"Q And then he says: 'Then you go northwest to Nell gee that's Gitdumden.'

Now, Nell gee is what, a mountain range?

A Yes. The Telkwa range."

And is Nell gee -- what is Nell gee in the Gisdaywa territory?

A What is Nell gee at?

Q Is Nell gee in the Gisdaywa territory?

A Part of it.

Q What part of it?

A Seselii t'oogh.

Q And was that identified by you on the Gisdaywa map?

A Yes.

Q Now, at page 23 -- sorry, still reading from the same page, My Lord, at 2338. Mr. Goldie reads on at line 30:

"And then he goes on over to the next page. And he says:

'On the northeast side'.

This is the second complete paragraph.

Are you on page 20, Mr. Joseph?

A Yes."

Q Now, Mr. Joseph, I would like to you go to page 20, if

you will, and I would like you to go to the first complete paragraph, not the second. And the first sentence of the first complete paragraph on page 20 of Exhibit 82 is: "On the east side was si til." What does that refer to, if you know? Do you see it at the top of page 20 that I am referring to? Do you see where it says "to get water"?

A Yes.

Q And then the first paragraph "On the east side was".

THE COURT: The next line.

MR. RUSH: -- "si til".

THE COURT: The second line, Mr. Joseph.

THE WITNESS: Yes.

MR. RUSH:

Q And perhaps if you want to read it in context, read from the bottom of page 19 over the top of page 20. My question is, do you know what si til is?

A This is Leonard.

Q Yes. Leonard is speaking here and he says that on the east side was something called si til?

A The only thing that I can relate to that is Dzel Teel.

Q And what's that?

A That's Morice mountain.

THE INTERPRETER: 183.

THE WITNESS: I never heard the -- I don't know this part, "si til".

MR. RUSH:

Q In Wet'suwet'en does Dzel Teel, does it sound like that?

A Yes.

Q And what -- where is -- I think you have told us where Morice Mountain is located?

A Yes.

Q Now, I want to ask you -- Mr. Goldie then read on in respect of the second paragraph on the northeast side was something that I will pronounce as dakeyezeeyes?

A Yes.

Q In relation to Morice Mountain. Where is Dakeyezeeyes?

A That would be south of Morice mountain, I believe.

Q Okay. Is that a boundary point of the Gisdaywa boundary?

A Yes.

Q All right. And then in the next sentence -- I'm sorry, the next paragraph beginning:

"There was one kok which is dead fall. I

guess my great uncle used to go there. Put fresh bait in it and the Gilserhyu used to come and put fresh bait in it from the other side and they were both putting fresh bait in it. One time they met."

And that is the boundary that encompassed Gisdaywa's trapline. Now, do you know what a kok was?

A G'oh?

Q Okay. Can you help us with that, Mr. Mitchell?

THE INTERPRETER: G'o-h.

MR. RUSH:

Q Now, is the G'oh, is that something that relates to Gisdaywa's boundary?

A Yes.

Q Is that a known place on the boundary?

A Yes.

Q And where is that place?

A It's south of Owen Lake, between Gilseyhu and Kaiyexweniits. Gisdaywa' boundary.

Q Now, I want to read to you at the bottom of 2339. And beginning at line 38, the question was -- Mr. Joseph, it won't be in the transcript that you have, this is in the transcript that I am reading from:

"Q Yes, I am obliged to my friend, I made an improper or incorrect assumption. Now, he goes on to say: 'That is the boundaries that encompasses Gisdaywa's trapline.'

And he is there quoting from what Leonard George said at the Moricetown feast. And then Mr. Goldie goes on to say:

'So he's apart from talking about Nelgii, he is gone around the Owen Lake over to Pimpernel, down to the Morice and then on the east side he has made reference to a small height of land. Those are the points that he says, if I understand this correctly, that encompasses Gisdaywa's trapline. Do you agree with that?

A Yes."

Now, in that question what did you understand Mr. Goldie -- or what did you understand by the use of the word "Gisdaywa's trapline."

A Well, it's a -- to me it's like I've said, is that --
MR. GOLDIE: Excuse me, I'm not quite sure whether this is an appropriate question, My Lord, on re-examintion. What I was asking him to do was to elucidate or to follow the evidence which -- not the evidence but the statements that Mr. Leonard George has reported to have made, and then I simply used the words that Leonard George used, and said putting the geographic terms, as I understood them, into English. Now, I don't know that my friend can go beyond the question that was put. What is a proper -- I'll put it this way. In my submission it is a cross examination of an answer which is unambiguous. My friend is trying to create the ambiguity and there was none between the witness and myself.
MR. RUSH: Let me see if I can reframe it.
THE COURT: At the bottom of the page he did say that in that context trapline meant territory.
MR. RUSH: Yes.
Q But this is my question, My Lord. Nell gee was excluded, two other names were excluded, and my question is, Mr. Joseph, if you include Nell gee and you include Dzel Teel and G'oh, what is it that you understood Mr. Leonard George to be describing at the Moricetown feast?
A He was describing Gisdaywa' territory.
Q And when you say his territory, what do you mean in this context?
A It's all of the --
MR. GOLDIE: Well, I object to him putting a gloss on Mr. Leonard George's statement, because that's what he is now being asked to do, is to re-interpret what Leonard George said.
MR. RUSH: That's exactly what my friend does in cross-examination, only without three geographic reference points.
MR. GOLDIE: I did not, if I can say with all respect, attempt to mislead the witness. When I said down to the Morice and then on to the east side, he's made reference to a small height of land. Those are the points, and the witness didn't disagree with that. And then I said are those the boundaries that encompass -- "if I understand this correctly, that encompasses Gisdaywa's trapline. Do you agree with that?
Yes", without any qualification.
THE COURT: I don't understand what the problem is. That's my

