Vancouver, B. C.
September 28, 1988.

NEIL STERRITT, Resumed:

THE REGISTRAR: In the Supreme Court of British Columbia, this Wednesday, September 28, 1988. Delgamuukw versus her Majesty The Queen, at bar.
THE COURT: Mr. Goldie?
MR. GOLDIE: Thank you my lord.
THE COURT: I am sorry, Mr. Goldie, can you assist us on a scheduling matter? Do you expect to be the rest of the week with the witness or where do we stand?
MR. GOLDIE: I expect I will be asking the witness to be stood down sometime today. We are prepared to proceed with the experts if they are called but otherwise I will reach a point where I will be asking him to be stood down.
THE COURT: All right. Thank you.

CROSS-EXAMINATION BY MR. GOLDIE: (Continued)

MR. GOLDIE:
Q Mr. Sterritt, I have just one or two more questions about Kathleen Wale that we were discussing yesterday. And my question to you is this: On October 23rd, 1984, when the writ was issued, where was the territory that was claimed on behalf of Kathleen Wale located?
A The -- on behalf of Kathleen Wale the House of Gwoimt?
Q That is correct.
A Along the Skeena, just south of the Village of Kisgagas.
Q Is that the only place that territory was claimed on her behalf?
A Yes. The other areas which would have fallen under her name, would have been under either Smaex or Tasbux or Tsiiwus, I am not sure which of those names were associated with her name.
Q None of the names that you have just mentioned are referred to in the statement of claim, are they?
A I believe --
MR. RUSH: You should put that before him.
MR. GOLDIE:
Q Under Exhibit 1 or under tab 1 is appended to your affidavit the statement of claim is issued on November 23rd, 1984 and I would like you to confirm for me that

1 none of the three names that you have just mentioned
2 is referred to in the statement of claim.
3 THE COURT: Well, that should be a matter for counsel.
4 MR. RUSH: I have looked at it and I can confirm that.
5 THE COURT: All right. And your question, Mr. Goldie, was
6 directed to the first statement of claim?
7 MR. GOLDIE: Yes, I said on October 23rd, 1984, where was the
8 territory that Gwoimt was claiming in the statement of
9 claim.
10 Q Now, can you respond to my question?
11 MR. RUSH: He did.
12 THE COURT: He said on the Skeena near Kisgagas.
13 MR. GOLDIE:
14 Q Near Kisgagas. What about the territory which is in
15 the upper right hand corner and which in Exhibit 102
16 is identified as territory claimed on behalf of Gwoimt
17 and her associated chiefs?
18 A Can you repeat that again?
19 Q Who claimed that territory in October 23rd, 1984? The
20 territory that stretches south from Thutade Lake to
21 Bear Lake, and which is identified on Exhibit 102 with
22 the letters and numeral 1A5, and the 5 under the code
23 is identified as Gwoimt, Smaex and Tsiiwus. I am
24 asking you who claimed that territory on October 23rd,
25 1984?
26 A That area was a territory associated with Smaex.
27 Q Who is not referred to in the statement of claim?
28 A No.
29 Q So, therefore, Gwoimt was claiming that territory on
30 behalf of one of her associated chiefs?
31 A Yes.
32 Q All right. Now, where was the territory that she was
33 claiming for herself or her associated chiefs in 1985?
34 THE COURT: You mean the territory near Kisgagas?
35 MR. GOLDIE: Well, I now have it, as I understand it from Mr.
36 Sterritt, that she would be the plaintiff who would be
37 claiming the territory south of Thutade Lake, through
38 to Bear Lake, because one of her associated chiefs was
39 the person associated with that territory.
40 Q But she would be the plaintiff, the declaration would
41 be made in her name, is that not correct?
42 A As I recall -- you're talking about 1985 now?
43 Q Well, I wanted to make sure that his lordship was
44 following me and I want to go back to 1984, do you
45 follow me, at the time the writ was issued, October
46 23rd, 1984, and do you agree with me that at that time
47 the territory south of Thutade Lake to Bear Lake was

1 being claimed by Kathleen Wale?
2 A No, I can't -- I don't recall just how it was framed
3 in 1984, the statement of claim was framed. Tsabux,
4 Tsiiwus and Smaex were associated with Gwoimt, but
5 whether we had identified in 1984, just how we had
6 identified that at that time, I don't recall in
7 relation to that territory north and northeast of Bear
8 Lake.
9 Q Well, if it was any one of those people it would have
10 to be Kathleen Wale who was making the claim, because
11 the others aren't even mentioned in the statement of
12 claim; is that right?
13 A They are not mentioned, that would be right, yes.
14 Q All right. So we have it --
15 A If that was the case, yes.
16 Q Well, I think Mr. Rush has agreed with me that they
17 are not mentioned in the statement of claim.
18 Now, the -- we have it, then, that the claim to
19 that territory was being made by Kathleen Wale and she
20 was the person identified with that territory at that
21 time?
22 A As I recall, yes.
23 Q I want to refer you to your examination for discovery,
24 volume three, page 290, question 1397.
25 "Q Would it be fair to say --"
26 Does your lordship have it.
27 THE COURT: Yes.
28 MR. GOLDIE: 1397 to 1398:
29
30 Q Would it be fair to say this then, that in 1984
31 the 37 plaintiffs were those who had identified
32 themselves as houses?
33 A Well, yes, you could say that, you could say that
34 that those -- that those houses had been
35 identified at that time as representing the
36 people and the land.
37 Q And in the subsequent two years the process that
38 you have been describing as taking place resulted
39 in the identification of further houses?
40 MR. GRANT: You mean houses which were not identified
41 in 1984?
42 MR. GOLDIE: That is the process he has been
43 describing.
44 A Yes, that could be the situation."
45 Do you remember being asked those questions and you
46 gave those answers?
47 A Yes.

Q And they were true?
A Yes.
Q And in volume four, page 468, question 2022 to 2033:

"Q Let me phrase it a little differently. At the time that the writ was issued you had, on October 22nd, 1984, there was attached a Schedule A and B, a metes and bounds description and a map. The map was Exhibit 10. Do you recall that?
A Yes."

My lord, Exhibit 10 is now Exhibit 731.

"Q Within the external boundaries depicted on Exhibit 10 you knew of the house boundaries in some detail, perhaps not in complete detail; is that a fair statement?
A I knew, I knew that, yes. I knew of the house territories, that there was a lot of work that had to be done genealogically and in consultation back and forth with hereditary chiefs to ensure that the depiction of the territories at that time was accurate."

