

Vancouver, B.C.

June 27, 1988

(PROCEEDINGS RECONVENED AT 10:00 a.m.)

THE REGISTRAR: Order in court. In the Supreme Court of British Columbia, this Monday, June 27, 1988. Calling Delgamuukw versus Her Majesty the Queen at bar, My Lord.

THE COURT: Mr. Rush.

MR. RUSH: My Lord, there were a number of matters that were put to today to be dealt with by way of motion and by way of application, I suppose, and we have an outstanding motion on the question of documents which we wish to proceed with. And my learned friend, Mr. Goldie, and I believe Miss Koenigsberg, has -- they have, rather, raised certain questions which they wish to deal with today as well. So we would propose to first begin with the motion. We have Mr. Adams who was involved in preparing that motion who will address Your Lordship on that.

THE COURT: All right.

MR. GOLDIE: My Lord.

THE COURT: Yes.

MR. GOLDIE: Before Mr. Adams proceeds, I wrote to my friends on the 23rd of June, suggesting that this -- the nature -- the subject matter of their motion might be dealt with in conjunction with other matters in chambers, in Your Lordship's chambers, rather than by way of notice of motion. And I think I should read to Your Lordship my -- the letter that I wrote to them. This is addressed to Mr. Rush:

"Your notice of motion of June 16th, 1988 appears to seek:

- (1) An end to the further discovery of documents.
- (2) Some detail of documents already listed.
- (3) Production of documents relating to the B.C. Special Vote.
- (4) Production of documents relating to the application for the Sustut-Takla forest licence.

Items one and two raise matters which have been of continuing concern to all parties. There are other matters of a similar nature which have been of concern including:

- 1 (1) Difficulties in obtaining admissions of  
2 authenticity in respect of both archival  
3 and nonarchival documents. Different  
4 views have been expressed concerning the  
5 consequences of such admissions. Here I  
6 refer to the correspondence and the  
7 responses to our notices to admit.  
8 (2) Production of band council documents.  
9 (3) An understanding of the manner in which  
10 your expert evidence will be led.

11 Quite apart from the legal obligation of the  
12 parties, co-operative resolution of all of these  
13 matters would go some distance toward organizing  
14 the balance of the trial and could save  
15 considerable time and expense in and out of court.  
16 On Monday we will be proposing that these matters  
17 be dealt with collectively and that an attempt be  
18 made to resolve them in the settlement conference  
19 before the Chief Justice in chambers.

20 As to your item three, that is production of  
21 documents relating to the B.C. Special Vote --"  
22

23 Well, I needn't go on because I state something  
24 with respect to items three and four of their request.  
25 But the point, My Lord, is that it seems to me a much  
26 freer expression and exchange of views and some  
27 attempt to arrive at a resolution based upon a  
28 settlement of these matters. It might be more  
29 productive than simply proceeding with a motion with  
30 its inevitable consequence that there would appear to  
31 be two camps or two schools of thought or two  
32 positions taken without any qualification.

33 I chose the reference to a settlement conference  
34 because that's a mechanism which, although primarily  
35 used prior to a trial, as I understand it, there is no  
36 good reason why it shouldn't be used during a trial  
37 with respect to particular issues.

38 THE COURT: You are not talking about settlement of the whole  
39 case?

40 MR. GOLDIE: Well, depends on how the conversation goes.

41 But that's the purport of my suggestion at this  
42 point.

43 THE COURT: Mr. Macaulay?

44 MR. MACAULAY: I agree with Mr. Goldie's suggestion about the  
45 way of attempting to solve these problems. If that  
46 doesn't work then parties are free to make their  
47 applications before the court, and if it works in part

1           then it's still well worth trying.

2 THE COURT: Mr. Rush, Mr. Adams?

3 MR. RUSH: The idea of dealing with the issues collectively is a  
4 good one, I think. I don't have any trouble with the  
5 proposal to try to resolve some of these issues  
6 informally, however, I think that I see no reason why  
7 it can't be done in the form of the open court where  
8 we've in effect done -- we've engaged in a number of  
9 pre-trial conferences which have been relatively  
10 informal without the inevitable necessity of dealing  
11 with formal motions. So my proposal is to proceed  
12 with these applications, but we do so in the  
13 courtroom.

