Vancouver, B.C.
April 22, 1988

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

THE COURT: I do apologize. I was invited, or commanded to attend a meeting of the Rules Committee this morning for a few minutes and they kept me longer than I had hoped.

THE REGISTRAR: In the Supreme Court of British Columbia. This Friday April 22, 1988. Calling Delgamuuwk versus her Majesty the Queen at bar, my lord.

I caution the witness and the interpreter you're both still under oath.

JAMES MORRISON, Resumed:

THE COURT: Mr. Mackenzie.

MR. MACKENZIE: Thank you, my lord.

Now, my lord, there was one matter left over from yesterday dealing with the Babine slide road. And your lordship may recall that that road goes up to Kisgagas. I'm not going to go into any details on that, my lord, except to say that I advised the court yesterday my instructions, or my understanding was the road was built in 1951, and you recall that was the date noted in the Order in Counsel we exhibited, but in fact I'm now instructed the road was built in 1953 by the Department of Fisheries, my lord.

THE COURT: All right. Thank you.

MR. RUSH: Good thing we don't trust everything we read in the documents, my lord.

THE COURT: Well, I didn't mistrust it, Mr. Rush, but I knew that because an Order in Counsel was passed authorizing something didn't mean it happened that date. And the year is what again, 1950 --

MR. MACKENZIE: 1953, my lord.

THE COURT: '53. Thank you.

MR. MACKENZIE: But all the other information as I understand is correct.

MR. RUSH: Well, we'll ask Mr. Mackenzie to take the stand and give us that assurance.

THE COURT: I always accept the assurances of counsel when they are confidently stated.

MR. MACKENZIE: Actually, Mr. Morrison testified to the other details about the fact that that road was built by the Department of Fisheries to gain access to the slide.

THE COURT: What exhibit number did we mark with relation to that?
THE REGISTRAR: The Order in Counsel?
THE COURT: Sorry?
THE REGISTRAR: The Order in Counsel?
THE COURT: Yes.
THE REGISTRAR: 406. Privy Counsel Order was 405 at tab 13. Order in Counsel is tab 15, 406, my lord.
THE COURT: Yes. Thank you.
MR. MACKENZIE: My lord, today I wish to deal with the blue volume, volume 2, which is before your lordship. And, my lord, I'll also be asking your lordship to refer to the territorial maps, plaintiffs' territorial maps A and B, Exhibit 378 and 379. And the first subject I wish to address, my lord, is admissions of admitted documents with respect to traplines. That is contained in the blue volume at volume 2. And if your lordship will follow through with me then to tab 7, that document has been admitted by the plaintiffs.
THE COURT: All right. Are you seeking to mark that?
MR. MACKENZIE: I would have that marked, my lord.
THE REGISTRAR: I have to know what it is.
MR. MACKENZIE: Yes. That's a document entitled Trapline Administration.
THE COURT: Is that what that says?
MR. MACKENZIE: Yes, my lord. I have the original, my lord, if necessary. And it's dated September 19, 1983.
THE COURT: Yes. All right.
THE REGISTRAR: Exhibit 407, my lord.
THE COURT: All right.

(EXHIBIT 407: Trapline Administration dtd. Sept.19/83 re James Morrison)

MR. MACKENZIE: Now, the next document is at tab 8, my lord, and that document is also a document entitled Trapline Administration dated September 19, 1983 regarding John Delbert Robinson.
THE REGISTRAR: That will be 408, my lord, tab 8.
THE COURT: Yes, 408.

(EXHIBIT 408: Trapline Administration dtd. Sept.19/83 re John D. Robinson)

MR. MACKENZIE: My lord, for purposes of clarification, perhaps I could mention Exhibit 407 relates to James Morrison.
THE COURT: Yes. This one relates to John Robinson.

MR. MACKENZIE: The next document is tab 9, which is Application for Registration of a Trapline John Robinson & Company dated March 3, 1950. And I have a copy of the original. There's -- the actual date in March is a little unclear. It's March 1 or 3, but it is March, 1950, my lord.
THE COURT: Yes.
THE REGISTRAR: 409, tab nine.

(EXHIBIT 409: Application for Registration of a Trapline for John Robinson & Company dtd. Mar.3/50)

THE COURT: Is that the trapline or the trapping -- does that represent the trapping rights that were relinquished by tab 8?
MR. MACKENZIE: Those -- that's my understanding, my lord.
THE COURT: Yes. Okay.
MR. MACKENZIE: Although, my lord, I have to qualify that by referring to at tab 8, Exhibit 408, and pointing out to your lordship that that document -- in that document Mr. Robinson agrees to relinquish the right. My instructions are that the paperwork and the actual registration has not yet taken place.
THE COURT: All right.
MR. MACKENZIE: The reasons I'll get to in evidence, my lord. The next document is tab 25, Application for Registration of a Trapline Alex S. Brown & Company dated June 7, 1946.
THE COURT: This is an almost illegible document, Mr. Mackenzie.
MR. MACKENZIE: I have a copy of the original here, my lord. I understood that clearer copies were all put in the document books. I can hand my copy up to your lordship.
THE COURT: I don't need it just now. I think the best copy should be filed as the exhibit. This one can't be made out.
MR. RUSH: Are you talking about tab 25?
THE COURT: Yes.
MR. RUSH: That's not admitted.
MR. MACKENZIE: Tab 25. I refer to Mr. -- Mr. Rush is disputing the fact that that's admitted, my lord, so if I read out the statement of the plaintiffs', or perhaps I could assist Mr. Rush. This is the -- fine, my lord. Mr. Rush in his notice to -- in his response referred to a document dated June 7, 1946, and we have a bit of a dispute here now, my lord.
MR. RUSH: Well, the face of the document, my lord, is AGBC 3298

607T014, and it says Wilmer Johnson Trapline, and I believe that's the way it was described on the notice to admit. If I'm wrong about that then --

MR. MACKENZIE: Yes, it was, my lord. This trapline is now held by Wilmer Johnson, and this particular application is the application of Mr. Brown who held it before Mr. Johnson. If my friend wishes to withdraw that admission perhaps I could discuss that with my friend and he may want to admit the current trapline holder who's Mr. Wilmer Johnson. We have his application here as well, my lord. Is that satisfactory?

MR. RUSH: I just want to see what I admitted. And if you will just give me a moment, my lord.

THE COURT: Yes. Certainly.

MR. RUSH: On the copy that I admitted there is not on the face page as appears in tab 25 in parenthesis Application for Trapline of Alex S. Brown dated June 7, 1946. However, looking at the document that I did admit -- yes, it is the document that is contained in the first three pages of that, so it appears to be the same document.

THE COURT: All right. Well, then this is an application by Mr. Brown for trapline registration in 1946 which was -- which was relinquished to Wilmer Johnson & Company in 1966?

MR. MACKENZIE: That's correct, my lord. That is on the reverse of the document.

MR. RUSH: Well, what I'm admitting is the application for the registration of the trapline and documents.

THE COURT: In 1946?

MR. RUSH: Yes. And the document back and front.

THE COURT: I don't know if that's what this is or not.

MR. RUSH: Is that the same?

MR. MACKENZIE: Yes.

THE COURT: You see my difficulty, Mr. Mackenzie, if you look at this document.

MR. MACKENZIE: My lord, I'm handing the original up, and I'm sorry, my lord, that you got the --

THE COURT: Show Mr. Mackenzie that. Well, the document I was given -- my tab 25 is quite a different document.

MR. RUSH: Well, my lord --

THE COURT: Oh, it's the back I suppose.

MR. MACKENZIE: If your lordship would be pleased to --

THE COURT: Well --

MR. MACKENZIE: -- Compare the pages.

THE COURT: Yes. All right. I can make an appropriate note. I know where to go and find the original. Thank you.

THE REGISTRAR: Are you entering this?
MR. RUSH: I think the original should be.
MR. MACKENZIE: I think the original, yes.
THE COURT: All right that will be Exhibit 410.
THE REGISTRAR: 410.

(EXHIBIT 410: Application for Registration of a Trapline of Alex S. Brown & Company dtd. Jun.7/46)

MR. MACKENZIE: Now, my lord, my friend Mr. Rush also admitted another document which is described in the written response as Attorney General of British Columbia file 1276ATN, that's the assigned trapper number, 618T006, Sam Morrison Trapline. And, my lord, I don't have that file number in my binder. I do have the current application for Sam Morrison in my binder, clear copy, with the original taken from another -- another file, and I wonder if my friend could advise which Sam Morrison document he admitted in that response, or did he admit the whole file? That may be something we can deal with at the adjournment, my lord.
THE COURT: All right.
MR. MACKENZIE: And finally, my lord, I refer to the document at tab 3 relating to James Morrison's trapline. And my understanding is that my friend has admitted that document at tab 3, but I have to say, my lord, we don't have an original copy of that. It's a fairly clear copy though at tab 3.
THE COURT: The second page is the back, is it?
MR. MACKENZIE: Yes, my lord. Those are my instructions.
MR. RUSH: Yes, my lord, what I admitted was the Application for Registration of a Trapline.
MR. MACKENZIE: Yes.
MR. RUSH: Which is the bottom portion of tab 3 and the second page. The bottom portion of tab 3 and the second page are back and front.
THE COURT: The top part of the first page of tab 3 is not part of the exhibit?
MR. MACKENZIE: Not part of the admission.
MR. RUSH: Not part of my admission.
THE COURT: I'll cross it out. The balance will be Exhibit 411 then.
MR. RUSH: Thank you.
THE REGISTRAR: Is there a date on that.
MR. MACKENZIE: Yes. This is an Application for Registration of Trapline James Morrison dated June 7, 1946.
THE REGISTRAR: Thank you.

(EXHIBIT 411: Application for Registration of a Trapline of James Morrison dtd. Jun.7/46)

MR. MACKENZIE: Just while we're speaking about that, my lord, if your lordship will refer to tab 2 that's another carbon copy of that document, and I have the original of that. That is I have the original of another of the carbon copies with an original signature of Exhibit 411 at tab 2.
THE COURT: Yes.
MR. MACKENZIE: So if my friend would wish to have that original introduced I can show it to my friend.
THE COURT: Are they the same thing?
MR. MACKENZIE: Yes, my lord. I'm showing the original to my friend now.
MR. RUSH: Well, my lord, I don't really have any -- what I've admitted is what's on --
MR. MACKENZIE: Fine, my lord.
MR. RUSH: On page -- on tab 3. It's the same thing in tab 2, and I really don't see the point in adding to the record here by essentially adding --
THE COURT: Is there any need to have tab 2 in evidence, Mr. Mackenzie?
MR. MACKENZIE: No, my lord. I just wanted to assist my friend if he wanted the original.
MR. RUSH: Well, I'm sorry. I think that if I admitted one or the other it doesn't really matter to me. I think just one of the documents should go in. I think it's preferred --
THE COURT: Shall we delete tab 2?
MR. RUSH: That's what I think.
MR. MACKENZIE: Fine, my lord. I may say, my lord, these trapline administration, there were several original carbon copies distributed to different ones and that's why --
THE COURT: I'll give you back tab 2, Mr. Mackenzie.
MR. MACKENZIE: Thank you, my lord. That completes the admissions with respect to those documents, my lord. My lord, Mr. Rush, is prepared to resolve that Sam Morrison trapline.
MR. RUSH: Where is it in your tab?
MR. MACKENZIE: The Sam Morrison trapline appears at page -- at tab 14 and 15 of the document book. And one is the April 6, 1962 application and the other is January 11, 1963 application.
THE COURT: All right. What -- can you tell me what tab 14 is?
MR. MACKENZIE: Tab 14, my lord, is the registration application

for Sam Morrison dated April 6, 1962.
THE COURT: All right. That will be Exhibit 412, Mr. Rush.
MR. RUSH: I'm just checking the copy, my lord. It looks like it's the same.
MR. MACKENZIE: I have the original for Mr. Rush if he wishes.
MR. RUSH: That's fine. That's the one we admitted, and I'm content if my friend wants to put in the original that's fine.
THE COURT: That's Exhibit 412.
THE REGISTRAR: 412.

(EXHIBIT 412: Application for Registration of a Trapline of Sam Morrison dtd. Apr.6/62)

MR. MACKENZIE: I haven't put the original in unless there's --
THE COURT: All right. What about tab 15?
MR. RUSH: Yes, my lord. We admitted the authenticity of that as well. I don't need the original.
THE COURT: Exhibit 413.
THE REGISTRAR: 413.

(EXHIBIT 413: Application for Registration of a Trapline of Sam Morrison dtd. Jan.11/63)

MR. MACKENZIE: That then completes the admissions with respect to the documents in this binder, my lord.
THE COURT: Thank you.
MR. MACKENZIE: My lord, this evidence deals with traplines and to -- as a matter of convenience for your lordship at tab 1 of the blue binder I have set out an excerpt from Exhibit 24A. My lord, if you'll go to the back of the tab the large -- the volumes with the colouring -- the highlighting.
THE COURT: Yes.
MR. MACKENZIE: Your lordship will see in the lower left hand corner of the first. Letters A, B, C.
THE COURT: Yes.
MR. MACKENZIE: My lord, I have taken the liberty of putting the numbers of the territories on this map to show -- to orient your lordship as to the location of these traplines with respect to the territories and Mr. Morrison's affidavit. And if your lordship will look at --
THE COURT: Is this large map with the coloured markings taken from some other identified map?
MR. MACKENZIE: Yes, Exhibit 24A, my lord. The base map is from Exhibit 24A for Identification.

THE COURT: Same for D, E and F?
MR. MACKENZIE: Yes, my lord.
THE COURT: Yes. All right.
MR. MACKENZIE: And if I could just discuss this briefly, my lord, to orient your lordship. The first A, B, C shows territory A which your lordship will recall is Chipmunk Creek territory. Your lordship has map A, Exhibit 378 with --
THE COURT: Yes.
MR. MACKENZIE: These are northern territories, my lord.
THE COURT: Yes.
MR. MACKENZIE: And, my lord, if you look at territory A, that's Chipmunk Creek territory, with the documents that have been admitted now, my lord, the trapline that covers up -- covers -- or in that area your lordship will see is 0618T006, and that's Sam Morrison's trapline. That's the subject of two of the exhibits which we marked today, my lord, Exhibit 412 --
THE COURT: 412 and 413.
MR. MACKENZIE: -- And 413.
THE COURT: Is that territory circled in yellow encompass both 412 and 413?
MR. MACKENZIE: Yes, my lord. Same trapline, my lord. Those applications are subsequent.
THE COURT: I see. All right.
MR. MACKENZIE: And then going to territory B, my lord, your lordship will recall territory B is the Fort Creek territory, and there is an area east of the Skeena River. And that territory is covered by trapline 0618T005 according to this map Exhibit 24A. Does your lordship have that reference?
THE COURT: Yes.
MR. MACKENZIE: Now, my lord, we do not have an admission with respect to that trapline and the application for that trapline, but your lordship -- but, my lord, Exhibit 24A and the supporting documents show that trapline is held in the name of Mr. Ernest Angus.
And then, my lord, moving to the part of area B west of the Skeena River. Does your lordship have that reference?
THE COURT: Yes.
MR. MACKENZIE: The documents show that area is covered by trapline 0617T001. Does your lordship see that reference?
THE COURT: I'm sorry. What's the number again?
MR. MACKENZIE: 1617T001. That number appears just above Notch Top Peak, which is just west of the Skeena River. And

it should be highlighted on your lordship's copy. Showing it to your lordship right here. This is a very large --

THE COURT: I'm sorry. I was looking at -- was Ernest Angus' trapline east or west of the Skeena?

MR. MACKENZIE: East, my lord.

THE COURT: East. All right. Yes, I have it.

MR. MACKENZIE: Now, my lord, I'm referring to that 1617T001.

THE COURT: Yes.

MR. MACKENZIE: And records underlying Exhibit 24A for Identification show that trapline as currently registered to Charles Stevens. And, my lord, we do not have admissions with respect to the applications relating to that trapline although they're in this binder. It's in this binder. And your lordship could see that's a very large trapline. It's outlined in west of the Skeena, and it goes way up into area C, which is the Barker Creek territory.

Does your lordship have that?

THE COURT: Yes.

