Vancouver, B.C.
May 10, 1988

(PROCEEDINGS RECONVENED AT 9:00 a.m.)

THE REGISTRAR: Order in court. In the Supreme Court of British Columbia, this Tuesday, May 10, 1988, calling Delgamuukw versus Her Majesty the Queen.

SOLOMON MARSDEN, resumed:
ALICE SAMPSON, Interpreter, resumed:

THE REGISTRAR: I caution the witness and the interpreter you are both still under oath.
THE COURT: Mr. Goldie.

CROSS-EXAMINATION BY MR. GOLDIE, Continued:
Q Mr. Marsden, I think you told Mr. Grant that you were asked by the Kitwanga and the Gitsequkla to give evidence here?
A Yes.
Q And the Kitwancool wish -- or hope that the Gitksan will win this lawsuit, this court action; is that not the case?
THE INTERPRETER: Did you say Kitwanga or Kitwancool?
MR. GOLDIE:
Q Kitwancool.
A Yes.
Q And you agreed to come and help the Gitksan in the court action?
A Yes.
Q Some years ago the Kitwancool were aware that the Nisga'a were bringing a court action in connection with their land claims. Do you recall that?
A Yes, I remember.
Q And the Kitwancool, in order to help the Nisga'a, did not speak out when the Nisga'a claimed in the court case, lands which the Kitwancool said they owned; is that correct?
A Yes.
Q And in Exhibit 439 which is the Kitwancool Comprehensive Land Claim, I find at page 22, and I'm going to read it to you. Perhaps you might tell him what I'm going to do. It's at the bottom of page 22 and I quote:

"For some years now the Nishga Tribal Council

1 has claimed that their people lay ownership
2 to the land which drains into the Nass River, from
3 the watershed which divides the Skeena and the
4 Nass drainage."
5
6 Now just pausing there, does that refer to the Kiteen
7 River area?
8 A Yes.
9 Q Thank you. And at page 29, there is a photograph
10 which is entitled: "Boundary with the Nishga marked
11 at Gyehl 'din (Kiteen River), 1976." And you were one
12 of the people there; is that correct?
13 A No. This Gyehl 'din is not the boundary. Git Xsi
14 ts'uuts'xwt is the boundaries.
15 THE INTERPRETER: He says he doesn't know -- it's a few miles
16 from Gyehl 'din.
17 MR. GOLDIE: I see. Mr. Marsden, what was the purpose of put-
18 ting up the marker which is shown in that photograph?
19 MR. GRANT: You are referring to the sign?
20 MR. GOLDIE:
21 Q I'm referring to the sign, that's correct.
22 A The Kitwancool put the sign up.
23 Q All right. But is the sign -- I thought Mr. Marsden
24 told us that the sign did not -- was not the boundary?
25 A Yes.
26 THE INTERPRETER: But he wanted to know who put the sign up.
27 A Did the Kitwancool?
28 MR. GOLDIE: At Kitwancool. All right, now, what is the purpose
29 of the sign?
30 MR. GRANT: Just the witness, I believe, asked a question as to
31 whether they put the sign up, and I'm not -- seems to
32 be some confusion.
33 MR. GOLDIE: The question for Mr. Marsden is what is the purpose
34 of this, what was the purpose of putting the sign up.
35 THE INTERPRETER: He asked who put the sign up.
36 MR. GOLDIE:
37 Q And the answer is the Kitwancool put the sign up.
38 A Yes. This -- I was there when they put that up. It's
39 not at Gyehl 'din, it's at Git Xsi ts'uuts'xwt.
40 Q It's not what?
41 A It's not at Gyehl 'din, it's at Git Xsi ts'uuts'xwt.
42 Q All right, thank you. Now I'm returning to page 22
43 and the Kitwancool land claim statement at this point
44 goes on to say, and I quote:
45
46 "The Kitwancool, cautious to prevent any injury to
47 the Nishga case which went before the Supreme

1 Court of this country, did not speak out."
2
3 And that is correct, is it not, Mr. Marsden, that the
4 Kitwancool did not speak out when the Nisga'a went
5 before the Supreme Court of the country?
6 A Yes, yes. That's what it was said, because there is a
7 way to settle this. The Nisga'a have their way to
8 settle this and we have our ways to settle this, and
9 we did not want to get involved while their land
10 claims was going on.
11 Q And --
12 A The Kitwancool people did not let their territory go
13 just because they never spoke out, it's just that they
14 have respect for these people while they are in front
15 of the courts.
16 Q Yeah. And what was it that the Nisga'a, according to
17 Mr. Marsden's understanding, were seeking in the
18 courts?
19 A The Nisga'a people want it made clear that they
20 were -- that they owned the territory that they were
21 claiming.
22 Q And is that -- is that the same thing that the Gitksan
23 is seeking here?
24 A Yes, it is.
25 Q Same thing that the Nisga'a were looking for in the
26 Calder case?
27 A Yes.
28 Q Have the Kitwancool agreed not to speak out about land
29 that they claim which is claimed by the Gitksan in
30 this case?
31 A I -- I could not answer that question because I am a
32 Gitksan, and -- and the reason why I am here is
33 because the chiefs chose me to be here.
34 Q Well, did not the Kitwancool claim part of the Bowser
35 Lake area?
36 A The Bowser Lake does not include the claim of the
37 Kitwancool. It's right at the bottom end of Bowser
38 Lake.
39 Q You mean the claim comes up to Bowser Lake, is that
40 what you are saying?
41 A Yes.
42 Q Yeah. Well, did not the Kitwancool agree that they
43 would not make any claim in this lawsuit or in this
44 court action to any land near Bowser Lake?
45 THE INTERPRETER: Just a minute, could you repeat that question
46 again.
47 MR. GOLDIE: Yes, yes. Have not the Kitwancool agreed that they

have no claim near Bowser Lake? Haven't they agreed with the Gitksan that they will make no claim in the Bowser Lake area?

MR. GRANT: Well, I just wonder, my friend has asked two questions. One is that they have no claim there and the other is that they make no claim there. It's an important distinction.

MR. GOLDIE:

Q Have they not -- I'll reframe my question. Have they not agreed with the Gitksan that they will make no claim to the Bowser Lake area or anywhere near the Bowser Lake area?

A Okay. No. There was no -- we know where our territories are.

Q Um-hmm.

A And what I want to say now is we have talked enough about the territory of the Kitwancool, and I am here to talk about the laws, I am not here to talk about the chiefs' territories.

Q Well that may be so, Mr. Marsden, but I have one further question for you. Did not the Gitksan agree that the territory of Kitwanga Yal belong to Kitwancool and --

THE INTERPRETER: What is it?

MR. GOLDIE:

Q Well, let's break that down. Mr. Marsden, yesterday you talked about Yal of Kitwanga. Do you remember that?

A Yes.

Q And is not the territory that once belonged to Kitwanga or Yal, now part of the Kitwancool territory?

A No. The fishing site of Ska Hooxsit is close to Kitwanga.

Q And the territory Antgal Bakw which we mentioned is with Kitwanga?

A Territories.

Q All right. Now yesterday, Mr. Marsden, you said that the tribal council had been appointed by the chiefs to speak in the court case. Do you remember that?

A Yes.

Q There was no tribal council in the old days, was there?

A No.

Q When did the tribal council -- or when was the tribal council appointed by the chiefs?

A I don't remember the exact date when the tribal council started.

1 Q Mr. Marsden, were you a member of the tribal council
2 when it -- when it was appointed by the chiefs?
3 A No.
4 Q Were you one of the chiefs that appointed the tribal
5 council to speak for the Gitksan in this case?
6 A The Kitwancool didn't join this tribal council.
7 Q I see.
8 THE COURT: I'm sorry?
9 MR. GOLDIE: The Kitwancool did not join this tribal council.
10 THE COURT: I thought -- well.
11 MR. GOLDIE: Is that correct?
12 THE COURT: I shouldn't argue the evidence.
13 MR. GRANT: I'm sorry?
14 THE COURT: Well, all the documents I have seen have listed the
15 tribes or the villages represented by the tribal
16 council as including Kitwancool.
17 MR. GRANT: I don't think so.
18 THE COURT: You don't? All right.
19 MR. GRANT: No, My Lord. I think that may have been --
20 THE COURT: I thought it was one of the seven villages.
21 MR. GRANT: No. There is eight villages and Kitwancool is the
22 eighth village.
23 THE COURT: Kitwancool is not a member?
24 MR. GRANT: No.
25 THE COURT: All right, thank you.
26 MR. GOLDIE: Mr. Marsden, there came into our hands a few days
27 ago, a sheet headed "Land Claims Legality," published
28 by the Interior News, Smithers, December 3rd, 1986,
29 and it consists of three pages with a stamp at the
30 bottom, Peter Williams, Hon. L.L.D., and there is a
31 map attached to it, and then there is another
32 typewritten page with a letter to the Editor of
33 Interior News, September 30th, 1987, and there is a
34 stamp, Peter Williams, and what looks like a
35 signature, Peter Williams, and it is said to be
36 presented at a meeting to certain -- presented "in
37 support of Kitwancool high chiefs orders to stop all
38 logging, April blank 1988." Now I'll put that in
39 front of you and hand that to His Lordship, please.
40 Mr. Marsden, I refer you to --
41 MR. GRANT: Do you have one for the interpreter?
42 MR. GOLDIE:
43 Q Yes. I refer you to the last page. Is that the
44 signature of Mr. Peter Williams, the president of the
45 Kitwancool?
46 THE WITNESS: Yeah, that's right, that's his signature
47 Q And did the high chiefs of Kitwancool ask Mr. Williams

to inform Westar Timber Company, Bell Pole Company, Hobenshield Bros., Orenda Forest Products, to stop all logging in Kitwancool territories pending the Gitksan-Wet'suwet'en case?

THE INTERPRETER: Orenda Products?

MR. GOLDIE:

Q I think it's Forest Products but it's not clear.

A Yes. When Peter send these notices out to the companies, the chiefs got together and had a meeting. He wasn't alone in this.

Q No. And was Mr. Marsden one of the chiefs?

A Yes.

Q Did the chiefs then authorize Mr. Williams to send these notices? And by "these notices" I mean all of the notices that are attached -- that are in that document I gave you?

THE INTERPRETER: To the companies?

MR. GOLDIE:

Q Yeah?

A Yes.

Q Yes. And attached -- or part of these documents is a map that is called "Kitwancool Territory". Do you recognize that map, Mr. Marsden?

A Yes, I know this is the Kitwancool map.

Q Do you know who drew it?

A The company -- one of the companies sent us these maps, this map, and Peter took a look at it and he send it back.

Q Well, is this not the map, then, of the Kitwancool territory or is it?

A Yes, it is.

MR. GOLDIE: All right. My Lord, may we have that marked.

THE COURT: Yes. That's Exhibit 449.

THE REGISTRAR: Exhibit 449.

(EXHIBIT 449 - Five Page Document entitled "Land Claims Legalities", Published by The Interior News, December 3, 1986)

MR. GOLDIE:

Q Mr. Marsden, have you ever heard of a map -- an old map made by Mr. Sam Douse?

A Yes. He is one of the persons that -- that was trying to outline the territory of the Kitwancool.

Q At page 29 of Exhibit 439 there is a photograph of a map of the Kitwancool territories stated to be 1918, "Drawn by Samuel Douse of Kitwancool, photographed by

1 Louis Shotridge. Courtesy of the University Museum,
2 University of Pennsylvania." Mr. Marsden, have you
3 ever seen the original of Mr. Sam Douse's map?
4 A No, I didn't see it.
5 Q But you know there is such a map?
6 A Yes. He -- he was making the maps for the territory
7 of the chiefs.
8 Q Mr. Sam Douse was?
9 A Yes.
10 Q Yeah, all right. I want to show you a photograph.
11 I'm going to show -- My Lord, I've handed up a book of
12 documents and under tab 1 is the facing -- the
13 frontispiece and pages 49 and 50 of a publication
14 called The Museum Journal published by the University
15 Museum of the University of Pennsylvania. And under
16 tab 2 are pages 117 to 148 of an article which is a
17 continuation of the first. And then under tab 3 is a
18 photograph which my instructions are, is the same
19 document as in Exhibit 439 at page 29. And I'm going
20 to show the witness a photograph of the photograph as
21 obtained from the University Museum, University of
22 Pennsylvania. Perhaps His Lordship could see that for
23 a minute.
24 Now, Mr. Marsden, this is a photograph of the map
25 that is at the top of page 29 of Exhibit 439, and my
26 question is, have you ever seen a map like that?
27 A No. I think that was Samuel Douse.
28 Q You think -- yes.
29 THE WITNESS: But the actual piece of paper is not around.
30 Q Is that correct?
31 THE WITNESS: Yes.
32 Q Now looking at this map, is it possible for you to
33 identify on it, any of the features -- and by features
34 I mean can you tell from that map where Kitwancool is?
35 THE WITNESS: No, I can't. There seems to be writing there and
36 I can't see what's on it.
37 Q No. It's too small?
38 THE WITNESS: Too small.
39 MR. GOLDIE: Right, thank you.
40 My Lord, the statement in Exhibit 439 is a -- at
41 page 29, "Drawn by Samuel Douse of Kitwancool,
42 photographed by Louis Shotridge. Courtesy of the
43 University Museum, University of Pennsylvania," and
44 then goes on to make some identification and says,
45 "The northern portion of the Kitwancool territory has
46 been cut off in this particular photograph." And I am
47 going to refer Your Lordship to tab 2 at page 139.