14 THE COURT: All right. Well, I have a policy that I try to  
15 follow invariably, but it slips once in awhile on  
16 most urgent grounds being suggested, of not seeing  
17 counsel in private chambers during the course of a  
18 trial. And I don't know whether many judges do or  
19 whether they get good results, but sometimes with  
20 objections and complaints and sometimes with a  
21 possible lack of understanding or appreciation of  
22 what's happened by parties or the public, and I think  
23 I would prefer -- welcome as counsel may be in my  
24 chambers, which are spacious but perhaps a little bit  
25 limited in reflection of this size -- for a collection  
26 this size, and I think what I would like to do if  
27 counsel agree, is I think we should adjourn and take  
28 off our gowns and have the kind of discussion that all  
29 counsel seem to think is useful here in the courtroom  
30 and in public. Is that acceptable to both Mr.  
31 Macaulay --

32 MR. GOLDIE: Well, it doesn't matter where the discussion takes  
33 place.

34 THE COURT: Yes.

35 MR. GOLDIE: It's not on the record, that's the whole purpose,  
36 it doesn't form part of the record of the case.

37 THE COURT: Any objection to not having a reporter, Mr. Rush?  
38 Nothing personal intended, I'm sure, Madam Reporter.

39 MR. RUSH: I don't see any problem with that.

40 THE COURT: All right. Well, we'll -- are counsel ready to  
41 proceed immediately or do they need time to organize  
42 themselves and their thoughts for this process?

43 MR. RUSH: I think we are ready to proceed.

44 MR. GOLDIE: There is one batch of documents that we would like  
45 to have. Perhaps we might do it beginning at two?  
46 Well, Mr. Plant is going to deal with one of these  
47 matters, and he tells me he is -- we might as well get

1           started and he may be able to deal with it without  
2           reference.  
3 THE COURT: Well then, why don't we adjourn for a moment while  
4           we all disrobe.

5  
6           (PROCEEDINGS ADJOURNED AT 10:15 a.m.)  
7  
8  
9

10                           I hereby certify the foregoing to be  
11                           a true and accurate transcript of the  
12                           proceedings herein transcribed to the  
13                           best of my skill and ability.  
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18                           Toni Kerekes,  
19                           O.R., R.P.R.  
20                           United Reporting Service Ltd.  
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1 (PROCEEDINGS RESUMED AT 3:25 p.m.)  
2 THE REGISTRAR: Delgamuukw versus Her Majesty the Queen,  
3 continuing, my lord.  
4 THE COURT: Mr. Goldie?  
5 MR. GOLDIE: My lord, I haven't had a chance to discuss this  
6 with any detail with my friends, but it seems to me  
7 that of the four items in the Notice of Motion, that  
8 your lordship is prepared to make an order that  
9 discovery be completed by October 15th with  
10 appropriate safeguards. And --  
11 THE COURT: Yes.  
12 MR. GOLDIE: And my suggestion would be that Mr. Adams draft an  
13 order and circulate it and if we have difficulty with  
14 it we come back to you.  
15 THE COURT: He is not here, is that fair?  
16 MR. GOLDIE: I didn't make that suggestion with having regard to  
17 that.  
18 MR. RUSH: We sent him away, my lord, so we can make that  
19 commitment on his behalf.  
20 THE COURT: I think that's a good idea.  
21 MR. GOLDIE: The document list format, that is to say whether  
22 the satisfactory description, I did not understand  
23 your lordship to make an order because the parties are  
24 trying and are going to continue that.  
25 THE COURT: I adjourned that.  
26 MR. GOLDIE: And that matter has been adjourned.  
27 THE COURT: Yes.  
28 MR. GOLDIE: The the production of the B. C. special documents,  
29 the upshot of that appeared to be that no order is  
30 needed now but using the old phraseology, any party is  
31 at liberty to come back if they think themselves  
32 prejudiced.  
33 With respect to the production of the Sustut  
34 documents, my understanding is that the application  
35 was dismissed. And the discussion with respect to the  
36 notices to admit was not the subject matter of the  
37 Notice of Motion, but the message, if I may put it  
38 that way, that we at least are taking with us, is that  
39 the notice to admit is something which is to be  
40 encouraged in its use, if there is a refusal to admit  
41 based upon reasons which appear to be unsatisfactory,  
42 that we are at liberty to come to your lordship for  
43 assistance and that I think carries with it the  
44 implied requirement that my friends particularize the  
45 reasons why they are rejecting any particular  
46 documents, so that those reasons may be the subject  
47 matter of submissions to your lordship, if that

## Discussion

1 becomes necessary.

2 THE COURT: The only thing I think I disagree with, I don't  
3 think I wanted to go so far as to say I dismissed the  
4 Sustut application. We decided to proceed informally  
5 and we did proceed informally and therefore I don't  
6 know that I want to preclude the plaintiffs from  
7 bringing a substantive application and argument again  
8 if they wish.

9 MR. GOLDIE: I was simply treating it the same way I treated the  
10 closure motion, that there appeared to be some  
11 finality.

12 THE COURT: But the closure matter is a little different because  
13 you didn't really take much opposition to the closure  
14 matter when the time is set for the 15th of October  
15 and for that reason I thought I was making almost a  
16 consent order.