MR. MACKENZIE: So, my lord, that's the same trapline that covers up into area C. Covers that whole area west of the Skeena River including the foot of area A that goes over across the Skeena. It's not shown on here. If your lordship will look at -- will see that on Exhibit 378, map A.

THE COURT: Yes.

MR. MACKENZIE: Then the southern territories, my lord, and referring to the plaintiffs' document Exhibit 379, map B, your lordship have that handy, what we're looking at now -- the document we're looking at now in the blue binder has the letters D, E, F and G on the lower right hand corner.

THE COURT: Yes.

MR. MACKENZIE: And this is another excerpt from trial Exhibit 24A for Identification showing the southern boundaries -- southern territories in this affidavit.

THE COURT: Yes.

MR. MACKENZIE: Does your lordship have that?

Now, my lord, first referring to area D, which is the northern Tsabux area, T-S-A-B-U-X, the document gives the trapline number for that area as 0607T014.

Does your lordship have that reference?

THE COURT: Yes.

MR. MACKENZIE: Now, my lord, that is the trapline of Wilmer Johnson, and that's the subject of one of the admitted documents today, which is Exhibit 410.

Does your lordship have that reference?
THE COURT: Yes.
MR. MACKENZIE: Now, my lord, if your lordship would continue that trapline curves around and goes down into area F.
THE COURT: Yes.
MR. MACKENZIE: Does your lordship see that?
THE COURT: Yes.
MR. MACKENZIE: Continues right around down to Kisgagas. If your lordship goes down to Kisgagas and just north of Kisgagas you see the same trapline number. That's Wilmer Johnson's trapline according to this document Exhibit 24A, and the document that was admitted, Exhibit 410. Does your lordship have that reference?
THE COURT: Yes.
MR. MACKENZIE: Now, my lord, the next area I wish to refer to is area E and area G on the plaintiffs' map. And those areas are covered by trapline number 0607T009. Does your lordship have that?
THE COURT: Yes.
MR. MACKENZIE: And, my lord, that's James Morrison's trapline, or it was James Morrison's trapline according to the evidence and to the document which is admitted today, Exhibit 411.
THE COURT: That has now been transferred to Elsie Morrison?
MR. MACKENZIE: Yes, my lord: The registered owner is still recorded as Mr. James Morrison.
MR. RUSH: We don't know that.
MR. MACKENZIE: Sorry. Just -- I agree, we don't know that.
MR. RUSH: We don't know that.
MR. MACKENZIE: I'm sorry. I'm just saying this is the documents underlying this Exhibit 24A for Identification, but yes.
Now, my lord, that completes my review of those territories and the traplines that cover them.
THE COURT: Yes. Thank you.
MR. MACKENZIE: Yes, my lord. And the descriptions of the traplines contained in the admitted documents, the trapline applications correspond, I'm instructed, with the boundaries shown on Exhibit 24A for Identification.
THE COURT: Yes.
MR. RUSH: Well, I don't accept that. That's the subject matter of the whole dispute around the trapline map.
MR. MACKENZIE: Well, my lord, that can be determined by comparing the descriptions on the applications to the areas set out on Exhibit 24A for Identification.
THE COURT: Well, I take what counsel are saying to me is this,

that Mr. Mackenzie has stated as counsel the areas described in this tab 1 of the blue book have been compared with and correspond with Exhibit 24A for Identification. Exhibit 24A for Identification has not been proven. And all Mr. Mackenzie's statement means is that physically they correspond.

MR. RUSH: No problem with that. They do physically. He took a photocopy off of 24A. I don't have a problem with that. I think the supposition or inference I think that was suggested in what Mr. Mackenzie was submitting to you is therefore the lines on Exhibit 24A were a matched correspondence with the descriptions given in the applications, and that I say is the subject matter of dispute.

THE COURT: I think unless Mr. Mackenzie can make a statement as counsel that the metes and bounds descriptions in the trapline applications conform to Exhibit 24A and are transposed on to blue tab 1 it goes no further than I stated a moment ago.

MR. RUSH: Yes. I agree with your lordship's summary.

MR. MACKENZIE: And I agree.

THE COURT: I think we have to be -- I think we have to be prepared to accept the statements of counsel in matters of that kind, always being kept in mind that counsel don't make bold and confident assurances about matters of fact unless there's no possible dispute about them. The court frequently relies upon the statements of counsel regarding physical matters of that kind. It may be that if counsel can't make that kind of a bold and confident statement then, and I take that phrase from the Cannons of Legal Ethics, then it will have to be a matter of evidence.

MR. MACKENZIE: My lord, to follow up with your lordship, Mr. Rush rose to dispute my statement, and I wish --

THE COURT: I'm not sure he disputed your statement. I think he's commenting upon the effect of the statement, which is a matter of law, as I understand the colloquy that's going on at the moment, if I can identify it for you.

MR. MACKENZIE: My lord, because this is a matter of some importance to Mr. Rush, and your lordship referred to metes and bounds, I cannot say confidently and boldly that the metes and bounds exactly correspond with Exhibit 24A. The extent of my statement is that having examined the descriptions myself they correspond generally with the areas shown on Exhibit 24A for Identification which is at tab 1 of the

binder, and so I put this forward for orientation and assistance to the court, and that's the extent that I think this can be -- this evidence can be used.

THE COURT: Just one moment, please. Well, then my note is that Mr. Mackenzie says he has compared the metes and bounds descriptions in the registration documents and trapline registration documents and says they conform generally to Exhibit 24A in blue tab 1.

MR. MACKENZIE: Yes, my lord, that accurately reflects my position now.

THE COURT: All right. Are you tendering these two maps in blue tab 1?

MR. MACKENZIE: Yes, my lord. Subject to the qualifications that your lordship has noted I will tender those as exhibits.

MR. RUSH: Well, my position is, my lord, they don't need to be tendered as exhibits. You have Exhibit 24A in front of you. That might be a more convenient form for you to deal with 24A, but I think you have that as an exhibit already.

MR. MACKENZIE: That's a good point, my lord, and so I would say this map, Exhibit 24A, is already an exhibit in this lawsuit for identification.

THE COURT: Yes.

MR. MACKENZIE: And so there's no need to mark these.

THE COURT: Any information on 24A that is not -- any information on these two plans in blue tab 1 that is not in Exhibit 24A?

MR. MACKENZIE: Yes. The markings corresponding with the territories is not in Exhibit 24A, my lord. That's been taken from the Exhibit 378 and 379.

THE COURT: Yes.

MR. MACKENZIE: It's a combination.

THE COURT: Well, I think that it may be useful at some time to look at these two maps in blue tab 1, and for that reason I'd like to have them as part of the material at trial. And as they depend on Exhibit 24A which is only marked for identification these must also be for identification. They may be the tail that moves with the hide of 24A, but I would like these two maps to be marked as 24A-1 and 24A-2.

MR. RUSH: For identification.

THE COURT: For identification, yes.

THE REGISTRAR: Which one is the first one?

THE COURT: A, B, C.

MR. MACKENZIE: Northern territory A, B, C, my lord.

THE COURT: Yes.

THE REGISTRAR: Is?
THE COURT: Is 24A-1.
THE REGISTRAR: Okay.
THE COURT: And 24A-2 for identification also. Thank you.

(EXHIBIT 24A-1: Map marked territories A, B and C)

(EXHIBIT 24A-2: Map marked territories D, E, F and G)

THE COURT: Can I ask Mr. Morrison, please, who is Ernest Angus?
A Pardon me? He's deceased long time ago. I don't know.
THE COURT: Was he a Gitksan?
A Gitksan.
THE COURT: Do you know the clan or house?
A No, I don't know. I don't know his --
THE COURT: All right. How about Charles Stevens?
A I don't know either. I heard the name, but I don't know the person. There's many Stevens, but I don't know which one.
THE COURT: Is he deceased?
A Deceased, yeah.
THE COURT: And was he Gitksan?
A Yeah, Gitksan.
THE COURT: Do you know the clan or house?
A No.
THE COURT: All right. Sam Morrison, of course, is your brother?
A Yes.
THE COURT: And Wilmer Johnson?
A Yes.
THE COURT: Is he deceased?
A No. He's alive.
THE COURT: Is he a Gitksan?
A Yeah, Gitksan.
THE COURT: And his house or clan?
A Wolf clan. Tsabux
THE COURT: Tsabux.
MR. RUSH: That's 65, my lord.
THE COURT: Thank you. Is the house of Tsabux or is he Tsabux?
A Yeah, he's Tsabux.
THE COURT: And that's 65, Mr. Rush?
MR. RUSH: On the plaintiffs' list. Yes, that's right.
THE COURT: All right. Thank you.
MR. MACKENZIE: Yes, my lord, there are some other maps at the front of tab 1 that aren't necessary now that we have discussed the Exhibit 24A-1 for Identification.

THE COURT: Want to remove them?
MR. MACKENZIE: And I would ask that those be removed, my lord.
THE COURT: All right. Thank you.
MR. MACKENZIE: And you're handing the ones that are not marked, and there are others at the beginning of the tab, my lord, with overlay.
THE COURT: Yes. Do you want to remove them?
MR. MACKENZIE: Yes, please, my lord.
MR. MACKENZIE: Now, my lord, and Mr. Morrison, I'd like to refer to tab 3 which is Exhibit 411.

CROSS-EXAMINATION BY MR. MACKENZIE CONTINUED:

Q Now, Mr. Morrison, you signed that Exhibit 411, did you?
A Yes.
Q And your brother Sam also signed it as a witness to your signature?
A Yeah, his name's on here.
Q You recognize the signature there?
A Yes.
Q Now, Mr. Morrison, you applied for this registration in 1946, correct?
A Yes.
Q And at that time you stated that, or did you state that you had inherited the trapline?
A No.
Q Oh, so you say that this information on Exhibit 411, "Number of years applicant has trapped line inherited", that's incorrect?

MR. RUSH: No, he didn't say that. He said he didn't state that.
MR. MACKENZIE: Sorry.

Q Would you say -- is that correct that you inherited the line?
A No.
Q So you say the information on Exhibit 411 is incorrect?
A Which one is that?
Q I'm referring specifically to the reference, "Number of years applicant has trapped the line". Does your lordship have that reference?

THE COURT: Yes.
MR. MACKENZIE:

Q Do you see that reference, Mr. Morrison? Is that wrong?
A Well, the Fish and Wildlife put this on. I didn't put that on.

1 Q I understand. So you say it's wrong?
2 A It's wrong because that's the way they do those things
3 in those days. I didn't put anything. I didn't say
4 that I inherit that. That's just the holder at this
5 time. This is what they forced us to do at that time
6 to register that trapline.
7 Q Yes, I understand. My question is is the information
8 there wrong?
9 A Wrong.
10 Q Thank you.
11 MR. RUSH: You're referring here to that line, "Number of years
12 applicant has trapped line inherited"?
13 MR. MACKENZIE: Yes.
14 MR. RUSH: Thank you.
15 MR. MACKENZIE:
16 Q And you testified that your father had this line
17 before you, did you?
18 A Yes.
19 Q Yeah. I refer you to tab 4A.
20 Does your lordship have tab 4A in your lordship's
21 binder?
22 THE COURT: Yes.
23 MR. MACKENZIE:
24 Q Did your brother Sam Morrison have this line before
25 you did?
26 MR. RUSH: The witness is being directed to a -- the first page
27 under -- well, the second, third page under tab 4A.
28 THE COURT: Yes.
29 MR. RUSH: Actually the third page, Application for Registration
30 of a Trapline dated March 22, 1941 Sam Morrison in
31 typewritten per no signature or anything on there.
32 THE COURT: Yes. The question is did your brother Sam have this
33 trapline before you did.
34 A Well, I don't know anything about it.
35 MR. MACKENZIE: Referring back to tab 4. At the beginning of
36 tab 4 with third -- third page in there's a letter
37 dated June 14, 1946 from Mr. Muirhead. Do you have
38 that reference, my lord?
39 THE COURT: Yes.
40 MR. MACKENZIE:
41 Q This letter, Mr. Morrison, says that this trapline was
42 formerly applied for by Sam Morrison and was turned
43 over to you. You deny that Sam Morrison had the
44 trapline before you?
45 A I don't know anything about this. Only I know when I
46 signed the applicant for the other one.
47 Q And at the bottom of that letter of June 14, 1946 Mr.

1 Mallinson, the Indian Agent, states that the line in
2 your name, James Morrison, was taken over from Sam
3 Morrison and says that you were down at the Cannery.
4 Were you down at the cannery in July, 1946? Can you
5 recall that?
6 A No, I couldn't remember that.
7 MR. RUSH: Although it's a small point, my lord, that portion
8 was slightly misread by my friend. It was, "I return
9 herewith application duly completed for the
10 registration". It doesn't indicate that the line is
11 in the name.
12 MR. MACKENZIE: Yes. Perhaps, my lord, I should read that out
13 in response to my friend. Yes. "I return herewith
14 application duly completed for the registration of
15 trapline in the name of James Morrison which has been
16 taken over from Sam Morrison his brother."
17 Then referring to the page before that letter of
18 June 14 there's a map. Still at tab 4, my lord.
19 THE COURT: Yes.
20 MR. MACKENZIE: There's a map, and in the centre of that map is
21 written "Morrison James". And up in the upper right
22 hand corner of that map there's an indication of a
23 Shedin Peak.
24 Q Do you see that? Was your trapline just southwest of
25 Shedin Peak, Mr. Morrison?
26 A I don't understand this map. There's nothing on it.
27 Q Fine. Thank you. So your evidence is that your
28 father had the line before you, is that correct?
29 A Yes.
30 Q Yes. And your father was Simon Morrison?
31 A Yes.
32 Q Yes. And who had the line before Simon Morrison?
33 A I don't know.
34 Q Okay. Referring to tab 6. Is that your signature at
35 the bottom of that document, Application for Renewal
36 dated June 16, 1976?
37 A No, this is not my signature. You compare it with the
38 other and see what's the difference on there.
39 Q Were you trapping in 1976?
40 A On -- I'm talking about this signature.
41 Q I'm asking you another question. Did you go out on
42 the traplines in 1976?
43 A Well, I don't know where I'm trapping at that time. I
44 don't go by the date. When I'm trapping I'm trapping
45 any time when I feel like to.
46 Q I'm referring to the document at tab 5. I have the
47 original of that, my lord. That document is dated on

the original March 12, 1976 and then there's a stamped date March 15, 1976. "To whom it may concern we give James Morrison our permission to trap on our trapline approximately 150 miles north of Hazleton. The number should be on our record there in it's Smithers." Signed Gerry Samuel Morrison, Kelly Howard Morrison and Samuel Morrison, Hazleton B.C.. Now, did you -- Gerry Morrison is Sam's son, is that correct?

A Yes.

Q And Kelly is Sam's son?

A Yes.

Q Yes. And this letter refers to the northern trapline at Chipmunk Creek, doesn't it?

A Yes.

Q That's in territory A. And did you have this letter -- sorry. Did Gerry Morrison, Kelly Morrison and Samuel Morrison send that letter in 1976?

A They must be. Where did you pick up this?

Q Can you identify that letter? Did you ask them to send that letter?

MR. RUSH: Well, just -- my lord, there are two questions there. Maybe my friend can go one by one.

MR. MACKENZIE:

Q Can you identify that letter?

A I don't know. I didn't trap at that time at that year. That's for sure.

Q Did you ask Sam and his sons to send that letter?

A I didn't remember asking anybody about that.

Q Is that Samuel Morrison's signature?

A Well, I don't know Samuel Morrison's signature.

Q It looks as if they're all signed by the same person. So you don't know anything about that letter?

A No.

Q No. And you can't recall whether you were trapping up at Chipmunk Creek up in 1976?

A No, I didn't.

Q Were you at Chipmunk Creek in 1976, do you know?

A No.

Q Now, can you agree with me, Mr. Morrison, I'm going to refer now to map B, Exhibit 379, your trapline covered areas E and G? That is the Ska'yans't and the Gwin dak territories, is that correct?

MR. RUSH: Is the trapline description in front of the witness?

MR. MACKENZIE: No. I'm just asking him from his memory.

MR. RUSH: From his personal -- from his memory.

MR. MACKENZIE: Yes.

A Which map you talking here?