difficulty.
MR. RUSH: Well. All right. As I see the problem, it's this. The conclusion that you will be asked to draw, on the basis of this answer, by counsel potentially in the future, is that all there was to Gisdaywa's territory were two registered traplines, one owned by Joseph Nahloochs, succeeded by Joseph George, and the other registered in the name Thomas and then Andrew George. The description -- the summary of the description given by Mr. Goldie fits that conclusion. It does not fit the number of points that were described by Mr. Leonard George at the Moricetown feast. And what I am asking Mr. Joseph to do is to include those other boundary points, one which Mr. Goldie expressly asked him to exclude, and the other to -- which were not mentioned in his description of the territory. And what is it that you have when you include those other boundary features, and his answer was Gisdaywa's territory, and I'm satisfied with that. But -- I make no apologies for this description. I think that the full geographic description should have been put to Mr. --
THE COURT: You say that full description is in the minutes?
MR. RUSH: Yes.
THE COURT: And it was described fully the same way by the witness in chief?
MR. RUSH: No, it wasn't.
THE COURT: Oh, he went right around the perimeter of the whole property.
MR. RUSH: I'm sorry. Yes, in chief he was, yes. But as I see it, My Lord, the point of this cross-examination was to diminish the size of the claimed boundary.
MR. GOLDIE: Well, the question wasn't objected to, and I think the whole thing is a matter of argument, my friend having now stated in argument which I have yet to make.
THE COURT: I think that I am going to ask you to go on to something else, Mr. Rush. I am sure that the whole position is clearly stated both ways, and I don't think its been clearly stated what this witness says the territory is, and you say that the minutes that have been put in have described the same boundaries. It don't see any room for re-examination on this question.
MR. RUSH: All right. Mr. Joseph, I wonder if I may then refer you to the page 2341. That's the next page, My Lord, at line 13, and there's a description that Mr. Goldie

read from Mr. George's comments at the feast:

"And down at the bottom of page 20 Leonard speaks there again:

'I know some of the boundaries between Madeek's and Gisdaywa. Now they are all same clan, but didn't go across their boundary. Gisdaywa said, 'Nelh,' - now there is one creek that sticks in my mind. -- They used to say, 'Now you don't go to the far end of that lake. There's lots of muskrats. You don't go and swipe muskrats.' On the other hand they don't come on my side -- I say 'my side' - I mean Gisdaywa side which was usually beaver.

And then he gives a names for a,

'little muskrat housesitting in the middle that belongs to Madeek which is Victor's grandfather. And that's how much respect they had."

And then Victor says:

'Now that the gitdumden tribe has finished telling you of their trapping territory and their boundries now you're going to hear from Gilseyhu Chiefs.'.

So that as far as you were concerned, Mr. Joseph, at that point the boundaries of Gisdaywa had been described?

A Yes.

Q And that's the sort of description that was given in any Feast in which the boundaries are referred to?

A Yes. Usually our people when they give a description of their territory at a Feast, all they do is mention one area and the rest -- the people that know the territory know what area they are talking about. In this -- at this time Leonard mentioned more names than I did, because of the strangers that were in.

Q Yes.

A Were there. It was for their benefit.

Q Yes. He gave a series of points?

Q Yes. Now, is that the sort of information that the map maker who drew up this map that's part of Exhibit 62 has given, these series of points?

A Yes."

And my question is what is the information that was given to the map maker?

THE COURT: I don't know how the witness can be expected to answer that without the map in front of him. We have got so many --

MR. RUSH:

Q Well, Mr. Joseph, would you be assisted by the map of 62 -- which is 62-3, My Lord -- what names were given to the map maker, the map maker that went into the preparation of the map that was entered as Gisdaywa's map, Exhibit 62-3?

A Well, he was given information on all the boundaries, like the beaver dams and the ridge, where it crosses the Morice River and how many times it crosses the Morice River and other information on creeks to the south, and it's -- he's been given information on every territory. So that -- so the other side -- the other neighbours do the same. They tell him where their boundary is, and that just coincides with Gisdaywa's territory on all sides. So that's how we arrived at that boundary.

Q All right. This is Exhibit 62-3. His Lordship has asked me to put that in front of you. That contains a number of Wet'suwet'en names and places.

MR. GOLDIE: All of this was gone through at great length in the evidence in chief. We went around that entire map.

THE COURT: Yes, we did indeed. Are you asking the witness, Mr. Rush, if he gave the map maker the information that's shown on that map?

MR. RUSH: Well yes.

THE COURT: The major boundary points --

MR. RUSH: My question is "the sort of information" that is referred to at page 2342, line 9.

Q Is the information, Mr. Joseph, which you gave to Mr. Marvin George for the production of that map, is it the information of the names and places that are indicated on there and the boundaries that are there?

A Yes.

Q All right. I would like to refer you now, My Lord, to page 2351. And on 2351, My Lord, reference was made to a letter which is dated April the 3rd, 1987, and you will see that at line 13 -- Mr. Goldie reads the letter and that was exhibited at 86D. I wonder if we could have that letter placed before Mr. Joseph. It would be in the -- I think the second volume, book 2,

and it's at Tab 10 -- yes, it's at Tab 10 of the second volume, and it's about the sixth page in. It's a handwritten letter.

THE COURT: Yes.

MR. RUSH: This is the letter 86D that's referred to on that page, My Lord.

Q Mr. Joseph, you have a copy of Mr. George's letter there. Can you tell His Lordship when you first saw that?

A I first saw it when -- in September, sometime in September, when we came down here for the court case to resume.

Q Yes. Would that be the early part of September?

A Yes.

Q And after you saw that letter, did anything happen in Moricetown with regard to that letter?

A Yes, there was a meeting.

Q And this was a meeting of whom?

A The Wet'suwet'en chiefs from Hagwilget and Moricetown.

Q And was Mr. Andrew George present?

A Yes.

Q What was the subject matter of the meeting?

A Well, he was asked -- the chief wanted to know why this letter was written, and he was asked about it.

Q Was there a discussion about it?

A Yes.

Q Was this in Wet'suwet'en?

A Yes.

Q And after that discussion, what occurred?

A Well, Andrew said that --

MR. GOLDIE: Well, perhaps if the witness could say what happened rather than what Andrew said.

MR. RUSH: Well, I must say, My Lord, there's been many contexts in which the person -- information was illicited which was of a hearsay nature. And I don't want to be -- I don't really object to restricting the discussion here, but I don't think it's at all in terms consistent with the flavor of much of what my learned friend illicited.

MR. GOLDIE: This is the first time I am hearing this. This is not your evidence in chief. This is re-examination.

MR. RUSH: That's true.

THE COURT: Well, I don't think it matters whether it's chief or cross or re-examination, hearsay is still hearsay. I have not been as active as I should in keeping hearsay evidence -- I am relying on counsel to object, and lots of things are objected to as hearsay that aren't,

but for this witness to say now what happened as recently as last September, is of very, very doubtful probative value. I don't think it's admissible at all. It is objected to.