17 MR. GOLDIE: Well, I am quite happy with that, my lord, that  
18 the -- I was the one that said any order should be by  
19 consent and if my friends feel that they wish to bring  
20 this on formally, I am quite happy to deal with it  
21 then.

22 THE COURT: It may be that my analysis is defective. That could  
23 be pointed out to me. It seems to me we proceeded  
24 informally and we should continue that way.

25 MR. MACAULAY: We will have to bring on our application sooner  
26 rather than later. It's an application to compel the  
27 plaintiffs to produce certain documents. These are  
28 documents relating to experts' reports. It was set  
29 down for today and I ask that it be adjourned to  
30 Thursday and perhaps we can see where we are.

31 THE COURT: Is that convenient, Mr. Rush?

32 MR. GRANT: My lord, I was dealing with that and that is a  
33 praecipe for an application that was discussed before  
34 your lordship July 31st of last year.

35 MR. MACAULAY: It's nothing new.

36 MR. GRANT: It certainly is nothing new and I think one may say  
37 it is almost stale dated in some senses. Then there  
38 was correspondence on February 2nd of this year and a  
39 reply from Mr. Rush on March 3rd of this year and  
40 that's where it was left until the praecipe was  
41 brought on last week. I would ask my friends, and I  
42 endeavoured to review the material, I am looking at if  
43 they could provide me with some precision as to what  
44 it is precisely their concern is because last July  
45 31st's motion and affidavit was -- dealt with the  
46 whole range of areas and I would like them to be  
47 precise as to what they are seeking. It may assist

## Discussion

1 us. In some areas I know what they are seeking and I  
2 am in the process of resolving some aspects of it. So  
3 I don't think there is any problem with it.

4 Yes, both Mr. Rush and I were thinking the same  
5 thing when Mr. Macaulay stood up on this and that is  
6 we don't want to spend further court time on this, I  
7 thought that we dealt with three quarters of the day  
8 on the informal procedure of documents. I want them  
9 to set out in a letter to me what it is they are  
10 particularly concerned with and if there is issue left  
11 outstanding we can come back to court. I would be  
12 advocating we come back to the court after the  
13 completion of Mr. Sterritt's evidence, rather than  
14 once again interrupting it with half a day of  
15 argument.

16 MR. MACAULAY: Mr. Grant refreshes his memory from the  
17 correspondence I see it is quite particular and he has  
18 had plenty of notice. Nothing has changed. We  
19 haven't got any of the documents. Their position  
20 simply is that the documents we seek we are not  
21 entitled to see until 60 days before the witness gives  
22 evidence.

23 THE COURT: Well is it a matter that has to be argued before the  
24 completion of Mr. Sterritt's evidence?

25 MR. MACAULAY: It's the closure problem we were facing, that's  
26 why we want to --

27 THE COURT: Closure, you mean the October 15th closure or  
28 closure of the court?

29 MR. MACAULAY: Both.

30 THE COURT: Well, I will be glad to arrange a time for you to  
31 hear this very quickly after the completion of Mr.  
32 Sterritt's evidence, if that's convenient.

33 MR. MACAULAY: Yes.

34 THE COURT: All right. Thank you.

35 MR. RUSH: Well, I guess one further comment to reflect on your  
36 lordship's observations, that I do take your  
37 directions, if I can describe them in that way, as  
38 informal directions. And that with respect to the  
39 comment made by Mr. Goldie concerning the drafting of  
40 an order concerning the closure of the disclosure of  
41 documents, if I can put it that way, that as a result  
42 of those directions that is really the one formal  
43 aspect that we would be proceeding with.