1 Q I'm talking about the map you have in your hand.
2 A You talking about registered or tradition?
3 Q Registered trapline.
4 A Geez, registered is not -- not true on this other map
5 you're talking about here. It's made by fish and
6 wildlife. It's straight line, and it covered any
7 areas and any other creeks, and they could state it on
8 this creeks here. It's Luu Skadawit.
9 Q Okay. You've got -- you've got the map Exhibit 378 in
10 front of you, and I've put Exhibit 411 at tab 3 in
11 front of you, and -- I'm sorry. 379. You've got the
12 southern territories map B, 379. I just want to clear
13 this one up. Referring to your trapline application
14 which is dated June 7, 1946, that's Exhibit 411.
15 A You see on this one here Luu Skadawit.
16 Q Yes. You're referring to Exhibit 411?
17 A Yes.
18 Q And can you agree with me that there's a reference to
19 Luu Skadawit on Exhibit 411?
20 Does your lordship have that reference?
21 THE COURT: Yes.
22 A This is what you're telling me.
23 MR. MACKENZIE:
24 Q Sorry. Before you get into that can you answer that.
25 Can you agree on Exhibit 411 there's a reference to
26 Luu Skadawit?
27 A Yes.
28 Q And on Exhibit 411 it says that your trapline starts
29 at Luu Skadawit?
30 MR. RUSH: And Shedin Creek.
31 A Yes, and Shedin Creek. Right.
32 MR. MACKENZIE:
33 Q Now, Luu Skadawit is Sperry Creek on map B?
34 A Yes, this one here.
35 MR. MACKENZIE: Does your lordship have that reference?
36 THE COURT: Yes.
37 A But this one is not right the way they draw it. This
38 line here.
39 MR. MACKENZIE:
40 Q My question to you is your registered trapline covered
41 areas E and G on this map that you have in your hands,
42 Exhibit 379, didn't they?
43 A They didn't cover this -- the distance the way they're
44 putting this line in here. See, these people didn't
45 know what the meaning of Luu Skadawit is, and they can
46 put it anywhere on those creeks because the creeks are
47 identical. And if I show you two creeks you wouldn't

1 know this is what they're doing. And they can put it
2 any -- anywhere.
3 Q Your evidence is that a mistake was made in describing
4 the trapline in Exhibit 411, your application?
5 A Well, they're talking about this. If I tell you
6 something and if I point a creek for you now then you
7 draw it on the line. That's what they're doing at
8 that time. And they could put it anywhere in those
9 creeks. This is what my answer is to you.
10 Q Okay. I understand now. I'll just finish off this
11 series of questions with reference again to Exhibit
12 411. The description of the trapline is, commence at
13 confluence of Luu Skadawit and Shedin Creeks and then
14 northerly along the east bank of Shedin Creek.
15 MR. RUSH: Excuse me just a moment. Mr. Morrison, Mr. Mackenzie
16 was reading from the application. If you just --
17 THE COURT: Mr. Morrison, can you show me where the confluence
18 of Luu Skadawit and Shedin Creek is?
19 A It's right here.
20 THE COURT: Well, where is Shedin Creek then? Where is the
21 confluence?
22 A Right here.
23 THE COURT: Yes. All right. Thank you. Sorry, Mr. Morrison --
24 or Mr. Mackenzie.
25 MR. MACKENZIE: Just continuing, my lord.
26 THE COURT: Going north along Shedin Creek.
27 MR. MACKENZIE:
28 Q North along Shedin Creek, 13 3/4 miles to the first
29 creek on the east side north of Xsu wil wiltxwt.
30 A M'hm.
31 Q And that appears on your Exhibit 379, doesn't it, Xsu
32 wil wiltxwt?
33 A Xsu wil wiltxwt, yeah. Drain into Sicintine.
34 Q That's east 5 7/8 miles to height of land between the
35 said height of land and Shedin Creek and Sicintine and
36 Shelagyote Rivers.
37 A M'hm.
38 MR. MACKENZIE: Does your lordship have these geographical
39 points on the map as we follow along?
40 THE COURT: Yes.
41 MR. MACKENZIE: Then southerly 8 miles along the west side of
42 said height of land, then westerly along the north
43 bank of Luu Skadawit Creek, 7 3/4 miles to point of
44 commencement.
45 Does your lordship follow that --
46 THE COURT: Yes. Yes.
47 MR. MACKENZIE: -- On Exhibit 379?

Q And am I correct in summarizing your evidence as saying the Fish and Wildlife Branch made a mistake?
A Yes, on this one here. All this. Not just the first one. You look at the map that you show me it's not right. It's straight line. It can't be. And the tradition line, you see it yourself here, this is how it draws.
Q Sorry. You're referring to Exhibit 379?
MR. RUSH: Well, he's also referring to the previous map that was shown to the witness which I think was suggested to him as a trapline map which had straight lines on it.
MR. MACKENZIE: Yes. That's right.
Q And tab 7 of the document book is Exhibit 407, and there you agreed to transfer your line to Elsie Morrison, didn't you?
A Yes.
Q Now, Elsie Morrison has never been on that territory, has she?
A No.
Q No. And there's no one trapping there now, is there?
A I don't know. Since she is the holder now she would know herself what was on there.
Q When was the last time you were in there?
A I couldn't remember what year.
Q You can't get in there by skidoo, can you?
A No.
THE COURT: Well, you're not sure when you were there, but what was it five years, ten years ago?
A Oh, we are hunting every once in awhile. Last two years we have been in there. We been walking in there.
MR. MACKENZIE:
Q When is the last time you trapped in there?
A I couldn't remember what year, but it's two or three years anyway. We not staying there when you go out there. You just go up and come back for hunting. Same as trapping. So you can't keep track. Only time keep track of the trapping when you got your fur and you return back and that's on your slip. That's the only thing you can keep track with. You can't keep track with years, but also you got your fur returned, that's what you got.
THE COURT: Take the morning adjournment, please.

(PROCEEDINGS ADJOURNED)

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

_____
Peri McHale, Official Reporter
UNITED REPORTING SERVICE LTD.

1 (PROCEEDINGS RESUMED AT 11:30)
2
3 THE REGISTRAR: Order in court.
4 THE COURT: I'm sorry gentlemen, Miss Sigurdson, Miss Russell
5 and gentlemen, I've got a minor emergency on my hands,
6 but it's not too serious, but I'm going to have to
7 hear an application to adjourn an assize trial on
8 Monday. I've set it for two o'clock. I'm sure it
9 will only be a minute or so. The accused has
10 disappeared apparently, creates all sorts of
11 difficulties with juries and things like that. All
12 right, thank you.
13 MR. MACKENZIE:
14 Q Now, we were speaking about your trapline at
15 Ska'yans't before the adjournment; do you recall that?
16 A Yes.
17 Q And can you you tell us when you were trapping in that
18 area last, please?
19 A That I couldn't remember. It's about two or three
20 years, as I say, or four years. It's just off and on
21 and we travelled so much back and forth in that area.
22 Q So you say two years ago?
23 A Probably three years.
24 Q Three years ago?
25 A I didn't know what exact date, but I was there four
26 years, three or four years, or five.
27 Q Were you trapping there in 1985?
28 A I couldn't say, I didn't remember exact date.
29 Q So you can't recall whether you were trapping there in
30 1985?
31 A I was trapping there some years ago, not specific date
32 that I can put on there.
33 Q Were you trapping there since 1980?
34 A This, as I say, I couldn't put the date on that. I
35 remember some years that I have been in there.
36 Q And were you trapping there before 1980?
37 A As I say, I couldn't remember offhand. I just don't
38 have -- I was in there back and forth.
39 Q You can't recall the year when you were last trapping
40 in that area?
41 A No.
42 Q Do you recall whether you trapped in that area in the
43 1970's?
44 A I should say that I don't know anything about the
45 date. It doesn't concern me any date when I go
46 trapping.
47 Q Can you recall whether you were trapping in that area

in the 1960's?
A As I say, I -- if maybe so on that -- on the date, but as I say, I wouldn't go with -- there's no numbers in that, but I was in there some time ago.
Q Yes. Do you recall whether you were trapping there in the 1950's?
A Well, it's -- you know, it's too many things going on, you can't keep track of all these things, you know. You never know, you trapping back and forth, eh. We travel so many areas, you don't know what year that if you're going to travel so much, you can't keep track of what date, we're on one corner to another. You travel as you go along.
Q Well, you said this morning that you can tell the years from the fur returns; is that your evidence?
A Yes.
Q Yes. Did you submit fur returns?
A We sell it to the Bay.
MR. MACKENZIE: Did you submit fur returns for this territory that we're speaking about now?
MR. RUSH: Maybe the questioner and witness are asking -- have different things in mind when the use of the fur returns is used. The witness referred to sales to the Bay. I'm sure my learned friend is referring to a document that is a known government document as a fur return. Maybe that can be clarified, it might help.
THE COURT: All right. You can perhaps avoid any possible misunderstanding, Mr. Mackenzie, by putting it again, please.
MR. MACKENZIE:
Q All right. You say you submitted fur returns?
A Yes. To the Bay.
Q And what are those fur returns, what kind of documents are those?
A They're not documents, just a sale.
Q I see. You sold the furs to the Hudson's Bay Company in Hazelton?
A Anywhere, anywhere as high as -- you don't just sell it in one place, you take it from one place to another, wherever they can pay you higher.
Q When was the last time you sold furs from this territory that we're speaking about, the Ska'yans't area E and G?
A I can't remember.
Q Did you sell furs in this territory in the 1980's?
A I couldn't remember.
Q Did you sell furs from this territory in the 1970's?

A I can't remember.
Q Did you sell furs from this territory in the 1960's?
A I couldn't remember.
Q Did you sell furs from this territory in the 1950's?
A I don't remember.
Q Do you know who Johnny Morrison is?
A No.
THE COURT: I'm sorry, you don't know?
A Yes.
THE COURT: Oh, you do know? Thank you.
MR. MACKENZIE:
Q I beg your pardon, my Lord, I think we're at cross purposes. Do you know who Johnny Morrison is?
A No.
THE COURT: Thank you.
MR. MACKENZIE:
Q Do you know who Lillian Morrison is?
A No.
Q Do you know who Herbert Morrison is?
A No.
Q And do you know who Charles Morrison is, or was?
A What's his Indian name?
Q I'm sorry, I don't know the Indian name. What was the name of your -- of Simon Morrison's father?
A Well, I'm asking you, you see you read that, and I need to -- I need to know that.
Q Do you know the name of Simon Morrison's father?
A Yes.
Q What was his name?
A Sduutxw'mlax ha.
Q What was his English name?
A Charles Morrison.
Q And what was Charles Morrison's wife's name?
A I don't know.
Q Do you know who Charles Morrison's father was?
A No.
Q And you also testified that you don't know who had the territory E and G, that's the Ska'yans't territory, who had that trapline before Simon Morrison; you don't know that?
A No.
Q Did your father, Simon, ever tell you who had the territory before him on Ska'yans't area --
A No.
Q E?
A No.
Q My Lord, I'm handing to the witness a document, an

extract from an Attorney General of Canada document 4093. I hand a copy to your Lordship. That purports to be a copy of a will of Johnny Morrison dated April 2, 1932. Now, Mr. Morrison, in this document I put before you Mr. Johnny Morrison appears to be saying: I give to my daughter, Lillian, certain property in Glen Vowell and to Herbert certain property in Glen Vowell. Now, you don't know Lillian or Herbert, do you?

A No.

Q And then in the fourth paragraph Johnny Morrison says:

> "My hunting ground near Gisgigash I will go to the man who will help Herbert and Lillian with my funeral expenses to the amount of $25.00 and $30.00."

Now, do you know whether your father, Simon Morrison, helped with Johnny Morrison's funeral expenses?

A I never seen this before.

Q Did your father, Simon Morrison, help with Johnny Morrison's funeral expenses?

A I don't know anything about this.

Q Did your father, Simon Morrison, help with Johnny Morrison's funeral expenses?

A I don't know anything about this. I said I don't know about this document here.

Q I'm asking you, did your father, Simon Morrison, help?

A I said I didn't know.

MR. MACKENZIE: Oh, okay.

MR. RUSH: My Lord, I don't see the point in putting the same question to the witness again and again without perhaps shifting the context. A document is placed in front of the witness and asked to relate to the document. The witness is clearly trying to relate to the document. Now, perhaps the document can be taken away from the witness or somehow contexturalizing it by saying let the document stand alone and then put the question separately, but I think it's a pointless exercise to put the same question four times.

MR. MACKENZIE: I'm prepared to rephrase the question, my Lord.

THE COURT: All right, thank you.

MR. MACKENZIE:

Q Just put the document aside, Mr. Morrison. Can you tell me from your knowledge, did your father, Simon Morrison, help with the funeral expenses of Johnny Morrison?

A Well, at that time I don't know what's going on at that time. I only know so much, that's what I know, what I will tell you, so I wouldn't know about that.
Q Is your answer that you do not know whether Simon Morrison helped with Johnny Morrison's funeral expenses?
A I don't know.
Q Did Simon Morrison ever tell you that he helped with Johnny Morrison's funeral expenses?
A Maybe he did, but he didn't tell me.
Q You've never heard of Johnny Morrison?
A No.
Q And you never heard that he owned the territory at Ska'yans't?
A No.
Q No? And you never heard that Johnny Morrison's territory was given to your father, Simon?
A No.
Q Now, in the third paragraph in this document dated April 2, 1932 it reads:

> "I give my trapline on Gravel Creek to Lillian and Herbert together. This is on the right-hand side of the Skeena River. Simon Morrison is to stay on the left-hand side."

Now, Gravel Creek, that's Chipmunk Creek, isn't it? And that's in the area A, that's Xsi maxhla saa giiblax.
A Xsi maxhla saa giiblax.
MR. MACKENZIE: Yes. Did your Lordship get that answer?
THE COURT: I'm not sure whether the witness agreed that Gravel Creek is Chipmunk Creek. Is it?
A Yes. That's Xsi maxhla saa giiblax, that's Chipmunk Creek.
THE COURT: Or Gravel Creek?
A Yeah. We call it Xsi maxhla saa giiblax.
THE COURT: Is it ever called Gravel Creek?
A I never heard about that.
MR. MACKENZIE:
Q What's the translation of Xsi maxhla saa giiblax?
A In what?
Q Into English, what's that mean?
A Well, Giiblax is sand.
THE COURT: I'm sorry. Was there a word before sand?
A Yeah. Gibblax is sand.
THE COURT: Gibblax is sand?

MR. MACKENZIE: My Lord, the witness is saying that the Gitksan word Gibblax --
THE COURT: I see.
MR. MACKENZIE:
Q G-i-b-b-l-e-x, underline the X, is sand; is that correct?
A Yes, sand.
Q Could also be gravel, couldn't it?
A Well, depends, gravel is different kinds, eh, rocks and things like that.
Q Lots of rocks up in Chipmunk Creek, aren't there?
A Well, not until that point where I pointed and to where you can see where the --
MR. MACKENZIE: Now we're referring to map A, Exhibit 378, my Lord.
THE COURT: Um-hum.
MR. MACKENZIE:
Q The witness has that document before him now.
A See over here.
Q And the witness is now referring to the area above Chipmunk Creek and above that indication of Prairie Dog on Exhibit 378. Does your Lordship have that point on the boundary? And you're saying that's where the gravel and the rocks are?
A Not rocks, sands.
Q Sands?
A That's why they call it Xsi maxhla saa giiblax.
Q What about the rocks and gravel, where are they, if anywhere?
A No rocks, all sands here, maybe the odd boulders, but you can't see it underneath the water.
Q Lots of boulders in the creek?
A It must be one there or maybe hundreds or maybe thousands.
Q Lots of boulders and rocks in that creek?
A Well, always in the other creeks.
Q Yes. But there are in that creek as well, correct?
A You see, this is why they call this Xsi maxhla saa giiblax, all sand you can see inside the water, that's where nice and shiny inside.
Q Now, Simon Morrison had the territory at Ant gilek in 1936, didn't he?
A Yes.
MR. MACKENZIE: Yes. That's the area in area A, west of the Skeena River, that's on the left-hand side of the map, Exhibit 378 when you look at it. Now, were you aware that --

MR. RUSH: Just excuse me. Were you asking the witness if he only had the territory on the left-hand side; was that the intent of the question?
MR. MACKENZIE:
Q Yes. Simon Morrison had the territory at Ant gilek on the west side of the Skeena River in 1936, didn't he?
A Yes.
Q Yes?
A He had this whole thing here.
Q He didn't take over the west side until 1941, did he?
A Yeah. But he owns this.
Q I'm sorry, I beg your pardon, I'll rephrase that question. Simon Morrison didn't take over the territory A on the east side of the Skeena until 1941, did he?
A But he was trapping at that time.
Q Yes. Your testimony was that the territory A on the east side of Chipmunk Creek was transferred to your father, Simon?
A Yes.
Q Yes?
A Sduutxw'm laxha.
Q From Charles Morrison?
A Yeah. It doesn't mean where he's going to start trapping.
MR. MACKENZIE: I'm now referring to Exhibit 408 at tab 8 of the blue binder. We're not marking that document dated April 2, 1932, my Lord.
THE COURT: No?
MR. MACKENZIE:
Q It hasn't been identified. Exhibit 408, and this was the day that Mr. Robinson, John Robinson agreed to transfer his Meziadan Lake line -- trapline to you, didn't he?
A Yes.
Q You were taking over the territory then at Meziadan Lake?
A I take over and I run and I already take over. We're not concerned about this register, but they do sign it over at that time.
Q Yes. But you had taken over the territory and the feast?
A Yes.
Q And you had -- you had taken the chief's name, Txaaxwok?
A Yes.
Q And that's the same time that you transferred your

other trapline to Elsie Morrison; is that correct?
A Yes.
Q And passing over Exhibit 409, my Lord, at tab 9, that's already been admitted. And now, I want to refer to Sam Morrison's trapline up in Chipmunk Creek, Mr. Morrison, and referring to tab 10, my Lord. The first -- the third page past tab ten is an application for cancellation dated March 22, 1941 for Lillian Morrison, and it is unsigned. But the document says "Application is made" -- does your Lordship have that reference?
THE COURT: Yes.
MR. MACKENZIE:
Q

> "In quadruplicate for cancellation of the registered trapline of this Indian."