MR. GRANT: Is that listed?
MR. GOLDIE: Which?
MR. GRANT: Tab 2 of that document?
MR. GOLDIE: No, this is one I asked to admit.
MR. GRANT: I haven't seen these documents before, tab 2 or 3, they weren't in the documents that I reviewed in your notice to admit.
MR. GOLDIE: I see.
MR. GRANT: They weren't included in that list.
MR. GOLDIE: My friend states he hasn't seen this. I was under the impression that this was included in the group of documents as submitted to him with a notice to admit. In any event --
MR. GRANT: I just asked if they had been listed and I haven't seen any of these documents before.
THE COURT: This isn't the sort of thing that would be listed in the list of documents, would it?
MR. GRANT: Well the photograph is one of the things that I was --
THE COURT: Well, I'm not --
MR. GRANT: I'm not taking a position yet, I was just trying to determine from my friend if they had been listed and he indicated they had.
MR. GOLDIE: Well, it's not a document that is in the plaintiffs' possession or control in any sense -- or the defendant's, in any sense of the -- as being relevant to the case. At least the case being put forward by the plaintiffs. What I am anxious to do, given the evidence of Mr. Marsden, is to indicate as best we can, the origin of this particular map. And at page 139, Mr. Shotridge who is a Tlinget Indian who made a visit to the Skeena villages in 1918, refers to Kitwancool and states at the bottom of the page:

> "The indifference of this community toward the immediate change of primitive habits for the modern ways which are so prominent among the coast tribes, may have been occasioned, according to the general feeling, by an agitation with regard to title to lands of the province. Some of the older men talked over this land question to me and on one occasion one of the leaders showed me a map, cleverly drawn with pen and black ink on a sheet of wrapping paper, indicating the tract of land which the chief claimed had been theirs from time immemorial. He stated that his ancestors had fought hard to retain this possession, and that

1 every member of the group is taught at childhood
2 to hold on to it. I could not obtain the drawing
3 which I thought would offer a good sample of an
4 Indian idea of map making but I photographed it."
5
6 The whole point of this, My Lord, is that so far
7 as Mr. Shotridge was concerned, that was -- he was
8 told that was a map of the ancestral territory of the
9 Kitwancool. And my question to Mr. Marsden is so far
10 as you know, Mr. Marsden, did Sam Douse's map indicate
11 the whole of the Kitwancool territory?
12 MR. GRANT: Well with respect, My Lord, he hadn't seen the map
13 before, he said he hasn't seen it, and the statement
14 is, "the tract of land which the chief claimed had
15 been theirs from time immemorial." Was that the
16 Kitwancool or was that Samuel Douse's house? Who
17 knows? And the witness has looked at the photograph
18 and can't recognize the places on the photograph of
19 the map.
20 THE COURT: He said he thought that was Sam Douse's map, isn't
21 that what he said?
22 MR. GRANT: He said he thought it was Sam Douse's map, but when
23 he looks at it he can't recognize anything on the map.
24 MR. GOLDIE: No, I beg your pardon, he said he could not -- he
25 said there was writing but it was too small. And --
26 MR. GRANT: Well maybe if he can recognize something other than
27 the writing. But he has said --
28 THE COURT: Well I think it's -- I think it's proper
29 cross-examination, Mr. Grant. I just don't think that
30 I can stop Mr. Goldie.
31 MR. GRANT: Well, I would just ask if what has just been read to
32 the court could be translated to the witness so that
33 he knows.
34 THE COURT: I'm not sure it should be, Mr. Grant, it's for
35 cross-examination.
36 MR. GRANT: All I'm saying -- yes, but in the normal course, in
37 the normal course the witness is sitting here and he
38 would hear and understand what is being said.
39 THE COURT: With respect, he should have heard what is being
40 said. This is cross-examination.
41 MR. GRANT: He heard what was said, whether he understands what
42 was said is a different question
43 THE COURT: I think the witness was completely alive to what's
44 happening and I don't think there is any risk of the
45 witness' understanding, and if there is I haven't seen
46 any sign of it up to now. The witness said he thinks
47 this is Sam Douse's map, I think he can then be asked

about it.
MR. GOLDIE:
Q Mr. Marsden, do you understand Sam Douse's map to show the Kitwancool territories as they were in 1918?
A I did not see this map.
Q Yes. What do you understand --
MR. GRANT: Let him answer. He started -- the witness was saying something just before.
MR. GOLDIE: My question is, what do you understand --
MR. GRANT: Well, My Lord, the witness was in the middle of saying something further. Could you let him finish.
MR. GOLDIE: Excuse me, he had finished answering my question.
THE COURT: Let's start over again. Start over again, please, Mr. Goldie.
MR. GOLDIE:
Q Mr. Marsden, the question I asked you was do you understand Sam Douse's map to show the territories of the Kitwancool, and you answered, "I have not seen -- or I had not seen Mr. Douse's map." Am I correct in that?
A I did not see this map. And when I did not see this map, I cannot answer your questions.
Q All right. Do you --
A Well, before I came here we had a meeting with the Kitwancool chiefs, and the meeting was that if I went to court I was to talk about the Gitksan law, and we made an agreement. The Kitwancool and the chiefs let me come here and they did not want me to mention the Kitwancool territories, and this is the reason why I am here, to talk about the laws.
Q Well, Mr. Grant asked you about the Kitwancool territories, why didn't you tell the judge at that time that you did not want to talk about them?
A This is the reason: I could talk about my own territory and when I mention my territory this is where the basis, the foundation of my strength comes from. So in order to show the court that I do have strength with the other Gitksan people, with the territories, I have to describe my land, my territory where my power is and my authority is.
MR. GOLDIE: Good. Well we'll talk a little more about your territories then.
My Lord, I would like to tender as an exhibit the extracts from The Museum Journal under tab 1 and 2 and the photograph under tab 3. And I'm tendering the magazine extracts not for the truth of the matters stated therein, but as part of the context of the

1 photograph which the witness has identified as Sam
2 Douse's map, or his believe that it is Sam Douse's
3 map, and I will be tendering the photograph itself as
4 a separate exhibit.
5 MR. GRANT: My Lord, I just wonder, as I haven't had a chance to
6 read this article at all, I wonder if my friend could
7 inform the court and myself if the reference he made
8 on page 139 and 140, if that's the only reference in
9 the article to the map, or if there are other
10 references within the context of the article?
11 MR. GOLDIE: As far as I'm aware that's the only reference to
12 the map. And the only other connection between the
13 article and Exhibit 439 is a photograph that is in 439
14 which is also taken by Mr. Shotridge at page 19, My
15 Lord.
16 THE COURT: Page 19 of tab 1?
17 MR. GOLDIE: 19 of Exhibit 439.
18 THE COURT: Oh, yes
19 MR. GOLDIE: And that photograph is found following page 131
20 under tab 2 of the document book.
21 MR. GRANT: My Lord, I just wonder if --
22 MR. GOLDIE: But as far as I'm aware that's the only other
23 connection between that and 439.
24 MR. GRANT: My Lord, I would just like an opportunity to look at
25 the article --
26 THE COURT: Yes, all right.
27 MR. GRANT: -- before I take a position. I may not oppose it.
28 THE COURT: All right. Well, I think we will -- what are you
29 tendering now, Mr. Goldie?
30 MR. GOLDIE: Well, I'm tendering the -- what is under tab 1,
31 because that identifies Mr. Shotridge and it's just --
32 it is just the beginning of his series of articles.
33 Then under tab 2, I am tendering pages 117 to 148,
34 that contains the portion of his article which deals
35 with the Skeena. I am tendering of that, only pages
36 139 to 140 for the truth of the statements therein
37 contained, and that is, so far as I am aware, refers
38 to the photograph alone.
39 THE COURT: All right. Well to keep things in sequence, I'm
40 going to -- I'm not going to have them marked but I'm
41 going to reserve numbers 450 and 451, and you can
42 speak to the matter again, Mr. Grant, when you get a
43 chance to look at the documents. It doesn't seem to
44 me to be necessary to have two different exhibit
45 numbers for pages 139 to 140 as well as 117 to 148;
46 the greater includes the lesser, I think.
47 MR. GOLDIE: No. It's the -- the purpose for which it is

tendered will be stated in the transcript.
THE COURT: All right. Well I'll reserve those two numbers and you may speak to it again whenever it is convenient, Mr. Grant.
MR. GOLDIE: To complete that package is the photograph which is under tab 3, but the original photograph in the sense of being a photograph of a photograph, I am tendering separately.
THE COURT: Yes, all right. Any problem with that, Mr. Grant?
MR. GRANT: I'm not -- no. Given the linkage I am not concerned.
THE COURT: That can be Exhibit 452. It seems to me that it's admissible as explanatory of the photograph which is an exhibit, it's a better copy of the photograph of Exhibit 439 anyway.
MR. GRANT: Yes, I agree.
THE COURT: So that will be Exhibit 452.
THE REGISTRAR: Original?
THE COURT: Yes.
MR. GOLDIE: Yes.
THE REGISTRAR: Exhibit 452.

(EXHIBIT 452 - Tab 3 of Blue Book, Photograph Copy of Map from University of Pennsylvania)

MR. GOLDIE:
Q Mr. Marsden, you explained to Mr. Grant how the territory around Meziadin Lake was acquired in two wars with the Stikine people. Do you remember that?
A Yes.
Q Before those wars, that area belonged to the Stikine people; is that correct?
A Yes.
Q And they are not Gitksan?
A No.
Q How long ago did those wars take place?
A It's clear to me that it's -- it's recent, because what they used, this was -- they used guns and the guns -- usually the Hudson's Bay Company was the first -- the first company that brought guns to the territories and these people had guns.
Q So it was --
A And it was -- it's clear to me that it is just been recently.
Q Yeah. Recently meaning any time since the Hudson's Bay came into the area?
A Yes. Yes, this is -- they were the ones that brought

the guns to the Stikine territory, and this is how come the Stikines used these guns.
Q Um-hmm. Before the Kitwancool acquired the Meziadin Lake territory by war, how far north did the Kitwancool territories extend?
A It went as far as my territory and I am not too sure about Gwashlam's territory.
Q Well, Gwashlam's territory is further -- is beyond Mr. Marsden's territory?
A Xsi masxwit.
Q Pardon me?
A Xsi masxwit is the name of Gwashlam's territory.
Q Right. And that is the territory around Meziadin Lake?
A Yes.
Q Yes. What is the boundary between your territory and Gwashlam's?
A Gwashlam's territory is on the other side of the Nass River where Xsi masxwit goes into the Nass River. Mine is on this side of the Nass River from Gwashlam's.
THE COURT: So the Nass is the boundary, is it?
THE WITNESS: Yes.
MR. GOLDIE: Um-hmm. All right, thank you.
THE COURT: Could we interrupt you for a moment, please, Mr. Goldie, to speak to the list.

(OTHER MATTERS SPOKEN TO)

THE COURT: Mr. Goldie.
THE REGISTRAR: Recalling Solomon Marsden to the stand.
MR. GOLDIE:
Q Mr. Marsden, I believe you were present at a feast or meeting with the Nisga'a in October 27th, 1984, at which there were a large number of Gitksan and a large number of Nisga'a and the feast was held to resolve the overlap problem. Do you remember that?
THE COURT: Where was the meeting, Mr. Goldie?
MR. GOLDIE: I think the meeting was at Canyon City.
THE WITNESS: Canyon City, yup.
MR. GOLDIE:
Q Canyon City?
THE WITNESS: Um-hmm.
Q And you were there?
A Um-hmm, yes.
Q Now before this, the Kitwancool and the -- and the tribal council had been working on the -- on the

1 Nisga'a -- working together on the Nisga'a overlap; is
2 that correct,
3 THE WITNESS: Um-hmm.
4 Q Under tab 4 is a letter dated March 30th, 1983, from
5 Mr. Sterrit. You know Mr. Neil Sterrit Jr., do you?
6 THE WITNESS: Yes.
7 Q And he was the president of the Gitksan-Wet'suwet'en
8 Tribal Council?
9 THE WITNESS: Yes.
10 Q And on March 30th, 1983, he wrote to Mr. Peter
11 Williams, President of Kitwancool, and he said --
12 MR. GRANT: Could the interpreter have it, the exhibit.
13 MR. GOLDIE: Yes, I'll put this in front of her.
14 THE REGISTRAR: I'll give her this one, Mr. Goldie.
15 MR. GOLDIE:
16 Q All right, thank you.
17 He said in the first paragraph, and I'll ask Mrs.
18 Sampson to translate this:
19
20 "As you will recall, at a meeting in Gitwangak on
21 January 18, 1983, the high chiefs asked the
22 researchers in the Land Claims Office to put
23 together supporting evidence for the Gitksan
24 claim."
25
26 Could you read that, please?
27 A Yes, I know that.
28 Q Yes. And Mr. -- the high chiefs instructed the land
29 researchers to put together maps and a tape recording
30 and photographs. Do you recall that?
31 A Yes.
32 Q And Mr. Sterrit said, "That to do this we must meet
33 with the Kitwancool high chiefs." Was there such a
34 meeting?
35 A I forgot whether they did this or not.
36 Q All right. But you -- were you aware that Mr. Sterrit
37 wrote this letter to Mr. Williams?
38 A Yes, I know.
39 MR. GOLDIE: Yeah, all right. I would ask that that be marked,
40 My Lord.
41 THE COURT: Any objection?
42 MR. GRANT: Well in light of the fact that Mr. Sterrit --
43 ultimately it will come in, so.
44 THE COURT: All right, thank you. 453.
45 THE REGISTRAR: 453.
46 MR. GOLDIE: Thank you.
47

(EXHIBIT 453 - Tab 4 of Blue Book, Letter dd. March 30, 1983, from Neil Sterrit to Peter Williams)

MR. GOLDIE:
Q Now I want to go to the meeting at Canyon City which occurred on October 27th, 1984, and this was the meeting at which the Nisga'a told their adaawk.
A Their adaawk was about a person known as Txemsim and this is what they call their adaawk. It is a common story amongst the -- all the people and they are -- they were trying to bring this up as an adaawk and say that the, the waters along the Nass -- or the land along the Nass and the waters that run into the Nass is all theirs, and they tried to connect it with the story of Txemsim. And this is a common story among the people.
Q The Nisga'a people?
A The Gitksan people and Txemsim know it's a common story and it's not an adaawk. They did not -- they did not tell any adaawks of their land, how they acquired this land. They had no adaawk connecting to any of their lands that they were claiming.
Q All right, thank you.
THE COURT: Could I have the spelling of that name, please.
THE TRANSLATOR: Txemsim?
THE COURT: Yes.
THE TRANSLATOR: T --
THE COURT: "T"?
THE TRANSLATOR: T-X underlined E-M-S-I-M.
THE COURT: Thank you.
MR. GOLDIE:
Q Now Mr. Neil Sterrit Jr. was at that meeting?
A Yes.
Q And he made notes of that meeting, or are you aware of that?
A I think he wrote them down. I'm not too sure.
Q All right. I'm going to ask you, Mrs. Sampson, to turn to tab 5 of the document book.
THE COURT: Before you do that, Mr. Goldie, can you tell me just in a word, the Calder case refers to a claim of the Nisga'a, and in that case has been about a thousand square miles. Can you tell me approximately where that thousand square miles was?
MR. GOLDIE: Yes. Very roughly, to the north-west of the Gitksan and Kitwancool.
THE COURT: North-west?
MR. GOLDIE: Yes. Or west by north.

THE COURT: Well looking at the map that we've been looking at more than any other map insofar as the Kitwancool are concerned, which is -- which is Exhibit 383, it's tab 1 in the white book.
MR. GOLDIE: Yes. That's --
THE COURT: That's the Nass coming up from the bottom left corner is it not?
MR. GOLDIE: Yes, that's correct.
THE COURT: Yes, all right.
MR. GOLDIE: And the -- the overlap includes virtually everything on the west bank of the Nass including the Meziadin.
THE COURT: I see, all right.
MR. GOLDIE: And the -- so far as it affects the Gitksan, it includes the Bowser Lake area.
THE COURT: All right. And the thousand square miles they talk about in the Calder case, is that the area they are talking about?
MR. GOLDIE: I believe so. The origin of the Nisga'a claim as I understand it, is an area that was shown on a map attached to a 1913 petition, and I don't have a map here. There was a reference made to it in Mr. Sterrit's examination for discovery, and there is a federal government publication which shows the overlap, and Mr. Macaulay may be able to be more precise than I am.
THE COURT: I would have thought that that little area -- when I say little area, the area you talk about there, the west bank of the Nass, would be roughly in excess of a thousand miles if it proceeds any direction to the west.
MR. GRANT: Well that's right, My Lord. There is a couple of things there that are being crossed. There is, of course, the Nisga'a claim to the federal government which is one item, there is a Nisga'a claim in the Calder case which, my recollection, and I think that it is appropriate to have the description from Calder if you are --
THE COURT: Sometime I'm sure we will get to that.
MR. GRANT: We'll get to that. But my recollection is that it does not include a large part of what is on the map that you've referred to. In fact, there was a deletion and a reduction of the territory that the Nisga'a claimed in the Calder case from what my friend has referred to as the 1913 petition.
THE COURT: At the left boarder of this map, Exhibit 383, we must -- that must be 75 to a hundred miles to the

coast, not --
MR. GOLDIE: Oh, well the Portland Canal comes up quite sharply in the upper left-hand side there.
THE COURT: I see, all right. Well, that's possible. Is there a -- does their claim stop at the head lands of the Portland Canal.
MR. GOLDIE: I have here the 1913 petition.
THE COURT: Yes.
MR. GRANT: But as I say, that was -- the claim in Calder was different than in the petition itself. I think there may be evidence of that difference.
MR. GOLDIE: Oh, I'm sure the boundaries have changed.
THE COURT: Yes.
MR. GOLDIE: But I'll read to Your Lordship the 1913 petition description, and certain -- certain topographic features are going to come to Your Lordship's attention.