44 THE COURT: Yes.

45 MR. RUSH: All right. Thank you. That confirms my  
46 understanding as well.

47 I am prepared to proceed with the further evidence

N. J. Sterritt (For Plaintiffs)  
In Chief by Mr. Rush

1 of Mr. Sterritt.  
2 THE COURT: All right. Thank you.  
3 MR. RUSH: Mr. Sterritt, would you please come to the witness  
4 stand? I should advise your lordship that the weekend  
5 has given us time, that is, counsel time to reflect on  
6 Mr. Sterritt's --  
7 THE COURT: Excuse me one minute, Mr. Rush. Those two documents,  
8 that's Mr. Macaulay's, that's Mr. Goldie's. These are  
9 the court documents.  
10 Sorry, Mr. Rush. Thank you.  
11 MR. RUSH: Yes, I was saying that counsel has considered Mr.  
12 Sterritt's status, if we can put it that way, and we  
13 have made a decision to tender Mr. Sterritt as an  
14 expert. And although we have certain evidence,  
15 certain evidence that I intend to elicit from Mr.  
16 Sterritt is not in the nature of expert evidence, and  
17 that's evidence I will be proceeding with now.  
18 I intend to proceed tomorrow with the tendering of  
19 Mr. Sterritt as an expert witness.  
20 Unfortunately, it may interrupt the flow of some of  
21 the testimony but I think your lordship can be brought  
22 up to speed quite quickly when we have the maps and so  
23 on back in front of you.  
24 THE REGISTRAR: I caution you, Mr. Sterritt, you are still under  
25 oath.  
26  
27 NEIL J. STERRITT, Resumed:  
28  
29 EXAMINATION IN CHIEF BY MR. RUSH: (Continued)  
30  
31 MR. RUSH:  
32 Q Mr. Sterritt, I would like now to turn your mind to  
33 the methodology used by you in the gathering of  
34 information from the hereditary chiefs about the  
35 Gitksan territories. And I want to ask you if you can  
36 tell the court how you first recorded information that  
37 you gathered from the hereditary chiefs?  
38 A My first entries were that journal that I kept more as  
39 a diary, and on loose bits of paper which I referred  
40 to earlier in my testimony. I then designed a form  
41 called a, I believe, Topo Survey Form, on which I  
42 entered -- I transferred the information from the  
43 various pieces of paper or scribbler that I was  
44 keeping, and from the journal. On that single form, I  
45 would enter one piece of topographic information, one  
46 geographic feature.  
47 Q Now, can you give us an idea of the time frame that



N. J. Sterritt (For Plaintiffs)  
In Chief by Mr. Rush

- 1           you are talking about when you used the, as you called  
2           it, the loose bits of paper and the journal and the  
3           scribbler, what would be the time frame you are  
4           talking about?  
5           A     Generally the period 1975 through to 1978 or '79.  
6 THE COURT: That was for the journal and loose pieces of paper?  
7           A     And the scribbler, yes.  
8 MR. RUSH:  
9           Q     And when did you develop the topographic data sheet?  
10          A     As I recall, it was about 1978 or 1979.  
11          Q     All right. Now, Mr. Sterritt, I am going to refer you  
12                to volume two of the black book of documents, which  
13                has been submitted in respect of your evidence and I  
14                would ask to you look at page 58. Excuse me, tab 58.  
15                At that tab there is a document that's entitled  
16                Gitksan-Carrier Tribal Council Data Sheets,  
17                Topographic Survey, Gitksan and Carrier Territories.  
18                Is that the document that you are talking about as the  
19                document that you designed or prepared in '78 or '79?  
20          A     Yes, it is.  
21          Q     Now, this is a document entitled -- well, we have got  
22                the title but with reference to the site Jackson  
23                Flats, is this an example of the content of these data  
24                sheets?  
25          A     Yes, it is.  
26          Q     Do you want to just explain for his lordship the  
27                categories of information that are included on this  
28                form, beginning with number one, site?  
29          A     Yes, there are 12 items that I attempted to record and  
30                item number one is site, which would be a site  
31                appearing on a topographic or a National Topographic  
32                series map, and Jackson Flats is a name that appears  
33                on the map 104-A, which is a N. T. S., National  
34                Topographic series designation. That identifies the  
35                Bowser Lake map sheet, which is item number four.  
36          Q     Now, just before you go on, Mr. Sterritt, is the  
37                National Topographic series of maps, is that a  
38                standard map series?  
39          A     Yes, it is? It's a series that have been established  
40                by the federal government and used by the federal and  
41                provincial governments across Canada and it's a way of  
42                dividing up the land area of Canada into a numerical  
43                and alphabetic system that designates where a given  
44                map area is. And once you understand how it works,  
45                you can pick out where that map would be and at a  
46                scale in a given part of Canada.  
47          Q     Now, this particular example of the Jackson Flats site