And I think it would say -- it says -- I don't have the original of this, my Lord:

> "A transfer thereof to Simon Morrison of Hazelton, B.C."

And Mr. Morrison, I'm just showing you that.
Q Now, did your father, Simon, take over the Chipmunk Creek trapline in 1941, registered trapline?
A I don't know, I never seen this before.
Q Well, now put the document aside, please. Did your father, Simon Morrison, take over the registered trapline at Chipmunk Creek in 1941?
A I don't know anything about it.
Q So you don't know whether your father took over the registered trapline at Chipmunk Creek?
A No.
Q And you were trapping with your father?
A Yeah, before that.
Q In that area Chipmunk Creek?
A Yeah, before that.
Q You were up there in the 1930's?
A Yes, '36.
Q Did your father ever mention the name of Lillian Morrison to you?
A No.
Q Do you know who the wife of Charles Morrison was?
A No.
Q Before 1941 your father was a member of Moses Steven's line, wasn't he?

A I wasn't aware of that. I don't think so.
MR. MACKENZIE: Did your Lordship get that answer?
THE COURT: Yes.
MR. MACKENZIE:
Q Do you know who Moses Stevens was?
A It was not Moses Stevens.
Q It wasn't? Do you know who Charles Stevens was?
A That's the same thing. There's many Stevens in Kispiox.
Q You told his Lordship this morning that you know Charles Stevens from Kispiox, right?
A I know, but which one are we talking about, which Indian name?
Q We are talking about Charles Stevens from Kispiox who had his line on the trapline on the west side of the Skeena River. Do you know that person?
A I know there's one Moses -- I mean Charles Stevens at Slamgeesh Lake, that's the only place I know where he's trapping at.
Q So you know Charles Stevens?
A I didn't know him, but I know the man that --
Q Did you know his father was Moses Stevens?
A No, I didn't.
Q Your father, Simon, never told you he was a member of Moses Stevens' trapline?
A No.
Q Referring to tab 11, that's an application for registration in the name of Simon Morrison dated March 22, 1941. Now, your testimony is you were not aware that your father, Simon, took over the Chipmunk Creek trapline in 1941?
A No.
MR. MACKENZIE: No? And referring to that document that -- I'm sorry. That document is tab 11, that document has not been admitted, but it's at tab 11, but just refer to the geographical description of the trapline, and the note at the beginning of that description says:

> "Commence on the east bank of Duti Creek at its confluence with the Skeena River."

Now, I'm referring to map A, Exhibit 378. And can you tell his Lordship where on map A Duti River is, or do you know Duti River?
THE COURT: Or Duti Creek?
MR. MACKENZIE:
Q Or Duti Creek?

A Duti Creek, I don't see Duti Creek here. Duti Creek was way up head of the Skeena.
Q I'm pointing to a river on the base map of Exhibit 378 which is entitled "Duti River". Is that where the Duti River is? My Lord, I don't know whether that question is a proper question to be answered. Do you know that river is up there?
A Well, I know it's Xsan that's coming down there.
Q Did you know that your registered trapline extended north of Chipmunk Creek?
A No. I'm not aware of that.
Q And did you ever go trapping in that area A at Chipmunk Creek with your brother, Sam Morrison?
A Yes.
Q Did you know that Sam Morrison's registered trapline extended north to Duti River?
A No. I wasn't aware about that.
THE COURT: I'm sorry?
A I wasn't aware about that.
MR. MACKENZIE:
Q I'm suggesting to you that the northern boundary of the registered trapline of your father, Simon Morrison, was not Chipmunk Creek, but it was Duti River; and what do you say to that?
A Well, we only go to this traditional boundary, this is what we go by here, of traditional boundary. As I state back again with the fishing and wildlife and D.I.A. was make all these maps and so on, it's full of maps and you can't believe it, like what the first one that you show me, nobody would understand that. This is where the confusion is, all these registered traplines, you don't go by tradition. You go by tradition and then you have no problem.
Q Yes. I will ask you some questions about that, but now I'll refer you to tab 13. And that's a return of registered trapline holder in the name of Simon Morrison dated May 30, 1942, and I'm placing the original carbon copy in front of you and showing it to my friend. Can you recognize your father's signature on the bottom of that, either one of those, that photocopy at tab 13 or the carbon copy that I'm handing to you?
A It's hard to see, you can't tell anything on it.
Q All right. Were you aware that your father made fur returns for his trapline at Chipmunk Creek?
A I don't know anything about that.
Q You never heard?

A Never heard it.
Q Never went with him to the Fish and Wildlife office?
A No.
Q And on Chipmunk Creek you trapped Beaver there, in that territory?
A Oh, yeah.
Q And you trapped fish in that territory?
A Yes.
Q You trapped marten in that territory?
A Yes.
Q You trapped mink in that territory?
A Yes.
Q You trapped muskrat in that territory?
A Yes.
Q You trapped otter in that territory?
A Yes.
Q You trapped skunk in that territory?
A Yes.
Q You trapped squirrel in that territory?
A Yes.
Q You trapped weasel in that territory?
A Yes. You forgot wolverine.
Q Wolverine, yes, thank you. Sorry, my Lord. Wolverine is mentioned here, that's right. Now, referring to tab 14, this is Exhibit 412, 412 that is. That's an application apparently of your brother Samuel Morrison dated April, 1962. Is that Sam's signature on that Exhibit 412?
A Well, I couldn't tell. You see, all the signatures all different, you see even my name, somebody sign my name on this one.
Q I'm showing you the original of that Exhibit 412 and asking you whether you can agree with me that that's Samuel Morrison's signature there?
A I wouldn't agree with that.
THE COURT: Well, does it matter, Mr. Mackenzie, if the document is admitted?
MR. MACKENZIE: Yes. The document is admitted.
THE COURT: We know who the signature is.
MR. MACKENZIE:
Q Thank you, my Lord. I'm referring to the back of the document now, my Lord. Your testimony before has been Kelly Morrison and Jerry Morrison are Sam's sons, correct?
A Yes.
Q And so I'll refer to Exhibit 412 in the geographical description of that trapline and note that it

commences on the north bank of Duti Creek at its confluence with Skeena River; do you see that?
A Yes.
Q Okay. You weren't aware of that?
A No.
Q Now, whose territory is on the other side of Chipmunk Creek?
A That's --
MR. RUSH: You mean the north?
MR. MACKENZIE:
Q North of Chipmunk Creek?
A North, that's Simgitgigenix.
MR. MACKENZIE: What's the number on the plaintiff's list?
THE TRANSLATOR: It's not on there.
THE COURT: I thought this was Wii Gaak?
A No, that's --
MR. MACKENZIE:
Q We're talking about north of Chipmunk Creek?
A Wii Gaak is just across from Chipmunk.
MR. RUSH: Simgitgigenix is -- I think is the northern boundary of Chipmunk Creek.
MR. MACKENZIE: I'm talking about the northern boundary on the eats side of the Skeena, my Lord.
THE COURT: Oh, all right.
MR. MACKENZIE:
Q Well, my Lord, without taking time, I think we have to get the spelling for the reporter. That chief that you mentioned, which house is he in?
A He's in Miluulak's House.
MR. MACKENZIE: Okay. We're going to have to get the spelling.
THE COURT: I'm sorry, I've lost you. I thought we were talking about the area around starting at the confluence of Duti Creek and Skeena. We're not --
MR. MACKENZIE: Yes, my Lord. I asked the witness who owns the territory of Chipmunk Creek. Does his Lordship have that reference?
THE COURT: All right. You're talking about east of the Skeena then, are you?
MR. MACKENZIE: Yes, my Lord.
THE COURT: Oh, all right, just a moment.
THE COURT: What are you giving me first, the chief's name?
THE TRANSLATOR: S-i-m-g-i-t-g-i-g-e-n-i-x.
THE COURT: Thank you.
MR. MACKENZIE: The next piece of information was the house of that chief, Miluulak.
THE TRANSLATOR: M-i-l-u-u-l-a-k.
THE COURT: Thank you.

MR. MACKENZIE:
Q Now, this I have to refer also to Exhibit 412, and again, Mr. Morrison, were you aware that Sam Morrison's registered trapline did not go west of the Skeena River?
A Which one is that?
Q I'm talking about Sam Morrison's registered trapline. Do you know what I'm speaking about?
A What page here?
Q You have the correct page, Exhibit 412, and I'm asking you -- first I'm suggesting to you Sam Morrison's registered trapline was east of the Skeena River; is that correct?
A Well, I don't know. It's all wrong with what we're doing, it's way over to the Duti River.
Q So you don't know where the registered trapline was?
A No.
Q Did you ever go trapping on that trapline at Chipmunk Creek?
A Yes.
Q Yes? Were you there in 1976?
A No. I couldn't remember a year that when I was there. We went there all the time, I know.
THE COURT: You're talking now about north of Chipmunk Creek?
MR. MACKENZIE: I'm talking about the territory -- the area of territory A, my Lord.
THE COURT: South of Chipmunk Creek?
MR. MACKENZIE: Yes, my Lord. And the trapline, my Lord, extends north and south of Chipmunk Creek. And that's -- your Lordship can see that on exhibit --
THE COURT: 412.
MR. MACKENZIE: Exhibit 24A1. At tab 1 of the blue binder.
THE COURT: 24A1?
MR. MACKENZIE: Tab 1 of the blue binder, Exhibit 24A1, my Lord.
THE COURT: Yes, thank you.
MR. MACKENZIE: Does your Lordship see area A of east of the Skeena River?
THE COURT: Yes, yes, I see it, slightly north of the Chipmunk Creek.
MR. MACKENZIE: Yes. The Chipmunk Creek is not marked, but it flows down from Chipmunk Creek.
THE COURT: Yes.
MR. MACKENZIE: See that, my Lord, it flows down into the Skeena River.
THE COURT: Right.
MR. MACKENZIE: The Duti River is marked and highlighted on that Exhibit 24A?

THE COURT: Yes.
MR. RUSH: The Duti Creek isn't.
MR. MACKENZIE: Yes. But Duti Creek is not, my Lord. So my Lord, my question relates to that registered trapline, that's the trapline we've been speaking about in these documents.
THE COURT: Yes.
MR. MACKENZIE:
Q Sam Morrison is the registered owner of that trapline 681T006. Do you recall when the last time you were trapping in that Chipmunk Creek area?
A No.
Q Were you trapping there in the 1970's?
A No.
Q No?
A I said I don't know a specific date when I was up there. We don't keep track of the day when we were up there, but we go up there every once in a while and back on to certain territory.
Q That's 100 miles north of Hazelton, isn't it?
A Yes. 150 miles north of Hazelton.
Q And when you last went in there how did you get there?
A Walk in on the ice.
Q Walked over the ice?
A Yes. 1936, as I stated on there before, that's the only thing I'm going to state on, 1936 is when we travel on the ice. We go up there ten days to go up there and seven days to come back.
Q That's right. Did you walk up there on the ice in the 1960's?
A I said I couldn't remember any dates, all I remember back in 1936.
Q Yes. Can you recall whether you were trapping on that line in the 1950's?
A Not a year, back and forth.
Q Were you there in the 1950's?
A I could be there, but I didn't keep track of the dates.
Q So you can't recall?
A Well, I can't recall, I don't keep track of the dates. I mean if I ask you what you do in the last 50 years, you wouldn't remember that, unless it's in front of you, if you have it in front of you in order to know that, what your question is.
Q I'm sorry, yes. Can you agree with me that you weren't on that territory trapping in the 1980's?
A I was there -- I wasn't trapping at that time, but I

1 was there in '85.
2 Q You flew in by helicopter, didn't you?
3 A Yes.
4 Q You weren't in that territory, were you?
5 A No, not trapping.
6 Q Before 1985, in the 1980's you were not trapping in
7 that territory --
8 A No.
9 Q Of Chipmunk Creek? And can you agree with me the
10 1970's you weren't trapping in that territory?
11 A No.
12 Q And -- sorry?
13 A No.
14 Q You were not trapping in the 1970's?
15 A No.
16 Q And you were not trapping there in the 1960's?
17 A Well, in -- I'm just preparing for years that we're
18 saying, I couldn't remember offhand that question
19 there.
20 Q Okay. You were there in 1985 -- I'm sorry. You were
21 on a helicopter flight in 1985?
22 A Yes.
23 Q What is the last time you were in that area before
24 1985?
25 A Well, that's the last time I was there, in '85.
26 Q When were you there before 1985?
27 A Well, I couldn't remember that.
28 Q Can't remember? Were you there in the 1970's?
29 A No.
30 Q Were you there in the 1960's?
31 A I said I couldn't remember that specific '60 you were
32 talking about.
33 Q Were you there in the 1950's?
34 A I said I couldn't remember.
35 Q Now, when was the last time Sam Morrison was in that
36 territory of Chipmunk Creek?
37 A I don't know, you have to ask him yourself.
38 Q Do you know if Sam Morrison was there in the 1980's?
39 A I don't know.
40 Q Do you know if Sam Morrison was there in the 1970's.
41 A I don't know.
42 Q Sam Morrison is your brother?
43 A Yes, my brother.
44 Q Do you know if Sam Morrison was there in the 1960's?
45 A I don't know.
46 Q Do you know if Sam Morrison was there in the 1950's?
47 A I don't know.

Q Do you know if Sam Morrison was there in the 1940's?
A I don't know.
Q Do you know if Sam Morrison was there in the 1930's?
A I couldn't tell you. The only thing I can remember at that time when we was with him in 1936, they're all numbers those years you're asking me.
Q The only thing you remember is 1936?
A Well, it's from there on, and the different years that are beyond '38 and so on back into certain territory.
Q I'm going to suggest to you that Sam Morrison has not been trapping in Chipmunk Creek for at least 20 years; do you agree with that?
A Well, maybe so. You could ask him yourself.
Q Okay. You don't know that, though, do you?
A I don't.
Q I'm going to suggest to you that you haven't been trapping there for at least 20 years?
A Yes.
Q That's true, isn't it?
A Yes.
Q All right. And you will agree with me that the only way to get into that territory for you and Sam Morrison, except for the helicopter flight, was to walk up there on the ice; is that correct?
A No. I don't think so.
Q Is that true?
A No. You can walk there.
Q You can walk up the telegraph trail?
A Yes.
Q And that's 100 miles from Hazelton?
A One hundred fifty miles.
Q One hundred fifty miles from Hazelton?
A Yes. You know why, because if you're going to have hunting or trapping you've got to get to a territory, whether it was in helicopter or cars or Skidoos or anything, you still have to walk. I'm still doing it today. I don't take any flights or cars or anything.
Q And today you trap at Meziadan Lake?
A Yes.
Q And you drive along Highway 37 to get to Meziadan Lake?
A Yes. Because the road is there and everybody was using it, eh, and I got licence to drive on the road and I got rights to drive on the road.
Q Yes. You have a driver's licence, don't you?
A Yes. I have a driver's licence and I pay for it and I paid my licence.