> "Commencing at a stone situate on the south shore of Kinnamox or Quinamass Bay and marking the boundary line between the territory of the said Nishga Nation and Tribe and that of the Tsimpshean Nation or Tribe of Indians, running thence easterly along said boundary line to the height of land lying between the Nass River and the Skeena River --"

THE COURT: I see.
MR. GOLDIE:

> "-- thence in a line following the height of land surrounding the valley of the Nass River and its tributaries to and including the height of land surrounding the north-west end of Mitseah or Meziadin Lake, thence in a straight line to the northerly end of Portland Canal, thence southerly along the international boundary to the centre line of the passage between Pearse Island and Wales Island, thence south easterly along said centre line to the centre line of Portland Inlet, thence north-easterly along said centre line to the point at which the same is intersected by the centre line of Kinnamox or Quinamass Bay."

And so on. That gives Your Lordship --
THE COURT: Yes, all right. One other thing, then, in the centre of this Exhibit 383 there are what I take by black outlining to be two small lakes.

MR. GOLDIE: Yes.
THE COURT: Would that at that latitude be the height of land between the Skeena and the Nass?
MR. GOLDIE: I -- my guess is it's very close to it, that there is a drainage.
THE COURT: The Kispiox looks to be a river -- looks to be to the east running down to the Skeena.
MR. GOLDIE: Yes.
THE COURT: And there is a small lake -- river from that westerly lake running down to the Nass. It seems to me that would have to be the height of land between.
MR. GOLDIE: Yes.
THE COURT: All right, thank you.
MR. GOLDIE:
Q Would you open the blue book under tab 5, please, to the first page of Mr. Sterrit's notes, yes. Now, what I'm going to do is make a brief reference to the -- what each speaker said, and ask Mr. Marsden if he recalls that after the opening ceremony, Mr. Jimmy Gosnell spoke for the Nisga'a?
A Yes.
Q And he said amongst other things, "The overlap is not serious"?
A Yes.
Q And he said, "Gitksan live in all our villages and the Nisga'a live in Gitksan villages"?
A Yes. I guess they are referring to the Gitksans that have moved with them, and what they think is that they would -- just because there were some Gitksans living with them that they -- they are going to claim the Gitksan's territory, some of the territories. But this is not so with the Gitksan law. Once when a person leaves the village, he could not take the -- anything from the house, and also, he would not take the pole so he would not take the territory. When he leaves, he leaves all this behind. When he leaves, he moves to another village. And because where the totem-pole is is where the power of the chief lies, and --
Q Yes?
A -- and all the totem-poles are still in Gitsequkla and the house are still in Gitsequkla and they could not take these.
Q But I -- Mr. Marsden, you told us in response to questions from Mr. Grant that those people who moved away were still Gitksan?
A This is the case with some of the people. If you have

1 deserted your village, you leave it, you don't come
2 back and you don't own anything there. But with some
3 of the people it's different, they keep coming back,
4 many coming back to attend the feast, to do their work
5 in the village, and they don't forget which house they
6 belong to.
7 Q Um-hmm. So the Gitksan law is that if somebody is
8 living with the Nisga'a but returns to feasts in the
9 Gitksan villages, he or she remains Gitksan?
10 A Yes.
11 Q And the Nisga'a who live in the Gitksan villages, do
12 they become Gitksan or do they remain Nisga'a?
13 A They do the same thing too, they return home when
14 there is a big feast put on by their house.
15 Q But if they don't return home, do they become Gitksan?
16 A We could not say this, we could not -- once they
17 belong to a house they are in a house.
18 Q Yes. Would you turn over to page 2, please, Mrs.
19 Sampson. Do you remember Mr. Charlie Swanson
20 speaking?
21 A No.
22 Q Do you remember a Nisga'a speaker saying, "We are all
23 related, I have two sisters in Gitanmaaxs"?
24 A No, I didn't hear that.
25 Q Don't remember that, all right. And there was a
26 gift -- there were gifts given at the feast?
27 A They gave money to Neil Sterrit for the expenses.
28 Q And then, Mrs. Sampson, if you turn to page 4. Do you
29 remember Mr. Chester Moore telling the story of
30 Meziadin, Nisga'a story of Meziadin?
31 A No, I didn't hear. They didn't tell any adaawks and
32 they wouldn't let Kitwancool people listen to their
33 adaawks.
34 Q Do you not remember Nisga'a people telling a story of
35 why the Thaltan gave Meziadin to the Nisga'a?
36 A No.
37 Q No, all right. And then was -- did Mr. Richard Guno,
38 Chief of Nisga'a, speak? Can you state his chief's
39 name. Is that -- is that a Nisga'a chief?
40 A They just put that name on, they just recently put the
41 name on Richard Guno, K'amxsiwaa. That's -- but he
42 knows he is from the house of Guxsan.
43 Q Well, was he -- was he Nisga'a?
44 A He was brought up with the Nisga'as. His father is a
45 Nisga'a but his mother is a Gitksan.
46 Q And that is a Gitksan name, a chief name in the
47 Gitksan?

A If -- the name is -- belongs to the Nisga'a people. He was adopted into the house.
Q All right. And did he not tell a story about the territory around the Meziadin?
A I don't remember.
Q Do you remember him speaking about Michael Bright?
A I think I know the situation here. That Michael is from Lax Gibuu and Richard is Gisk'aast.
Q Fireweed?
A Fireweed.
Q Yeah. Well, Michael Bright --
MR. GRANT: Was the witness explaining -- in the middle of an explanation I think?
THE INTERPRETER: Yes.
MR. GOLDIE:
Q All right, let him finish.
A Richard could not say anything about what Michael Bright is doing.
Q Michael Bright was from Kitwancool and went to live on the coast?
A Yes. He is from the house of Gwashlam.
Q Yes. In?
A In Kitwancool.
Q And did he return to Kitwancool to attend feasts?
A No. And these are the people that want to claim the territory of the Kitwancool. They put it in with the Nisga'a claim.
Q And Mr. Richard Guno was saying that he had rights because he was beside Mr. Michael Bright; was that what Mr. Guno was saying?
A Even if they say this they can't do nothing, because Richard is from the house in Gitsequkla and Michael is from Kitwancool, and they could not stand side-by-side because one is from Gitsequkla and one is from Kitwancool, and they don't have the power to make any decisions about anything.
Q And as far as Mr. Marsden is concerned, they have no rights in Kitwancool territory?
A They have left the country of Kitwancool and they cannot return back and speak to anything that is happening.
Q Thank you. But they were speaking at this feast?
A Yes, they did speak here, but we -- we did not recognize them.
Q Yes. And there was a speaker from Nisga'a who was from the house of Duukw. Look at page 13, please, Mr. Marsden, D-U-U-K-W. Mr. Marsden, is that a Nisga'a

house?
A I never heard this name before and I don't know it.
Q You don't recognize it, all right. Do you recall a speaker saying that his uncle told him that it was a two-day journey to his territory from Git lax damix? That name is on page 13 on the right-hand side, second paragraph.
MR. GRANT: My Lord, my friend's question as I understood it was that -- he asked if the speaker said it was a two-day journey to his uncle's territory from Git lax damix, and the notation doesn't refer to where it is, the two-day journey to that is to his uncle's territory. It just says there was a two-day journey from Git lax damix.
MR. GOLDIE:
Q The question I asked was do you recall the speaker saying that?
A This may be right, but who said this?
Q Well, the speaker is identified by Mr. Sterrit merely as Chris, apparently from the house of Duukw?
A Yes. Somebody said this, but I didn't really know who was saying this.
Q But it was a Nisga'a?
A Yes.
THE COURT: Well, doesn't it appear from the top of the right-hand column, page 13, that he was talking about a location that may be abbreviated but it starts -- looks like G-I?
MR. GOLDIE: G-I-H-L, D-I-N.
THE COURT: Yes.
MR. GOLDIE: Could you pronounce that word for Mr. Marsden and ask him if he recognizes it. Gihl d'in?
THE INTERPRETER: Where is that at?
MR. GOLDIE: Page 13, the right-hand column, line three.
THE INTERPRETER: Gihl d'in.
MR. GOLDIE: Which is it?
THE TRANSLATOR: Gihl d'in.
THE COURT: How do you spell that, please?
THE TRANSLATOR: G-I-H-L.
THE COURT: G-I-H-L.
THE TRANSLATOR: Space D stop I-N.
THE COURT: Yes.
MR. GOLDIE:
Q All right. Does Mr. Marsden identify that name and if so can he tell us where it is?
A I know Gihl d'in. This is the territory of Wutaxhayetsxw.

Q Of Kitwancool?
A Yes.
Q What --
A It is -- it is close to the boundary of the Nisga'a and the Kitwancool people.
Q What clan is that chief?
A Frog.
Q Mr. Marsden's clan, yes.
THE COURT: The third line from the bottom suggested it might be a river
MR. GOLDIE:
Q The source, yes. What is Gihl d'in?
A It's the name of the territory and also the water.
Q Is it a river or a creek or a lake?
A Yes, it's a river.
Q Is there an English name for it?
THE WITNESS: Kiteen.
A Kiteen.
Q Kiteen, thank you.
A The white people couldn't say Gihl d'in so they say Kiteen.
Q Very, very wise. So this Nisga'a was stating that his house owned a territory on the Kiteen which is owned by a member of your clan?
A It's Kitwancool's. The Nisga'as got no business with this.
Q All right, thank you. Did the -- did the Nisga'a speak in their own tongue?
A Yes, they use it.
Q Were -- was that translated?
MR. GRANT: You are referring to the meeting?
MR. GOLDIE:
Q Yes.
A Yes, they did. They used these speakers and through -- they would talk into the speakers and it go through the earphones of the translator and she would speak through the -- to the people, translate to the people what is being said.
Q And when the Kitwancool and Gitksan spoke, they spoke in their own tongue?
A Yes. They did use their own language but we understand what the Nisga'a was saying, and they understand what we were saying.
Q The two languages are quite similar, are they?
THE WITNESS: Um-hmm.
Q Yeah. Now, was the last Nisga'a speaker Mr. Frank Calder?

A Yes, I remember what was going on at that meeting, but the -- we are talking about territories now and I am here for -- to explain the laws and we are talking about territories.

Q Well, I want to come to what Mr. -- what the Kitwancool people said at this meeting, and I want to have Mr. --

A I am getting tired and I do not want to talk about the territories, and I think I am not going to answer any more if it's being asked of me.

MR. GOLDIE: All right. Well, suppose we have an adjournment?

THE COURT: Yes, all right.

THE REGISTRAR: Order in court. Court will recess.

(PROCEEDINGS ADJOURNED AT 10:55 a.m.)

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.

Toni Kerekes,
O.R., R.P.R.
United Reporting Service Ltd.

(PROCEEDINGS RECONVENED PURSUANT TO RECESS)

THE REGISTRAR: Order in court. Ready to proceed, My Lord.
THE COURT: Goldie.
MR. GOLDIE: My Lord, I wonder if I might explain to the witness that I am asking these questions only because of evidence that was given in response to Mr. Grant's questions. I don't want to leave the impression with the witness that I'm doing something that I shouldn't be doing.
THE COURT: Well, I don't know. Is it necessary, Mr. Grant?
MR. GRANT: Well, if Mr. Goldie wants to say that, I have no problem. My problem, and I want to advise the court and Mr. Goldie that, with respect to questioning this witness relating to Kitwancool territories that are not subject to this action at all and are not -- do not impact in the sense that they're part of some overlap with this territory, other than the witness' own territory which he described, and I would submit that that is not relevant. If there's questions of Nisga'a claims that impact on the clan territory subject of this action or of Kitwancool claims that impact on the subject matter of this action, I -- of course I'm not saying that sort of questioning is not relevant, but to go on and on about the Kitwancool and the Nisga'a's problems which are both outside this claim territory and have no bearing on the issues before the court I submit is not relevant, and I --
THE COURT: Well, I --
MR. GRANT: I say that in advance because I understand my friend may be asking more questions about it, although there's things he may be asking about relating to other statements that are in these notes. I've just had a chance to review these notes again now over the break, so I say that I would object to relevance on those areas.
THE COURT: Well, I've noticed that on television they seem to be able to divide things up and are able to speak with great confidence as to precisely what's relevant and what isn't, but I must say I'm completely at sea as to what possibly can be relevant in most of this evidence, but it's here and I have to deal with it. I don't think the witness was qualified as an expert in Gitksan law. I don't think that much of his evidence, strictly speaking, may have been admissible at all. It was heard without objection. There's certainly areas where the overlap is involved and there are areas which may reflect upon the overlap, and I'm not

1 able to sort out at this stage, and I'm not sure I'll
2 ever be able to sort out even at the end of the trial,
3 what is strictly relevant and what isn't, but I can't
4 at this moment give effect to your submission Mr.
5 Grant that I should try to draw a clean line between
6 what relates strictly to overlap and what doesn't. I
7 don't know whether it relates to overlap or not.
8 MR. GRANT: Well, there is a clean line as to what relates to
9 overlap and of course Mr. Goldie has raised it, and
10 that is that there's the Nisga'a -- the defendants
11 state that the Nisga'a have some -- are making some
12 claims within this area that's the subject of this
13 claim, and similarily -- well, I shouldn't say, but I
14 understand from some of Mr. Goldie's questioning that
15 he may be trying to determine or questioning relating
16 to Kitwancool in the same situation. What I'm saying
17 is, My Lord, is that really all the witness is trying
18 to say is that the Kitwancool chiefs are not in this
19 court action, their territory is not a subject matter
20 before the court, and that's where I think the
21 confusion lies.
22 THE COURT: Oh, there's much more confusion than that Mr. Grant.
23 MR. GRANT: Well, I think, yes, I think --
24 THE COURT: A good deal more.
25 MR. GRANT: -- there is another confusion which is that he was
26 allowed by certain persons to agree to be a witness,
27 but they asked me --
28 THE COURT: Well, it's counsel's responsibility that he's a
29 witness, no one else's. It's only counsel's
30 responsibility that he's a witness. I can't look
31 beyond that.
32 MR. GRANT: I agree.
33 THE COURT: But I'm --
34 MR. GRANT: All I'm saying --
35 THE COURT: I'm not going to rule that something cannot be
36 relevant at this stage in the examination of this
37 witness. He's here. He's in the box. If we were in
38 the feast hall we'd play according to his rules, in
39 this courtroom we've got to play according to what I
40 conceive the rules likely are. And I tell you that I
41 cannot sort out at this stage what is relevant and
42 what is so irrelevant that it should not be admitted.
43 If it relates to territories, that's what this case is
44 all about, if he's a Gitksan. I'm not going to try
45 and weigh these matters on very fine scales. I think
46 we have to -- we're into this, and I think we have to
47 endure it and I think we should get on with it. Go

ahead, Mr. Goldie, you make whatever statements you want to the witness. I don't think it's necessary, but --

CROSS-EXAMINATION BY MR. GOLDIE CONT.:

Q All right. I do want to point out to Your Lordship that there were a couple of what might best be termed mild objections taken at the outset to some of this evidence, and Your Lordship had my friend's assurance that it was relevant. Now, when I hear a question as was put to the witness, "Now, in your lifetime have Nisga'a people used the resources of your territory to your knowledge?", what am I to make of that? And what I'm making of it is the relationship between the two people which appears now to have been put in issue. Maybe in the fullness of time it will appear to dwindle into nothingness, or as the astronomers if not the astrologers would say, a black hole.