N. J. Sterritt (For Plaintiffs)  
In Chief by Mr. Rush

- 1           you say is on the Bowser Lake map sheet, is that a  
2           correct description?
- 3           A     Yes.
- 4           Q     All right. And the scale is 1 to 250,000?
- 5           A     Yes, the scale, at that scale you're dealing with  
6           approximately one inch equals four miles on the map.
- 7           Q     Now, the location designation under number five?
- 8           A     Well, that is there for two reasons: One is that for  
9           many of the Gitksan or Wet'suwet'en names, there is no  
10          identifiable site on a National Topographic series at  
11          that scale or even at a lesser scale of 1 to 50,000  
12          scale. So, the location, if you did not have that  
13          information, then you would -- I would attempt to  
14          locate that feature and describe it in some detail.  
15          Similarly, Jackson Flats is a fairly large area and  
16          the feature that I might be identifying would be  
17          within the area of Jackson Flats so I would attempt to  
18          locate it more precisely in the location category of  
19          number five.
- 20          Q     And number six refers to the Gitksan or Carrier name  
21          or names?
- 22          A     Yes, in this case it's a Gitksan name and it's the  
23          meaning or the name is Gal Tsaphl Hasii Yeeks and what  
24          that means is the Home of the Swallows, and there are  
25          mudbanks in the area of Jackson Flats where the  
26          swallows make their homes so it's called Gal Tsaphl  
27          Hasii Yeeks.
- 28          Q     And on this particular data sheet it's spelled G-A-L,  
29          T-S-A-P-H-L, H-A-S-I-I, Y-E-E-K-S.
- 30                 Then you have a category, Mr. Sterritt, number  
31          seven of a features and sub category territory of, and  
32          you have G-E-E-L, Geel there?
- 33          A     Yes.
- 34          Q     Go ahead and explain that sub category, please?
- 35          A     The area of Gas Tsaphl Hasii Yeeks had been identified  
36          as part of the territory of Geel. It goes on to the  
37          main crest or clan of Geel, and this is Giskaast or  
38          Fireweed. And so as to distinguish it from other  
39          owners or other house affiliations, Wolf, Frog or  
40          Eagle. And then --
- 41          Q     Go ahead.
- 42          A     Then the sub category C, the village identifies it  
43          that Geel is a hereditary chiefs from Kispiox.
- 44          Q     Then under eight, remarks or significance, and you  
45          have written here and I quote: "This territory often  
46          called by this name, i.e. 'Geel, Gal...'" And perhaps  
47          you can help me with the pronunciation?

N. J. Sterritt (For Plaintiffs)  
In Chief by Mr. Rush

- 1 A Gal Tsaphl Hasii Yeeks. And not only is the area of  
2 Jackson Flats specifically Gal Tsaphl Hasii Yeeks, but  
3 quite often people refer to the entire territory of  
4 Geel at the head of the Skeena as Gal Tsaphl Hasii  
5 Yeeks.
- 6 Q Now, in that category of remarks or significance, this  
7 obviously is one example of the kind of entry you  
8 would make. What would be other examples of entries  
9 you would put in that category?
- 10 A The -- if there was additional historical or other  
11 unique information that the hereditary chief or  
12 Gitksan or Wet'suwet'en individual had relayed to me,  
13 and then I would incorporate it into that area there.
- 14 Q All right. And under nine, published references, and  
15 here it's blank on the form, but what was that  
16 category set aside for?
- 17 A If I came across a reference to Gal Tsaphl Hasii Yeeks  
18 or Geel, in relationship to this territory, then I  
19 would write that reference and who the authority was  
20 for it. For example, Barbeau, when reading Barbeau I  
21 might -- he would refer to that territory, I would  
22 enter -- I would put down Barbeau and then a  
23 reference, if one was made to it. There might have  
24 been an explorer went through and met Geel or there  
25 was some reference to Geel's territory, I would  
26 similarly put that down if I found that in the diaries  
27 of the explorer or any reference to it for that  
28 particular area.
- 29 Q Okay. Now, under number ten you have a sub or a  
30 category of advisor, and here you have filled in  
31 Martha Sinclair, open brackets, Haimadam, close  
32 brackets. Can you explain that category?
- 33 A Well, that would be the person who talked to me about  
34 this area and gave that name or some portion of the  
35 information. In this case, she provided all that  
36 information. But the other thing I wanted to point  
37 out is I think I referred to Martha Haimadam earlier.  
38 Martha Haimadam is -- she was born Martha Haimadam and  
39 married and became Martha Sinclair. It's the same  
40 person I referred to last week.
- 41 Q Haimadam is a surname, in this case it's not the  
42 chief's name of Martha Sinclair; is that right?
- 43 A That's right. Martha Sinclair is the -- is in the  
44 house of Geel, she was the daughter of Peter Haimadam,  
45 and took her father's name as a surname then. But  
46 that's not her Indian name.
- 47 Q Haimadam is spelled H-A-I-M-A-D-A-M here. And then