You were asked those questions and you gave those answers?
A Yes, I did.
Q And the answers were true?
A Yes.
Q Now, in 1985 your view, I suggest, of who was the proper chief identified with the territory south of Thutade Lake and extending to Bear Lake, was still Gwoimt or Kathleen Wale?
A No. In the summer of 1985, I went on a field trip to that area with members of the House of Nii Kyap, a member of the House of Nii Kyap, and during that period identified features and then following that, in the -- which would be when I sat down in 1986, in December of 1986, then I brought together all of the information that I had from over the years as well as that field trip and began to put all of that together.
Q But you didn't change the map that is Exhibit 102 and is dated October, 1985?
A No, it was a base map and a draft map that Marvin was working with and I had, in terms of him and I working together on that, I hadn't done that and not until September or December of 1986, is when I sat down and began to go into it in detail.

1 Q And there are notes of your field trip in the summer
2 of 1985 to which you refer?
3 A Yes, there are.
4 Q And who are the people who accompanied you on that?
5 A On that particular trip there was two sets of -- on
6 one day I went out with two sets of people, in the
7 morning I went out with William Charlie, who is Wawsi
8 Mideek, and my father, Neil B. Sterritt, Wii Gaak, and
9 then in the afternoon I went out with Peter Abraham,
10 and Alec Bob, Alec Bob, and Alec Bob is from the House
11 of Nii Kyap.
12 Q Were any of your imformants on that occasion members
13 of the House of Gwoimt?
14 A No.
15 Q But it was on that occasion, and possibly on
16 subsequent occasions, that you obtained information
17 that caused you to correct or change the territory
18 at -- attributed to Gwoimt in the area south of
19 Thutade Lake?
20 A No, the -- I don't know at what point Tsabux was
21 identified in the statement of claim as a hereditary
22 chief with a house, for the purposes of the statement
23 of claim, but at whatever point that was, that -- I
24 mean at any given time, that is the area that was
25 known to be territory of the House of Tsabux, and the
26 chiefs within that house are Smaex, and Tsiiwus, and
27 that was the reason that Gwoimt's name appeared on the
28 map originally, because Gwoimt was associated with
29 those chiefs and sat together at the feast, and still
30 sit together at the feast. But it was not the
31 territory of Gwoimt.
32 Q Mr. Sterritt, I am not talking about the subsequent
33 appearance of Tsabux or anybody associated with him, I
34 talking about the substitution of Nii Kyap for Gwoimt
35 in the northern part of the area which had been
36 attributed to her by you in 1984?
37 A Well, I pointed out yesterday that David Gunanoot, Nii
38 Kyap, had mentioned that Black Hat Tom was his uncle
39 and it wasn't clear at that time to me what the
40 relationship was between Black Hat Tom, who was also
41 known as Tom Tsabux, and Nii Kyap, and that's the
42 reason for that.
43 Q Well, you haven't got to the point of why you
44 attributed Gwoimt to that area in the first place?
45 A Well, I think I have.
46 Q Well, why?
47 A Because of the relationship between Gwoimt and Tsabux.

1 Q Well, Tsabux subsequently appears in his own right, we
2 are not talking about him, we are talking about the
3 substitution of Nii Kyap for Gwoimt in the northern
4 part of this area?
5 A I just explained the connection. I wasn't clear on
6 the relationship between relationship between Tsabux
7 and Nii Kyap, because David Gunanoot had called Black
8 Hat Tom his uncle and I thought there might be a
9 relationship. When we pursued that further and got
10 into it, in fact there was a separate House of Tsabux
11 and the House of Nii Kyap was separate. And -- but
12 that's the reason for that at the time.
13 Q And the information upon which you attributed the
14 territory to Kathleen Wale in 1984 proved to be wrong?
15 A No. I pointed out, I think we have gone over this a
16 number of times this week, that the first statement of
17 claim identified a number of hereditary chiefs who
18 would represent a certain number of people and all of
19 the territories. Gwoimt in that case was associated
20 with Smaex, Tsiiwus and Tsabux and for that reason
21 Gwoimt's name appeared in that area. But it was not
22 the territory of Gwoimt.
23 Q Despite what the statement of claim alleged?
24 A Well, I think I have clarified that for you a number
25 of times.
26 Q I am interested in finding out the process which
27 resulted in an allegation in the statement of claim
28 with respect to a named person as the head of a house
29 and whose name us subsequently removed. And I think I
30 have your explanation.
31 A Yes, I have explained that a number of times.
32 Q Now I want to move --
33 THE COURT: Before do you that, the territory you mentioned as
34 being attributed to Kathleen Wale at the time of the
35 first statement of claim near Kisgagas, is that still
36 attributed to her or has that been -- has she been
37 replaced in that area?
38 A No, that's still there. It's south of Kisgagas --
39 THE COURT: And it's still attributed to Gwoimt?
40 A Yes, this is the one right here. Kisgagas is right
41 about here and actually it's more southwest when you
42 look at the map.
43 THE COURT: So that that's unchanged?
44 A Yes.
45 THE COURT: Thank you.
46 MR. GOLDIE:
47 Q That's unchanged from 102, basically, right straight

1 through to overlay map 9-A?
2 A Yes, I believe so.
3 Q Now, I want to ask you some questions about the
4 territory of Geel. One of -- and this is the northern
5 territory -- and one of the aspects of the concessions
6 made to the Tahltan was to reduce Geel's territory in
7 size; is that correct?
8 MR. RUSH: Excuse me, there has been no evidence of concessions
9 made to the Tahltan? Are you paraphrasing the
10 evidence of Mr. Sterritt's or is this a question you
11 are putting to the witness?
12 MR. GOLDIE: That's how I am characterizing it.
13 A Well, that's an improper characterization.
14 MR. GOLDIE:
15 Q Well reduction, how about that, the reduction in the
16 northern territory in favour of the of the Tahltan?
17 Are you happier with that?
18 A That's a better word but --
19 THE COURT: How would you describe it?
20 A An identification of the further work of the further
21 work on the boundaries in that area --
22 THE COURT: A recognition of the Tahltan claim to that claim
23 formerly claimed by the Gitksan?
24 A Yes.
25 MR. GOLDIE:
26 Q And that was one -- one of the results of that
27 re-definition of that was the -- what was part
28 originally thought to be the territory of Walter
29 Harris as Geel became Tahltan territory?
30 A Well, I would say it was always Tahltan territory. As
31 I mentioned, people defined the area as going to the
32 head of the Skeena and when you're situated at
33 Hazelton that's a very general term. But in fact,
34 ultimately, with more and better work, then we were
35 able to identify where the boundaries went in that
36 area.
37 Q And what you're saying is that once that was done you
38 recognized that territory which had been earlier
39 claimed as territory of Geel's, had always been
40 Tahltan territory?
41 A Yes.
42 Q Now, I have looked through the material that you gave
43 us for Geel, and Mr. Walter Harris doesn't appear to
44 be one of your informants, and when I say the material
45 you gave us for Geel I am referring to a blue binder
46 of material dated April 20th, 1987, which you informed
47 us included the material that you had relied upon in