Now, Mr. Marsden, I don't want to tire you and I'm sure you will tell me when you are tired, and the only reason I'm asking you these questions is that they appear to relate to the evidence that you gave in answer to my friend Mr. Grant's questions. Now, we were talking about the Canyon City feast, and I'm almost finished with that. I want to ask you this: Gwashlam spoke for the Kitwancool and that is Mr. Robert Good -- no, who's Gwashlam?

A Abel Campbell.

MR. GOLDIE: Abel Campbell, yes, thank you.

THE COURT: The first name?

MR. GOLDIE:

Q A-b-e-l, My Lord.

Do you remember him speaking?

A Yes, I remember.

Q And then you followed him, did you not?

A Yes.

MR. GOLDIE: And you said that you were -- did you -- this is at page 17 I want to read to you. This is at the right-hand column at the bottom of the page, and I quote: "I want to tell you the law of the chiefs of our forefathers. If somebody, even a high chief abandons his village, a village where his..." I can't make out that word, "...are, another man takes his place."

THE COURT: "...a village where his stories are, another man takes his place."

MR. GOLDIE: Stories, yes. Do you remember saying something

1 like that in Gitksan?
2 MR. GRANT: Madam Interpreter could take the exhibit, if she
3 wishes, to sit down while she's doing it.
4 THE INTERPRETER: How far did you read onto this one?
5 MR. GOLDIE: Just down to the end of "another man takes his
6 place." The top of the left-hand column on page 18.
7 THE INTERPRETER: Oh, I'm reading the wrong one.
8 MR. GOLDIE: Let's --
9 THE INTERPRETER: Okay. I was reading on the right-hand side,
10 like "I want to tell you the laws."
11 MR. GOLDIE: Yes. And then it follows up here.
12 THE INTERPRETER: Here. I was reading this one.
13 MR. GOLDIE:
14 Q Okay.
15 A Yes.
16 Q Yes. Thank you. And I'm not going to read everything
17 that you said, but you finished by calling upon Chief
18 Guu gwih'l gyoo, Mr. Peter Williams, that's at the
19 bottom of the right-hand side of page 18?
20 A Yes.
21 Q And you said "Peter, we will back you. You will
22 conclude the ways of our forefathers."?
23 A Yes.
24 Q And then Mr. Williams spoke and he spoke about the
25 Royal Commission in 1915?
26 A Yes.
27 Q And he referred to the reason why the Meziadin Lake
28 belonged to Kitwancool because of the blood which was
29 there, the blood of the Kitwancool in the lake?
30 A Yes. This was the foundation for us to make it clear
31 to the Nisga'a people to see that this land was given,
32 the Meziadin area was given to us because there was
33 the blood of our people spilled there.
34 Q Yes. And after he had gone through this, he said, and
35 I quote: "This is why Kitwancool owns Meziadin and
36 Bowser Lake is part of Kitwancool and Gitksan own part
37 of Bowser." That's --
38 A Yes. We said this and we were referring to the
39 boundary goes to Bowser Lake. The Bowser Lake is not
40 in our territory.
41 Q Not even part of it?
42 A No.
43 Q And then Mr. Williams listed the people who would lose
44 territory if the Nisga'a were right and he called it
45 aggression not overlap; isn't that right?
46 A Yes, that's what he said.
47 Q And he then referred to the court case and, the

1 Nisga'a court case, and said that he -- that the
2 Kitwancool did not want to hurt them while before the
3 courts. Do you remember that?
4 A Yes.
5 Q And he said to the people there, "You, the Nisga'a,
6 told the courts, the Supreme Court and the Court of
7 Appeal, that no people disputed you, but here to his
8 right and left are people disputing you. The high
9 chiefs of the Kitwancool and Skeena are disputing
10 you."
11 I'm quoting, Mrs. Sampson, from the bottom of the
12 right-hand column on page 21 to the top of page 22,
13 left-hand column.
14 A Yes.
15 Q And after Mr. Williams concluded, there were some
16 Gitksan -- other Gitksan witnesses and Mr. Stanley
17 Williams, Gwis Gyen, spoke did he not?
18 A Yes.
19 Q Now, Mr. Williams is the person that you referred to
20 yesterday as being highly respected by the chiefs of
21 the Gitksan?
22 A Yes.
23 MR. GOLDIE: And you were present when Mr. Stanley Williams
24 gave his evidence on commission a little while ago?
25 MR. GRANT: That was for part of it you mean.
26 MR. GOLDIE:
27 Q I'm just asking him.
28 Were you present when Mr. Williams gave his
29 evidence?
30 A Yes.
31 Q Now, is it right that Mr. Williams knows more about
32 the territories than any other chief?
33 A They just recognize him as an expert on the
34 territories of Gitsegukla and Gitwingax.
35 Q Just those two village territories. With respect to
36 those two he knows more about those territories than
37 any other person -- any other chief?
38 A The chiefs told Stanley where the territories are.
39 THE COURT: What were the two villages?
40 MR. GOLDIE: Gitwingax and Gitsegukla. My Lord, I'd ask that
41 those notes which are numbered from pages 1 to 23 with
42 the title page "Notebooks of Neil Sterritt", this is
43 an extract from those notebooks which in turn are part
44 of the plaintiffs' production, document 3920, be
45 marked as the next exhibit.
46 MR. GRANT: My Lord, I object to these going in as an exhibit
47 now. I have not had an -- I have just received this,

of course, this document book this morning, and I -- of course I've seen these notebooks before. I didn't know if they were -- my friend hasn't entered them up to this stage, although the notebooks haven't been referred to, this witness of course has adopted certain statements that have been read to him and that's all in the evidence and that's what we have. That evidence is established now. My friends will have an opportunity of course with Mr. Sterritt at which time --

THE COURT: Mr. Sterritt's a plaintiff isn't he?

MR. GRANT: Mr. Sterritt is a -- he's a represented member of a house.

THE COURT: Yes. Could your friend not just call upon you to produce it and put it in as a document in handwriting of one of the plaintiffs?

MR. GRANT: Well, there's probably several -- since there are several -- over several thousand plaintiffs in the terms of the represented, he's not a named plaintiff, but what I'm saying is that I -- I mean if this document had -- if I'd had this last night I would have had an opportunity to review it with Mr. Sterritt. I don't know if this is complete or not. I don't know if he's --

THE COURT: I don't think there's any problem in you having time to look at it, subject to what Mr. Goldie says. It seems to me that it's probably admissible, separately entirely from whatever the witness has said about it.

MR. GRANT: Well, I'm saying that there may be a time that it will be admitted.

THE COURT: Well, to put it another way, I don't think that its admissibility depends upon the evidence given by this witness, but I'm sure Mr. Goldie won't object if you want some time to look at it and consider your position.

MR. GRANT: Okay. I'd ask that this not go in as an exhibit now.

THE COURT: We'll reserve it a number so it goes in in sequence, but the number will be?

THE REGISTRAR: 454.

THE COURT: 454. That's all of tab 5 wasn't it, Mr. Goldie?

MR. GOLDIE: Yes, that's the whole of what's under tab 5.

THE COURT: The number's been reserved. All right.

MR. GOLDIE: Mr. Marsden, is it not possible that this territory, and I'm now talking about the Meziadin Lake territory, was used by Kitwancool, Stikine, and Nisga'a?

MR. GRANT: When?
MR. GOLDIE:
Q Any time. All three have used the territory?
A In the beginning it belonged to the Stikine people.
Q Yes?
A But after they had war with the Kitwancool people, it was given over to the Kitwancool people by the Stikine people.
Q All right. Now, you testified, and I'm referring to page 5875 of Volume 92, you testified that your territories are about 55 miles away from Kitwancool Lake. Do you remember that?
A Yes.
Q And you said that was mile 55 on the highway or the road miles are 70, and you said that when you were young you used horses to get supplies up there. Do you remember that?
A Yes.
Q And you were there when you were young from about the end of October until May?
A Yes.
Q Now, that was to trap was it not?
A Yes, trapping and also for survival to get the whatever kind of meat we could get.
Q Well, before you had horses you wouldn't go that far away, would you, to hunt?
A We never depended on the horses that much. We could go there by ourselves. We could carry about a hundred pound pack and go there and in the wintertime we would use dog sleds.
Q But when you went there in the wintertime you trapped furs to trade and you hunted meat to eat; is that right?
A Yes, that's what we did.
Q And the hunting was so that you could survive out in the bush during the wintertime?
A Yes.
Q Now, the furs that you traded were for the white man's goods such as guns?
A Yes.
Q And before the white man came the furs were used for clothing?
A Yes. This is not the only thing we used the furs for. We had trading outlets to the different nations down the coast. We would trade them with their food for furs or our meat for their seafood.
Q This was with the T'simxsan?

A Some of them were T'simxsan.
Q And long before there were white men in your -- in the part of the world in which you lived, the white man's goods came up from the sea by trading with the T'simxsan?
A Yes.
Q Mr. Marsden, how long have the Kitwancool -- how long have the people of the Kitwancool village been concerned about land claims?
A I will just tell a part of it. I can't go into the territories.
Q No. That's right.
A In the beginning when there was too much people at Gitangasx --
Q Where?
A Gitangasx.
Q Could I have the spelling for that, please?
THE TRANSLATOR: G-i-t-a-n-g, underlined, a-s-x underlined.
A There was too many people at Gitangasx so they left Gitangasx and they travelled towards where Kitwancool is now.
Q Yes?
A The area. And this is when they first claimed their land, and this is where the land claims started when they first claimed that land. That was in the ancient times.
Q Right.
A Before the flood.
Q Now, in much more recent times the Kitwancool have filed many petitions with government?
A Yes.
Q And they were advised -- and they believed that their petitions were in the courts as early as 1908; is that within your knowledge?
A Peter Williams told me some of the things about the land, land claims. Maybe it is 1908. This is when I was born and I don't have any knowledge of this.
Q All right. Any knowledge you have about the time as early as that you got from other people?
A Yes.
Q And the Kitwancool have a land researcher who's looking into their claims?
A Yes.
MR. GOLDIE: And is the -- are the sections of Exhibit 439, which begin at page 33, chapter 3, headed "The Establishment of Kitwancool Indian Reserves", is that the work of the land researcher?

1 MR. GRANT: My Lord, with respect to this, my recollection of
2 the ruling with respect to this was that that was not
3 considered relevant and the court ruled not -- that
4 that was not going to be part of the exhibit, "The
5 Establishment of the Kitwancool Reserve", and that's
6 why I've left -- I did not examine this witness at all
7 on that area, was I understood from the ruling the
8 court made last week with respect to Vernon Smith was
9 not relevant to the proceedings herein.
10 MR. GOLDIE: Well, that was a ruling that was made with respect
11 to Mr. Smith and all I'm asking him is the origin of a
12 section and a document, part of which is now an
13 exhibit.
14 THE COURT: Well, I think the only part of this that's an
15 exhibit is pages 1 to 12, and 14 to 20 is it not?
16 MR. GRANT: Yes.
17 MR. GOLDIE: That's presently so.
18 THE COURT: Yes.
19 MR. GOLDIE: But I have examined the witness with respect to a
20 number of other pages on that. The photographs at
21 page 29 I've examined him on.
22 THE COURT: Who presented this document?
23 MR. GRANT: The provincial defendant and --
24 THE COURT: In cross-examination of Mr. Smith?
25 MR. GOLDIE: Yes.
26 MR. GRANT: That's right. And it was ruled that the chapter 3,
27 "The Establishment of Kitwancool Indian Reserves" was
28 not relevant and for that reason I didn't broach that
29 subject with this witness at all. And I submit, with
30 respect, that the fact that it -- that was a ruling
31 with respect to Vernon Smith, if it's not relevant,
32 it's not relevant, and we can't start with a new
33 witness and say well, now it is relevant. So I submit
34 that any questioning on chapter 3 should not be
35 allowed.
36 MR. GOLDIE: It may not have been relevant with respect to Mr.
37 Vernon Smith, who is a named plaintiff. This witness
38 has been called by the plaintiffs presumably because
39 he has some information of value to their case. I'm
40 entitled to explore with him his background and the
41 connection that he has with land claims. Eventually
42 submissions are going to be made to Your Lordship
43 about the reliability of evidence that has been
44 developed, if I may use that word, in a context of
45 land claims. And the Kitwancool have been active in
46 presenting their claims.
47 I have another basis for wanting it in, and that

of course is the fact that the claims that are advanced by the Kitwancool were joined in by other members of the plaintiffs and there may come a time when it becomes of importance to argue before Your Lordship the delay in asserting their claims in this court.

THE COURT: Well, I think that for the purposes of -- for present purposes, without admitting the document as proof of the truth of anything stated in it, it is probably something for the provincial defendant to establish, if it can, through cross-examination of the knowledge of a witness, what the source of the document is, that is, who prepared it and when. But I don't think until I've heard a full argument on the matters Mr. Goldie has just threatened me on that I should admit it as evidence in the case except perhaps for identification. If it's shown that this witness knows what the source of that is, I think that that is not in any way inconsistent with what I have previously ruled. So you may proceed with that line of questioning with the witness, Mr. Goldie.

MR. GOLDIE: Yes. My only purpose at the present time is to establish the source of chapter 3.

THE COURT: Yes.

MR. GOLDIE: And I had suggested to you, Mr. Marsden, that it was the work of your land researcher?

THE COURT: I don't know if the witness knows what you're talking about.

MR. GOLDIE: All right. Perhaps I should go back.

THE COURT: Put the document before you, if you would, if it would help.

MR. GOLDIE:

Q In the claim that was submitted to the federal government there is a chapter 3 marked "The Establishment of the Kitwancool Indian Reserves" and do you know who wrote that?

A He doesn't know who.

Q Is there a researcher employed by the Kitwancool whose name is Mae Derrick?

A Yes. Mae Derrick is the researcher, but I did not see this completed.

Q I see.

A I wasn't there when this was completed.

Q Did you see parts of it when she was working on it, if she worked on it?

A No.

Q No. All right. Do you remember the troubles with the

surveyors in the 1920's when you were a very young man?

A Yes, I remember.