N. J. Sterritt (For Plaintiffs)  
In Chief by Mr. Rush

- 1           you have a place, a sub category under ten,  
2           interviewer and M. J. Sterritt is noted there, that of  
3           course refers to you, does it?
- 4           A    Yes, it does.
- 5           Q    And the date, it indicates 1985?
- 6           A    Yes, that's the -- that is the time that I talked to  
7           Martha.
- 8           Q    Is Martha living or has she passed on?
- 9           A    She passed on between 1985 and now. I think it was in  
10          1986.
- 11          Q    And then you have a category, 11, photos or drawings,  
12          and in this case there is a -- that's left blank.  
13          What was that intended to contain?
- 14          A    If I took photos of that or if I came across photos, I  
15          would enter them similar to the published references  
16          column. For reasons that I will give later, I didn't  
17          keep up that but also I might have done a sketch of  
18          the area or of a feature, and I would have referred to  
19          it.
- 20          Q    And finally, under 12, "other notes", you have what  
21          appear to be the names of four people there. Can you  
22          explain the significance of those names in that  
23          category?
- 24          A    Well, in this case, what I have added is the other  
25          hereditary chiefs who I talked to at different times  
26          who also referred to Gal Tsaphl Hasii Yeeks, and I  
27          have entered them there. So there is other  
28          information that would -- that is corroborating  
29          information in terms of Martha Haimadam.
- 30          Q    And there you have indicated Walter Blackwater, (1986)  
31          and then Martha Brown, Steve Morrison, (1976) and  
32          Chris Harris, (1974). Some of these dates precede the  
33          date of 1985 when you obtained this information from  
34          Martha Sinclair. How is that explained?
- 35          A    I prepared this form at a later date and used that as  
36          an example. This is a form that was included in a  
37          summary that was requested during my examination for  
38          discovery by Mr. Goldie.
- 39          Q    And what other information did you record on other  
40          data sheets in this category, 12, other notes?
- 41          A    Any additional information that would supplement the  
42          information up above. It was a catch-all column and  
43          it is not that extensive but anything that I felt or  
44          judged to be supportive or included references to that  
45          name there.
- 46          Q    All right. Now, were these topographic data sheets  
47          always filled out in the same way by you?

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- 1 A In a similar way. Sometimes I didn't have all of the  
2 information. If I, for example, in the number seven,  
3 if I found it was a boundary area, let's assume that  
4 it was a creek, and that the creek was a boundary,  
5 then what I would enter is the creek name in number  
6 six and any other information that was available. But  
7 then under the territory of, main crest and village, I  
8 would draw a line between, let's say, Geel, and his  
9 information, and then put the other hereditary chief  
10 who was on the other side of the border in an  
11 extension of those same three columns so that it would  
12 demonstrate what it was, and I would attempt to  
13 indicate whether it was, the east side or the west  
14 side of the creek that was a boundary. Or who was on  
15 the east or west side or north or south or whichever  
16 direction.
- 17 Q Now the information that's contained on this data  
18 sheet, I guess from categories one to eight, was that  
19 information -- who provided that information?
- 20 A Well, categories one to five were added by me,  
21 categories six, seven, eight would be information from  
22 a hereditary chief.
- 23 Q And in this case, the hereditary chief --
- 24 A Being Martha Sinclair. And her, basically, and the  
25 others have similar information or some part of that  
26 information.
- 27 Q All right. If I can just ask you, how -- from whom  
28 was it that you determined that Gal Tsaphl Hasii Yeeks  
29 referred to Jackson Flats?
- 30 A Martha Sinclair and Chris Harris, Chris Harris being  
31 the father of Walter Harris, and Walter Harris is  
32 Geel, and Chris had been to that area and informed me  
33 of that and then by location I was able to do a  
34 similar orientation with Martha Sinclair and some of  
35 the others. I also was on a helicopter flight to the  
36 area with Walter Blackwater and at that time he  
37 pointed out the area of Gal Tsaphl Hasii Yeeks, and on  
38 the National Topographic series map that was Jackson  
39 Flats.
- 40 Q Now, in respect of a data sheet that the site Jackson  
41 Flats represents here, how soon after you had  
42 completed an interview, in this case with Martha  
43 Sinclair, did you then fill out the information  
44 contained on this data sheet?
- 45 A This data sheet was filled out to assist with the  
46 request of Mr. Goldie. But in ordinary circumstances,  
47 I would fill out the form within -- on the same day or

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- 1 within the week of taking the information.  
2 Q And where would the information have come from that  
3 ended up on this form?  
4 A Well, from my field books.  
5 Q Any other sources?  
6 A Yes, any source that I came along to I would enter it  
7 on to these forms. The dilemma or the problem I  
8 encountered with the form, was that the information  
9 was coming in faster than I could keep track of the  
10 forms. I had to evolve another system that wasn't as  
11 detailed as this and then rely on my field books to  
12 have the detailed information there because it was a  
13 matter of transferring to a map a lot of information  
14 at a time and I found that I couldn't keep up with  
15 this form and I didn't totally abandon it, I just had  
16 not been able to keep it up.  
17 Q Now the other way of recording the information, I  
18 think you indicated earlier in your evidence, was a  
19 summary sheet which you called land use reference  
20 data; is that right?  
21 A That's right. Yes, it is.  
22 Q I am going to come to that in just a moment. I wanted  
23 to ask you whether, when you were keeping this data  
24 sheet that we have been referring to, and others  
25 similar to it, was this a one-time recording or did  
26 you record over a period of time on these data sheets?  
27 MR. GOLDIE: Are you referring to this one?  
28 MR. RUSH: No, not necessarily.  
29 Q I am referring to generally the way you kept data  
30 sheets and not necessarily this one.  
31 A On these data sheets I attempted to keep the  
32 information in one place. It doesn't mean that I did  
33 that, in some situations there could be two or three  
34 of these all with the name, not necessarily this one,  
35 but Jackson Flats for example on the top and then  
36 further information. But it would be partly because I  
37 ran out of room or for some other reason. But  
38 ordinarily, I used the form as a place to gather that  
39 information and I might have written on the back of  
40 the sheet "further information".  
41 Q What did you do with the topographic data sheets after  
42 you completed them?  
43 A I attempted to locate that feature on a map.  
44 Q What kind of map?  
45 A National Topographic series map at a scale of 1 to  
46 250,000.  
47 Q So like the Bowser sheet you referred to here?