MR. RUSH: Yes.

Q Mr. Joseph, what -- when did this meeting happen that you are referring to?

A It happened around the first of December.

Q Of December?

A Yes.

Q All right. And how many Wet'suwet'en chiefs were there?

A There was about 20.

Q And did -- was the meeting convened in respect of the subject matter of the letter that's in Exhibit 86D?

A Yes.

Q And as a result of the discussion -- I take it Mr. Andrew George spoke there, did he?

A Yes.

Q And I would ask you, what was the result of the meeting?

A Well, Andrew said that he would --

Q Mr. Joseph --

A George.

Q There's been an objection taken to your saying what Andrew said, so if you can skirt around what was said and just perhaps say what was done, if you know.

A Well, he -- the chief wanted to know why it was written, and the answer was that it was meant to assist me, but if that was objected by the chief, that he would just ask the people that he wrote to, to disregard the letter. That's all that I understood.

Q Okay. Do you know what happened after that?

A No.

Q All right.

THE COURT: I'm sorry, when you say "this is meant to assist me", were you referring to yourself?

THE WITNESS: Yes.

THE COURT: Thank you.

MR. RUSH: All right.

THE COURT: Are you changing the subject?

MR. RUSH: No. No, this is same subject.

THE COURT: All right.

MR. RUSH:

Q I am showing you a letter that's dated December the 4th, 1987, addressed to Fish and Wildlife, Province of British Columbia, Smithers, B.C. I would ask you if

you recognize the signature of Mr. Andrew George on that?
A Yes, it's his signature.
Q All right. Have you ever seen this letter before today?
A No.
MR. RUSH: Can that be marked as the next exhibit?
MR. GOLDIE: I am going to ask if I may be allowed to re-examine on this letter, My Lord.
THE COURT: All right. We'll deal with that when the time comes.
MR. GOLDIE: On that basis I am not objecting to it anymore.
THE REGISTRAR: Exhibit 117.

(EXHIBIT 117 - LETTER DATED DECEMBER 4, 1987 TO FISH AND WILDLIFE, PROVINCE OF BRITISH COLUMBIA - SMITHERS)

MR. RUSH: Well, I don't accept that as a basis for his lack of objection. I think there have been many, many documents marked as exhibits based on Mr. Joseph's identification of his signature.
THE COURT: It does make a difference if it's in chief or re-examination on one hand and cross-examination on the other, but I'll deal with Mr. Goldie's application in due course.
MR. RUSH: And, My Lord, I have been kindly provided with a copy of the original copy of the trapline file from Smithers, and one of the documents taken from this file is a photocopy which I was provided with by my learned friend of a referral slip, and I would like to tender this. It's a referral slip from my friend's file.
MR. GOLDIE: May I see it please.
MR. RUSH: Here is the original here. And I would like to tender that as an exhibit. And I concede that I haven't -- I can't put it to this witness, and I would would tender it on the basis that it was presented to me from a Wildlife file from my learned friend.
MR. GOLDIE: It didn't get me very far.
MR. RUSH: That's fine. If he won't agree, that's fine with me.
MR. GOLDIE: I'm quite happy -- I'm not happy to have it go in, I am quite prepared to have it go in, but I expect some reciprocity next time around. I just -- My Lord, I don't want to belabour this point, but we have had my friend complaining about not receiving documents, and I gave him a couple of documents, notice of them.

When I gave him the source of them, my friend has yet to state that he is prepared to admit them, despite the fact that I gave him the archival references. And I find that in July of this year I wrote to him a letter which stated:

> "We have endeavoured to reach an agreement on documents and after a review of the correspondence it seems to me that all that has been agreed by Counsel for the three parties is that a requirement for certification of archival documents is waived. You and Mr. Macaulay have not, so far as I am aware, resolved the differences between you as indicated in this letter of May 11.
>
> I am still not satisfied with the scope of an agreement as defined by your letter of May 9th but it would do little good at this time to rehearse the arguments for a wider agreement. The following is an attempt to set out what is apparently common ground.
>
> 1. There is agreement amongst counsel on points 1, 2, 3, 4, 6 and 7 of your letter of May 9, provided there is agreement to the following;
>
> 2. 'Archival documents' includes what is specifically listed in Mr. Macaulay's letter of May 11th and more generally referred to in paragraph 8 of your letter of May 9. What else falls within the scope of these words is to be dealt with at the time the copy is tendered.
>
> 3. Based on the practice followed so far, it is sufficient to identify a document as archival if the archival source is indicated in the copy tendered or at the time it is tendered.
>
> Would you and Mr. Macaulay let me know if this is an accurate reflection of the present understanding."

I have not received a reply to that letter so far as I am aware.

Now, I don't want to belabour these points, but if this trial is going to get along and we are going to finish it off in a reasonable time, we've got to

facilitate each others entry of documents which are going to get in in the long run. And I still have yet to receive a reply from my friend about the documents which I tendered from Mr. Ditchburn. I have yet to receive a reply from him about the R.C.M.P. documents, both of which are in exactly the same category as the document that he is now presenting.

I am not objecting to this document going in. In fact taken all in all, I am delighted that it is.

MR. RUSH: Well, he started out being unhappy and now he is delighted.

THE COURT: He said he is not happy.

MR. RUSH: So I'll just have that marked.

THE COURT: Well, all right. I'm sorry, but I have to deal with another matter for a few minutes. Other people are awaiting to hear from me.

THE COURT: Order in court.

(PROCEEDINGS ADJOURNED FOR A SHORT RECESS)

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

LORI OXLEY
OFFICIAL REPORTER
UNITED REPORTING SERVICE LTD.