MR. GOLDIE: Yes. And the Kitwancool at that time turned the surveyors back, they didn't want them surveying land in the Kitwancool Valley; is that right?

MR. GRANT: My Lord, I just want to say that now we're going into the creation of the Kitwancool Reserve, and I submit that there is no relevance to the subject matters before the court of the creation of a reserve outside the territory with respect to the Kitwancool, and that was my understanding of why chapter 3 was excluded in your earlier ruling and it was not canvassed with this witness on direct for that very reason. And it wasn't a question that it was not relevant to Vernon Smith, it was not relevant to the case.

MR. GOLDIE: Well, I'm not interested in the establishment of the reserves, My Lord, I'm interested in the actions and attitudes of the Kitwancool and the other plaintiffs with respect to the surveyors for any reason, not just reserves, surveyors generally.

MR. GRANT: Well, the attitude of the plaintiffs with respect to surveyors I don't -- I don't oppose. That's clearly relevant. It's -- the question though is not the plaintiffs, it's the Kitwancool who are clearly not plaintiffs in the action.

MR. GOLDIE: Well, we have a bit of a problem because my friend puts forward this witness as a Gitksan, and at some point I'll be saying the knowledge of the Kitwancool is the knowledge of the Gitksan and vice versa. But I submit, My Lord, that I haven't got to the point of talking about reserves, and I'm not talking about reserves, I'm talking about surveyors.

THE COURT: Apart from reserves, how does it help the trial with these issues to know, if such was the case, that the Kitwancool people obstructed or prevented surveyors from going on the grounds?

MR. GOLDIE: Because it led to a number of the incidents, some of which were referred to in the opening by my friends.

THE COURT: I haven't got that committed to current memory, Mr. Goldie, what he said in that.

MR. GOLDIE: One was the burning of houses at Kitsegukla and by white man and the arrival of a gun boat and the varying attitudes that people had with respect to whose -- the varying attitudes that the people had

with respect to the purposes of that meeting and the suggestion was made in the opening that this was regarded as just a feast whereas in point of fact the evidence, my friend jocularly called it the Victoria colonist evidence, was that it was sent up there to overawe the natives at the time.

THE COURT: Assuming that happened at Kitsegukla --

MR. GRANT: Forty years earlier, My Lord.

THE COURT: -- what bearing does that have on the Kitwancool prevention, if I can call it that?

MR. GOLDIE: Well, the -- it's all part of the same thing. It is the question of jurisdiction within this valley. Now, my friend has led this evidence to say these people are all the same. The fact that they're -- Kitwancool aren't plaintiffs in this particular instance is irrelevant. They are, according to this witness, the same cultural group. And the Exhibit 1303, if my memory serves me correctly, is the funding application of the Tribal Council and it talks about all of these things as one; the evidence before the Royal Commission, which has been referred to, the attitude that these people have held that they retain jurisdiction and have never relinquished it, and that the -- Mr. Marsden has personal knowledge of the resistance of the Kitwancool to surveyors, the same. I'm going to put questions to him with respect to the B.C. Special Fund. All of these things are opened up by virtue of the witness saying "We're Gitksan."

THE COURT: All right. Thank you. I'm sorry, Mr. Grant, Mr. Macaulay?

MR. MACAULAY: I have no submissions.

THE COURT: All right. Thank you. Mr. Grant?

MR. GRANT: Well, My Lord, with respect, when my friend says it's all part of the same, it isn't. The Skeena uprising was in 1888. The events he's now talking about are 1927. But time isn't the only distinction, and paragraph 51 or 52 of the statement of claim expressly excludes this chief and his house members as a number of other chiefs and house members from this action and their territory. The events he's now dealing with are events that occurred outside the claims territory. The documents that we are now talking about, if this is -- my friend says this is all relevant, and as Mr. Macaulay has referred to in the past, is a whole volume of documents relating to the Kitwancool area which have not thus far been elucidated in evidence. There's crime reports,

there's all kinds of things which all make interesting reading, but I don't know if it's going to have that much of a bearing on the case. And I would submit that there is some point at which there should be some kind of confines, and I appreciate the liberality with which the court has viewed that. I appreciate that that's what has been done, but once again we're now moving into the whole question of Kitwancool and what happened there, which all may be very interesting, but entirely irrelevant to what we're dealing with here. My friend is not asking this witness about what Guxsan did or what happened at Kitsegukla, he's asking about what the Kitwancool did. And he hasn't, with all due respect, established at all that the people involved in the surveyors are Kitwanga or other Gitksan who are ancestors of the plaintiffs, and I submit that they are not.

THE COURT: All right. Where do you say this obstruction of the surveyors took place, Mr. Goldie, in the 1920's, whereabouts?

MR. GOLDIE: In at least one case it took place on the road between Kitwanga and Kitwancool.

MR. GOLDIE: I made a reference to Exhibit 23. I'm in error in that regard, My Lord. It's Exhibit 384, tab 8.

THE COURT: Well, Mr. Goldie, I have serious reservations about the relevance of this evidence, but I think that I will allow you to adduce it, subject to the objection. I'm not sure that I should try and rule in these things at this time. The one, with respect, persuasive argument that I want to consider is the fact that the witness was put forward on the basis that the laws and presumably the culture of the Kitwancool are the same as that of the Gitksan, and that was part of Mr. Grant's introduction to the evidence of this witness and the basis for the admissibility of much of the evidence he gave. And if they are, I assume for the moment that they are, the same cultural people, as I think they probably are, then their conduct in the management or in the defence or the care of their lands may bear or may form a basis for an inference in the same way the way the Kitwancool people carry out the Gitksan laws may be the basis for an inference as to how the Gitksan also carry out or observe their laws, and for that reason and subject to any objection I'm going to allow the evidence to be adduced. But, as I say, I have some serious reservation about how useful it would be to

1 know that the Kitwancool didn't let some surveyors in
2 in 1920. I'm not sure that that's going to be much of
3 a foundation for an inference, but together with other
4 evidence it just might, and for that reason I'll allow
5 the evidence to be called.
6 MR. GOLDIE: Thank you, My Lord. I did want to correct the
7 reference I made to that 1303. It would be
8 misleading.
9 THE COURT: The correct number is what?
10 MR. GOLDIE: Is Exhibit 384, tab 8.
11 THE COURT: Yes. All right.
12 MR. GOLDIE: And that's the exhibit, My Lord, that includes the
13 Kitwancool in the Gitksan villages. It refers to the
14 village as represented by the Tribal Council as
15 Hagwilget, Moricetown, Kitwancool, Kitwanga,
16 Kitsegukla, Gitanmaax, Sika doak, Glen Vowell and
17 Kispiox.
18 THE COURT: Who by the way is Sika doak?
19 MR. GOLDIE: Sika doak is Glen Vowell.
20 THE COURT: Oh, that's Glen Vowell.
21 MR. GOLDIE: Yes.
22 THE COURT: All right.
23 MR. GOLDIE:
24 Q And in that document Glen Vowell's in brackets, which
25 I can't pronounce very well.
26 Now, I think you told us, Mr. Marsden, that you
27 remembered the resistance to the surveyors and do you
28 recall -- did you know the late Mr. Albert Williams
29 who was the second president of the Kitwancool?
30 A Yes, I remember him.
31 Q And did Mr. Williams ever tell you of the claims put
32 forward by the Kitwancool based on the Royal
33 Proclamation of 1763?
34 THE INTERPRETER: What was the year?
35 Q 1763.
36 A No. No. They never mentioned this to me and Peter
37 Williams never mentioned it to me either.
38 Q You're not aware of a document that was posted up in
39 the Kitwancool territory headed "Indian protest
40 against white settlers coming into the Kitwancool
41 Valley"? Do you ever remember a document that had
42 those words on it in English, a resolution of the
43 Kitwancool Indians?
44 THE INTERPRETER: Could you repeat that question again, the first
45 part?
46 Q Do you have any knowledge of a resolution of the
47 Kitwancool Indians which was posted up in the village

and elsewhere headed "Indian protest against white settlers coming into the Kitwancool Valley."?
A No.
MR. GOLDIE: All right. Thank you. Now, I'm going to ask you some questions about your trap line and under tab 7 of that book in front of you is a map.
THE COURT: Do you want the bottom half or the top half?
MR. GOLDIE: It runs right from the bottom up to the top. It's number 0615T029, My Lord.
Mr. Marsden, I'm instructed that the area that is identified with the number 0615T029 is what is commonly known as the Kitwancool Band trap line, and it runs right up from the lowest most southerly point being just below Kitwanga Lake right up past to the Bell-Irving River.
MR. GRANT: My Lord, it's my understanding that the majority, if not all of this, is outside of the claimed territory.
THE COURT: Of the plaintiffs' claimed territory?
MR. GRANT: The territory that's the subject of the court action, and I would object to the relevance of the questions with respect to it.
MR. GOLDIE: I don't think that all is. In fact -- and that's what I want to ask him about.
MR. GRANT: Oh, if you're dealing with that, some part may be within that.
THE COURT: All right. Go ahead.
MR. GOLDIE:
Q Is that the trap line of the Kitwancool Band?
A That is the area of the territory of the Kitwancool, but it's not correct. It's not correct what the game warden has done here. This is not right. Look at this.
MR. GOLDIE: You're pointing to a place about half-way about in the middle of the licence?
MR. GRANT: The narrow place north of Derrick Creek where it's narrowed down is where the witness was pointing, My Lord, to.
THE COURT: Yes. All right.
MR. GRANT: Sort of a neck in the territory in the trap line registration.
MR. GOLDIE:
Q Now, this trap line is in fact about three or four trap lines put together is it not?
A We know we registered trap lines, but this is not -- it's not correct. The game warden doesn't know the area and it's not correct.
Q Well, you may not agree then with that particular map,

but the Kitwancool Band has a registered trap line doesn't it?
A Yes. It is in the territories of the Kitwancool and it's also in that book about the Kitwancool laws.
Q But unlike any other of the Gitksan this trap line is in the name of the head chiefs of the Kitwancool for the whole of the Kitwancool Band?
A Yes.
MR. GOLDIE: Right. Now, in the upper right-hand corner of that trap line to the right of what is marked as the Nass River, and I'm pointing to an area which has on it 0615T029 right up in the right-hand corner, My Lord.
THE COURT: Yes.
MR. GOLDIE: Otherwise identified by having the letter 69 just below the trap line number.
THE COURT: Yes.
MR. GOLDIE: And it has a couple of timber licences 4096P and 4120P, et cetera. Isn't that in the territory of Djogaslee, one of the named plaintiffs? Can you help me?
THE TRANSLATOR: How do you spell that?
MR. GOLDIE: D-j-o-g-a-s-l-e-e.
THE TRANSLATOR: Djogaslee.
MR. GOLDIE: Djogaslee.
MR. GRANT: Just for the record, I think what Mr. Goldie's referring to is an area that's to the east of a river there. There's a river.
THE COURT: Yes, the Nass River, so it says.
MR. GRANT: Oh, yes. Yes.
THE COURT: Yes.
MR. GRANT: To the east of the Nass River then.
MR. GOLDIE: Isn't that --
THE INTERPRETER: Which part are you talking about, this side?
MR. GRANT: This is the Nass River there.
THE INTERPRETER: Uh-huh. And this side is --
MR. GRANT: And for the witness, My Lord, it's to the west of Shaladamus Creek which is on the map too.
THE COURT: I think, Mr. Goldie, we might adjourn now and you can see if he can inform himself of the map --
MR. GOLDIE: I'm just going to --
THE COURT: -- with the purpose of possibly answering the question. All right. Thank you.
THE REGISTRAR: Order in court.
THE COURT: We'll adjourn until two o'clock. Thank you.
THE REGISTRAR: Court will adjourn until two.

(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.

Tanita S. French
Official Reporter

(PROCEEDINGS RECONVENED AT 2:00 p.m.)

THE REGISTRAR: Order in court. On Delgamuukw versus Her Majesty the Queen at bar.
THE COURT: Before you start, Mr. Goldie, I think I should acknowledge my thanks and the thanks of all of us for the thoughtfulness of our reporters and for the diligent service they have rendered to us, particularly in influencing us with a birthday cake in celebration of the first year of this trial.
MR. GRANT: The focus on first, My Lord, gives me some cause for concern.
MR. GOLDIE: One of them suggested to me that they were the only people who have derived direct benefits.
THE COURT: Certainly doing better than the rest of us as I'm sure. Oh, and I have a card from them which I don't think needs to be marked as an exhibit. Thank you, again.
MR. GOLDIE: Mr. Marsden, before the lunchbreak I pointed out an area to you of the Kitwancool band trapline, which I suggested to you was within the territory of Walter Wilson, a Gitksan plaintiff in this action. Is that your understanding?
MR. GRANT: Before -- I just wanted to correct something, My Lord, that I had said and that the court suggested which was that this was to the east of the Nass River. In fact, My Lord, the river that flows to the west of the area referred to in the north-east part of this map is the Bell-Irving River, and so this is to the east of the Bell-Irving River and to the north of the Nass River which flows along in an east-west direction.
THE COURT: Wait until I find that.
MR. GOLDIE: Can Your Lordship go to the top right-hand corner of the licence, the words --
THE COURT: Yes.
MR. GOLDIE: And the -- the river that is running north and south in that top right-hand corner is the Bell-Irving, and the river that is running -- that provides the running east and west is the Nass.
THE COURT: Are you sure?
MR. GRANT: Yes. My Lord you can see it on the other map.
MR. GOLDIE: This is Exhibit 24-A, My Lord. O613TO29 is outlined like that.
THE COURT: Yes.
MR. GOLDIE: The area we are talking about is in there. This is the Bell-Irving.
THE COURT: If you follow that river --

MR. GRANT: It joins the Nass.
MR. GOLDIE: The confluence of the Bell-Irving and the Nass is right.
MR. GRANT: And the Nass continues that way.
THE COURT: Oh, the Nass continues easterly. Yes, yes, all right. Thank you.
THE COURT: Well, I'm sorry to be difficult, gentlemen, but the map also shows --
MR. GRANT: Can we have a translation of the evidence, please?
A This is not right. The game warden put this on here which is not right. The Meziadin is over here and that's where the territory goes this way, the Kitwancool territory goes this way not towards Bell-Irving.
MR. GRANT: She is indicating this way to the west, towards Meziadin Lake.
THE COURT: This looks like the Irving if that's the Bell-Irving.
MR. GRANT: No. That's Irving Creek but the Bell-Irving goes up this way, My Lord.
THE COURT: I see, all right. This is Irving Creek and that's Bell-Irving River, is it?
MR. GOLDIE: Yes.
MR. GRANT: Yes.
THE COURT: All right. Is Mr. Marsden confusing the boundary of the Kitwancool territory for the boundary of the trapline licence?
MR. GOLDIE: I don't think so, but I'll clarify that, My Lord.
THE COURT: All right.
MR. GOLDIE:
Q Mr. Marsden, does the solid black line which I am following with my finger outline the Kitwancool band trapline territory in the north? And it starts right there and goes up like this.
A That's the trapline starting here but it doesn't go up to -- up here, it doesn't go up there.
MR. GRANT: Indicating the north-east.
MR. GOLDIE: Please let me finish.
MR. GRANT: Well I just want it for the record where he is pointing.
MR. GOLDIE: Yes, I'm going to do that. Please don't interrupt again.
All right. Now you've pointed, Mrs. Sampson, to the top right-hand corner --
THE INTERPRETER: Yes.
MR. GOLDIE: -- of the trapline and you are saying that is not -- and Mr. Marsden has stated that is not included

in the trapline; is that correct?
THE INTERPRETER: Yes, that's what he is saying.
MR. GOLDIE:
Q Thank you. What is the boundary of the trapline, according to Mr. Marsden's recollection? And if we could get a pen and ask him just to trace it on that map.
A It's -- it is in one of those -- on the maps that you showed me from Kitwancool, one of the Kitwancool books. You can look at that.
Q If you would give me the original exhibit which is the histories of the Kitwancool, it's the yellow one that's just underneath there, Madam Registrar -- or the orange one I should say.
THE REGISTRAR: 448.
MR. GOLDIE:
Q Thank you.
Is this what you refer to, Mr. Marsden, that is The Histories, Territories and Laws of the Kitwancool, and it is the map and the frontispiece?
A This is the approximate boundary here. It's the approximate and that's -- that's what the Kitwancool people were asking the game warden to have these territories put down as traplines for protection.
Q They wished to have their territory registered as a trapline for protection?
A Um-hmm, yes.
Q All right. But Mr. Marsden, on the map which is in Exhibit 448, doesn't the approximate line enclose even more territory of Walter Wilson's than the present trapline map which is in front of you?
A If it is on this map then it's the game warden's fault, because these lines here are not -- are not really correct, they are approximate and --
Q Yes?
A And if it includes that, well that's the reason. And even here it's not right. Over here where there should be a river or a creek known as Xsi masxwit, it goes past that straight line and it goes this far.
Q All right.
A And it's not shown here.
Q All right. Maybe I can say one more thing. Firstly, that this map is not the game warden's map, it is -- the straight lines are those put on by Mr. Wilson Duff.
THE WITNESS: Um-hmm.
Q And now I'm going to show you the map that we looked

at this morning which is attached to Exhibit 449. Now, is that more like the trapline boundary that you say should be --

MR. GRANT: Just indicate where the Xsi Txemsem is.