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- 1 A Yes.
- 2 Q On Jackson Flats sub data sheet.
- 3 A Yes.
- 4 Q Go ahead.
- 5 A And eventually I assigned a number to it, to a  
6 sequence on a National Topographic map, and so a  
7 number, the number one, for example, if this was the  
8 first entry on the Bowser sheet would appear on this  
9 form. And then that number would appear in the  
10 location of Jackson Flats on the map. And I would --  
11 I tried to keep track of that. But as I say I moved  
12 from that to the summary sheet and kept a running  
13 sequence with the summary sheets.
- 14 Q Now, Marvin George was the or is the cartographer,  
15 were these sheets given to Marvin George?
- 16 A Yes, when Marvin George was hired I turned them over  
17 to him along with my field books and he began to  
18 transfer the information to maps.
- 19 Q And can you estimate how many of these topographical  
20 data sheets you prepared like this?
- 21 A Several hundred. Probably in the neighbourhood of 300  
22 to 350.
- 23 MR. RUSH: My lord, can that be an exhibit, please?
- 24 MR. GOLDIE: My lord, I take it this is being marked simply as  
25 an example and not for the truth of the matters stated  
26 therein? I think the witness has stated that it was  
27 prepared as an example. And I think that's as far as  
28 it goes.
- 29 MR. RUSH: Oh, no. It may have been prepared as an example, but  
30 it may also be a statement of the truth of the  
31 contents.
- 32 Q Mr. Sterritt --
- 33 MR. GOLDIE: I object to it being marked for that purpose. I  
34 assume we are coming to the books of original entry,  
35 which are the scribblers and the field notebooks and  
36 then we are going to come to, again, presumably,  
37 something that was made contemporaneously then I  
38 assume we are going to be shown what it was that was  
39 handed to Mr. George. But at the present time this is  
40 one sheet of 350 and, in my submission, it is going to  
41 be no more and it is no more than an example of what  
42 he has done and not of the truth of the matters stated  
43 with respect to -- that Jackson Flats is the territory  
44 of Geel.
- 45 MR. RUSH: I quite disagree with that.
- 46 THE COURT: I understand that you do, Mr. Rush. I think that it  
47 can be marked as the next exhibit, at least for the

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1 purposes Mr. Goldie suggests and upon argument,  
2 possibly for a much broader signification. I would  
3 prefer not to have to rule on that question until I  
4 hear the rest of the evidence that's going to be  
5 adduced about these documents. We may well be able to  
6 deal with them more conveniently in their entirety.  
7 MR. RUSH: Yes, my lord. I am, however, tendering this document  
8 so that the document speaks for the truth of its  
9 contents.  
10 THE COURT: I understand.  
11 MR. GOLDIE: And I am, of course, objecting to that.  
12 THE COURT: And I am ruling that it's going to be admitted as  
13 the next exhibit number --  
14 THE REGISTRAR: 652, my lord.  
15 THE COURT: 652. At least for the limited purpose mentioned or  
16 described by Mr. Goldie and with Mr. Rush having the  
17 right to contend that it has a much broader  
18 signification.  
19  
20 (EXHIBIT 652: TAB 58, STERRITT TOPOGRAPHICAL DATA NOTES)  
21  
22 THE COURT: Mr. Sterritt, you mentioned just a moment ago that  
23 you transferred the information from these data sheets  
24 and others to a kind of map and you used a term to  
25 describe it.  
26 A Yes.  
27 THE COURT: What was the name of that map?  
28 A It's a National Topographic series map, in this case  
29 it's the Bowser sheet.  
30 THE COURT: Yes, all right.  
31 A At a scale of 1 to 250,000.  
32 MR. GOLDIE: My lord, I'd like that map produced for our  
33 examination, and I am speaking now of the original  
34 map.  
35 THE COURT: It hasn't been produced at the moment?  
36 MR. RUSH: Well, there is a dispute as to what has been  
37 produced. This has been produced.  
38 MR. GOLDIE: No, I am sorry, a copy of it has been produced.  
39 The witness has referred to six of these maps, we have  
40 two of them. But I am now talking about the  
41 originals. Because what we have is a photocopy of  
42 two.  
43 THE COURT: Well, are you ready to deal with that, Mr. Rush?  
44 That request?  
45 MR. RUSH: Perhaps tomorrow morning, my lord.  
46 THE COURT: All right. Just a moment.  
47 THE COURT: I missed -- does Mr. Sterritt's status, either as he