(PROCEEDINGS RESUMED AT 3:25)

THE REGISTRAR: Order in court.
MR. GOLDIE: My Lord, I think in view of the wording of that last document that the entire file ought to go in.
THE COURT: I don't think I've seen the last document yet.
MR. GOLDIE: Oh, I thought my friend had tendered it.
THE REGISTRAR: It's numbered 118.
THE COURT: This is the -- this is called a referral slip, is it?
MR. GOLDIE: Well, that's its heading, but --
THE COURT: I take it that this referral slip refers to Exhibit 117, does it?
MR. RUSH: Yes.
MR. GOLDIE: Well, I assume that's what my friend is tendering it for.
MR. RUSH: No. I'm tendering it for the date.
MR. GOLDIE: Well, whatever it's being tendered for, it's -- on its face it's stated to be placed on his trapline file, and if it's to have any significance whatsoever the entire file ought to be marked.
THE COURT: Well, I'm sorry, 118 can't refer to 117, it must refer to 86D, does it?
MR. GOLDIE: Yes.
MR. RUSH: It refers to 86D, yes.
THE COURT: Yes, all right.
MR. GOLDIE: 86D?
MR. RUSH: Yes. It refers to the letters, it doesn't refer to

the whole file.
MR. GOLDIE: I beg your pardon. It doesn't refer to 86D. 86D is April the 3rd, and this refers to a letter of July the 3rd.
THE COURT: Well, I took it that -- well, I have no right to take anything, because there will be many things in between, but on July 3rd Mr. George could have dropped off 86D. He could not have dropped off 118 because it's not dated until September 4th.
MR. RUSH: That's right. And furthermore, I've received a letter, thanks to my learned friend on -- it's September the 7th, which says that:

> "It has come to our attention that the enclosed documents have recently been added to the trapline file of Andrew George."

The document that you have in your hand plus the Andrew George letters were attached to that.
MR. GOLDIE: Well --
THE COURT: Well, will the file disclose to what this in 118 refers to except by date?
MR. GOLDIE: Well, all it will do is enable the court to see to what the referral slip is being added, plus one assumes Exhibit 117, but my friend said that 117 refers to 86D, and my answer -- my comment is no, it could not do that. 86D, as in dog, is dated April the 3rd 1987, and Mr. George is talking about letters written on July the 3rd. Now, there is 86E, which is July the 3rd, and presumably that's what's being withdrawn, but the letter of April the 3rd he doesn't withdraw. And I don't think that -- well --
MR. RUSH: Well, this will no doubt be a matter of argument, because I will urge something quite different upon you, my Lord. I will of course be saying that what was -- that July the 3rd was the operative date because of the referral slip, and that the July 3rd referral slip can only refer to those two Andrew George letters.
MR. GOLDIE: Well --
THE COURT: Well, I agree with you, Mr. Rush, that this -- it's certainly going to be a matter of argument, unless somebody comes along with first knowledge and explains it.
MR. GOLDIE: And -- well, all I'm pointing out is my friend's suggestion that what was dropped off on July 3rd included the letter of April 3rd is pure speculation

that the document of July the 3rd is the document that is addressed to whom it may concern -- I'm sorry -- addressed without prejudice. It isn't addressed to anybody.

THE COURT: Well, I have no reason to believe that the letters of April 3rd and July 3rd were dropped off at the same time even.

MR. RUSH: None whatsoever, none whatsoever.

THE COURT: They had to be stapled together, but --

MR. GOLDIE: The referral slip is in the singular. Mr. Andrew George dropped this off today.

THE COURT: All right. Well, I think we can speculate endlessly, and I hope we don't have to do that.

MR. GOLDIE: Not endlessly, my Lord, but the file itself contains a lot of -- a great many communications from Mr. Andrew George.

THE COURT: Well, unless your friend agrees, Mr. Goldie, I am reluctant to add a whole file of additional material to an already over-burdened record. I think I ought not to just open up the doors and let everything in.

MR. RUSH: Well, my Lord, I'm happy to take that referral slip back and have somebody prove it. Maybe that's the best way. We will ask the gentleman who signed it.

THE COURT: Great American practise of striking things from the record, but why don't we just leave it. It doesn't prove anything yet, but it may prove something in due course.

MR. RUSH: Yes, thank you.

THE COURT: All right.

MR. RUSH: All right. Just refer you now to page 2406, which is in volume 37, line 4, Mr. Joseph.

THE COURT: I'm sorry, what page?

MR. RUSH: 2406, my Lord.

THE COURT: In volume?

MR. RUSH:

Q This is volume 37. At line 4, the question, Mr. Joseph you were asked this question by Mr. Goldie:

"Q Did you have -- do you have any knowledge Of why a Wet'suwet'en trapline should be in Gitskan territory?

A Well, they're there, my grandmother Cecilia George had a -- is one of the two that had a seat in the Gitskan Feast House.

Q I see.

A And she had -- she would go to the Feast at Gitanmaax, to every feast, and the former

Spookw gave her permission to use that territory."

Do you remember that answer, Mr. Joseph?

A Yes.

Q Do you know why the former Spookw gave her permission to use that territory?

A Well, a grandmother has always gone to the feast at Gitanmaax, and over the years her mother I think was also involved with the Gitskan feast, so my grandmother was always at these feasts, and she contributed to Spookw's feasts. So chief Spookw said that he found it hard to go up from Gitanmaax to New Hazelton to hunt and trap, so he gave permission to my grandmother to use that part of the territory.

Q All right, thank you. And now with reference to an answer that was given at 2446, my Lord, Mr. Joseph, you were asked a question by Mr. Goldie about Gisdaywa's territory being owned by Goohlaht, and that you had heard it had been given at sometime in the past as compensation for the lifetime Goohlaht, do you recall that?

A Yes.

Q If that happened did Gisdaywa continue to own the territory even though Goohlaht might have had it for his lifetime?

A The Goohlaht that I was talking about was before my grandfather, and it was to compensate the House of Goohlaht, and it's -- some of the elders say that it was just the lake, the territory around the lake, that was only one that was supposed to be used by Goohlaht.

Q Okay. My question here though was that if that did happen while Goohlaht had it for his lifetime did Gisdaywa continue to own the territory?

A Yes.

MR. GOLDIE: Well, how can he make that statement when all he was doing was transmitting something that he had heard. He was -- he was simply retailing a story that he had heard about compensation. How can he say what the situation was when his -- he's simply the conduit of the story, and as far as the transcript goes, he exhausted his recollection.

THE COURT: Shouldn't the question, Mr. Rush, be that the question what did the old man say about this?

MR. RUSH: Well, I thought contectually that's what the case was, but I will reframe it. Mr. Joseph, under the -- under Wet'suwet'en law and from what you understand

the history of Gisdaywa's House to have been as it's been recounted to you by your uncle and your grandparents, did you understand if this event occurred that Gisdaywa continued to own the territory that was given to Goohlaht for his lifetime, if that happened?

A Well, Gisdaywa kept on using the territory all along.

THE COURT: Well, that's not an answer to the question, is it?