1 arriving at your conclusion that the territory we are
2 talking about was -- belonged to Geel. And did he --
3 was Mr. Walter Harris is one of your informants?
4 Because I don't find any reference to him in this book
5 that you gave us.
6 A No, Walter himself was not familiar with the territory
7 but what he did know from his father and from his
8 uncles was that Geel had a territory at the head of
9 the Skeena, but it was other persons who were familiar
10 with that territory who defined it for me.
11 Q Well, one of your informants was Walter Blackwater?
12 A Walter Blackwater was one of them.
13 Q He provided you with a lot of information, did he not?
14 A Well, in respect to what?
15 Q Well, this and other territories besides this?
16 A Yes.
17 Q He gave commission evidence, did he not?
18 A Cross-examination, I think.
19 Q Cross-examination on an affidavit, yes.
20 A Yes.
21 Q And you were present?
22 A Yes, I was.
23 Q Did he give his evidence in Gitksan?
24 A Yes, I think he did.
25 Q Is it my understanding that the interviews that you
26 conducted with him were conducted in English?
27 A It was a mix when Walter talked to me, sometimes he
28 talked in English but he speaks broken English and
29 sometimes he spoke in Gitksan, and in the company of
30 someone else. I am not -- not always with someone
31 else, but sometimes with someone else there.
32 Q One of the tapes that was produced on September 23rd
33 is the plaintiffs' document 5594, which I am
34 instructed was an interview with Mr. Blackwater May
35 22nd, 1983. I am instructed that that entire tape is
36 in English.
37 A Yes, I think it may have been. I haven't reviewed
38 that tape but it may have been.
39 Q And I am instructed that Mr. Blackwater showed no
40 difficulty with the English language in the course of
41 that interview, would that be your recollection?
42 A Well, he could converse in English but to express
43 himself in terms of the territory in a full way,
44 it's -- and I find that with a lot of the Gitksan and
45 Wet'suwet'en, that they express themselves much better
46 in their own language and Gitksan is his first
47 language.

1 Q The question that I put to you was that he experienced
2 no difficulty in the English language in the course of
3 that interview; is that your recollection?
4 A I don't recall whether he did or not.
5 Q But you do recall that the entire interview was
6 conducted in English?
7 A I am not sure about that, whether it was or not.
8 Q But since there is a tape, we will take the tape as
9 conclusive, will we?
10 A I haven't listened to that tape. I haven't reviewed
11 that tape, I think, since that time.
12 Q Do you recall that during that interview there was a
13 map of the areas being discussed?
14 A I think there may have been a 1 to 250,000 map. I am
15 not sure about that.
16 Q You and Mr. Blackwater discussed it, features on that
17 map, did you not?
18 A I believe we did, yes.
19 Q Mr. Blackwater had no difficulty in following you on
20 the map?
21 A Yes, he did. I would point out a feature, and he
22 would go skimming across the map. I had a great deal
23 of difficulty with it.
24 Q But he was able to understand what the map was?
25 A Not really. From just the way he dealt with the map,
26 he couldn't. And in subsequent sessions with Walter I
27 found that I have had the same experience.
28 Q I am talking about this session that is on a tape that
29 was produced in September, September 23rd, of a
30 written interview on May 22nd, 1983, and I am
31 suggesting to you that Mr. Blackwater in that
32 interview did not experience difficulty in discussing
33 with you features on the map?
34 A He had no difficulty discussing features. But with
35 respect to the map, he may have appeared to understand
36 but I found from that and from other discussions with
37 Walter with a map in front that he could not follow a
38 map. And would he go -- I would point out a place on
39 a map and we would exchange information as to what
40 that feature was, and then he would -- then he would
41 start to describe where he was going from there and he
42 would be running all over the map as though -- he may
43 have sounded that he understood the map, but in fact
44 he was all over the page or whatever was in front of
45 him.
46 THE COURT: Which of the various Blackwaters went on the
47 northern tour?

A That was Walter's brother, David, that came on the trip.
THE COURT: David?
A Yes.
MR. GOLDIE:
Q Now in the book that you handed us in April of 1987 or handed -- not handed to us but that we received in April of 1987, I find a record of an interview with Mr. Walter Blackwater on the 12th of January, 1987 and is this handwriting yours?
A Yes.
Q And there is red underlining in the page as we received it, was that provided by you for our assistance?
A Is this from that document book? Yes, okay. Yes, I believe I did.
Q Now that interview was by telephone?
A I am not sure whether it was or not.
Q Well, I am directing your attention to the words "by telephone" just opposite the date.
A Yes.
THE COURT: Mr. Goldie, the date was?
MR. GOLDIE: 12th of January, 1987, my lord.
Q And that interview was conducted in English?
A Yes, it was. Well, primarily, I think primarily in English.
Q And at the bottom of the page, underlined in red, one of three lines underlined in red, you have first "boundary of Geel", and then a line down, you have "boundary of Geel goes way up to Stikine." What did you understand -- first I should ask you, is that a transcription of something that Mr. Blackwater told you?
A Yes.
Q What did you understand him to mean by "way up to Stikine"?
A Well, quite often they talk about the Stikine people and in that case he was talking about the boundary would go to the Stikine people.
Q All right. He didn't mean to the headwaters of the Stikine, did he?
A I don't think so. They -- it's my understanding that it went up to the Stikine and I don't think he was talking about the Stikine River.
Q Or -- well, what you recorded was "boundary of Geel goes way up to Stikine." Now that could be either the river or the people?