A If this territory -- this is a map made according to the words, they have not travelled on that land, they were made according to the descriptions of the chief. And if -- it is not our fault if this map is wrong. And if Wilson's -- Walter Wilson's territory happened to be in here, well then we are sorry for that, because Walter has an adaawk on his territory. It shows that he owns a territory when there is an adaawk there.

MR. GOLDIE: All right, thank you.

MR. GRANT: Indicating north-east.

MR. GOLDIE:

Q The witness was referring to the map of Exhibit 449. And for my purposes, My Lord, it is sufficient if I have just this one further question, and that is, would you trap or any member of your house trap on territory within your trapline but which included Walter Wilson's territory?

A No. This is not of the frog clan's territory, it belongs to the wolf territory, and I really don't know if -- if this is the case.

Q All right, thank you. I'm going to come back to the question of trespass a little later.

The -- I think I asked you this question before lunch, however, the Kitwancool band trapline is -- consists of a number of individual traplines, both wolf and frog; is that not correct?

A Yes, yes. The reason why they made the -- they say they call this territory the -- they have a trapline registration is because they want to make it clear to the people that this is their own territory and that is the -- the wolf clan and the frog clan of Kitwancool.

Q Yes. I'll come back to that in a little while, but the -- I want to ask you some questions about Fred Johnson. Do you remember we -- I asked you if you knew Fred Johnson, Lelt, and you said yes, and he -- he was with you at the Pole Cutting Ceremony of Joan Ryan, and he is a frog from Kitwanga; is that correct, Fred Johnson?

A Yes.

Q And his wife was a wolf from Kitwancool?

A Yes.

1 Q Is her name Mary?
2 THE WITNESS: Maggie.
3 Q Maggie, right. Do you remember a man by the name of
4 William Baynon coming to Kitwanga and Kitwancool in
5 1953?
6 A No.
7 Q All right. The -- now Mr. Fred Johnson's father was a
8 high chief in the wolf clan at Kitwancool?
9 THE WITNESS: Wilitsxw.
10 Q Wilitsxw?
11 THE WITNESS: Yeah.
12 Q And the present holder of that name is John Robinson?
13 THE WITNESS: That's right.
14 Q Yes. And Fred Johnson gave evidence on commission
15 here, it's Exhibit 69-A, My Lord, and he talked about
16 the boundaries of the Kitwancool and the claims around
17 Meziadin Lake. He would have the right to tell those
18 stories of the Kitwancool because his father was a
19 Kitwancool chief?
20 A Yes. He has this right because he was -- he was
21 brought up around that area and he spent so much time
22 with his father.
23 Q Yes.
24 A And he has the right to point out the boundaries and
25 the names of the places to other people.
26 Q And he would have the right to tell how the holder of
27 the name, his father's name owned territory?
28 A Yes.
29 Q Now, he told -- he told a story about a trial before
30 the Indian agent, Mr. McCullough, and it was about who
31 owned the territory. Have you ever heard of Mr.
32 McCullough?
33 A No.
34 Q Well, I'm going to read to you what Mr. Johnson said
35 at page 1-66.
36 THE COURT: Where are you reading from?
37 MR. GOLDIE: One dash sixty-six of Exhibit 69-A.
38 THE COURT: Oh yes, all right.
39 MR. GOLDIE:
40 Q And this is Mr. Rush:
41
42 Q "Did 'Wiilitsxw --"
43
44 How does one pronounce that name?
45
46 THE TRANSLATOR: 'Wiilitsxw.
47 MR. GOLDIE:

1 Q Q "-- 'Wiilitsxw tell the Nisga' about
2 this?
3 A Yes, they summonsed my father. Council
4 from the Nisga', Master McCullough, he
5 was the Indian agent.
6 Q How did they summons your father?
7 A They wrote on blue paper and there was
8 blood on the paper. This is the law.
9 They talked Gitksanemx. That's when the
10 court started.
11 Q Did the Nisga' want your father's land?
12 A Yes, they tried to claim it.
13 Q Is that why they summoned him over the
14 Nass?
15 A Yes, he was arrested by the council.
16 (In English) Indian agent was the
17 judge and judged him.
18 Q What happened over there?
19 A They had court. My father spoke. This
20 was the land that was given by the
21 Stikine, and he sang the song. My father
22 brought the wing that he got from the
23 Stikine and he showed it, and the Indian
24 agent took it. The Indian agent said
25 this is what happens during the war, on
26 the battle fields. This is what happens
27 in the battle fields, this is the sign,
28 this is the symbol of battle. That is
29 why 'Wiilitsxw owns the territory."
30
31 Now, I'm not going to ask Mrs. Sampson to
32 translate all of that, but would you translate from
33 lines 23 to 30 and tell him that that's what Mr.
34 Marsden -- tell Mr. Marsden that's what Mr. Johnson
35 said about court before the Indian agent?
36 A Yes, this is what they do when there is a battle.
37 Q Yes. And had he heard that the title of the wolf clan
38 was confirmed by the Indian agent, Mr. McCullough
39 or --
40 MR. GRANT: You are asking Mr. Marsden?
41 MR. GOLDIE:
42 Q Yes. Had he heard that the title of the wolf clan was
43 confirmed by the Indian agent?
44 A Yes. It -- the territory belongs to the wolf clan.
45 Q But has he heard -- had he heard about the trial
46 before the Indian agent?
47 A I did not -- I did not hear about this but I know that

1 territory belongs to the wolf clan.
2 Q Yes, right. Now I have another question to ask you
3 about the people who have moved away and who claim
4 rights. Would you tell Mr. Marsden that's what I'm
5 going to ask him?
6 A Yes, this is what I said earlier today.
7 Q Yes.
8 A That the people that have moved from Kitwancool are
9 the people that claim -- it's not really the Nisga'a
10 people that are claiming the Kitwancool land, it's the
11 people that have moved down there from Kitwancool that
12 is claiming this land.
13 Q I want -- Mr. Marsden, is there -- is there a family
14 where members of your clan, Ganada, who moved over to
15 Stewart at the head of the Portland Canal?
16 A I -- I don't -- if it did I would have known about it.
17 Q If they attend feasts at Kitwancool, their rights in
18 the territory of Kitwancool are protected; is that
19 correct?
20 A They do not come every time their chief puts a feast,
21 but they do come. And then -- and now what has been
22 said about Stewart, whether relatives were living
23 there, I did not hear about this before, I don't know
24 any wolf clan or any frog clan from Stewart.
25 Q All right. I just want to get one other point clear,
26 and that is that the Kitwancool protect their
27 territory against those who have moved away and who
28 have lost their rights, by having the trapline
29 registered in the name of the band?
30 A When the Kitwancool people did this it was for the
31 protection of their land, not -- they weren't even
32 thinking of things like this, about pushing people out
33 of their land that have rights to their land -- to
34 this land, they weren't -- they never even thought of
35 that.
36 MR. GOLDIE: No, all right. Well I'll come back to that in a
37 minute, then.
38 My Lord, I wonder if we might have the large
39 enlargement of the trapline area that was under tab 7
40 of the document book marked separately.
41 MR. GRANT: Well, My Lord, with respect to this, I -- I don't
42 think this is part of Exhibit 24-A, I don't think the
43 witness has really identified this document. That is
44 he has made reference -- there is places on the map
45 that he has referred to but it hasn't been identified.
46 In fact, he has disputed the boundary lines on it and
47 I would object to it being admitted because I don't

1 think it has been proven.
2 MR. GOLDIE: Well, it's simply an enlargement of what is on 24-A
3 and those are my instructions and I am merely
4 suggesting that it --
5 THE COURT: Is 24-A an exhibit or for identification?
6 MR. GRANT: For identification.
7 MR. GOLDIE: No, it's an exhibit.
8 MR. GRANT: It's for identification. It's all part of the
9 alienations which --
10 MR. GOLDIE: My understanding --
11 THE REGISTRAR: Exhibit 24-A is an exhibit, large map of
12 registered trapline.
13 MR. GRANT: My understanding was it was only for identification.
14 THE COURT: Well, all right. This will be -- if counsel tell me
15 this is merely an enlargement of something that is
16 already an exhibit it may itself be an exhibit. But
17 it's subject to the privities of the evidence.
18 MR. GOLDIE: Oh, absolutely, absolutely.
19 THE COURT: All right. So we will call this 24-B?
20 MR. GRANT: No.
21 MR. GOLDIE: No, there is a whole series of --
22 THE COURT: All right, we will give it its own number.
23 THE REGISTRAR: 455.
24
25 (EXHIBIT 455 - Tab 7 in Blue Book, Enlarged Trapline
26 Map)
27
28 THE COURT: And of course, Mr. Goldie, it doesn't prove any of
29 the other trapline boundaries that weren't discussed
30 in the evidence.
31 MR. GOLDIE: No.
32 MR. GRANT: 24-A, as I recall, was marked as an exhibit proper
33 for a very limited purpose which was there was some
34 place names that were referred to in June 8th of last
35 year.
36 THE COURT: All right.
37 MR. GOLDIE: More than that.
38 THE COURT: 24-A, all right. And this is tab what?
39 MR. GOLDIE: It's tab 7 of the document book.
40 THE COURT: Yes.
41 MR. GOLDIE: Now, My Lord, I want to refer to the documents
42 under tab 6.
43 THE COURT: I can put the map away?
44 MR. GOLDIE: Yes, thank you.
45 THE COURT: Tab 6?
46 MR. GOLDIE: Yes. My Lord, the documents under that tab are the
47 contents and total without any attempt to

discriminate, of the office file of the Kitwancool band trapline number 615TO29, it's the defendant's production number 1845.
THE COURT: In whose office?
MR. GOLDIE: In the office of the Provincial Ministry of Environment, Hazelton District. And my friend has admitted the authenticity of it.
MR. GRANT: Well, my friend may be mistaken.
MR. GOLDIE: Better read this again.
MR. GRANT: Yes. There was a -- within this large body of material is an application for registration of a trapline in the name of the Kitwancool band. And as I have indicated -- well I shouldn't say it's within this document because the listing my friends gave of the documents to admit did not include their number 18 -- sorry, yes, there it is, it does have 1845, and it's referred to as a file from 1946 to 1979.

Now, we've taken a position, My Lord, that with respect to any application registrations that are signed and the originals are available, especially when they have these overlap type of clippings on them as you have seen in the past, we would admit those. The balance of this file, My Lord, I would object to. It's -- it's not necessarily business records, it's a -- it's flotsam and jetsom and anything else that happens to get into the file from whatever source, and we would object to the admissibility of the bulk of this file. If my friend is seeking to put in -- here it is, I think I have it at the end.
THE COURT: The application dated 16th of August, '51?
MR. GRANT: Just a moment, My Lord. It's dated -- well --
THE COURT: Name of the Kitwancool Indian band?
MR. GRANT: Yes. The application is dated --
THE COURT: At the back?
MR. GRANT: In the name of the Kitwancool band.
THE COURT: Yeah.
MR. GRANT: Yes. I'm just looking for that. We have admitted that document, the one that's signed. I think there is more than one copy and there is --
THE COURT: Well the signature -- I can't read the signature of the applicant.
MR. GOLDIE: My Lord, perhaps I can assist my friend. The -- I will be referring to certain documents and I think they can be proved at this point, and I'll be making a submission with respect to the balance later. I have the original documents here: 1845-71 is a document that is signed by Walter S. Douse, and I take it

that's what my friend is referring to, and there are lists attached to it and that leads to the application of 74. I shouldn't say leads to the application, it is preceded by an application dated February 28th, 1935. I have the registration in the name of the Kitwancool Indian band and I don't think that was done at the time, I think it became Walter S. Douse and Company.

THE COURT: What date did you say, 1935?

MR. GOLDIE: Yes. That was 187 -- 1845-74.

MR. GRANT: I presume that's the page number?

THE COURT: I don't see a number on it.

MR. GOLDIE: Well, in your book of documents, My Lord, the numbers have been attached in sequence. 1845-74, the number is right in the middle of the page, it's an application for registration of a trapline in the name of Kitwancool Indian Band, and over the page is the reverse of that.

THE COURT: Yes.

MR. GOLDIE: And that was 1935.

THE COURT: Yes, I have that. Well, what do you say about the original document, Mr. Grant, do you have any problem with that document?

MR. GRANT: No. I now see -- this document, the original document, my friend has just shown me three and he has explained that this document 1845-74, we admitted that, that can go in without any objection.

THE COURT: All right. That will be Exhibit 456.

THE REGISTRAR: Exhibit 456.

(EXHIBIT 456 - Tab 6 of Blue Book, Trapline Registration of Kitwancool Indian Band dd. February 28, 1935)

MR. GRANT: And my friend wishes 1845-71?

MR. GOLDIE: Yes.

MR. GRANT: We are not objecting to that, subject to the issue of relevance, My Lord, but I think that can be argued later.

THE COURT: What's the date of the second one?

MR. GOLDIE: The second one, My Lord, is an application dated September 24th, 1951.

THE COURT: All right. That will be Exhibit 457.

THE REGISTRAR: 457.