1 Q And you have a car?
2 A I have a truck.
3 Q You have a truck, yes. Do you also have a car?
4 A Well, I've just stated to you I have a truck.
5 Q Do you have a car as well?
6 A Yes.
7 Q And you have a travel home as well?
8 A No. Anything to do with the hunting ground, eh.
9 Anything to do with it I would answer that.
10 Q Now, your brother Sam is about 80 years old today, is
11 he?
12 A I don't think so. I don't think he is that old.
13 Q He's quite old, though, isn't he? He's blind you
14 said?
15 A He's about eight years older than me.
16 THE COURT: How many years older?
17 A Probably eight. I'm not sure what exactly, I'm just
18 guessing myself, but just figure for what my age is is
19 what I'm saying.
20 MR. MACKENZIE:
21 Q Sam is blind now, isn't he?
22 A Yes.
23 Q And when did he lose his sight?
24 A I couldn't remember a year when he was or when he was
25 on disability, but 15 years.
26 Q About 15 years?
27 A Yeah, probably. So I'm not putting an exact date on
28 it, but he has a record with his doctor, I know.
29 MR. MACKENZIE: Now, you testified that when you applied --
30 THE COURT: I'm sorry, Mr. Morrison, you were born in 1928, so
31 you're 59 years old, aren't you?
32 A Yes.
33 THE COURT: If your brother is eight years older, then he's only
34 68. That's a long way from 80.
35 A Yes.
36 MR. MACKENZIE:
37 Q I was incorrect, my Lord. I didn't mean to mislead
38 the witness. Your brother is in his late 60's, isn't
39 he?
40 A Well, around there. It could be around, 68.
41 Q Um-hum.
42 A I think what you're referring to was some other
43 people. I think it's -- I can see it where your
44 information has arised, there's some other signature
45 which I really didn't recognize.
46 Q I just want to ask you now some general questions
47 about the traplines. You testified the other day that

when you applied for the trapline at your registered trapline you did it because they said they would protect the trapline?
A Yes.
Q Yes. And no one else would be able to go into the trapline?
A Yes.
Q Yes. And you also testified that you sold your furs to the Hudson's Bay Company and other companies?
A Yes.
MR. MACKENZIE: That completes that series of questions, my Lord.
THE COURT: All right. Do you want to start something new?
MR. MACKENZIE: Yes, my Lord.
THE COURT: Or do you want to adjourn until two o'clock?
MR. MACKENZIE: Thank you, my Lord.
THE COURT: What do you prefer?
MR. MACKENZIE: If your Lordship wishes, this would be an appropriate time to adjourn.
THE COURT: We have four minutes if you can use the time. If not, we'll adjourn.
MR. MACKENZIE: No, my lord.
THE COURT: All right. Two o'clock, please.
THE REGISTRAR: Order in court. Court will adjourn until 2:00.

(PROCEEDINGS ADJOURNED AT 12:30)

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

Graham D. Parker
Official Reporter
United Reporting Services Ltd.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

THE REGISTRAR: Calling Delgamuukw versus Her Majesty the Queen at bar, my lord.
THE COURT: All right. Mr. Mackenzie.
MR. MACKENZIE:
Q Mr. Morrison, yesterday you testified that you attended a meeting at Fort Babine?
A Yes.
Q Yes. And that was after you took the name Txaaxwok?
A I can't remember the years.
Q Fine. I'm just asking you the question. You can't recall if it was after you took the name Txaaxwok?
A No, I couldn't. There was many times I went to Babine. I don't know which meeting you're referring to.
Q Have you had many meetings with people at Fort Babine?
A Yes.
Q And have you had meetings with the people from Takla Lake?
A Yes.
Q And at those meetings were you discussing the eastern boundary of the Gitksan claims?
A Yes.
Q And you testified yesterday also that you are, or the day before yesterday that you attended the All Clans Feast at Burns Lake in April, 1987?
A Yes.
Q And you recall there were people at that meeting as you testified from Takla Lake, is that correct?
A Yes.
Q Now, have you attended any other meetings relating to boundaries of the Gitksan and neighbouring people with people other than Gitksan people?
A No.
Q Have you attended any meetings with the Nisga'a chiefs?
A No.
Q Have you attended any meetings with the Thaltan chiefs?
A I did went up to Thaltan, but just exchanged information why I was up there.
Q When was that?
A I couldn't remember the year. I couldn't remember the year when I was up there.
Q Who went with you?
A With other tribal group is Ray Jones.

Q And where is he from?
A He's from Hazleton. From Gitsegukla.
Q Gitsegukla?
A Yeah.
Q Anyone else go up with you?
A Mel Bevin.
THE COURT: I'm sorry.
A Mel Bevin.
THE COURT: I didn't get that.
A Mel Bevin.
MR. MACKENZIE:
Q That's a well-known name, Mr. Morrison. Where did -- Mel Bevin's passed away, hasn't he?
A No.
Q Oh. Where does he live?
A He lives -- well, he lives in Hazleton that time that I know, but I don't know where he comes from.
Q And who else was on that trip with you?
A Just the three of us.
Q And where did the meeting take place?
A Right in Iskut.
THE COURT: I'm sorry.
A Iskut.
MR. MACKENZIE: I-S-K-U-T, my lord.
THE COURT: Oh, yes. It's a well-known location.
MR. MACKENZIE:
Q Iskut is north of Tuudaa dii Lake?
A No, it's north of -- north of Meziadan.
Q North of Meziadan Lake?
A Yes.
Q And when you went up to exchange information you exchanged information with Thaltan chiefs?
A Yes.
Q Can you recall who was there from the Thaltan chiefs?
A Well, only people that are members spoken was Alec Dennis.
Q Alec Dennis.
A Alec Jack.
Q Alec Jack.
THE COURT: I'm sorry. Is that two people?
A Yes.
THE COURT: Yes. Thank you.
A The other one's last name Jack, the other one's Dennis.
MR. MACKENZIE:
Q And what was that information exchange about?
A Well, something about the territory. Just the story

1 that we are talking about. It's not big issue. Just
2 talking, that's all.
3 Q Did you tell a story about Meziadan Lake?
4 A No.
5 Q What did you say at that meeting, if anything?
6 A Well, we just talking and see what -- what he's
7 hunting. We been talking about hunting.
8 Q Were you talking about the hunting grounds?
9 A Not particularly hunting ground.
10 Q Were you talking about the boundaries with the Gitksan
11 people?
12 A Not particularly.
13 Q Have you attended any meetings with Kaska Dene people?
14 That's Kaska, K-A-S-K-A, Dene, D-E-N-E.
15 A That's the one in Burns Lake.
16 Q And in Burns Lake they had Kaska Dene people there?
17 A Yes. That's --
18 Q And they had some people there from Fort Graham?
19 A Yes.
20 Q And Fort Graham is northeast of the Tuudaa dii Lake,
21 isn't it?
22 A Yeah, east of that. Two separate roads, Fort Graham
23 and Fort Ware.
24 Q Fort Ware is another group of Indian people?
25 A Yes.
26 Q And Bear Lake also -- I'm sorry. At Burns Lake also
27 there were Carrier-Sekani people?
28 A Yes.
29 Q And Sekani people were the people from Takla Lake, is
30 that correct?
31 A They could be.
32 Q So did you attend any meetings with the Kaska Dene
33 other than at Burns Lake?
34 A No.
35 Q Did you attend a meeting, any meetings with the
36 people -- sorry. I'll rephrase that.
37 Did you attend any meetings at Bear Lake to
38 discuss the boundaries?
39 A No.
40 Q Have you attended any meetings at Moose Valley?
41 A Yes, I attend that.
42 Q And Moose Valley is just south of Tuudaa dii Lake,
43 correct?
44 A Yes.
45 Q And do you recall that you were at Moose Valley in
46 1986?
47 A Yeah. Could that be that date? I only there once,

that's all.
Q And the subject discussed at that meeting was the boundary between the Gitksan and Dene people?
A Yes.
Q And Neil Sterritt Sr. was there?
A Yes.
Q And Alfred Joseph was there?
A Yes.
Q And Robert Jackson was there?
A Yes.
Q And at that meeting the Dene people told their -- their histories?
A Yes.
Q Yes. And they told their histories of the area of around Tuudaa dii Lake?
A Yes.
Q And did the Gitksan people tell their histories?
A Yes.
Q Was David Gunanoot there?
A No. I couldn't remember if was David there.
Q And is it fair to say that the Dene people told histories about their claims in the Tuudaa dii area, is that correct?
A Yes.
Q And the Gitksan people told histories about their claims in the Tuudaa dii area?
A Yes. Just talking about -- not really into the history. At that time they're just talking about the boundaries, and they talk about different places. What these people were talking about that's -- that's people House of Nii Kyap speaking that time. Only one person is different. William George is different than the other people. All the clan of Nii Kyap that spoke at that time.
MR. MACKENZIE: Do we have the spelling of the -- plaintiffs' spelling for Nii Kyap? My lord, perhaps I could give that.
MR. RUSH: 52.
MR. MACKENZIE:
Q William George is from Takla Lake, correct?
A Yes, is from --
Q So the Dene people at that meeting at Moose Valley told you about their claims to the area around Tuudaa dii Lake and south of Tuudaa dii Lake, is that correct?
A Yes. One spoke from the place you were talking about, Fort Ware, but he said they're not prepared for that

1 meeting because the elders are not there at that time.
2 Only one spoke at that time.
3 Q And where is Fort Ware?
4 A That's east of that.
5 THE COURT: East of Tuudaa dii?
6 A Yes.
7 MR. MACKENZIE:
8 Q Did you take any notes of that meeting?
9 A I don't.
10 Q You didn't have any notes?
11 A No.
12 Q Was that meeting taped?
13 A I don't think so.
14 Q Neil Sterritt Jr. was there, wasn't he?
15 A Yes.
16 Q To your knowledge did Neil Sterritt Jr. take notes of
17 that meeting?
18 A I'm not sure whether he take notes.
19 Q Can you tell his lordship which areas the Dene people
20 spoke about?
21 A These people from Nii Kyap, as I say, that's the only
22 one spoken, except William George.
23 Q And which areas did they claim?
24 A Well, they say that these areas belongs to them, that
25 place where we have meeting with.
26 Q At Moose Valley?
27 A That's Nii Kyap's House, the ones that spoke.
28 Q The Dene people said the Moose Valley belongs to them?
29 A Not Dene. These Nii Kyap people are from Gitksan
30 people.
31 Q Yes. The people who attended from Fort Ware and Fort
32 Graham said that the Moose Valley belonged to them?
33 A No. The only one spoke -- as I say, I didn't recall
34 what his name if he mention, he ever mentioned his
35 name, but he didn't say anything. He just say the
36 people not ready. They know about that area.
37 Q Yes.
38 A But these people are not ready to tell anything at
39 that time.
40 Q But they told the histories of their house, didn't
41 they?
42 A Not them.
43 Q But the people from Takla did tell histories of their
44 house?
45 A Yeah. One person that speaks is -- is William
46 Charlie.
47 Q Was it William Charlie or William George?

A William Charlie.
Q William Charlie. So William Charlie from Takla Lake spoke about his people's hunting and histories in the Moose Valley area?
A Yes, that spot. Not specific histories on that. Just little stories. Name of the area. Just exactly what they doing at that time.
Q Is the area around Moose Valley --
A In Moose Valley in the north and west and north only spot we are talking. Not specific history we are talking. But William Charlie is Gitksan people.
Q He's in Takla Lake --
A He's in Takla Lake band.
Q And you've -- okay. At that Moose Valley meeting did the people mention what had taken place at Bear Lake in 1985?
A I wasn't there at meeting at Bear Lake.
Q No, I understand that. There was reference to the meeting at Bear Lake, wasn't there?
A Not exactly.
Q Did they tell about the meeting at Bear Lake?
A Well, they just mentioned Bear Lake at that time, but they didn't say anything at that time.
Q And the people from Takla Lake also claim the area of Bear Lake too, don't they?
A People -- which, Gitksan or --
Q Takla Lake.
A Or Carrier-Sekani?
Q Takla Lake band members.
A The band. Depends who you're talking about.
Q Yes. Do you agree with me that the members of the Takla Lake band claimed the area around Bear Lake?
MR. RUSH: Isn't this hearsay, my lord?
THE COURT: Well, not really. Is it? He's not proving facts through the mouth of a third person. He's saying what position was taken by someone at a meeting he attended.
MR. RUSH: If he were being asked that that would be another matter, but he's asking about a band, and the band presumably is a group of people, and presumably the -- somebody -- the inference is that somebody in the group of people spoke at the meeting. This witness heard it and therefore this witness is able to say what the band position is, and I say that's hearsay.
THE COURT: Well, it may be that there is some doubt about -- about who the speaker represented, but if for example the speaker was the head chief of the band it might be

he who's speaking for the band. I agree that there is more specificity required. I think the modern view of the hearsay rule is to confine it in those cases where somebody is proving a fact through the statements of a non-witness. I don't think when one is dealing with something like a position taking a discussion that that is proving a fact except the fact he said it, but I agree with you there is a problem of agency. You might be able to clear that one, and maybe you won't, Mr. Mackenzie.

MR. MACKENZIE: Yes, my lord. I didn't mean to ask what the band's position was.

Q My question is can you agree with me, Mr. Morrison, that members of the Takla Lake band claim the area around Bear Lake?

A What you talking, the reserve?

Q No. I mean the hunting grounds around Bear Lake.

A Well, the people that claim it it's their own hunting ground they were talking about.

Q Yes.

A I just mentioned to you William Charlie.

Q Yes. He's from Takla Lake?

A Yes.

Q Thank you.

THE COURT: And he was a Gitksan?

A Yes.

MR. RUSH: From the House of Wiigyet.

A Yes -- or no. That's not correct. That's House of Miluulak.

MR. MACKENZIE: Did you get that, my lord, Miluulak?

THE COURT: Not yet.

MR. MACKENZIE: House of Miluulak have a number?

THE COURT: M-I-L-U-U-L-A-K, I suppose.

MR. MACKENZIE: Number 49, my lord.

Q Now, the Sekani people also had hunting grounds around Bear Lake, didn't they?

A Well, Carrier-Sekani you say?

Q Yes.

A Well, there are people in Nii Kyap's territory they call it. People live in Fort St. James in the House of Nii Kyap.

Q Fort St. James?

A Yes. Who lives in Fort St. James, they're the ones who say belongs to them. That's the House of Nii Kyap again.

Q Yes.

A That's Gitksan people.