A They use the name Stikine interchangeably. Actually they use that more than Tahltan, but they use that interchangeably with the people.
Q But my question to you is, that that could have been either the people or the river?
A Well, that's a possibility, that that's what it could be, yes.
Q Of course if he was referring to the river he was mistaken?
A Well, the -- yes, because it doesn't go way up to the head of the Stikine.
Q Right. By January 12th, 1987, you were dealing with the Tahltan people or had dealt with them in connection with their claims?
A Prior to that I had talked to Martha Himadim, Martha Sinclair, and she had indicated where the boundary went, boundary went up the Skeena as well.
Q My question was: At that time, had you been in contact with the Tahltan people?
A In what year?
Q January the 12th, 1987.
A I think that the trip that I took to Iskut, if I remember right, was in 1986, was in the fall of 1986.
Q All right. Now, you have advised his lordship that the entire northern territory of Geel's was excluded from the map which accompanied the statement of claim as issued in October, 1984, because Geel had not, in effect, decided at that point, had not decided to join the lawsuit, am I right in that?
A Yes.
Q Now, had you identified any other territories as belonging to Geel at that time?
THE COURT: From what time is that?
MR. GOLDIE: October of 1984, my lord.
THE COURT: Thank you.
A In what area?
MR. GOLDIE:
Q Well, just generally.
A Well, we knew that Geel was associated and had territories in the area of Sweetin River down in the -- on the Kispiox river.
Q Was that removed from the claims area because Mr. Harris hadn't decided to join the lawsuit?
A No. One of the chiefs in his house had indicated that he wished to go in at that time and he did.
Q Well, in whose name was that territory claimed in the statement of claim as issued in October, 1984?

1 A I am not sure. I would have to look. I don't recall.
2 Q All right. But we do have it clear that there was
3 property which has been or territory subsequently
4 identified as Geel which was within the boundary of
5 the land claim as it was in October, 1984, and was not
6 excluded, even though the northern territory was
7 excluded?
8 A Yes.
9 Q And you can't recall the name of the person who
10 claimed that territory in 1984?
11 A Well, it's a member of his house. I think his name
12 is -- and I think Walter had indicated that if he
13 chose to enter at that time, that he could -- I think
14 his name is Niista Huuk, that's John Heit.
15 Q Well, he wasn't named in the statement of claim, was
16 he?
17 A No, but that territory was associated with someone
18 else and I don't recall who it was associated with
19 then.
20 Q You may have an opportunity of consulting the
21 statement of claim during the break and perhaps you
22 can tell us after that who was claiming that Sweetin
23 River territory in October of 1984.
24 THE COURT: I take it Geel was not a plaintiff at that time?
25 MR. GOLDIE: He was not a plaintiff at that time, my lord. And
26 as Mr. Sterritt has confirmed, the exclusion of this
27 finger of territory in the north, I am referring to an
28 overlay which shows the territory as outlined in the
29 claim to the Federal Government in 1977 and the
30 territory as outlined in what is now Exhibit 731, the
31 map attached to the original statement of claim was
32 excluded because Mr. Harris had not made up his mind.
33 Q One other reference, if you can assist us, Mr.
34 Sterritt, another one of your informants with respect
35 to Geel's territory was Martha Brown?
36 A Yes.
37 Q And I am going to show you notes of an interview with
38 her dated November 30th, 1984. Are those are your --
39 is that your handwriting?
40 A Yes, it is.
41 Q And the people present at that time were Martha Brown,
42 S. Robinson, is that Steve Robinson?
43 A Yes.
44 Q E. Samson, who is that, please?
45 A That's Eva Samson.
46 Q And yourself?
47 A Yes.

1 Q And this was "re her territory"; is that correct?
2 A Yes.
3 Q And you have underlined on those pages those
4 observations which she made which relate to the
5 territory of Geel?
6 A Well, yes.
7 Q And on that date, November 30th, 1984, did she say to
8 you that Geel's territory is around Groundhog Mountain
9 and Table Mountain, it doesn't go past there?
10 A Yes, she did.
11 Q That is considerably south of the boundary which
12 existed before the reduction or re-definition that
13 occurred with the Tahltans?
14 A What's the date on that?
15 Q November 30th, 1984, according to this?
16 A Yes.
17 Q Am I not correct then, Mr. Sterritt, that shortly
18 after the statement of claim was issued, you were
19 advised by Martha Brown that Geel's territory was --
20 the boundary was considerably short of what was
21 depicted in the next amendment to the statement of
22 claim?
23 A Yes, I did. And the reason for that is that I wanted
24 to get further information and also to, once I had
25 that information, to deal with the entire northern
26 boundary, not all at once or not piece by piece.
27 Q In any event what she told you was place the -- placed
28 the boundary far short of the Stikine River?
29 A Yes.
30 Q And was she telling you something which indicated that
31 the claim as made in October of 1984 was excessive?
32 A I don't recall that she said anything like that.
33 Q I am not suggesting she said anything like that, I am
34 asking you if -- wasn't that information which
35 indicated to you that the claim, as made in October,
36 1984, was excessive? I am talking now about the
37 northern boundary.
38 A I wouldn't use those words. I was seeking a --
39 whether there was further detail about those areas, we
40 had -- we had a map that we had used for a number of
41 years that was based on a certain amount of
42 information but at that point I was seeking further
43 detail. And Martha Brown indicated that at the time.
44 Q She is a very high ranking chief?
45 A She was.
46 Q Her -- she is one, she was one of the plaintiffs,
47 Kliiyem lax haa?

1 A Yes.
2 Q You say "we had a map we had used for many years",
3 what are you referring to, please?
4 A Yes. I am referring to the map of 1977.
5 Q That's the one that was presented to the federal
6 government?
7 A Yes.
8 Q Now, in this book, there is a map, which --
9 MR. RUSH: Which book are you talking about?
10 MR. GOLDIE: The book dated April the 20th, 1987 entitled --
11 well, one title is Territory of Goohlaht, and then
12 under another tab there is Territory of Geel. Now, is
13 that a map on which you have entered some features?
14 A Yes, it is.
15 Q That's the -- the printing is in your hand, is it?
16 A Yes, it is.
17 Q And that purports to be the northern territory of
18 Geel?
19 A Yes, it is.
20 Q That, of course, is after the boundary was redefined
21 with the Tahltans, is it not, that map?
22 A This map or this territory, as it's shown, was based
23 on the work that I did over the winter of 1987,
24 starting in December of 1986.
25 Q Yes, what I am saying is that it is subsequent to the
26 redefinition of the boundary?
27 A It's part of the redefinition. I don't get your
28 point.
29 Q I am looking -- I am going to ask you, is there any
30 map which shows Geel's territory prior to the
31 redefinition of the northern boundary?
32 A There is the map that you see -- you see that.
33 Q Exhibit 102?
34 A Yes. That's a draft map.
35 Q That was your understanding of Geel's northern
36 territory in October of 1985?
37 A No. This is a map that, a draft map that Marvin
38 prepared, he was using the same base that he had used
39 all along, and in December of 1986 I sat down and
40 began to do a review of all the material that I had
41 and of the external territories.
42 Q My question to you is: Prior to the redefinition of
43 the boundary, which followed the work you commenced in
44 December of 1986, your understanding of the northern
45 territory of Geel is found as outlined on Exhibit 102?
46 A No, I had information at that time that I had received
47 from my uncle, that I received from Martha, that I had