(EXHIBIT 457 - Tab 6 of Blue Book, Trapline

Registration of Walter S. Douse and Company dd. September 24, 1951)

MR. GOLDIE: And 1845-73 is the cancellation of the Kitwancool Indian band registration to be renamed as the Walter S. Douse and Company trapline. I take it my friend doesn't have an objection to that?
MR. GRANT: No, it's a business record, I don't object to that, My Lord, subject to relevance, of course.
THE COURT: All right. Cancellation will be Exhibit 458.
THE REGISTRAR: 458.

(EXHIBIT 458 - Tab 6 of Blue Book, Cancellation of Trapline Registration of Kitwancool Indian Band dd. August 16, 1951)

THE COURT: The date of the cancellation, please?
MR. GOLDIE: Is the 28th -- I'm sorry, the 16th of August, 1951. So the sequence is the registration in the name of the band in 1935, cancellation of that in August '51, followed by a registration in the name of Walter S. Douse and Company on the 18th of August, 1951.
MR. GRANT: I would ask that the originals be filed, please.
MR. GOLDIE: Yes.
MR. GRANT: Those are copies.
MR. GOLDIE: I tender the application of February 28th, 1935 as the Exhibit 456.
THE COURT: Yes, thank you.
THE REGISTRAR: 456.
MR. GOLDIE: I tender the registration in the name of Walter S. Douse and Company of 18th of August, 1951, as Exhibit 457. That's 1845-71.
THE REGISTRAR: Okay.
MR. GOLDIE: And the cancellation of the band registration dated 16th of August, '51 as 458.
THE REGISTRAR: 458, thank you.
MR. GOLDIE: Mr. Marsden --
THE COURT: There is another document though, Mr. Goldie, is there not, September 24th, 1951?
MR. GOLDIE: Yes, My Lord. That's --
THE COURT: Where is it? Maybe not --
THE REGISTRAR: September 24th, '51 is Exhibit 457.
THE COURT: Well, we called it that originally but I don't think that that's what it was called when Mr. Goldie tendered the actual documents. I thought I saw one here.
MR. GOLDIE: Yes. But I think it is now Exhibit 457, My Lord.

THE COURT: All right.
MR. GOLDIE: September 24th, 1951.
THE COURT: All right.
MR. GOLDIE: Oh, I think I see where the problem arises. If I may see 457 for a minute.
THE COURT: Are there two dates on 457?
MR. GOLDIE: Yes, there are. The date of the 18th of August, 1951 is on the face of Exhibit 457 and it is the date of the application.
THE COURT: All right.
MR. GOLDIE: Then on the reverse of that and the reverse is partly on the page following 1845-71.
THE COURT: All right.
MR. GOLDIE: Your Lordship will see the date September 24th, 1951, and that appears to be the date on which the approval was -- some of them were given.
THE COURT: Yes.
MR. GOLDIE: And then the attachment is 1845-72.
THE COURT: All right.
MR. GOLDIE: Perhaps you might show that to His Lordship so that he can see that.
THE COURT: All right, thank you.
MR. GOLDIE: They are all under tab 6.
THE REGISTRAR: Tab 6, okay.
MR. GOLDIE:
Q Mr. Marsden, the registrations that we've been talking about indicate members of a company, and these were the people who were entitled to trap on that line, as I understand it, and I'm going to ask you to look at page 1845-72. Now look at the first column. Walter Douse was a member of what clan?
A The wolf clan.
Q All right. And Frank Benson?
A Fireweed.
Q And Abel Campbell I think you told us was wolf.
THE WITNESS: Yes.
Q Sarah Campbell, wolf?
THE WITNESS: Wolf.
Q Ernest Derrick?
THE WITNESS: Ganada.
A Frog.
Q Rebecca Derrick, John Derrick, Peter Derrick, Lucy Derrick, Walter Derrick, Mary Derrick, Elva Derrick, Vera Derrick, are all frog?
THE WITNESS: Lax Gibuu.
Q Oh.
THE WITNESS: John Robert is Lax Gibuu.

THE INTERPRETER: Connie Derrick.
THE WITNESS: Oh yeah, fireweed.
THE INTERPRETER: Connie Derrick is fireweed.
Q Fireweed.
A Frog, Peter J. Derrick. Lucy is the wolf clan, Walter Derrick is in the wolf clan.
Q Yes?
A Mary Derrick is in the frog clan.
Q Yes?
A Elva Vera Derrick is the frog clan. Vera Mary Derrick is frog clan.
Q All right. We needn't go any further, but these were all people in Kitwancool who were -- had the power to trap within the band trapline?
A These are the people that are -- that have their names down here, they are the people that registered the trapline.
Q Yeah. And they are as we have seen, from both wolf and frog and some fireweed?
A Yes.
Q And do you know of any other trapline of the Gitksan where the members registered are of three different clans?
THE INTERPRETER: Are we talking about Kitwancool or --
Q The Gitksan, generally?
A Here the reason why we have three clans on registered traplines here is because the -- the Gisk'aast married into the woman's house and which is called yuugwilatxw, and this is why the Gisk'aast is on here.
Q That's the fireweed?
A Yes.
Q Because -- well let me put this question then: This registration with all of these people on it from three clans, the fireweed because they married into the woman's clan, is not found anywhere else in the Gitksan to your knowledge?
A I do not know about this.
Q All right. Now, would you look at document 1845-64 in there. Now this is a letter from the Indian agent, Mr. Mallinson to the game warden in 1946. Do you remember a Mr. Mallinson as the Indian agent?
A No.
Q That's a long time ago. Anyway, he reports or he says that:

> "Douglas Marsden, Indian of the Kitwancool Band advises me that the trapline covered by the above

named registration under the name of Fred and Rufus Good should really be in the following mentioned order of names:"

And then he sets out some names. Douglas Marsden was your father, was he?

THE WITNESS: Yes.

Q And he was a high chief?

THE WITNESS: Yes.

Q What was his chief's name?

THE WITNESS: Malii.

Q Malii. And that is wolf?

THE WITNESS: Wolf.

Q Yes, thank you. And would -- would Douglas Marsden have the power to say who should be on the trapline?

A Yes.

Q Thank you. Now 1845-63, one page back, it's a letter dated May 16th, 1946 from Mr. Mallinson to Mr. Martin, the game warden, and he says that he is informed by Peter Mark of the Gitsegukla Band. Do you remember a Peter Mark?

A Yes, I know him.

Q And he reported that Peter Williams of Kitwancool is a member of his trapline company. Peter Williams is fireweed?

THE WITNESS: Yes.

Q And do you know if Peter Mark of Gitsequkla, do you remember whether he was fireweed?

THE WITNESS: Yes.

Q Yeah. Now, if that is so, if Mr. Williams was -- should have been recorded in Gitsequkla, is it right that he should not be on the Kitwancool band?

MR. GRANT: The trapline registration?

MR. GOLDIE:

Q Trapline registration, yes?

A Yes, he has the right here because he married the woman from Xamlaxyeltxw's house and he has the rights to go on that territory as Yuugwilatxw.

Q All right.

THE COURT: Is it convenient to adjourn, Mr. Goldie?

MR. GOLDIE: Yes, all right My Lord, thank you.

THE COURT: All right. Take the afternoon adjournment, please.

THE REGISTRAR: Order in court. Court will adjourn.

(PROCEEDINGS ADJOURNED AT 3:00 p.m.)

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.

_____
Toni Kerekes,
O.R., R.P.R.
United Reporting Service Ltd.

(PROCEEDINGS RECONVENED AT 3:20)

THE REGISTRAR: Order in court.
THE COURT: Goldie.
MR. GOLDIE:
Q My Lord, perhaps I can condense one or two things here.
When Mr. Walter Douse died the line was then registered in the names of the four head chiefs including yourself; is that right?
A Yes, that's right.
Q And at that time an up-to-date list of the members of the Kitwancool who were entitled to trap was given to the game warden; is that right?
THE WITNESS: Uh-huh.
Q Thank you. From time to time did not the high chiefs consult the game warden with respect to correcting and changing the trap lines?
A Yes. This did happen and at one time we called one of the game wardens to come and meet with us because there was a trap line that was not correct and we did invite him but he didn't show up.
Q But you had meetings with the game warden?
A Yes. Yes. We do call him when we want to, but at times they come and meet with us.
Q Yes?
A To talk to the people.
MR. GOLDIE: If you'd look under tab 6, page 1845 - 56. My Lord, that's a copy of what purports to be a resolution addressed to the Indian Affairs Branch, Babine Indian Agency, requesting that registration be in the name of the four chiefs. Unless my friend wants me to, I don't propose going through that with the witness, but I'd ask whether my friend has any objection to that being marked.
MR. GRANT: Well, I guess my only point, My Lord, is that what is the relevance of all of this? We're now talking about the Kitwancool trap line that is outside of this territory. I mean we're expanding and expanding the scope of the evidence.
THE COURT: Well, you see it comes back to the problem mentioned a while ago that you tendered this witness as a person who could speak about the Gitksan affairs, the Gitksan sociology, if I can call it that, and suggestions were made that what applied to the Kitwancool applied to the Gitksan.
MR. GRANT: Well, he said the laws were the same, the Gitksan laws were the same, but we're talking here about a territory, a trap line registration, outside of the

1 claim area.
2 THE COURT: But one of the laws of the Gitksan, as I have
3 understood this case, was that territories followed
4 the matrilineal line.
5 MR. GRANT: Yes.
6 THE COURT: And I don't know if this leads to some different
7 conclusion, but it might.
8 MR. GRANT: Well, if that's --
9 THE COURT: How can I say now that there won't be a foundation
10 for an inference here somewhere? I don't know if
11 there will or not, but I expect that I'll hear an
12 argument somewhere that this casts some doubt or
13 suspicion upon the certainty of the Gitksan laws as
14 they have been explained, not by just this witness,
15 but by other witnesses. That's why I'm captive, the
16 same as you are Mr. Grant. I don't know where we're
17 going. I have to assume that Mr. Goldie thinks that
18 he knows where he's going and we may all be surprised,
19 or some of us.
20 MR. GOLDIE: Including me.
21 THE COURT: I wish I could, but I don't think I can stop him.
22 MR. GOLDIE: It also has -- well, I'm not going to make any
23 further submissions on that.
24 THE COURT: Well, what are you --
25 MR. GOLDIE: I'm asking my friend if there's any -- if he will
26 accept or admit that that document is what it purports
27 to be as signed by Peter Williams and stating that the
28 registration is to be in the name of these four
29 people. What I'm seeking to do, My Lord, is to
30 establish that the registration in the name of the
31 four people is at the request of them.
32 THE COURT: Which is not in the matrilineal line I should think.
33 MR. GOLDIE: Well, that's right, among other things.
34 THE COURT: Just a moment, please, we're waiting for Mr. Grant
35 now.
36 MR. GRANT: Well, I think now my friend is saying what he
37 intends to do, and I think if that's what he intends
38 to do, he should ask this witness that, if that's what
39 this is. This is a letter purportedly signed by Peter
40 Williams to the Indian Affairs Branch. The document
41 speaks for itself in terms of what it says. It says
42 what it says.
43 THE COURT: There's nothing the witness can add to that unless
44 you're requiring Mr. Goldie to identify the
45 signature -- or sorry, the witness to identify the
46 signatures.
47 MR. GRANT: Well, I have not gone through this document with the

witness or Mr. Williams, but it appears to me that it looks similar to another document that he identified the signature of and I'm not --

THE COURT: I think you owe us a yes or a no, Mr. Grant.

MR. GRANT: Well, if he's only concerned about whether that document appears to be a letter from Mr. Williams, I'm not going to object to it going in.

THE COURT: All right.

MR. GRANT: It's not a resolution as my friend categorizes it, it appears to me to be a letter.

THE COURT: It looks more like a letter of request.

MR. GOLDIE: Yes.

THE COURT: All right.

THE REGISTRAR: What's the date on it?

MR. GOLDIE: This is dated the 26th of February, 1965, and I'd ask that that be the next exhibit, My Lord.

THE REGISTRAR: Exhibit 459.

(EXHIBIT 459: Tab 6 of blue book, Letter dated February 26, 1965)

MR. GOLDIE: It's page 1845 - 56 under tab 6.

MR. GRANT: And just for the record, My Lord, I reserve the right on relevance to argue that in due course.

THE COURT: Oh, yes, certainly.

MR. GOLDIE: Yes.

Now, I want to refer you to page 1845 - 14. Now, this is a letter dated March the 25th, 1970, to the Game Branch of the Provincial Government with copies to Mr. MacFarlane of the Indian Affairs branch signed by Mr. Williams, and again I'd ask my friend if he accepts that document or admits the authenticity of that document.

MR. GRANT: Regarding this document, My Lord, I would suggest if my friend wishes to put it in that it be marked for identification at this time. I'd like to review this document and determine -- obviously it's a more extensive document than the other one. I have not had an opportunity to do this with the person who appears to be the author of this document.

THE COURT: Well, there's no point in marking it for identification.

MR. GOLDIE: No. I --

THE COURT: You can reserve on your agreement and speak to your friend about it in due course.

MR. GOLDIE: Well, my friend then is not accepting the document at the present time?

THE COURT: Yes.
MR. GOLDIE:
Q Mr. Marsden, I'm showing you the original of this letter which is at page 1845 - 14. Can you identify Mr. Peter Williams' signature?
THE WITNESS: Yeah, that's right.
Q And do you recall a meeting with Mr. MacFarlane and Mr. Smythe to discuss correcting trap line registrations, and this was in 1965?
MR. GRANT: 1970.
MR. GOLDIE:
Q I'm sorry, 1970 is correct.
A I wasn't at the meeting. I wasn't there at that time, but they did have a meeting.
Q And later did you see a copy or did Mr. Williams inform you of what happened at the meeting?
A I don't think so.
Q Let me ask you this: Do you remember being told that Mr. Williams had requested that separate registrations in the name of Michael Inspring Bright and Mr. Adams be cancelled because they had not come to the Kitwancool Capital about taking out that registration?
A No.
Q You don't remember that. Do you remember Mr. Williams telling you or you discussing with Mr. Williams that a registration in the name of Claytons, Sydney, Peter, John and Douglas Clayton, must be cancelled because it was within your territory?
A No.
Q Do you recall being advised that the registration of Sam and James Hyzims must be cancelled because it was on Chief Gwashlam's territory?
A No.
MR. GOLDIE: My Lord, I'm going to make a -- I would tender this strictly on the basis of the identification of the signature and I would make a submission at a later date with respect to the purpose for which it may be received.
THE COURT: All right. Mr. Macaulay?
MR. MACAULAY: I have no submission to make.
THE COURT: Grant? He has identified the signature.
MR. GRANT: Yes, he's identified the signature. I think it can be marked for an exhibit for that purpose only.
THE COURT: Yes. 459.
THE REGISTRAR: 459 was the letter from February 26th.
THE COURT: Oh, yes. All right. It will be 460 then.
THE REGISTRAR: 460. And it's the March 25th, 1970 letter?

MR. GOLDIE: Yes. It comprises pages 1845 - 14 to 16.
THE REGISTRAR: Thank you.