1 Q Yes.
2 A Not Carrier-Sekani.
3 THE COURT: I'm sorry. I missed what we were talking about
4 there. People in the House of Nii Kyap living in Fort
5 St. James claimed what?
6 MR. MACKENZIE:
7 Q The hunting grounds around Bear Lake?
8 A Yeah.
9 THE COURT: All right.
10 MR. MACKENZIE:
11 Q After you took the name Txaaxwok did you attend a
12 feast with the Nisga'a chiefs at Gitwangak?
13 A No, I answered that yet.
14 Q Were you aware of the feast that was held with the
15 Nisga'a chiefs?
16 A No, I wasn't around that time.
17 Q Where were you?
18 A I don't know where I was. I could have been in
19 Vancouver. I wasn't around, that's why I didn't know
20 about. Notice was sent, I think, but I wasn't around
21 because I travel a lot of the time.
22 Q You travel quite a lot?
23 A Yes.
24 Q And in what connection were you travelling, with your
25 business?
26 A No. I'm -- I'm travel everywhere I want to.
27 Q Yes. And why were you in Vancouver at that time?
28 A I in Vancouver visiting my friends. Sometimes just to
29 get out of my hometown just like anybody else.
30 Q Do you visit Vancouver quite frequently?
31 A Sometimes. I don't remember whether I was here. Go
32 to the PNE or, you know, join --
33 Q Are you still fishing?
34 A Join our friends fellowship together.
35 Q Are you still fishing these days?
36 A Yeah, sometimes.
37 Q You go down to Prince Rupert to fish?
38 A Yes, fishing.
39 Q Do you have a boat down in Prince Rupert?
40 A Yes.
41 Q Yes. And how often do you go down to Prince Rupert --
42 A I go down --
43 Q -- Each year?
44 A -- On the first of July, first week of July, and
45 finished around end of August. The fall fishing is
46 carry on some people, but myself I didn't go.
47 Q So you were engaged in the commercial fishery down in

Prince Rupert?
A Yes.
Q Would you say that fishing is the principal source of your income?
A Not really.
Q Now, did you go to the Nisga'a feast in the Nass Valley the next year after the Gitwangak feast?
A Yeah, I went to Gitanshilkw.
Q Is that in the Nass Valley?
A Yeah, Gitanshilkw.
MR. MACKENZIE: Yes. Could we have a spelling for that, please?
THE TRANSLATOR: G-I-T-A-N-S-H-I-L-K-W.
THE COURT: What is that, please?
MR. MACKENZIE: Sorry. Go ahead.
A Chief was what they call that weasal.
THE COURT: It's a location, a place?
A Location of the place where this village originally native at that time.
MR. MACKENZIE:
Q Is there an English name for that place?
A Yeah, Canyon City.
Q Canyon City. And about a hundred Gitksan chiefs went to the meeting?
A Yes.
Q And that meeting was hosted by the Nisga'a chiefs?
A Yes.
Q And there was dancing and singing at that meeting?
A Yeah. That's them, not us.
Q Nisga'a chiefs --
A Yes.
Q -- Told their histories?
A Yes.
Q And they also sang their sacred songs?
A Yes.
Q And Nisga'a chiefs described their territories?
A Not really. They're telling about the story of Txemsim.
MR. MACKENZIE: Could I have a spelling for that, please?
A Tsemsim is -- it's not a history according to this, what you're telling.
MR. MACKENZIE: Oh, we'll get the spelling and we'll -- I'll ask you more about that.
THE TRANSLATOR: T-S-E-M-S-I-M.
MR. MACKENZIE: That -- have you got that spelling, my lord?
THE COURT: Yes.
MR. MACKENZIE:
Q That is different from an adaawk, isn't it?

1 A Yes. It's just a story that just like those people
2 from Carrier-Sekani speak up this and that. It's
3 little -- it's not the history. When you tell the
4 history you start it from the beginning and it's
5 ended. It's got to be ended. Not half way and it
6 stays there. That's where the history is. They
7 didn't start and stop somewhere. It's got to go all
8 the way and it's ended. But this is the way they
9 telling, stop go, up and stop awhile, and it's never
10 ended.
11 Q So the Nisga'a chiefs told stories about different
12 places in their territory, is that correct?
13 A Yes. Different things they talking about. Same thing
14 I was talking about, just part of those story, but
15 other territory which is not even related with these
16 histories all about in each territory.
17 Q And the Gitksan chiefs responded and told some of
18 their histories?
19 A Yes.
20 Q Yes. And the -- and was David Gunanoot at that feast?
21 A Yes, I believe so.
22 Q Yeah. And Stanley Williams was at that feast?
23 A I didn't really keep track with those people were
24 there.
25 Q Albert Tait, Delgamuuwk, was at that feast?
26 A The only people that I travel with at that time is
27 Kitwancool, but I know those Gitksan people. That's
28 different presentation with the too groups there,
29 Kitwancool and Gitksan.
30 Q You went to the meeting with the Kitwancool chiefs?
31 A Yes.
32 Q And one of those chiefs who was there with you was
33 Soloman Marsden?
34 A Yes.
35 Q And you recall that Fred Johnson was there?
36 A That's different group.
37 Q He's from Gitwangak, correct?
38 A Yeah.
39 Q He was there, do you recall that?
40 A I couldn't remember that.
41 Q The whole idea was to resolve the overlapping claims
42 in the border territories, wasn't it?
43 A Yes.
44 Q And at that meeting the Nisga'a people told about
45 their claims for the hunting grounds around Bowser
46 Lake, didn't they?
47 A Yes.

1 MR. MACKENZIE: Now, Bowser Lake we have seen. And does your
2 lordship recall that Bowser Lake was on the map in the
3 green binder which was at tab 20 of volume 1 of the
4 green binder?
5 THE REGISTRAR: Exhibit 383.
6 MR. MACKENZIE: Yes. Thank you. It was Exhibit 383.
7 THE COURT: Yes.
8 MR. MACKENZIE:
9 Q And the Gitksan people claim hunting ground around
10 Bowser Lake, don't they?
11 A Yes.
12 Q And Bowser Lake is within the land claim area of the
13 Gitksan people, isn't it?
14 A Yes.
15 THE COURT: Are you saying this, it's within the area claimed by
16 the plaintiffs in this action?
17 MR. MACKENZIE: Yes, my lord. My lord, that can be seen from
18 trial Exhibit 5, and from schedule to the -- schedule
19 B to the Statement of Claim.
20 THE COURT: Yes.
21 MR. MACKENZIE: Which -- of which I have a copy here, my lord.
22 THE COURT: I'm only questioning it because it's just outside
23 the area claimed by the Kitwancool chiefs according to
24 Exhibit 383.
25 MR. MACKENZIE: That's my understanding.
26 Q Is that your understanding, Mr. Morrison?
27 A Yes. The boundary as stated where the Xsi maldit is.
28 Q That's Surveyor Creek, right?
29 A Yes.
30 THE COURT: All right. Thank you.
31 MR. MACKENZIE:
32 Q And the Nisga'a people claim the Bowser Lake area
33 because of a treaty with the Stikine people, is that
34 correct?
35 A I don't know about that Stikine.
36 Q Do you know the people at Iskut? You visited there,
37 didn't you?
38 A Yes.
39 Q The Nisga'a people had a treaty with the people from
40 Iskut, didn't they?
41 A I don't know whether they do or not.
42 Q But that's the basis of their claim that they
43 presented at the meeting, is it not?
44 MR. RUSH: How can he answer that?
45 MR. MACKENZIE: I'm sorry. I just want to know whether they
46 said at that meeting --
47 MR. RUSH: If they did isn't that hearsay?

1 MR. MACKENZIE: Well, it's the position taken.
2 MR. RUSH: Well, is my friend putting it in for the truth that
3 in fact that is what they claim, or putting it in, or
4 questioning on it for the purposes of saying that's
5 what they said? It's unclear to me.
6 MR. MACKENZIE: I'll start with that's what they said, my lord.
7 THE COURT: All right. You're talking now about the meeting
8 with the Nisga'a?
9 MR. MACKENZIE: Yes, my lord.
10 THE COURT: Do you know when that was?
11 MR. MACKENZIE: I'm instructed it was after the Gitwangak
12 meeting.
13 Q Is that correct, Mr. Morrison?
14 A I wasn't there at the first meeting.
15 THE COURT: When was the meeting with the Nisga'a people at
16 Canyon City?
17 A Well, it was fall. That's only thing I remember that.
18 I don't remember exact date on that.
19 MR. MACKENZIE: I'm instructed it was October, 1984, my lord.
20 THE COURT: All right. Well, you're asking the witness now
21 about what was said by some Nisga'a chiefs at this
22 meeting at Canyon City which you say was in 1984?
23 MR. MACKENZIE: Yes, my lord.
24 THE COURT: You're suggesting it was 1984. All right. Go
25 ahead, please.
26 MR. MACKENZIE:
27 Q And Neil Sterritt was at that feast, wasn't he?
28 A Jr..
29 Q Neil Sterritt Jr. was at the feast?
30 A Yeah.
31 Q And to your knowledge he made an audio tape of that
32 feast. Do you recall that?
33 A I don't know whether he did or not. I didn't watch
34 people. I was there for the feast not to watch
35 anything with videos going on.
36 MR. MACKENZIE: I can tell your lordship that a tape appears on
37 the plaintiffs' list of documents. I'll give your
38 lordship the number for that if your lordship requires
39 that reference.
40 Q Now, the Nisga'a chiefs had a map of their territory
41 at the meeting at Canyon City?
42 A I don't think they show anything. Maybe they did, but
43 I didn't see anything at that time. You see, what
44 happened that time you didn't mention that. When they
45 have a feast and they have to down feather. You know
46 what down feather means?
47 Q Yes, we have heard that evidence.

A What it means, it means to the people you invited, if I invite you and sit in that feast and you got to listen -- listen to our side. Are you listening?
Q Yes, I am.
A You listen to the feast. That's why I was invited to see what's going on there. This is what they say down feather. You listen and your side not to make any comment back. You might just say yes. This what it means. This is what they were doing to us at that time. They make a down feather and put it on to our heads. That means peace. That we don't say anything. You know what I mean?
Q Yes.
A See, if I invite you and I put down feather on you that means you have to sit back and listen.
Q Yes. So will you agree with me that the Nisga'a people still claim the Bowser Lake area, and that matter hasn't been resolved yet?
A Well, I don't know about that, but I'm just saying this is what happened at that time, that's why we didn't say anything.
Q As far as you're aware the Nisga'a people are still claiming Bowser Lake hunting ground, aren't they?
MR. RUSH: Well, that's a hearsay -- requires a hearsay response. I object to that question.
THE COURT: I'm not sure it's hearsay for the reasons we have mentioned, but there may be a distinction here because this is not a plaintiff. If he was a plaintiff I think he could be expected to answer, but it's a matter of uncertainty. If he knows that they're claiming it then it would seem to me he could be asked about that. It may be that the answer would be hearsay in the sense that if X told them they were claiming it it would be hearsay, but if he talked to a Nisga'a chief and a Nisga'a chief told him they were claiming the Bowser area then it seems to me it would be quite admissible.
MR. RUSH: I can't see how. No, I can't.
THE COURT: It's an admission.
MR. RUSH: No. It might be probative in terms of X chief saying that he on behalf, or in his interpretation the Nisga'a people are claiming, or it might be admissible if he said he was claiming. The question is however in respect of all of the Nisga'a people, of whom there may be 2,00 or 50,000, that they're claiming it. I think unless there is some document, or if there is some other means by which this witness would know that

that it's hearsay in respect of the Nisga'a people, and that's the form of the question.

THE COURT: Well, I think, Mr. Rush, I'm against you on that. I think it goes to the reputation of the -- of the ownership of the land. Ownership is based upon reputation, and if there is a -- if there are people who he has talked to who say we claim it then it seems to me that is negative evidence refuting a contrary reputation.

MR. RUSH: Well, that's precisely it though. That is precisely the danger of pursuing it, because you have heard on the Gitksan side the positive evidence of the reputation, and yet to negate that or lead to an inference of negation of that you hear a statement from any source, not just this witness, on the basis of a similar type of reputation that it isn't so, or there's a contrary claim, and I say that's worthless evidence to you. There may be a claim, and it may be a claim that is advanced by the Nisga'a people on their behalf by someone. It's not, in my submission, probative evidence to be taken from a witness in this way about what he has heard from someone about the Nisga'a people.

Now, if my friend is going to say -- if he's going to pursue that the Nisga'a people have a history, and it follows the type of reputation evidence that your lordship has permitted, and that's quite a different matter, but this witness in particular in respect of this meeting hasn't said that there have been the kind of histories or the adaawk told in respect of those territories as you've heard about the Gitksan.

THE COURT: If there are specific statements made about a claim to a territory then it's my view that that is admissible evidence on the question of reputation.

MR. RUSH: But you haven't heard that.

THE COURT: Well, I think that's what Mr. Mackenzie is trying to find out.

MR. RUSH: No, I don't agree, my lord. The question was do you know if the Nisga'a people have a claim, or still have a claim.

THE COURT: Are claiming.

MR. RUSH: Correct. But that's not the question that your lordship has just posed. Your lordship framed it in terms of are there statements that people made in respect that would support such a claim.

THE COURT: Semantically you may be quite right.

MR. RUSH: I don't think it's a matter of semantics, my lord.

It's here the Gitksan chiefs are put to the proof of the reputation. And I say that the contrary evidence of a contrary reputation in a general form such as this cannot in any way lead to a negative inference to be drawn about proof of their ownership of their territories. And certainly not in this way.

THE COURT: Doesn't an adverse claim reflect upon a reputation?

MR. RUSH: No, I don't think it does, because a claim is a worthless thing in the air. Anyone can make a claim to anything. What might be an adverse reputation or adversely affect the reputation of the Gitksan chiefs would be if there were contrary evidence called of history, of reputation of authority, and of community. The same tests that were required of the Gitksan. Now, I say that any claim is worthless unless there is something to back that claim up of a probative -- of a probative kind that would lead your lordship to a conclusion that there is an adverse right adverse to the interests of the Gitksan chiefs.

THE COURT: Thank you. Mr. Macaulay, do you have any submission on this?

MR. MACAULAY: My lord, as I understand the exception to the hearsay rule having to do with reputation is that the evidence is admitted notwithstanding its hearsay character which normally makes -- excludes it, because first there is no other practical way of establishing an ancient reputation, and secondly, because the reputation evidence has to pass the test of general acknowledgement as you call that. In other words, the plaintiffs here will have to show that it's generally acknowledged by neighbours, by the population generally that a house is entitled to a given territory. It's up to the -- those people challenging the reputation -- it's open to the people challenging the reputation to show that second characteristic doesn't exist. If for instance there has been a challenge, take the instance of a neighbouring house of the Gitksan where there's a dispute, and we have some evidence of disputes over boundaries, that's clearly admissible on the question of whether or not the reputation evidence ought -- the alleged reputation evidence qualifies as an exception to the hearsay rule. It follows that your lordship should listen to and take into consideration in coming to a decision on whether or not this evidence is admissible consider whether there are -- there is evidence of other people entered who challenge that reputation.

1 And if this witness has met with the representatives
2 of a neighbouring nation he can be asked doesn't that
3 neighbouring nation dispute your -- your -- whatever
4 house it happens to be, your Gitksan claim to this
5 land. And if this witness were to say yes, they
6 dispute it, or they did dispute it when I was there,
7 then that's evidence that your lordship will be
8 entitled to consider because it goes to the question
9 of reliability, because it goes to the question
10 whether or not there was general agreement in the
11 community.
12 THE COURT: The problem I have with the evidence -- I tend to be
13 with you up to this point, Mr. Macaulay, and the
14 question I'm having difficulty with is that the
15 conversation that he's describing is with a living
16 person. Should not that living person be called to
17 give evidence rather than give it through a
18 second-hand source? I'm not sure it's hearsay for the
19 technical reason I mentioned, but reputation is not
20 upon the speaker being deceased, because if the
21 speaker is alive shouldn't he be called?
22 MR. MACAULAY: Yes, if the evidence is of a particular person
23 making a particular statement.
24 THE COURT: Yes.
25 MR. MACAULAY: But if the evidence is a neighbouring community
26 or another part of the Indian community clearly is
27 doing things --
28 THE COURT: Yes.
29 MR. MACAULAY: -- Inconsistent with what the consensus of the
30 plaintiff is trying to show.
31 THE COURT: Their activities could certainly be proven. You
32 wouldn't have to call them to prove their activities
33 if they could be proven through the witness in
34 cross-examination. It seems to me it might make a
35 difference if this unnamed speaking person is alive
36 and could be called as a witness.
37 MR. MACKENZIE: My lord, this did take place at a feast. And as
38 your lordship will recall, and Mr. Morrison's
39 affidavit, and in several of the -- a lot of the
40 evidence we've heard today evidence has been given of
41 reputation of things that were said at the feasts.
42 And that is -- I think, your lordship has accepted
43 that as a particularly solemn forum in which
44 evidence -- at which statements made will be accepted,
45 in this culture which has an oral tradition will be
46 accepted as an exception to the hearsay rule.
47 THE COURT: I haven't read my judgment for some time. Doesn't

it depend on deponents or the source -- the source of the information being deceased and therefore not capable of being called?

MR. MACKENZIE: That's one -- I think that's one category, my lord. But as Mr. Macaulay says we are talking about ancient oral history -- ancient oral history of the Gitksan and Nisga'a people, and so what is admissible for the Gitksan people as ancient history as told in their feasts should arguably be applicable also for the neighbouring peoples who also have oral histories and very solemn forums in which these matters are discussed.