1 received from Martha Himadim, Martha Brown, as
2 distinct from Martha Himadim, that indicated that the
3 boundary was not as far up the Skeena as we had
4 thought and that simply hadn't found its way on to the
5 maps.
6 Q All right. Now, the -- you will recall that on
7 Exhibit 10, that is to say Exhibit 731, you also
8 outlined your understanding of the Carrier-Sekani
9 overlap, as it was at that time, at that time, the
10 time of your examination for discovery, do you recall
11 that?
12 A Yes.
13 MR. RUSH: If my friend is moving on to to a new subject or if
14 he isn't the map that was shown to Mr. Sterritt is
15 entitled "Territory of Geel, Xsi Miinanhlgii" and
16 stamped "draft copy".
17 THE COURT: Thank you. Is that book --
18 MR. GOLDIE: It's not an exhibit. I think I probably better --
19 I should say this, that the interview with Martha
20 Brown to which reference was made, is now under tab 5
21 in Exhibit 721.
22 THE COURT: Tab 5 in the book of documents?
23 MR. GOLDIE: Yes, that reminds me --
24 THE COURT: I don't think that's what tab 5 is in this book.
25 MR. GOLDIE: 721, my lord.
26 THE COURT: Maybe it's back here.
27 MR. GOLDIE: 721 is the collection of notes that the plaintiff
28 has tendered.
29 THE COURT: I am just mystified by your reference to tab 5, Mr.
30 Goldie.
31 THE REGISTRAR: This is 721, my lord.
32 THE COURT: All right.
33 MR. GOLDIE: Well, that reminds me, my lord, that the -- does
34 your lordship have 721 tab 5?
35 THE COURT: Yes, I do now.
36 MR. GOLDIE: The fourth page in is the note of an interview with
37 Martha Brown on November 30th, 1984.
38 Q Mr. Sterritt, I want to put before you the note of the
39 interview in 721, and draw your attention to the fact
40 that what was given us in April of 1987 appears to be
41 an edited version, to assist you in that regard -- I
42 am sorry, what is in Exhibit 721 is edited. For
43 instance, I refer you to page 3 in the document that
44 was given us in 1987, April, and I draw your attention
45 to the portion which reads "M. B. went up with Walter
46 Geel. They went up because he wanted to make a totem
47 pole."

We were unable to find that in 721, can you tell us why one was taken out and the other was left in?

MR. RUSH: My lord, he can't tell you that but I can. In reviewing those notes, what has clearly happened is that when the notes were pulled through on the feeder for the photocopier and in fact pulled in several pages at one time and so it looks like some of the pages are spliced and I just, after the questions of some of these notes not having been included as they should have been, I have been reviewing all of the notes and trying to determine exactly what was wrong and in both pages, the second page and the third page, there are in fact three pages all compressed into one. So that's the explanation.

THE COURT: That's in the document book that Mr. Goldie is working from?

MR. RUSH: Yes, the document book in 721 is -- contains pages which have been collapsed together, we have got half of one and half of another. I have been reviewing those and have determined that those two pages contain -- whereas the whole entry should contain seven, I think it has five or something like that.

MR. GOLDIE: Well, are there -- I assume my friend will inform me of any other documents like that.

MR. RUSH: Well, I am trying review all of them. It takes a comparison one by one by myself.

THE COURT: Yes. The exhibit, 721, tab 5, doesn't appear to have any photographic compression?

MR. GOLDIE: It's the one that does. 721 does not include all of the material that is in the book that we were given in April.

THE COURT: I am sorry, I spoke too quickly, because the 5th page does show a line.

MS. KOENIGSBERG: It's the fourth page in my book is headed seven and the next page is headed eight but there are only three pages.

THE COURT: I understand. All right.

MR. GOLDIE: The -- now at the time, of course my lord, when we received, when we received the material in the book I have been showing to the witness, we did not have any of these other notes. They started coming prior to the conclusion of Mr. Sterritt's discovery, and of course they have been coming in in batches since then.

I was going to to say, my lord, I should tender the documents to which I have referred as separate exhibits. The first, my lord, would be Mr. Blackwater's telephone interview of the 12th of

1 January, 1987, that consists of one page, Martha
2 Brown's interview of November 30th, 1984,
3 THE COURT: The date?
4 MR. GOLDIE: November 30th, 1984. And that consists of eight
5 pages.
6 And the map which my friend, Mr. Rush, has
7 identified, which does not appear to be dated but
8 which the witness has stated is subsequent to the
9 redefinition or alteration of the northern boundary.
10 I would ask that the Blackwater documents be marked
11 Exhibit 73 --
12 THE REGISTRAR: 736 would be the next exhibit.
13 MR. GOLDIE: 736. The Martha Brown document be 737, and the map
14 be 738.
15 My lord, I don't have any copies of those and I
16 will have those made over the --
17
18 (EXHIBIT 736: INTERVIEW BY PHONE WITH WALTER
19 BLACKWATER BY N. STERRITT)
20
21 (EXHIBIT 737: NOTES WITH MARTHA BROWN, NOVEMBER 30,
22 1984)
23
24 (EXHIBIT 738: MAP - NORTHERN TERRITORY OF GEEL -
25 PRINTING BY N. STERRITT, UN-DATED)
26
27 THE COURT: Any objection, Mr. Rush?
28 MR. RUSH: None.
29 MR. GOLDIE:
30 Q Now, I am turning to the Carrier-Sekani overlap and
31 you will recall that you outlined what you described
32 to be the Carrier-Sekani overlap on Exhibit 731 or
33 Exhibit 10, you recall that, do you?
34 A Yes, I do.
35 THE COURT: I am sorry, Exhibit 731?
36 MR. GOLDIE: Yes, that's the map that was attached to the
37 original statement of claim, it was before the witness
38 on his examination for discovery, and it was on that
39 that he marked certain outlines. Your lordship may
40 recall the outline of the northern boundary change.
41 And for your lordship's assistance, the boundary
42 change was marked by the figure 3 on Exhibit 10 or
43 Exhibit 731.
44 THE COURT: That was Exhibit 10 on the discovery?
45 MR. GOLDIE: Yes, Exhibit 10 on the discovery. And I am not
46 going to make further reference to that.
47 Q And there were, at the time of your discovery, namely,