(EXHIBIT 460: Tab 6, blue book, letter dated March 25, 1970)

MR. GRANT: It's March 25th.
MR. GOLDIE: I'm sorry, what did I say? March 25th 1970. Yes. Now, I want to refer you to page 29, 1845 - 29.
THE COURT: I'm sorry, what page?
MR. GOLDIE:
Q Twenty-nine, My Lord.
Now, this is entitled "Brief to the Game Branch Government of British Columbia Game Warden". It is dated April 19th, 1969, and you identify your signature at the bottom of that document, Mr. Marsden, do you?
THE WITNESS: Yes.
Q Was that -- that document appears to be a complaint on the part of you, Abel Campbell, Walter -- and Walter Derrick, that Frank Benson is encroaching upon various trap lines within the Kitwancool blanket trap line, in particular Mr. Abel Campbell's trapping ground. Do you remember a complaint about Mr. Frank Benson?
A Yes, it is.
Q And what you wanted was for the Game Branch to do something about Mr. Frank Benson?
A Yes.
Q In fact, Frank Benson was trespassing wasn't he on Abel Campbell's territory?
A Yes.
Q And Frank Benson was a member of the village of Kitwancool, but he was trapping in the wrong place?
A Yes.
Q And the Game Branch wrote Mr. Benson telling him to trap on that line formerly held by James Weget; is that not correct?
THE INTERPRETER: What was the first name of Weget?
Q James Weget.
A Yes.
Q And the letter that the game warden wrote, a copy was sent to Mr. Edgar Good, chief councillor? Edgar Good was the chief councillor at Kitwancool?
THE WITNESS: Yes.
Q And the letter to Mr. Benson is at page 1845 - 28 and he said:

"I have been advised by the headmen of the Kitwancool Band trap line (Marsden, Good, Derrick, Campbell & Company), that you have been taking beaver from that portion of the line that is rightfully Abel Campbell's. They also stated that you have trespassed on other lines for the purpose of taking beaver.

This action you have taken is contrary to the wishes of the headmen of the Kitwancool line, and I wish to advise you to stop this act of trespass on to the grounds of your neighbours. You are to work that portion of the line formerly held by James Weget to which you now hold trapping rights. This is in accordance with the wishes of the headmen of the blanket trap lane registration.

I am advising Edgar Good, Chief Councillor, of this letter and shall request that he take action to see that you stay within the confines of the area that has been allotted to you."

And the letter to Mr. Good is at page 1845 - 27.

MR. GRANT: Twenty-eight.

MR. GOLDIE: No, 27, and Mr. Smythe wrote to Mr. Good, the chief councillor, that he's received a letter of complaint and that Mr. Benson is a registered member and nothing we can legally do unless he steps outside the area, and they discussed it with Mr. MacFarlane and they -- he has written a letter to him and he makes certain suggestions.

My Lord, in my submission the document entitled "Brief to the Game Branch" of April 19th, 1969, signed by Mr. Marsden, the letter from Mr. Smythe to Mr. Benson dated May 2nd, 1969, which a copy of which went to the chief councillor, and Mr. Smythe's letter to Mr. Good of May 2nd, 1969, should all be -- I tender all three as part of the same transaction and submit that the documents should be marked given a number A, B and C.

THE COURT: Mr. Grant? You don't mind, Mr. Macaulay?

MR. MACAULAY: I have no objection.

THE COURT: Mr. Grant?

MR. GRANT: I believe of course the witness identified his own signature and the letter to -- he knew about the

1 letter to Frank Benson. I have no objection to those
2 two.
3 THE COURT: Well, what's the basis for the admissibility of the
4 letter to Mr. Good, Mr. Goldie?
5 MR. GOLDIE: It's referred to --
6 THE COURT: Nobody knows if it was ever received.
7 MR. GOLDIE: -- in the letter to Benson. "I am advising Edgar
8 Good, Chief Councillor, of this letter and shall
9 request that he take action to see that you stay
10 within the confines...". And then Mr. Good's letter,
11 the letter to Mr. Good, has a postscript, "A copy of a
12 letter written to Mr. Benson is enclosed for your
13 records."
14 THE COURT: Well, there's no mention in the letter or any
15 evidence that suggests -- that would even show that it
16 was mailed, does it? It says that --
17 MR. GOLDIE: Well, except the witness' knowledge that the letter
18 went to Benson.
19 MR. GRANT: I'm not objecting to that letter.
20 THE COURT: Your friend's not objecting to that, it's the one to
21 Mr. Good. Did you ask the witness about the letter to
22 Mr. Good?
23 MR. GOLDIE: Beg your pardon, My Lord?
24 THE COURT: Did you ask the witness about the letter to Mr.
25 Good?
26 MR. GOLDIE:
27 Q Well, I'll put -- I asked him if he was aware of the
28 letter to Mr. Benson and he said yes, but I can put
29 this question: Were you, Mr. Marsden, aware that the
30 game warden or the conservation officer, Mr. Smythe,
31 wrote to Mr. Good about Mr. Benson's trespass?
32 A This must be the time when I was working in Rupert.
33 Q Well --
34 A And I don't remember this.
35 Q Well, you signed the brief on April the 19th, that's
36 the long sheet of paper there --
37 THE INTERPRETER: He's talking about the letter from --
38 Q From --
39 THE INTERPRETER: -- Smythe.
40 Q -- Mr. Smythe to Mr. Good, and I'm asking him, was he
41 aware that Mr. Smythe had written to Mr. Good as a
42 result of the brief that Mr. Marsden and Mr. Campbell
43 and Mr. Derrick sent him?
44 A Yes, I know the situation.
45 MR. GOLDIE: Well, I don't propose pursuing it any further. In
46 my submission the documents are all connected.
47 THE COURT: Yes, I think it can now be marked as 461 B.

MR. GOLDIE: And that would make the brief as Exhibit 461 A.
THE COURT: Yes.
MR. GOLDIE: The letter to Mr. Benson 461 B.
THE COURT: Yes.
MR. GOLDIE: And the letter to Mr. Good 461 C.

(EXHIBIT 461A: Tab 6, blue book, Brief to Game Branch)
(EXHIBIT 461B: Tab 6, blue book, Letter dated May 2, 1969 to Frank Benson)
(EXHIBIT 461C: Tab 6, blue book,Letter dated May 2, 1969 to Mr. Good from Mr. Smythe)

MR. GOLDIE: Mr. Marsden --
MR. GRANT: I reserve the right to argue about relevance.
THE COURT: Well, that's always open. I was once on a murder case where counsel said the evidence of the eye witness was irrelevant.
MR. GOLDIE:
Q I hope this is a little more relevant, My Lord. Is it in accordance with Gitksan law that trespass on trap lines are settled by the Fish and Wildlife branch?
A The chiefs do not use the white man's law, but it was their decision to do this, to have this man come in. It was the chiefs' decisions, but this is not the Gitksan law that the game warden would come in, but it was by the decisions of the chiefs and this is why this has happened.
Q And it happened in other places in the Gitksan -- in other villages?
A Yes, this has happened at times when the white man's law interferes with the Gitksan law and this happens.
MR. GOLDIE: My Lord, there are a number of other documents in that file. I don't propose going through them. I'm going to ask that the original file from Hazelton containing the original documents, except those which have been marked here, be allotted a number for identification as I wish to argue, as I indicated earlier, I wish to argue a number of the exclusions on a variety of grounds at the end of the lay witnesses.
THE COURT: All right. Any objection to that, Mr. Grant?
MR. GRANT: I take it Mr. Goldie wishes just to reserve a number now?
THE COURT: Yes.
MR. GRANT: Well, I have no objection of course reserving a number. I'm sure we'll argue that when it goes in later.

THE COURT: All right. This balance of tab 6 then will be allotted number 462.
THE REGISTRAR: 462.
MR. GOLDIE: I want to have the witness identify the letter under tab 8.
MR. GRANT: That letter is admitted. It's in the notice to admit. It's not necessary for the witness to identify the signature, if that's what my friend is seeking. It's been identified or admitted.
MR. GOLDIE: All right. I tender that as an exhibit, My Lord. It's Mr. Marsden's letter of February 12th, 1987, to H.R. Misener Contracting.
THE REGISTRAR: Mr. Marsden's letter to H. --
MR. GOLDIE: R. Misener, M-i-s-e-n-e-r, Contracting, of February 12th, 1987.
THE REGISTRAR: Thank you.
MR. GOLDIE: That's number 462 is it?
THE COURT: 463.
THE REGISTRAR: 463.

(EXHIBIT 463: Tab 8, blue book, Mr. Marsden's letter to H.R. Misener dated February 12, 1987)

MR. GOLDIE: 463, yes. Thank you, My Lord. The documents under numbers -- under tabs 9 to 18 inclusive, the authenticity of those documents has been admitted -- I'm sorry, that's not correct. The documents under tab 9, tab 10, tab 11 --
MR. GRANT: Tab 10 is not admitted.
MR. GOLDIE: I'm sorry, I thought that was.
MR. GRANT: Just a moment.
MR. GOLDIE: My friend is right. I'm looking at the wrong date 9, 11 -- under tab 14 a copy of a letter to Albert Williams dated May 1st, 1920. Under tab 15, a copy of Mr. Williams' letter to Mr. Ditchburn of May 7th, 1920. Tab 16 --
THE COURT: May 4th, 1920, is it?
MR. GOLDIE: Beg your pardon, My Lord?
THE COURT: Oh, it's May 7th is it or is it 4th?
MR. GOLDIE: 2795 is May 7th, I believe.
THE COURT: And that's 1920?
MR. GOLDIE: Yes.
THE COURT: All right.
MR. GOLDIE: Then Mr. Williams' letter to the Governor General of May 15th, 1920, under tab 16. The letter of the assistant deputy and secretary to Mr. Albert Williams of May 26th, 1920, under tab 17. Mr. Collison's

1 letter of May 31st to Mr. Ditchburn under tab 18.
2 THE REGISTRAR: May 31st?
3 MR. GOLDIE: May 31st, 1920. Right.
4 My Lord, what I would propose doing is simply
5 noting that those have been admitted as to
6 authenticity and I will be making a submission with
7 respect to their admission and the purpose for which
8 they are to be admitted at the time I make the -- my
9 overall submission on admissibility with respect to
10 lay witness documents.
11 THE COURT: All right. You're not asking them to be marked now?
12 MR. GOLDIE: Well, if I asked Your Lordship to mark them now I
13 would have to deal with each in terms of the purpose
14 for which it is tendered.
15 THE COURT: All right. All right.
16 MR. GOLDIE: And if we can simply reserve a block of numbers.
17 THE COURT: All right. Well, number 9 will be 464.
18 MR. GOLDIE: Yes.
19 THE COURT: And 18 will be --
20 MR. GRANT: My Lord, I'd like to comment on one of them.
21 THE COURT: Yes?
22 MR. GRANT: That is tab 11. There was a proviso in the notice
23 to admit in tab 11 because it refers to -- the
24 document refers to three maps. There were not three
25 maps attached with the notice to admit and I was
26 prepared to admit the document on the basis that
27 all -- the entire document would go in now. I
28 don't -- it appears from this that they don't have
29 the -- that the document being tendered is not the
30 entire document, and that's what I wish to -- that's a
31 proviso in terms of the authenticity because I did not
32 have the complete document in that there were two maps
33 referred to, blueprints 2 and 3, not included with the
34 delivery of the notice to admit.
35 MR. GOLDIE: My Lord, these are all archival documents found in
36 the Archives of the Public -- the Public Archives of
37 Canada in record group 10, and I have the photocopies
38 as taken and my instructions are that in that file
39 there was only the one map.
40 THE COURT: All right. With that we're going to depend upon a
41 matter of law as to whether the archival documents
42 apparently incomplete in form were admissible or not
43 admissible is it not?
44 MR. GOLDIE: We will be running into this in a number of places
45 where --
46 THE COURT: All right.
47 MR. GOLDIE: -- the archival records are incomplete, but I can

assure Your Lordship and my friend that so far as the archival -- archives are concerned, that's what is there.

THE COURT: Yes.

MR. MACAULAY: I've read this letter and looked at the map attached and it seems to me that the letter probably should have referred to a map of three reserves rather than three maps. It seems to be complete in the sense that when you read the text and you look at the map you see everything that's referred to in the text.

THE COURT: You think -- is there a map of three different reserves on one map?

MR. MACAULAY: Yes.

THE COURT: Well, that may be a --

MR. GRANT: I think that perhaps may be what happened here.

MR. GOLDIE: I hadn't examined it as closely as my friend.

THE COURT: As Sherlock Holmes said to Dr. Watson, that he had seen but not observed, Mr. Macaulay has observed and you've only seen it.

MR. GOLDIE: The dog didn't bark for me.

If we could have those reserved then?

THE COURT: Yes, I reserve numbers 464 to 470, but the exhibits have not been marked.

MR. GOLDIE: Yes.

THE COURT: All right. What have you decided to do, gentlemen? Are you finished, Mr. Goldie?

MR. GOLDIE: Yes, I am, My Lord.

THE COURT: What is your pleasure, Mr. Macaulay and Mr. Grant?

MR. MACAULAY: Well, if the interpreter is to be used I'm sure I'll be an hour at least.

THE COURT: Yes. Do you want to break for a while and come back and finish or do you want to -- I can sit starting at about 11 o'clock tomorrow morning.

MR. MACAULAY: I can be here at 11 o'clock tomorrow.

MR. GRANT: I can be here at 11 o'clock tomorrow morning.

THE COURT: Would you prefer that?

MR. GRANT: I'm just concerned about if we do break now and then come back that the entire hour may not be useful and we have to come back anyway.

THE COURT: And you will be a while in re-examination?

MR. GRANT: I won't be extensively long, but I might have something to say.

MR. MACAULAY: I don't say I will be an hour, My Lord, but I think that's a reasonable estimate.

THE COURT: Well, the cautious course might well be to start at eleven tomorrow. Our beloved government is telling us that we have to have trials in French here shortly so

I have to go to some meetings about the French language tomorrow morning which I'm going to be a great help to them all I'm sure, but as soon as that's finished -- and I have a pre-trial conference that I have had outstanding for a long time according to an important matter at ten, but I'm sure I'll be finished by eleven and we can finish this comfortably tomorrow then.

MR. GRANT: Yes, I believe so.

THE COURT: All right. Shall we adjourn until eleven?

MR. GOLDIE: My Lord, may I say this, that when Mr. Grant asked me if this week could be used I informed him of my commitments and one of them is an out-of-town meeting tomorrow.

THE COURT: Yes.

MR. GOLDIE: Miss Sigurdson can be here, but I'm concerned about if a controversy arises during the course of re-examination that it be reserved if Miss Sigurdson so requests.

THE COURT: Oh, I'm sure she can handle it can't she Mr. Goldie?

MR. GOLDIE: I have that confidence.

THE COURT: We'll see how we get along. We'll keep that in mind and if Miss Sigurdson --

MR. GRANT: She's heard many of our debates on redirect.

MR. GOLDIE: Yes, she has, and that's why I'm concerned.

THE COURT: Yes. Well, if Miss Sigurdson seems to be in distress, I'm sure we'll give some heed to your request. Eleven o'clock then. Thank you.

THE REGISTRAR: Order in court. Court will adjourn until 11 a.m.

(PROCEEDINGS ADJOURNED TO 11:00 a.m. May 11, 1988)

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

Tanita S. French
Official Reporter