MR. RUSH:

Q No. He continued to use it, but did he continue to own it?

A Yes, yes. Continued to own the territory.

Q All right. Now, Mr. Joseph, at 2449 there's another passage here relating to the same subject, and you were recounting to us a discussion that Moses David and Johnny David had with you. It starts at line 21 on page 2449:

> "Q I see. Well, if it wasn't given for compensation, then it may belong to Goohlaht today; isn't that what Moses David was saying?
>
> A Well, when I've travelled with Moses, he didn't say anything to me about that. And also been in that area with Johnny and -- Johnny David. He didn't say anything about that either."

And my question to you is knowing Moses David and Johnny David, would they have said something about it being owned by Goohlaht had it been so?

MR. GOLDIE: I object to that question.

MR. RUSH: Well, my submission here is, my Lord, that it would assist you to know that in -- we know that Moses David and Johnny David have been mentioned by Mr. Joseph as people who have informed him of things and upon which Mr. Joseph --

THE COURT: I think the re-examination is proper, Mr. Rush. Mr. Goldie asked -- wait a minute, I'm sorry.

MR. RUSH: It starts at 21.

THE COURT: Yes. Now, Moses David is saying something where?

MR. RUSH: Moses David is saying something earlier as --

MR. GOLDIE: It's Exhibit 97, my Lord.

MR. RUSH: And it's found in the transcript at page 2446 and 47, and the particular document is read to at some length and questions asked on that by --

THE COURT: Yes.

MR. RUSH: Mr. Goldie.
THE COURT: It is so that belongs to Goohlaht, Moses David, yes, and it was passed on that way.
MR. GOLDIE: Yes. This is the document produced out of custody of the Plaintiffs.
THE COURT: Yes, all right. Well, Mr. Goldie didn't ask the witness anything about what Moses David said, he asked about what Mr. Leonard George said, did he not?
MR. RUSH: No. He asked what Moses David said. Question page 2449 line 29:

> Q I see. Well if it wasn't given for compensation, and it may belong to Goohlaht today; isn't that what Moses David is saying? "

THE COURT: Oh, yes. Well, isn't that what Moses David is saying in this other document?
MR. GOLDIE: Yes.
THE COURT: Yes. And I don't think that opens up the same line of re-examination that would be -- would be the case if Mr. Goldie had said "What did Moses David say to you". Then if he asked that you could then say "What else did he say". But if all they're asking the witness, all Mr. Goldie is asking the witness about was what do these words mean that Mr. David said somewhere else, he's not asking him for a conversation between the two of them. That would open up further considerations for re-examination.
MR. RUSH:
Q All right. Mr. Joseph, you indicated in your testimony that there were some 200 people living off of the Hagwilnet Reserve, and can you tell us what the size in acres or square miles of the reserve land is?
A I think it's about 306 acres.
THE COURT: Including the ravine or the canyon?
A Yes.
THE COURT: Yes.
MR. RUSH:
Q And how much of the canyon makes up the reserve?
A It's quite a big area, it's all canyon and the river.
Q All right, thank you. You were asked a question by Mr. Goldie at page 2456 at line 20. He was asking you certain questions about Hagwilnet. He asked you, I can begin at line 10, I have -- well, I don't need to go back that far. He made reference to the fact that a suspension bridge that is there now runs over the

Bulkley River Canyon. Do you know how long a suspension bridge has been there?
A It's --
THE COURT: That bridge or a bridge?
MR. RUSH:
Q A bridge, a bridge?
A It's built in 1931.
Q Is that the present bridge?
A Yes.
Q Was there a suspension bridge before that?
A Yes.
Q Who built that?
A That was I think a bridge company put that it in about 1913, I think.
Q And do you know if there was a bridge before that?
A Yes.
Q Was that a suspension bridge?
A Yes.
Q Who built that?
A From -- it was built by Gitumskanees, Chief Charles.
Q A member of Hagwilget?
A Yes.
Q You indicated in your testimony, Mr. Joseph, of the principal areas of work that some band members are engaged in. Are there people on your reserve who are not employed?
A Yes.
Q Can you tell the court what the percentage of unemployment is on the reserve?
A It's very high, about 85 to 90 percent.
Q You gave evidence to Mr. Goldie about a small business enterprise application. Do you recall that?
A Yes.
MR. RUSH: What was the result of that application?
MR. GOLDIE: I thought he told us.
A That wasn't used, it didn't go any further then.
MR. RUSH:
Q You also told us that in answer to a question put to you by Mr. Goldie that the Hagwilnet band applied to the provincial government for the right to use forest resources, and I think that what was being referred to here was a Wood Law. Do you know what happened to that application?
A That also didn't go anywhere.
Q You were asked some questions about the spiritual beliefs of the Wet'suwet'en people, and in referring to your spiritual beliefs and practises you were asked

if these spiritual beliefs and practises affected the way the people governed themselves, and you said that not at the council level, and my question is is there another governing level where the spritual beliefs and practises affect the people?

A The other governing level would be the Feast House and the different clans that live on the reserve.

MR. RUSH: All right. Now, Mr. Joseph, you were asked about the preemption of land by Thomas George, and in so doing you were questioned by Mr. Goldie about other Wet'suwet'en people who preempted land, and you mentioned Johnny David, and then you were asked a question about Round Lake Tommy and you answered yes, and then you said something to the effect that what were people to do when they faced jail, and what did you mean by that?

MR. GOLDIE: Excuse me. Where is this?

MR. RUSH: I'm not working from my transcript unfortunately, because I'm working from my notes.

MR. GOLDIE: Well, I think I would like to find out the precise context of that.

MR. GOLDIE: It's at page 2515.

MR. RUSH: All right. I'll just repeat what was said here in the transcript form, Mr. Joseph, and you were asked this question, Mr. Joseph, this is at line 13:

"Q Now, Mr. Joseph, to your knowledge have other Wet'suwet'en preempted lands?
A I have heard of other preemptions, yes.
Q Johnny David, for instance?
A Yes, I think he talked of preempting.
Q And do you know whereabouts he preempted land?
A No.
Q How about Round Lake Tommy?
A Well, if you are living on a piece of land and you are chased off it, how else could you get it back without going to jail?
Q That may be a very good explanation."

Well, my question to you is what did you mean when you answered the question in that way?