1 in March of 1987, there were differences to be
2 resolved between the Carrier-Sekani and the Gitksan
3 and Wet'suwet'en?
4 A There were discussions to be held, yes.
5 Q Well, when I say differences to be resolved, I mean
6 there was an acknowledged overlap and that is what I
7 mean by differences?
8 A Well, I never said that there was an overlap. I
9 believe somewhere, at some point, I informed you that
10 I did not believe there to be an overlap, that there
11 was further work that had to be done by the
12 Carrier-Sekani themselves in relation to genealogies
13 and that, with that work, it would demonstrate that
14 there is no overlap.
15 Q Well, that was because, in your opinion, the work that
16 you had done would support, in your opinion, the
17 correctness of the line as you understood it at that
18 time?
19 A No, the hereditary chiefs themselves were stating that
20 there was no overlap, that they owned those
21 territories.
22 Q The -- but there were -- it was known at that time, in
23 March of 1987, that there was a necessity, both for
24 further work to be done on the part of the Gitksan-
25 Wet'suwet'en, and on the part of the Carrier-Sekani
26 and that it was known there would have to be meetings,
27 further meetings?
28 A The Gitksan and Wet'suwet'en stood ready at any time
29 to meet with any neighbour, if there was an issue to
30 be discussed, and that was something that the
31 hereditary chiefs were prepared to do and that I as
32 president was prepared to do at any given time and was
33 a process that we simply were prepared to do. We were
34 prepared to meet with our neighbours at any time on
35 these issues.
36 Q I understand that, Mr. Sterritt. And in fact you have
37 met with the Carrier-Sekani, on that basis, how many
38 times since March of 1987?
39 A Since March of '87?
40 Q Yes.
41 A Once.
42 Q Well, that was -- and prior to that you had met in
43 April of 1986?
44 A Yes, there was a meeting in April of '86. There was a
45 meeting in, I think, September of '86 as well.
46 Q I wasn't aware of that but the meeting in April of
47 1986 has been referred to as the All Clans Feast of

1 Moricetown?
2 A Yes, that was to deal with Wet'suwet'en territories.
3 Q And there was a map put up on the wall which has now
4 been produced and marked Exhibit 101 here, which is a
5 map drawn or prepared by Marvin George, which
6 indicated the extent of the land claimed by the
7 Wet'suwet'en as -- not the Wet'suwet'en, by the
8 Carrier-Sekani, as it was then understood by the
9 Gitksan and Wet'suwet'en?
10 A Yes, there was a map at that meeting.
11 Q Yes. And the word overlap was used at that meeting on
12 a number of occasions, wasn't it?
13 A It may have been, yes.
14 Q You were there, weren't you?
15 A Yes.
16 Q Have you not read the transcript of that meeting?
17 A Not for a long time, no.
18 Q Is it your evidence today that the overlap, using that
19 word as it was used at that All Clans Feast, has been
20 resolved?
21 A Can you repeat the whole question again?
22 Q Is it your evidence today that the overlap issue as
23 between the Gitksan Wet'suwet'en and the
24 Carrier-Sekani has been resolved?
25 A Are you referring to the April, '86 meeting.
26 Q No, I am sorry. I confused you. I said I am using
27 the word overlap in the same sense as it was used at
28 that meeting, but now put that to one side, and simply
29 concentrate on this question: Is it your evidence
30 today that the overlap issue as between the Carrier-
31 Sekani and the Gitksan-Wet'suwet'en, has been
32 resolved?
33 A The -- subsequent to the April of '86 meeting, the
34 Carrier-Sekani people moved away from that line that
35 they had had in their earlier map, which goes back to
36 the early '80s, they moved away from that considerably
37 and almost entirely eliminated the areas that they
38 were claiming in Wet'suwet'en territories. There was
39 a very -- I don't know to what extent they have done
40 work in the -- along the southern boundary but the
41 last that I know is that there was very little, if
42 anything, along the southern boundary, to my
43 knowledge, little if anything along the eastern
44 Wet'suwet'en boundary, and in the -- in terms of
45 subsequent work, there was -- the extent of what I
46 understand that the Carrier-Sekani may be claiming
47 today, would be a line from approximately north of --

from east of Horetsky, actually along the height of land east of the Nilkitkwa River, that's Xsi Yaga Mahlit on our map. In fact it's right in the area we landed. It's where we first landed at Horetsky. It's right there.

THE COURT: We didn't land at Horetsky?

A No, we didn't. The mountain we landed on is the area approximately where the line would go north from there.

THE COURT: What was the name of that mountain again?

A That was Kotsin Mountain. Let me look.

THE COURT: Yes, that is it.

A That's it, K-O-T-S-I-N. From there, the line goes slightly east and north to the west end of Thutade Lake, about like so. But there was nothing on any of the trips that we took into the area with Carrier-Sekani persons and our hereditary chiefs that indicated that to us, that that was not Gitksan territory. For example, the names in the area east of there are all Gitksan names. The people who are members of the Carrier-Sekani Tribal Council, who still maintain that they have an interest in that area, are in fact Gitksan persons' Gitksan names, but living at at Takla Lake. Similarly, at Bear Lake, the -- at a meeting at Moose Valley in September or October of 1986, before we left that meeting the members of the Carrier-Sekani said that if Thomas Jack and Mary Jack and that family, wished to be involved in this court case, then they would -- then it was up to them, and in fact they are members of the House of Nii Kyap, they own the territories around Bear Lake on both sides, and then the area that remained was the -- as far as we are concerned then is the area from just north of Bear Lake into this area and the people who are in that area are members of the House of Nii Kyap.

MR. GOLDIE:

Q Well, Mr. Sterritt, the question I put to you was: Is it your evidence today that the differences have been resolved and your answer is no, and you have just described the presently outstanding differences as you understand them?

A I shouldn't say no. I mean, there is -- the way I see it, there is still work that they may have to do but the Gitksan and Wet'suwet'en have done their homework and have set a very high standard for themselves and meet that standard.

Q Well, let me put it this way: The outline of the

claim made by the plaintiffs in this case, as depicted on overlay map 9-A, is not one that has been agreed to by the Carrier-Sekani at this point?

A Well, not to my knowledge. They -- and to what extent they might disagree, I don't know. I have just gone through and described where matters were as of about a year ago, and also point out that, through genealogies, we have determined that the people who are claiming those areas are in those areas.