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1 is now or as he will be if qualified as an expert,  
2 affect the use or the purpose for which this document  
3 can be used?  
4 MR. GOLDIE: Is your lordship referring to Exhibit 652?  
5 THE COURT: Yes.  
6 MR. RUSH: It could, yes.  
7 THE COURT: I had in mind the proverbial real estate appraiser  
8 who goes out and asks a lot of people what they paid  
9 for their property and then forms a conclusion as to  
10 the value of another piece of property, which is  
11 clearly hearsay evidence in the purest sense, yet  
12 is -- it can be given by an expert in support of his  
13 conclusion. That is the information he got from  
14 various people in these so-called comparables. Is  
15 there an analogy in that to what we are hearing here?  
16 MR. RUSH: It could be in respect to some of the other  
17 topographic sheets. I don't know. But this one I  
18 will argue it wouldn't be affected one way or another,  
19 because it was passed on to Marvin George, who we will  
20 be tendering as an expert.  
21 THE COURT: Apart from the question of what meanings to be given  
22 to it in Mr. Marvin George's evidence, just stopping  
23 at this point?  
24 MR. RUSH: I will be asking you to draw certain conclusions with  
25 respect to Mr. Sterritt's status as an expert, yes.  
26 THE COURT: Well, I think I will look forward with anticipation  
27 to hearing the argument on this interesting question  
28 tomorrow. Or whenever is convenient.  
29 Another thing, this book that I have, attorney-  
30 general's volume four, it was not given an exhibit  
31 number, madam registrar?  
32 THE REGISTRAR: No, it was not.  
33 THE COURT: So it's not before me. I don't recall precisely how  
34 it came before me.  
35 THE REGISTRAR: That must have come from Smithers.  
36 THE COURT: I have a document called "Sterritt Topographical  
37 Data", and I have written on it, "A. G. B. C. volume  
38 4." I think it's the fourth volume of some documents  
39 prepared by the province for the cross-examination of  
40 a witness. I don't remember which witness it was.  
41 MR. RUSH: Yes, it could be Mr. Muldoe or Mr. Morrison. But in  
42 a number -- in the case of a number of witnesses,  
43 similar documents like that have been put to the  
44 witnesses and some have been entered and some haven't.  
45 Without knowing the precise nature of those documents,  
46 I couldn't say whether they became exhibits or not.  
47 THE COURT: These include some of these data sheets and some

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1 notes that look like they came out of Mr. Sterritt's  
2 field book.  
3 THE REGISTRAR: I believe that was James Morrison's book.  
4 THE COURT: I think it's part of the James Morrison.  
5 THE REGISTRAR: But it wasn't an Exhibit.  
6 THE COURT: But it wasn't marked as an exhibit.  
7 MR. GOLDIE: Subject to being corrected, my understanding is  
8 that Mr. Mackenzie utilized that in the cross-  
9 examination of Mr. Morrison and reference will be made  
10 to it in the cross-examination of Mr. Sterritt.  
11 THE COURT: All right. I don't think any of the documents were  
12 marked as exhibits in Mr. Morrison's cross-  
13 examination.  
14 MR. RUSH: That's correct.  
15 THE COURT: Then it's really not before me except in the  
16 physical sense.  
17 MR. GOLDIE: Only to the extent of the cross-examination of Mr.  
18 Morrison.  
19 THE COURT: I am not sure what that means, Mr. Goldie. It may  
20 be that the context of the transcript will impute  
21 references to it.  
22 MR. GOLDIE: That's what my understanding is, that the witness  
23 was examined with respect to statements that are made  
24 in that book. But the transcript is sufficiently  
25 explanatory that --  
26 THE COURT: Yes. All right.  
27 MR. GOLDIE: -- that the document didn't have to be marked as an  
28 exhibit.  
29 THE COURT: All right. We will adjourn until 10 o'clock  
30 tomorrow morning.  
31  
32 (Proceedings adjourned to 10:00 o'clock a.m. Tuesday,  
33 June 28, 1988))  
34  
35  
36  
37  
38

39 I hereby certify the foregoing to be  
40 a true and accurate transcript of the  
41 proceedings herein to the best of my  
42 skill and ability.  
43  
44  
45  
46

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