MR. GOLDIE: Well, my Lord, the point of my asking to see the context is that I didn't question the explanation he gave, and I assume he's saying that that's the only way that Round Lake Tommy could get land that he was interested in. That wasn't pursued, it doesn't

clarify anything. The point of the examination relates to the acts of preemptions, for whatever reason.

MR. RUSH: Well, my difficulty there, my Lord, is that it's not used -- it is not, as Mr. Goldie suggests here in his next question, a very good explanation, because what piece of land are we talking about; is he talking about Round Lake Tommy? It would appear so. What piece of Round Lake Tommy's land?

THE COURT: But it isn't a response to any questions he was asked, it's a gratuitous statement the witness made which wasn't pursued. Why should it be the subject of re-examination?

MR. RUSH: Well, for one thing, I don't think it was gratuitous. Your Lordship is drawing an assumption.

THE COURT: Well, it's gratuitous in the context of the question he was asked, which a few moments later he answered.

MR. RUSH: Well, I'm saying that if the question of Round Lake Tommy's preemption, if there was such a thing.

THE COURT: Well, he says there was.

MR. RUSH: Well then --

THE COURT: No, I'm sorry. He says he was hereditary chief. Well, I think that Mr. Round Lake Tommy's character may have been impugned, unfortunately. I have no difficulty, I think, in allowing you to ask the question. I don't know if he went to jail or not. I suspect he did not. He's not on account of this anyway, but that's neither here nor there, but I don't mind you clarifying it.

MR. RUSH:

Q The question was:

> "Q How about Round Lake Tommy?"

Mr. Joseph, and your answer:

> "A Well, if you are living on a piece of land and you are chased off it, how else could you get it back without going to jail."

What did you mean by that when you said those words?

A Well, all the Wet'suwet'en people know that what happened when the white settlers came in and took -- chased them off their land, there is two brothers that were -- tried to resist when they were told to get off the land that they were living on and the land that they were raised on and they tried to resist, and

while that happened, they got chased off, their father died, and the people that chased them off of their land in the meantime laid a charge against them, so when their father -- after the father's funeral at Hagwilnet they were both put in jail. That is the -- what all Wet'suwet'en people know would happen to anyone who resisted.

Q Who was put in jail?

A Naziel and his brother.

MR. GOLDIE: Then the answer doesn't relate to Round Lake Tommy at all.

THE COURT: I take it Round Lake Tommy isn't Naziel?

A No.

MR. RUSH:

Q When you said this, what were you referring to in relation to Round Lake Tommy?

A Well, if Round Lake Tommy didn't take out a preemption and decided to stay on his own land it would -- same thing would have happened to him as Naziel and his brother. That's what I was referring to.

THE COURT: But Round Lake Tommy didn't go to jail?

A No.

THE COURT: No. We cleared that up.

MR. RUSH:

Q All right. Mr. Joseph, you were asked some questions about questions that were asked of Bazil Michell concerning Nadina Mountain. Do you remember those questions asked by Mr. Goldie?

A Yes.

Q To your knowledge is there a mountain called Niintiy?

A Yes.

MR. RUSH: Is that spelled N-i-i-n-t-a-i, or perhaps I should ask Mr. Mitchell if that is -- how would that be spelled, Mr. Mitchell?

THE INTERPRETER: N-i-i-n-t-i-y.

MR. RUSH:

Q All right, I was wrong. Where is that mountain located?

A It is located at one of the peaks on the -- up in the Driftwood Creek and towards Cronin Mountain.

Q All right. Do you know whose territory that it is on?

A That would be on Gyologyet and Woos.

Q Who's on the other side of that?

A On the west side?

Q East side?

A East side?

Q Or north-east side?

A North-east would be all Woos' territory, and the other side would be the Babine people.
Q Okay. And when you say the other side, what --
A The north side of Cronin.
MR. GOLDIE: I take it my friend's suggesting the translater made a mistake?
MR. RUSH: I'm not. I don't know who made the mistake. What I do know is a mistake was made.
THE COURT: All right.
MR. GOLDIE: It can only be one of two people.
MR. RUSH: I think it could be one of three.
THE COURT: No, no. I have the same mistake here.
MR. RUSH: That's my redirect.
THE COURT: All right. Mr. Goldie, do you have a question?
MR. GOLDIE: I have -- my friend questioned the witness on the use of land in the Gisdaywa claim territory, and introduced the word -- a word I don't believe was used either in the examination in chief or cross-examination, "Meadows". And the question I want to put to the witness is that he is not suggesting, is he, that he or his people have made any use of meadows which are private property, mainly part of ranches or are otherwise fenced off? I've heard nothing to suggest that there was any trespassing on private property in the evidence in chief or the cross-examination.
THE COURT: You're relating your question to the use of meadows since the coming of the white man, I take it, that are -- that purport to be privately owned or fenced?
MR. GOLDIE: Yes, that's correct. I raise it because meadows for me has a connotation of cultivation, and there has been no suggestion in any of the evidence in chief or in cross-examination of any -- of the use of any property that's cultivated or presently part of ranch property.
THE COURT: Any objection, Mr. Rush?
MR. RUSH: No.
THE COURT: Yes, go ahead.

CROSS-EXAMINATION BY MR. GOLDIE:
Q Mr. Joseph, in answering Mr. Rush's questions you said that your people use meadows. I take it you're not referring to land that is part of a ranch or is otherwise fenced in or regarded as private property; am I right in that?
A Well, they always settle very close to a meadow, and every settlement that they have this word in there,

they call it Tl'ok wa c'oo. So there's one on the north -- north of Tl'ok wa C'oo, there is a settlement at Pack Lake with that name, there's a settlement or home place north of Dek'aaz Tl'enlii with the same name, meaning a meadow.

Q And these are what you were referring to in your answer?

A Yes.

Q And these are on what I would call vacant Crown lands?

A No. It's places where they've lived where they have their winter houses and fish houses.

Q No. I mean today are they vacant Crown lands? When you go and -- when you and your people go to the territory today do you go on to the meadows that you've just described?

A Yes.

Q And that's because they're not fenced or otherwise restricted; am I right in that?

A Yes.

Q All right. You were asked about the ability to trap and hunt over reforested areas, and you were asked some questions about the state of logging on Nadina Mountain, and I think you told his Lordship it was about 40 years ago, and my question is land that has been logged off 40 years ago has been pretty well reforested by now; is that right?

A Not around -- as far as I can see around Owen Lake or any surrounding area. They seem to be all bare.