Q Yes. Now, with --

A The complication that arises is that there are Gitksan persons who live at Takla Lake and at Fort St. James, who I didn't know whether they consider themselves members of the Carrier-Sekani Tribal Council or whatever, but they are in that area and that's where the complication comes in.

Q I appreciate the evidence that you have given but I -- you will recall that you stated that the Tahltan had, as far as you were aware, agreed to that northern boundary. My simple question is: Have the Carrier-Sekani agreed with the eastern boundary and your evidence is not to your knowledge?

A No, you're being too general there. With the exception of the -- well, if you go by the original map that was issued by the Carrier-Sekani Tribal Council, just about all of that has been removed. There are a couple of areas that remain, and in terms of the Wet'suwet'en little, if any, and as I understood it, the Carrier-Sekani were going to do further research. I don't know what they have done or where they have gotten to on that at this point, but in terms of what's -- what remains, there is a, as I know it now, there is -- there may be a smaller area in the northeast.

Q Now, the next people that we discussed were the Council of Tsimshian Nations, when I say when we discussed, I am talking about your examination for discovery. What I will do is read to you some of your answers on the examination and ask if you agree with them or if you wish to amend them in any way. Volume three, 339, questions 1570 to 71:

"Q Let us come around, who is next?
A The next group we would come to would be the council of Tsimshian Nations.
Q Yes?
A They are based in Kitselas and Kitsumkalum."

You were asked those questions and you gave those answers?
A Yes.
Q And they are true?
A Yes.
Q 1597 to 1582:

"Q I am instructed the land to the north and northwest of Sand Lake is within the boundaries of a trapline which is registered in the name of William Bolton. Are you aware of that?
A That may be true. William Bolton may have a trapline in that area. I couldn't tell you that, but the hereditary lands that belong to the House of Tenimgyet are within the boundaries of that area and that's what that map reflects.
Q Mr. Bolton, is he either a Gitksan or Wet'suwet'en, to your knowledge?
A Mr. Bolton is, to my knowledge, is from Kitsumkalum.
Q So Tsimshian?
A Tsimshian.
Q Is it not so that the land on the north shore of Sand Lake is within the territory claimed by the people of Kitsumkalum?
A The people of Kitsumkalum may have included that in their territory but based on the work that I have done now the information of the hereditary chiefs is accurate that it is Gitksan territory and that it has been for hundreds of years. And also based on my work there is information from the elders of the Kitsumkalum people that the boundary of the Xsii 'it River is the limit of the Kitsumkalum people, and I think, once again, as I mentioned before, it is very important to do genealogical research; very important to get out on the ground. It is very important to know your histories, and there is no question that the Tenimgyet, that is the territory of the House of Tenimgyet."

You were asked those questions and gave those answers?
A Yes.
Q 1585 to 1587:

"Q Can you locate on this map, Exhibit 10, the area that we are talking about?

A We are talking about Dam Gitax 'ol, Sand Lake.
Q Yes.
A I guess we use number 4.
Q Yes. 4."
And the exhibit was then marked accordingly.
Question -- were you asked those questions, and did you give those answers?
A Yes, I do.
Q And they are true?
A Yes.
Q Question 1590 to 1599:

Q Now, you have marked a particular point on the Exhibit 10 as 4, which is Sand Lake. Can you give me any aerial sense of the overlap which you understood the people of Kitsumkalum made and which you say is now resolved?
MR. GRANT: Just for the record before he does that, Mr. Sterritt as marked the number 4 in the left margin.
A Okay.
MR. GRANT: And then he has crossed out a line and has made another line with an arrow.
MR. GOLDIE: Yes.
MR. GRANT: Just so the record shows that there was a correction made by Mr. Sterritt.
MR. GOLDIE: Yes.
A To be -- the fact is I have only just received an indication in rough from Kitsumkalum what it is they are claiming and it is very difficult to determine from this map just how far north in that particular valley, the valley of Lum An Tsihl Gwellii that they are going and I don't know how far they go. I don't know what their claim is.
MR. GRANT: Just for the record, I understand that a map of the Kitsumkalum claim with respect to this area has been produced to counsel for the Province of British Columbia and I think that if you want to question Mr. Sterritt on it you should at least let him, that you should allow him to examine that map.
MR. GOLDIE: Well, I am just asking him what he understands. I am not putting any maps to him.
A What I understand that generally they are claiming --"

Then Mr. Grant intervened.

"Just a moment. With respect to what Mr. Sterritt understands by the overlap claims of any other group -- of course Mr. Sterritt is not here representing those groups

MR. GOLDIE: That is clearly stated.

MR. GRANT: And also his opinion is only his opinion about that, and I question the weight of it. I have allowed you to go on extensively about it, but the weight of his opinion as to what their claim is and where that overlap is, is a matter of an opinion that may be modified by material provided by any of these other groups to counsel for the Province. Thusfar we have not received from counsel for the Province any Rules, answers to the Rules under the examinations and most, if not all, cases have not provided --

MR. GOLDIE: There have been no Rule 28's, Mr. Grant.

MR. GRANT: -- any answers to questions --

MR. GOLDIE: There have been no Rule 28 examinations.

MR. GRANT: Tendered by the Province to these third parties who are ordered to be examined under Rule 28."

And there is a continuing exchange. And I will skip down now to page 345:

MR. GOLDIE: I am not putting the answers of third parties to him, I am simply going -- do you have here the affidavit of Mr. Ryan which was sworn on the Rule 28 application?"

If I may intervene there, that was Mr. Ryan of the plaintiffs, whose affidavit was filed when the Province sought orders under Rule 28.

"Because I have page 3 of that affidavit and it states and I read: 'I have been informed by Neil Sterritt, the president of the Gitksan-Wet'suwet'en Tribal Council, that he has had informal discussions with Alex Bolton of the Kitsumkalum Band that the western boundary is claimed by the Gitksan plaintiffs. A further meeting was scheduled between representatives of the plaintiff and representatives of the Council of Tsimshian Nations on June 17, 1986, to exchange technical information and evidence with

respect to the proper border.' Did you so inform Mr. Ryan in those words?
A Yes, I did.
Q Now, could you tell me, please, what technical information and evidence was exchanged?
A Yes, I can.
Q Please do so?
A We went to a meeting and we took a map and we took some anthropological information and we provided that information to the Kitsumkalum people -- pardon me, the Kitselas and Kitsumkalum people, and requested certain information and we received none and they received ours.
Q You received nothing from them?
A No.
Q Were you given any indication at that meeting about of what their claim was?
A We have a very general idea about, about the extent of it and that's the best that I can do.
Q And could you do the best for me by depicting it on the map, Exhibit 10?"