MR. RUSH: Well, I find this an amazing argument on the part of the defendants, because it seems to reverse the positions taken back last May when we were arguing for a wider scope to the admissibility of reputation evidence. But if I may say, I think that the element of necessity with regard to reputation evidence is certainly the key element with regard to who the speaker of the information is, and if the person is a deceased person obviously that is one of the features of why the evidence should fall into the category of reputation evidence.

But the second aspect of this is that my friend Mr. Mackenzie takes the view that the Nisga'a people have an equivalent culture and society in respects that have been testified to you in considerable detail. You know nothing about that. You know nothing about the way in which the Nisga'a people operate in a feast society, and I don't think that you can draw conclusions that because there is a feast in the Nisga'a -- among the Nisga'a people therefore it follows that it has the same basis for authenticity and authority as it does among the Gitksan.

And my third and final point is that underlying the questions that were put to Mr. Morrison is the supposition that some unknown speaker somehow had authority to speak on behalf of all the Nisga'a people and he was the bona fide representative of the collective wisdom of those people. Again, you don't have any identified individual, let alone whether or not the persons that were present and apparently spoke at a time when Mr. Morrison could have heard anything said were people that were heads of houses or chiefs or in any way people who had a representative capability of speaking with authority in the community. And it's for these reasons that I say this

kind of evidence to this witness is completely inappropriate. That doesn't mean to say that I disagree with the point that is made by Mr. Macaulay, and that is that it might be this evidence can be called, but it can't be called in this way.

THE COURT: I have no doubt the evidence will be called, it's just whether this witness can give it. I'm going to --

MR. MACKENZIE: My lord, may I make one brief comment in response to Mr. Rush's?

My lord, I did take a position as Mr. Rush said that appears to be contrary to the position that was our objection, but my point was that if the Gitksan evidence is going to go in then this will go in also, but the position of the Province, as your lordship will recall, is there was an objection to all this evidence going in. Your lordship has ruled it will go in now and be argued later.

THE COURT: I'm not sure this evidence falls in that category. It might.

MR. MACKENZIE: That's the qualification that should be put on the position I took, my lord.

THE COURT: Well, I've lost track of my own memorable words, and I don't remember what I said, but I'm going to adjourn. I'll deal with the matter as soon as we resume. Being Friday I may be a few extra minutes.

THE REGISTRAR: Order in court.

(PROCEEDINGS ADJOURNED)

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

Peri McHale, Official Reporter
UNITED REPORTING SERVICE LTD.

(PROCEEDINGS RESUMED AT 3:20)

THE REGISTRAR: Order in court.
THE COURT: Mr. Mackenzie, you're not going to finish this witness today, are you?
MR. MACKENZIE: No, my Lord.
THE COURT: Well, can you carry on with something else?
MR. MACKENZIE: Yes, my Lord.
THE COURT: I would like to look again at the authorities on questions of evidence where the reputation about title can be rebutted by statements made by non-witnesses inconsistent with the reputation, and I would like to have a look at the authorities and see what it says, and if it's convenient I'll deal with the matter first thing Monday morning.
MR. MACKENZIE: Thank you, my Lord.
THE COURT: I will be glad to hear counsel if they can assist me further.
MR. MACKENZIE: My Lord, just for your Lordship's information, I'm pointing to trial Exhibit 5, and the location of Bowser Lake in the far north-west part of the land claims territory.
THE COURT: Yes. Where is Meziadan Lake?
MR. MACKENZIE: Meziadan Lake is just to the south, my Lord.
THE COURT: All right, thank you. It sure would help to see if I had Mr. Macaulay's map.
MR. MACAULAY: Just going to look to see, my Lord.
THE COURT: Your map's over here, Mr. Macaulay.
MR. MACKENZIE:
Q Now, I want to speak about the Burns Lake feast again in April -- April 6th, 1987. I'm going to draw your attention to the Burns Lake feast again, Mr. -- do you remember a Bear Lake Tom being at that feast at Burns Lake?
A Who's that again?
Q Do you remember Bear Lake Tom being at that feast at Burns Lake?
A No. I couldn't recall if there was any speaker or that person.
Q Do you recall someone saying that -- somebody saying his father was Bear Lake George?
A No.
Q And that his mother said they had never seen Gitksans in that area of Bear Lake; do you recall that being said?
A No.
Q Do you recall a person from Takla Landing at that

feast named Sam Hall?
A No. I couldn't recall of anyone.
Q Do you remember him saying "The Gitksans are going too far trying to take our land"?
A No.
Q Do you remember at that feast at Burns Lake someone called Moise, M-o-i-s-e, Johnny, 81 years old?
A No.
THE COURT: I'm sorry?
A No.
MR. MACKENZIE:
Q Do you remember him saying Bear Lake is not for Hazelton?
A No. What do you mean Hazelton, as the town of Hazelton?
Q Yes.
A There's a town in Hazelton and it's not reserve land.
MR. MACKENZIE: No.
THE COURT: It doesn't matter, Mr. Morrison, you've said you don't remember, so that's the end of if so far as your evidence is concerned.
MR. MACKENZIE:
Q Do you remember meeting Gordon Pierre at the Burns Lake feast?
A No.
Q But you can agree with me that as a result of your meetings at Moose Valley, Port Babine, Takla Lake, and Burns Lake you were aware that there were differing opinions as to the ownership of the lands on the eastern boundary of the Gitksan land claim around Bear Lake and Tuudaadii Lake, correct?
A Which one are you referring to, the Moose Valley -- or we've got point one meeting.
Q I'm just going to say you went to all those meetings, you were aware that there were differing opinions about who claimed the ownership?
A Yes.
THE COURT: And your question was differing opinions about ownership of Bear Lake or Bear Lake and Tuudaadii?
MR. MACKENZIE: Bear Lake and Tuudaadii Lake area.
THE COURT: Thank you.
MR. MACKENZIE:
Q And you were personally familiar with the Bear Lake area and the Tuudaadii Lake area because you flew in the helicopter in those areas, didn't you?
A Yes. I think you have to refer that you're saying that you deal with three lands, Babine, and you're

saying three, that's why I want to see point one meeting, because apparently the first meeting is the other boundary, not upper boundary.

Q Oh, yes. You recall that there were discussions about the boundary at Kotsine pass?

A Where Miluulak's territory is.

Q Do you know the word -- do you know the Kotsine River?

A Yes. That's where Miluulak's call Xsi ga malhlit. That's referring to the first meeting.

Q I think we need some spellings now. K-o-t-s-i-n-e is the creek?

A What's the Indian name?

MR. MACKENZIE: I don't know the Indian name, but I'm going to point out to his Lordship where the Kotsine River and the Kotsine Pass is. This has come up before, my Lord.

THE COURT: On the eastern boundary?

MR. MACKENZIE: South of Bear Lake, my Lord.

THE COURT: South of Bear Lake?

MR. MACKENZIE: Yes. So that was an area -- I'm sorry. Did we get the spellings?

THE COURT: K-o-t-s-i-n-e?

MR. MACKENZIE: Yes, my Lord.

THE COURT: I didn't get that.

MR. RUSH: No.

MR. MACKENZIE:

Q Did you have a Gitksan name for that Miluulak area around Kotsine Pass?

A That's why I'm asking, I only know some names. You've got to point that out where you're talking about, I don't know that English name. If you can put any name anywhere. You have to use the Indian names to know where you're talking about.

Q Are you saying that you don't know about the Kotsine Pass?

A As I say, I don't know about that.

Q Fine.

MR. RUSH: Well, a Gitksan word was used and it was asked to be spelled, and I think it should be spelled.

THE COURT: Who used it?

MR. RUSH: I think it was the witness.

THE COURT: Oh, I didn't even know about it. Do you remember the Indian word you used or the Gitksan word you used for Kotsine?

A You see, this is different word and this is why I'm asking, is that which --

THE COURT: No. We're asking you, sir. It's said by your

1 counsel, or counsel of the Plaintiffs, that you used a
2 word for Kotsine. If you did can you give us that
3 word again, please?
4 A No. He was using it.
5 THE COURT: No. Not as I understand it.
6 MR. MACKENZIE: Fine, my Lord. Do you recall, Mr. --
7 THE COURT: Well, we still don't have it.
8 MR. RUSH: Well, my Lord. I thought the witness referred to a
9 place, whether it was Kotsine or some other place, on
10 Miluulak's territory, and he gave the Gitksan word for
11 us.
12 THE COURT: Can you give us that word again, please, Mr.
13 Morrison?
14 A Xsi ga malhlit, that's the place I'm referring to on
15 Miluulak's territory.
16 THE TRANSLATOR: X-s-i g-a m-a-l-h-l-i-t.
17 THE COURT: I'm sorry. M-a-l --
18 THE TRANSLATOR: H-l-i-t.
19 THE COURT: L-i-d or t?
20 THE TRANSLATOR: T.
21 THE COURT: Thank you.
22 MR. MACKENZIE:
23 Q Now, did you have a meeting with Neil Sterritt and
24 David Gunanoot and Steve Robinson after you became
25 Txaaxwok to discuss the eastern and western boundary
26 of the land claim?
27 A What area is that?
28 Q I beg your pardon, the eastern and northerly boundary
29 of the land claim?
30 A Where does the meeting take place?
31 Q I don't know where the meeting takes place, but I
32 understood what you discussed was this place, Kotsine
33 Pass and a place called dgild gila, d-j-i-l, new word,
34 d-j-i-l-a. Do you recall that meeting?
35 A No.
36 Q Referring to tab 33 of the blue binder, my Lord. Tab
37 33. Now, these are Mr. Sterritt's notes after the
38 meeting; do you understand that, Mr. Morrison? And
39 they say that you were at the meeting on June 1983,
40 and they say that Mr. Sterritt was there, David
41 Gunanoot, Steve Robinson, Robert Jackson, you, Lester
42 Moore, and David Green. Now, do you remember that
43 meeting?
44 A Maybe give me the place, maybe I would remember it,
45 but I don't remember it.
46 Q Do you remember discussing a place, Dgil dgila?
47 A This, the only place I heard Dgil dgila, a word is

first meeting -- first meeting we had at Babine, at that time first that you're referring first, you see this is why I want you to go one, two, three, in order to know what we are talking about, because there are three of them, you can't put it together. It's the first one that deal with Dgil dgila and Ghaal sii noahl loop.

MR. MACKENZIE: Now, is that the name you just -- let's get the spelling for that, please. There's a name written -- oh, we've got to get the spelling.

THE TRANSLATOR: G-h-a-a-l s-i-i n-o-a-h-l l-o-o-p.

THE COURT: Thank you.

MR. MACKENZIE: Now, is that the name that's written beside -- on this page at tab 33 beside the Kotsine Pass. I think that should be pronounced for the witness.

THE COURT: Well --

MR. MACKENZIE: Can you pronounce that. I ask you, Miss Howard, whether she can pronounce the word that appears on the document tab 33, my Lord, this one.

THE TRANSLATOR: That's Ghaal sii noahl loop, the one he just mentioned.

MR. MACKENZIE: Did you get that, my Lord?

THE COURT: Well, I know what they're talking about. It's not the same word.

MR. MACKENZIE: Well, my Lord -- sorry, I didn't mean to interrupt you.

THE TRANSLATOR: It's Ghaal sii noahl loop. That's the same one.

MR. MACKENZIE: Did your Lordship get that comment from Miss Howard?

THE COURT: Yes.

MR. MACKENZIE: Your Lordship of course is correct that the spelling is different, but my Lord, there are different spellings for these words with the same pronunciation, as your Lordship is aware.

THE COURT: Yes, all right.

MR. MACKENZIE:

Q So did you discuss that place that Mrs. Howard just mentioned?

A Yes. And that meeting at Babine.

Q Yes. And that's an area that there's some difference of opinion about the ownership?

A Well, they want to make sure I was just with them, witness, because those people have a name on it, they're the owners both sides, that's the reason why they went over there.

Q The Babine people?

A Babine people and Gitksan people.
Q Yes. Now, you flew over the Tuudaadii area. The Tuudaadii area was included within the land claims of the Gitksan people of those days, wasn't it?
A Yes.
Q It was part of the claim in this litigation, wasn't it?
A That's Tuudaadii.
Q Yes. It was part of the claim in this litigation, wasn't it?
A Yes.
Q And now it's outside the territory claimed in this lawsuit, isn't it?
A Could you ask me again?
Q I'm saying Tuudaadii Lake is outside the area claimed in this lawsuit now, isn't it?
A Well, it is Gitksan.
Q Yes. The boundary of the land claims area was moved south of Tuudaadii in 1987 in this litigation, wasn't it?
A I believe so.

MR. MACKENZIE: Yes. Now, my Lord, I have at tab 30C a collection of documents, but I draw your Lordship's attention to the last document at tab 31, just before tab 31.

THE COURT: The map?

MR. MACKENZIE: Yes, my Lord, the map.

THE COURT: Yes.

MR. MACKENZIE: Yes. Now, my Lord, this is a comparison of the boundary on schedule B to the statement of claim at the beginning of this litigation, and the boundary as shown on schedule B to the statement of claim now, and the boundary in 1984 was at Tuudaadii and included Tuudaadii Lake, and since then it's been moved south, and that's reflected by this composite map.

THE COURT: Where is Tuudaadii Lake?

MR. MACKENZIE: My Lord, there should be a number 2 pointing to it.

THE COURT: Oh, yes, I see, or I took that to be the river.

MR. MACKENZIE: That's Tuudaadii Lake, my Lord.

THE COURT: All right.

MR. MACKENZIE: Yes. The point of this, my Lord, is I have the actual -- I have an excerpt from the actual schedules also at that tab, and I have at -- and I refer that to your Lordship at tab 30A. I have the statement of claim, a copy of an excerpt from the statement of claim filed October 23, 1984, and an excerpt from the

schedule amount of the metes and bounds description, and your Lordship, I'll say to your Lordship that that description has the boundary going north along the north shore of Tuudaadii Lake and including Tuudaadii Lake.

THE COURT: Yes.

MR. MACKENZIE: And then an excerpt from the actual schedule follows that metes and bounds description, and it's difficult to see the name Tuudaadii because the boundary goes right through it, but it's -- you can see, my Lord, that if your Lordship will look to the upper -- the north-east part of that land claim area you will see just north of that, right at the north finger you will see something called Tuudaadii Lake, and Tuudaadii Lake extends down L --

THE COURT: Are we still looking at 30C?

MR. MACKENZIE: Well, no, my Lord. I'm referring your Lordship to the -- perhaps this isn't necessary. I'm referring your Lordship to the actual documents of 30A, which is taken from the schedule to the statement of claim.

THE COURT: Yes.

MR. MACKENZIE: In 1984.

THE COURT: Yes, all right. I have that.

MR. MACKENZIE: The reason I'm referring this to your Lordship is to show the basis for the composite map which I would submit as an exhibit.

THE COURT: And you're pointing out Tuudaadii Lake?

MR. MACKENZIE: Yes, my Lord.

THE COURT: And it's right there at the end of the finger.

MR. MACKENZIE: The finger and extends down.

THE COURT: Yes.

MR. MACKENZIE: And the boundary goes through it.

THE COURT: Yes, all right.

MR. MACKENZIE:

Q Now, that was the situation in 1984, and then at 30B the -- the amended boundary is shown. This is an excerpt from the schedule B to the statement of claim, 30B, and the boundary is quite aways south of Tuudaadii Lake now. Your Lordship will see Tuudaadii Lake right in the middle of Spatsizi Plateau. Can your Lordship see that?

THE COURT: Yes.

MR. MACKENZIE: You get a sense of how big Tuudaadii Lake is, my Lord.

THE COURT: I haven't found Tuudaadii Lake yet. Just point to Tuudaadii Lake, please.

MR. MACKENZIE: Right here, my Lord, in the middle of the page.