MR. GOLDIE: I'm talking about the territory on the shoulder of Nadina Mountain, which I understood you told his Lordship had been logged off in the 40's and 50's.

THE COURT: Um-hum.

MR. GOLDIE:

Q Hasn't the second growth of that provided good cover for game?

A The second growth, you mean second growth is -- as far as I know second growth is timber that's been left after your selective logging; is that what you're talking about?

Q No. I'm talking about what happens to land which was logged off 40 years ago, something grows on it, doesn't it?

A Yes.

Q And it's timber?

A Yes.

Q Now, that timber is now about 40 years old, if it was logged off in the 40's. Do you know what the size of

the timber is that's 40 years old?
A Yes.
Q Doesn't that provide cover for game, deer for instance?
A Well, I haven't seen any of the logged-out areas that I saw along Morice, Owen. I don't see any second growth.
Q Those areas, Mr. Joseph, if I've understood your evidence, are areas which are currently being logged?
A Yes.
Q All right. Have you had occasion to go up onto Nadina Mountain and take a look at the area that was logged off in the 40's?
A Yes.
Q And is there a second growth timber there?
A Some areas I've seen second growth, yes.
Q Yes. And that provides good cover for game, does it not? It's good hunting country, especially in regard to deer, a country like that?
A It is good country for deer, but not -- it's the whole -- the most -- the biggest part of the territory is clear cut.
Q All right. I understand what you're saying in that regard.
A Yes.
Q Now, we had a discussion -- or you had a discussion with Mr. Rush with respect to the difference between burned-over land and the land that has been logged off, so far as berries is concerned?
A Yes.
Q My question is do they burn the slash up there?
A Yes.
Q And that -- after they've burned the slash you have about the same effect as burned-over land, but not before the burning?
A No. I've seen -- I've gone to a burned-out slash -- burned areas, and it seems that like the huckleberries just won't grow there. It's mostly green things, like fireweed, they just choke off everything.
Q Well, that's the first thing that appears after?
A Appears, yes. And it seems that huckleberries just -- I don't know whether the Department of Forestry sprays again, other plants, but I've never seen huckleberries grow in a slash burning.
Q Huckleberries seem to know the difference between slash burning and other burning, is that it?
A No. I'm not saying that, it's just that there may be

a spray that kills off the huckleberries.
Q Do you know if the Forest Service sprays up there?
A I know that, yes, there's been spray going on, and the -- they say that it keeps some of the shrubs down.
Q All right, thank you. Now, the next question about the question about the information you gave to the map maker in relation to the map at Exhibit 62, that's the Marvin George map of your territory, were you the sole source of information for that?
A No.
Q Who else provided Mr. George with information?
A Well, there's Andrew Leonard.
Q Your --
A And my uncles --
Q Your uncle --
A Joe George.
Q Joe, yes?
A And Sylvester.
Q Sylvester?
A Yes.
Q All right, thank you. You gave evidence of a meeting at Moricetown in which -- which Andrew George, your cousin, was asked by the assembled chiefs of the Wet'suwet'en why he had written a letter dated -- well, I'm not sure what the letter was that was -- that was shown to you, but I think it was Exhibit 86D, which was a letter dated April the 3rd, 1987. And you stated that the response that Andrew George gave to that question was that it was intended to assist you?
A Yes.
Q Assist you in giving evidence in the lawsuit?
A That's what he said to me, but that's all that I -- that I understood, was to assist me.
Q And if it was going to be an embarrassment to you in the lawsuit he would withdraw?
A Yes.
Q You were asked about the population on the Hagwilnet Reserve. I'm sorry. You were asked the size of the Hagwilnet Reserve?
A Um-hum.
Q And you gave 306 acres. That's the Reserve on which the village stands?
A Yes.
Q What other reserves are set aside for the use and benefit of the Hagwilnet Band?
A There is another one on the north shore of the Bulkley River.

Q And how large is that, please?
A I think that one is about -- I think it's a little over a hundred acres, I'm not too sure.
Q But anyway, do you know what the name of it is?
A It's Bulkley Reserve, I think it is.
Q All right. And no one lives on that, it's just used -- it's just available for the members of the band to make use of?
A Yes. There's no -- just trying to get a road in there.
Q Right. Now, you were asked about the percentage of unemployed on the reserve, and you gave the number 85 percent to 90 percent. Is that -- is that of the male population?
A Both.
Q Both?
A Yes.
Q In other words, of the 200 people who live there, 85 percent to 90 percent are unemployed?
A Yes.
Q Do you include in that number women who are at home looking after a family and raising children?
A No. I think it's -- it's maybe the both -- well, all the people that are in the labour force I'm talking about.
Q All right, yes. The people who would be available?
A Yes.
Q And that would not include people who were at home looking after a family?
A I think that would include them too.
Q You think it would?
A Yes.
Q So then in other words you classify 85 to 90 percent of the total of the 200 people on the reserve as unemployed?
A Yes.
Q I take it that for those who have been on the work force and are presently unemployed they have received or are receiving Unemployment Insurance?
A Yes. Some of them.
MR. GOLDIE: And for those --
MR. RUSH: Well, isn't this going a little bit farther than my redirect? I mean --
THE COURT: Well, it is.
MR. RUSH: My questions arose on this issue directly out of who was employed. I want to know who was unemployed, and now my friend is saying well, now we should know who's

getting Unemployment Insurance. I mean there's a corollary to my questions of who's employed. I don't see one has a relation to --

MR. GOLDIE: Well, I don't want to leave it the suggestion --

THE COURT: Isn't it a matter of law that they would be entitled to Unemployment Insurance, if they qualified? Somebody said it was a universal programme.

MR. GOLDIE: I hope it is, but I want to make it clear that there is no distinction drawn by reason of the fact that they're on a reserve.

MR. RUSH: Is anybody arguing that?

THE COURT: I don't think that would be in dispute, but you can ask any witness that if you want.

MR. GOLDIE:

Q The -- and the same goes with the provincial and federal welfare programmes; is that right, they're available to people on reserves?

A Yes.

MR. GOLDIE: Thank you. That concludes my cross-examination.

THE COURT: All right. Mr. Macaulay, anything more?

MR. MACAULAY: No. I have no questions for this witness, my Lord, but I want to address the question of almost a traditional question of genealogies before the situation gets out of hand again.

THE COURT: Yes.

MR. RUSH: Excuse me. Are we through with this witness?

THE COURT: Yes. I think so.

MR. RUSH: Your Lordship has no questions?

THE COURT: No. I have all kinds, but I've decided not to ask anymore. Thank you, Mr. Joseph, you are excused. Yes, Mr. Macaulay.

MR. MACAULAY: The next two witnesses are those for whom we do have genealogies, Madeline Alfred and Henry Alfred, but the following ones, Alfred Mitchell and Sarah Layton, we do not yet have. I bring it up before we reach the crisis point. I asked my friends last week, and I understood them to say that they hoped to have these genealogies fairly soon. The fact is that they've been working on them for years, not months, but years, and I understood Mr. Grant to say at one point that he had a big stack over on his desk and that he -- it was a question of getting around to it. Well, this is the time to get down to it, before we --

THE COURT: Can you give us an estimate, Mr. Rush, how long the next two witnesses will likely be in the witness box?

MR. RUSH: Well, I understood that there was a direction which we had been dutifully trying to meet that 14 days

prior to the calling of the witness we produce the genealogies, and we've been doing that and my friend has received the Tsayu genealogy that is in relation to the testimony of Mr. Mitchell, and I anticipate that the next witnesses --

THE COURT: Your friends are showing shocked disbelief.

MR. MACAULAY: Well, is Tsayu the same as Git lu daak?

MR. RUSH: No, it isn't.

MR. MACAULAY: He says in his affidavit he's from the House of Git lu daak.

MR. RUSH: He's not going to say anything else about the House of Git lu daak except he's in the House of Git lu daak.

MR. MACAULAY: He will have to on cross-examination, my Lord.

THE COURT: All right.

MR. MACAULAY: He may be the only Git lu daat we have. That's not -- no, no. That's a good thing I did bring it up. He purports to speak for somebody else.

MR. RUSH: He will speak for somebody else.

THE COURT: And the genealogy that's been furnished, Mr. Rush, is in relation --

MR. RUSH: Is in relation to the territory that's being -- about which --

MR. MACAULAY: I hope he can give some evidence about the genealogy of another House, but I'm talking about his own genealogy.

THE COURT: I take it that his genealogy will not be included in the one that's been furnished?

MR. RUSH: No, my Lord, it won't be. We're not going to be calling evidence from Mr. Mitchell about the House of Git lu daak, and we do -- and I don't think that the intent of your order was that anything the witness says about his House or another House was to precipitate the production of a genealogy. As I understand your Lordship's evidence is that where it realates to that --

THE COURT: My evidence?

MR. RUSH: Well, it is 4:15, my Lord, and I'm entitled to a few -- your Lordship's direction that where the evidence is directed at a territory about which the witness is going to speak then we'll provide the genealogy, and that's what we're endeavouring to do, and that's what we have done.

MR. MACAULAY: It seems I've been told, I wasn't at that particular pretrial conference or chambers application, my Lord, but I am told that there were -- this has already been covered, and the previous order

that was made that the obligation to provide genealogies is not limited to the Terry case(?) that a witness may be called to --

THE COURT: Well, counsel will have to refresh my memory, because I don't have a specific recollection of whatever order it was that I made in that connection. Do -- can counsel now or perhaps in the morning refresh my recollection on that question?

MS. KOENIGSBERG: My Lord, I don't think I can be precise about it, and maybe we should wait until tomorrow morning when we have the transcript of that particular pretrial, but I believe the context -- there are two orders and two conversations about production of genealogies, and it certainly was my understanding that the genealogies are to be produced in relation to a witness and his own House, and if that witness is speaking about other territories that are not in his House in relation to those territories, so I thought it was all inclusive.

THE COURT: That may come as a surprise to Mr. Rush and possibly to others, but that remains to be seen. But I take it, Mr. Rush, what you're telling Mr. Macaulay is that he will have genealogies of the Houses of which the witnesses will be speaking within the 14-day limit?

MR. RUSH: Yes, that's right. But I suppose these words are always coming back to bounce in my face, but I will say this anyway, to assure my friend we are going to be calling Git lu daak.

THE COURT: And you will be giving a genealogy for him?

MR. RUSH: Yes, we will.

THE COURT: When that time comes.

MR. RUSH: Yes. And I should say that the way we interpreted your Lordship's order is that the thrust of the evidence should be supported by the genealogy of the relevant evidence.

THE COURT: Yes.

MR. RUSH: The relevant evidence called by Mr. Mitchell will be in relation to the Tsayu clan of the Wet'suwet'en people, and that's what we've produced and we will have available to him, and he has it, and --

THE COURT: He has it now?

MR. RUSH: He has it now.

THE COURT: Yes.

MR. RUSH: Yes. And we felt we were ahead of the game. We always think that, I suppose, and we find ourselves surprised by --

MR. PLANT: I wonder -- I am grateful to my friend for having

provided us with the Namox genealogy. My concern about Alfred Mitchell and my request now for his genealogy arises from the fact that in the summary of his evidence it is stated that he will be giving evidence about his House and clan, and to that extent I think that we are entitled to have the genealogy of that House and clan. I might also say that I understand my friend to be -- my friend, Mr. Rush, to be saying at least that we are entitled to genealogies in respect of Houses which own territory or claim territory about which a witness will be testifying, even if the witness is not a member of that House. To be specific, in the case of Alfred Mitchell, he will be giving evidence at least by affidavit of three territories, and we have an affidavit -- we have a genealogy of the House of one of them, so far as I know, so I should say I'm proceeding on the assumption that we will be provided in a timely way with the genealogies of the other two Houses who claim the territory which Mr. Mitchell will be testifying about?

THE COURT: I take it Mr. Mitchell is not the next witness?

MR. RUSH: No.

MR. PLANT: As I understand it, it's -- he's the third witness after Mr. Joseph.

THE COURT: All right. Well, I think -- I think as the parliamentary say, one can take what's happened today as notice, and if after having looked up whatever orders are made, if counsel want to renew either first thing in the morning and if we have time you may do so, and I'm sure Mr. Rush, will do whatever he can to ensure the convenience of his learned friends. Thank you. Ten o'clock.

THE REGISTRAR: Order in court. Court adjourned until 10:00 a.m. tomorrow morning.

(PROCEEDINGS ADJOURNED AT 4:20)

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

Graham D. Parker
Official Reporter