THE COURT: I see it.
MR. MACKENZIE: In the middle of the -- just before the -- above the words Stikine Plateau.
THE COURT: It's got a square in the north, is it?
MR. MACKENZIE: It's a very large lake, my Lord, you see it goes from the south-east -- south-west at Tuudaadii Creek all the way west and then turns north-west.
THE COURT: Yes.
MR. MACKENZIE: All the way up to -- your Lordship can see goes all the way up to just west of Thomas Peak. The point -- the reason I'm referring to that, my Lord, is it's a good indication of orienting your Lordship to the change in the boundary.
THE COURT: Yes.
MR. MACKENZIE: That's the point of having the comparison which is at tab 30C.
THE COURT: Yes.
MR. MACKENZIE: But this comparison of course just shows part of that change of boundary, particularly the part that relates to this -- the territories in this affidavit.
THE COURT: Where is the westerly end of Tuudaadii lake in 30C? Does it extend beyond the word Tuudaadii?
MR. MACKENZIE: Yes, my Lord.
THE COURT: How far does it extend into the red area?
MR. MACKENZIE: No. It doesn't extend that far, my Lord.
THE COURT: Does it extend beyond the T, west of the T? Well, it doesn't matter.
MR. MACKENZIE: It's a little difficult to tell exactly, my Lord, but I think it extends slightly beyond the edge of the T.
THE COURT: All right, all right, thank you.
MR. MACKENZIE: Your Lordship, this may confuse matters a little bit, if your Lordship looks at Exhibit 378 --
THE COURT: Yes.
MR. MACKENZIE: Your Lordship will see just above -- just north of the area B, north-east of area B you will see Tuudaadii Creek.
THE COURT: Yes.
MR. MACKENZIE: And that flows into Tuudaadii Lake, which is I think just maybe just peaking over the eastern border of the map south of Tuudaadii Lake.
THE COURT: All right, yes. It's all very clear on your map, is it, Mr. Macaulay?
MR. MACAULAY: It is, my Lord.
MR. MACKENZIE: So, my Lord, I wish to submit the comparison of the two -- this area, the two statements of schedule B and the two statements of claim as an exhibit, just to

1 illustrate the difference in the boundary at that
2 location just at area B, the affidavit area B, which
3 is the subject of --
4 THE COURT: Well, is that a matter of evidence, or is that
5 really in the nature of an aide-memoire?
6 MR. MACKENZIE: Yes.
7 THE COURT: So it needn't be marked as an exhibit.
8 MR. MACKENZIE:
9 Q All right, thank you, my Lord. So as a result of your
10 meetings the final boundary was drawn, wasn't it,
11 along the eastern part of the Gitksan land claim?
12 A What part of the corner are we talking about?
13 Q I'm saying there were differing opinions and someone
14 finally decided to put the boundary at a certain
15 position along the eastern edge of the land claim in
16 this litigation, didn't they?
17 A Well, you mean in these two groups that you're talking
18 about?
19 MR. MACKENZIE: Yes.
20 MR. RUSH: My Lord, I can advise that it wasn't the witness that
21 has any knowledge about how this was drawn. I mean
22 that's a graphic decision. Perhaps my friend -- it's
23 been about 12 minutes since we've been talking about
24 the maps. Maybe my friend can go back to the meetings
25 and if there was a decision taken then he can be asked
26 about that.
27 THE COURT: Well, I suppose the question for the witness, Mr.
28 Mackenzie, is whether he had any part to play in
29 setting the boundary.
30 MR. MACKENZIE:
31 Q Did you have any part to play in making the final
32 decision where to put the boundary for the Gitksan
33 land claim?
34 A Not me.
35 THE COURT: Who did?
36 A Not me. I was there just to witness those people. I
37 didn't see anything, so I -- I wasn't made to make a
38 decision on the boundary.
39 MR. MACKENZIE:
40 Q Who made the decision on the boundary?
41 A The people themselves, both sides.
42 Q Which people was that?
43 A On both sides, the people you were talking about.
44 Q Who decided that, the boundary between the --
45 A Gitksan.
46 Q Who decides the boundary between the Thaltan people
47 and the Gitksan people?

A The Gitksan people and the Thaltan people, it's up to them to decide it and that's meeting them, and there's something else to come out of that meeting, this is what they have to decide, not just between you and I that we decide.

Q Who decided the boundary at Bear Lake?

A Well, they're the ones that -- people both sides too. You see, they have to read that in which I can tell you how to put the boundary today, it's up to them to put the boundaries, they're supposed to be.

Q Now, the boundaries --

A And the history -- on the history of each chief, you've got to protect that land, and there's a history behind all this territory. This is how it would be put about to the boundaries. You can't just draw a line to the boundaries and say this is my territory.

Q Now -- yes?

A You've got to tell this what is inside your territory, and it's not up to me to tell you the history about that, it's up to each individual chiefs that they have history, which I have no authority over without the permission.

THE COURT: No. That's not right, Mr. Morrison. If you were in when the agreement was reached you could tell us about it.

A Well, they don't reach any agreement at that time.

THE COURT: Somebody did somewhere.

MR. MACKENZIE:

Q There was no agreement reached?

A Well, not according to me. I don't know anything about this boundary. This map is nothing on it, you see, it didn't say anything on it.

THE COURT: Well, were you present when any agreement was reached about where to draw the boundary for the purpose of this lawsuit?

A Well, these people make it together, I didn't heard anything about what they were saying that they agreed together to make a boundary. You see, if they agreed with that I would have known today where the boundary is.

MR. MACKENZIE:

Q So there's different opinions about where the boundary is?

A Yes.

Q Now, when you were at the meeting at Burns Lake did you see this map which is behind you, Exhibit 101 in this lawsuit? Do you recall ever seeing that map?

A No.
Q That shows the Carrier-Sekanni claim in the -- partly in the north-eastern portion of the land claim area. Do you recall ever seeing that map?
A No.
THE COURT: That's Exhibit 101?
MR. MACKENZIE: Yes, my Lord. I have an excerpt of Exhibit 101 in the blue binder at tab 32, and I refer your Lordship to the second page at tab 32. Now, Mr. -- my Lord, I've taken the liberty of matching the areas, territorial areas of Mr. Morrison's affidavit on this excerpt from Exhibit 101. Your Lordship can see Tuudaadii Lake there in the upper right-hand corner.
THE COURT: Yes.
MR. MACKENZIE: Tuudaadii Lake --
THE COURT: Is Tatla to'o and Tuudaadii the same thing?
MR. MACKENZIE: No, my Lord. Tatla to'o is north of Tuudaadii.
THE COURT: I see. They're both marked, I didn't see the second one.
MR. MACKENZIE: I point your Lordship south to Hoy Lake, H-o-y, which is just in the corner there, just east of territory A, just south-west of Tatla to'o Lake. That's the point of some importance in this discussion.
THE COURT: Yes.
MR. MACKENZIE:
Q And now, Mr. Morrison, this is the Carrier-Sekanni claim, and it goes right through territory B, the Xsi andap matx, Fort Creek territory. I want you to look at this, please, and just confirm that?
MR. RUSH: I think the 378 should be put to the witness as well.
THE COURT: Yes.
MR. MACKENZIE:
Q Yes, thank you. I'm putting -- oh, could we have Exhibit 378, please, map A. Now, Mr. Morrison, you can see on this exhibit or this excerpt from Exhibit 101 that the Carrier-Sekanni claim starts just south of Hoy Lake and it proceeds south right through Fort Mountain or Andap matx, where -- do you see that?
A Which boundary are you referring to?
Q This boundary here.
A This one?
Q The black boundary. It goes right through Andap matx; do you see that?
A Yes.
Q And that's Fort Mountain, right?
A Yes.

MR. MACKENZIE: Yes. And it continues down to where the Mosque River and the Skeena River meet; is that correct, that's Xsi gwin hliiyuun?
THE COURT: That's Mosque, isn't it?
MR. MACKENZIE: Yes, my Lord. Does his Lordship have that point?
THE COURT: Yes.
MR. MACKENZIE:
Q And the boundary of the Carrier-Sekanni claim then proceeds west of the Skeena down through the lower part of Xsi gwin hliiyuun territory on the western part of the Skeena and then crosses over the Skeena south of Xsi gwin hliyuun territory; do you see that?
A Yes.
Q Yes? Were you aware that the Carrier-Sekanni people claimed part of this territory at Andap matx?
A The first time I sign this map I didn't see that before.
Q Do you know the Carrier-Sekani have a claim based on their hunting grounds?
A I don't know anything about that.
Q No? Wasn't that described at Burns Lake?
A Yes. But not this one here.
Q They -- fine, thank you.
THE COURT: Shall we adjourn, Mr. Mackenzie?
MR. MACKENZIE: Yes, my Lord.
THE COURT: All right. Is it convenient to inquire how we're getting along?
MR. MACKENZIE: Yes, my Lord. I expect that we will be finished on Monday.
THE COURT: Yes.
MR. MACAULAY: Well, could I bring up the question of -- your Lordship invited us to bring up the question of maps again. This is one of those cases where the map would be very useful as a guide to show pretty clearly where Tuudaadii Lake is, Tuudaadii Creek, all those land marks in small compass so they're easy to handle, and I've been waiting impatiently for my friend, Mr. Rush, to tell us what his position is regarding the base map and the two overlays that there are. Perhaps this is a good time to do that before this cross-examination is finished in case I didn't know -- I don't know what the position of my learned friend for the Province is going to ask. Perhaps I ought to have brought this matter forward before the cross-examination began.
THE COURT: Are you not in a position to deal with Mr. Macaulay's map, Mr. Rush?

MR. RUSH: I hate to depart from tradition, my Lord, but I'm tempted to say I would like to see the matter go to Monday, but I am prepared to say this, that we have looked at the map and we unfortunately disagree with the accuracy of the lines that are allegedly portraying the various boundaries of the sequences of maps that they purported to show, and certainly we don't agree that these, as I'm sure you will be told, helpful shaded areas in red and green and so on represent what they say that they represent. Now, that's the qualification. We've looked at these, and we have considerable disagreement where the federal cartographer says that certain of these lines go. Now, there is a base map on this, and your Lordship will see that it contains a number of the English-named reference points. It's convenient for my friend of course because it's in English, but in my submission we of course are leading evidence with the Gitksan names on them, which the witnesses refer. Subject to all those qualifications, I think it would be something your Lordship might find, as you already have with one previous map, as an aide-memoire.

THE COURT: Well, I would be very happy to have the underlying map, and Mr. Macaulay, is it a problem if I only have it as an aide-memoire for the time being?

MR. MACAULAY: That's a start, my Lord. It's true, this is a conventional -- the base map or underlying map is just a conventional map, it does not have the Gitksan and Wet'suwet'en names on it, but we -- our evidence, since it's absolutely necessary, our evidence does always get into translating names, determining where they are.

THE COURT: Well, I know that there's going to be a continuing problem with -- with the English-Gitksan dichotomy, and we have to live with that. But speaking for myself, I would be very glad to have a compendiously sized map like this one, Mr. Rush, if I could just have it as an aide-memoire. For example, I'm having serious trouble relating map A and B in juxtaposition to Kispiox, for example. I still don't know whether they're in walking distances or hundreds of miles apart. I have difficulty relating how far apart it is from Kispiox or Hazelton up to Meziadan Lake. These are all things if I had them all in one map it would be very easy to get myself better situated.

MR. RUSH: And I think the map is useful to that extent, and what I'm saying of course is the other lines which

purported to be lines of other maps rendered on this one I would ask your Lordship to look at with some circumspection.

THE COURT: I will look at them with great suspicion, but until I hear Mr. Macaulay's submission or evidence on it it could be simply to prove the matter. If that happens I may need to, for my purposes, just the underlying map, I would be very greatful if you start to use the map as an aide-memoire.

MR. MACAULAY: Could I explain again what the overlays are. My friend's comments concerning the two overlays, one overlay is our cartographer's shrinking down of Exhibit 5.

THE COURT: Yes.

MR. MACAULAY: Which is the plaintiff's document.

THE COURT: Yes.

MR. MACAULAY: Overlay 2 is a cartographic rendition of the various descriptions in the statement of claim.

THE COURT: Yes.

MR. MACAULAY: Of the claim area. And the colours show what has been added and what has been subtracted, that's all, but they don't pretend to -- because of the scale, for one thing, that's a small scale.

THE COURT: Yes.

MR. MACAULAY: They can't possibly be as accurate as a map that would be 1 in 10,000.

THE COURT: Yes, all right. Well, I will --

MR. MACAULAY: They give you a general measure.

THE COURT: I will be glad to have it with all its infirmities, if any. All right, apart from that, what do you see, Mr. Rush, about the rest of the trial? We only have two days next week and then we're on for a week, and then I think we go -- let's see, then we're off for a week, I guess, then we're on for three and then off, and then we're back for three, I think. Where will we be at the end of June?

MR. RUSH: I'm hoping we will have completed the native witnesses by the end of June. I'm hoping that to be the case, although certain things -- there are certain problems in this respect, that not the least of which one that I want to raise right now is we have -- we have a situation where there is a witness who can be called as soon as Mr. Morrison is completed, but he of course is -- will have to be called down to Vancouver. He's in Vancouver now, he expected to be called today, and it looks as though his evidence won't be called until Tuesday now, and then he will return and we will

have to come back on May the 2nd. Now, I only raise all of this saying that it's a costly matter for us to either keep a witness here or not to know with as great as precision as we can whether he will actually be called on Tuesday and then have to return. Of course, I would prefer not to have him called if he's -- if he's -- I would prefer not to have him here if he's not going to be called on Tuesday, and I guess what I'm really saying is I would like as accurate an assessment from my learned friends as to whether or not he's going to be called on Tuesday.

THE COURT: Would it help if we decide now that we will complete Mr. Morrison and call no other witnesses until the following Monday?

MR. RUSH: Well, that's one option. I'm not enthusiastic about that option.

THE COURT: Is there any advantage in calling him on Monday and standing Mr. Morrison down, or is it -- is that just the same problem with a different witness?

MR. RUSH: I think it's the same problem.

THE COURT: Well, I'm in your hands in this regard. I will be -- I'm willing to adjourn until the following Monday when we finish Mr. Morrison, if that's counsel's wish, or I will be glad to stay and carry on until Tuesday and hope we can finish that, whatever counsel thinks is reasonable.

MR. RUSH: If my friend can give me as accurate an assessment as possible how long it will take it might allow me to make a decision on Monday.

THE COURT: Perhaps when we adjourn they can give you their best estimates.

MR. RUSH: I also say this as part of the general problem of estimating the length of time it's going to take in order to complete the trial, other than that our hope is we will finish the native witnesses by the beginning of the summer.

THE COURT: All right. I have to raise a problem with counsel that I would be glad to have your assessment of the situation. I'm sure you've all heard of the Zuber Report, and I'm sure you're all aware of the serious problems facing Canadian courts and the management of trials and that sort of thing, and sometime ago I gave a general commitment without the final commitment to the Attorney General of Ontario that if possible I would try to attend a three-day meeting he's arranging on Canadian lawyers and jurists to discuss this important question, which is set for three days in

June, which are Monday, Tuesday, and Wednesday, which we're planning to sit. The Attorney General is really anxious to have a representative from a court that's well managed, and that is the impression which that request was put to me. I would not accept the invitation if those three days made the difference of finishing a class of evidence, so you think three days is going to be crucial in June, or is it perhaps not the time to do more than just ask the question, could I leave that question with you. It's the 20th, 21st and 22nd of June, which is one of our sitting weeks, and I'm not dying to go east at all. Again, I would go if it was convenient, a response to the request of the Attorney General of Ontario, but I would like counsel to think about it and let me know. If they think it's going to make a serious difference I would not go.

MR. MACAULAY: My Lord, if at the end of June we may find ourselves, who knows, with four or five days to complete rather than three or two.

THE COURT: Yes.

MR. MACAULAY: I would hope that we could all make the necessary sacrifices and arrangements to sit early in July to finish off that lay evidence.

THE COURT: I would be very happy to do that, if that's convenient to counsel.

MR. RUSH: That is actually a proposal that we had considered as well. I welcome that suggestion, if it is necessary.

THE COURT: Yes.

MR. RUSH: That would give us a better idea of whether or not those three days would be essential.

THE COURT: I have no commitment for the summer until later in July, when I have to go to another seminar in Ottawa which I can't avoid, but I'll leave this, I don't need to give an answer to the Attorney General immediately. I will bring the matter up with counsel again perhaps on Tuesday or something like that. All right, thank you, and I wish you all a very pleasant weekend.

J. Morrison (for Plaintiffs)
Cross-exam by Mr. Mackenzie
Submission by Mr. Mackenzie

(PROCEEDINGS ADJOURNED)

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

Graham D. Parker
Official Reporter
United Reporting Services Ltd.