Mr. Grant intervened. And I skip down to the answer.

"Well, all I can say, some portion of the Lum An Tsihl Gwellii, which is the Cedar River, I don't know how much they say they claim and Lum An Tsihl Gwellii, this river here (indicating).
Q Could you, just if you do not mind, put another 4 at the end of Cedar River so whoever reads the transcript can understand where your pen was hovering over when you said 'along the Cedar River'.
A Well, I will put a 5 by the name Cedar River.
Q All right. That is fine.
A 5 (indicating).
Q Thank you. And somewhere in there, indefinite as it may be, you understand they make some sort of claim?
A Yes.
Q Is it your understanding that part of that claim is based upon the use by the people of Kitsumkalum of that territory for hunting, fishing and trapping?
A I don't know what the basis is."

Q Do you recall being asked those questions and did you give those answers?
A Yes, I did.
Q And they are true.

THE COURT: Could we take the morning adjournment now?

MR. GOLDIE: Yes.

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

Wilf Roy
Official Reporter

(PROCEEDINGS RESUMED PURSUANT TO MORNING ADJOURNMENT)

THE COURT: Mr. Goldie.
MR. GOLDIE: Thank you, my lord.

CROSS-EXAMINATION BY MR. GOLDIE, (Continued):
Q Question 1617 to 1618 in Volume 3:

"Q Is it right to put it this way then, that the area that you have identified on Exhibit '10' is an area that has been the subject-matter of discussions with the Kitsumkalem people; those discussions have not been concluded, that as far as you are concerned the area that is within the boundary line shown in Exhibit '10' is properly the area of the House of the Gitksan, but the matter is still open as between the Gitksan and the Kitsumkalem; is that a fair way of putting it?
MR. GRANT: I believe he described that there were some changes to Exhibit '10.'.
MR. GOLDIE: I understood him to say that they were very minor changes.
A Yes, there is minor changes in that area. Everything, what you have just said, the very last part I think I would disagree with. I would have to -- actually I would like to hear it again.
MR. GRANT: Read the question back, please."

And the question was then read back.

"A Mr. Goldie, we have, for a number of years now, have made every effort to meet with other tribal groups and to continue to try and do that. I have done a tremendous amount of work in this area (indicating) with the hereditary chiefs and feel quite confident that is Gitksan and would be happy me to meet with them and discuss it further and hear what they have to say and to, you know, go into this in great length, but the evidence, in my opinion, is quite strong. It is Gitksan territory under the house of Tenimgyet.
MR. GOLDIE:
Q That is Arthur Matthews?

A Arthur Matthews, Junior."

You were asked those questions and you gave those answers?

A Yes, I did.

Q And the answers are true? The answers are true?

A There was a complicated answer back in there. Yes, they were -- it was true at the time, yes.

Q Are there any qualifications you wish to make at the present time and if so I'll put the answer in front of you?

A Yes. I'd just like to look at that one answer. It was complicated. Yes. That's fine.

Q So the answers are true then and true now, is that correct?

A Yes.

Q Question 1619 to 1620:

"Q Were there any notes made of the discussions that are described in Mr. Ryan's affidavit?

MR. GRANT: The ones before the affidavit was sworn?

MR. GOLDIE: And the one that was scheduled in June that he describes, and then the ones that Mr. Sterritt has talked about since then?

(DOCUMENT SHOWN TO WITNESS)

A I don't know about any notes that might have been made at the meeting that Mr. Ryan attended -- oh, is he not referring to that here -- okay.

Q You had informal discussions with Alex Bolton; did you keep any notes of that meeting?

A I would have to check. I am not sure whether I did or not."

You were asked those questions and you gave those answers?

A Yes.

Q And they are true?

A Yes.

Q And have you made a check to determine whether there are any notes of your meetings with Mr. Bolton?

A To the best of my recollection the notes appear in one of my field books. They are very brief, but there are some notes in my field book.

1 Q Will they be identified by reference to Mr. Bolton?
2 A Yes. I think Alex Bolton's name appears on the top of
3 the page.
4 Q And so far as you are aware those are the only notes
5 of discussion you have had with Mr. Bolton?
6 A Yes.
7 Q The burden -- or it is a matter of concern, is it not,
8 that the council of Tsimshian people feel they are
9 unprepared to discuss their boundary with you?
10 A I don't know on what basis or at what state of
11 preparation they are. They -- at one of the meetings
12 they did not have the money that they -- they did not
13 have a budget at that point to do research. And they
14 were going to try and get it. What we offered was our
15 facilities, our library. What they wanted to do was
16 to go to Ottawa and research there what information
17 there might be about the Kitselas or the Kitsumkalum
18 territories. And I think what they -- you might have
19 been thinking of is the Barbeau Beynon. What we did
20 was we offered to open our library to them so that
21 they could have access to all of that information that
22 we had which as far as I know was pretty comprehensive
23 with regard to Barbeau and Beynon on their
24 territories.
25 Q Well --
26 A At one of the sessions I took some material to them
27 and asked them -- they had said -- they had indicated
28 they had information and I asked them for that
29 material at that meeting in addition to anything else.
30 And they did not indicate whether they would give it
31 to the -- to us or not. To this day I have not
32 received anything and I think I made a request later
33 on for information.
34 Q You made a request for information of them?
35 A Yes.
36 Q What, by -- in writing or orally?
37 A I don't know whether it was at that meeting or whether
38 it was in writing later. I don't recall.
39 Q Well, Mr. Sterritt, we asked in a Notice to Admit that
40 was given in June, we asked the plaintiffs to admit a
41 letter from the council of Tsimshian nations to the
42 minister, Department of Indian Affairs, Ottawa, dated
43 November 24, 1986, in which request is made for money
44 and assistance. I don't believe that document was
45 admitted. I am not sure why not, but in any event it
46 wasn't. Would it be correct to say that you were
47 aware in November of 1986 that the Tsimshian, the

1 council of Tsimshian nations was seeking assistance
2 from the Federal Government to allow it to embark upon
3 a research and documentation program?
4 A I don't know at what point I was aware of that,
5 whether it was earlier than that or about that time.
6 I can't recall.
7 Q Did they not tell you that their information at that
8 time was insufficiently specific and rich enough in
9 detail to support their claim as against the Gitksan
10 on an equitable basis?
11 A Oh, they never indicated that to us. They -- at a
12 meeting they talked about those areas. They did not
13 get into specifics. They -- I think they indicated
14 they had to do work, but they never -- I don't recall
15 at any time them using those words.
16 Q Well, didn't they indicate to you that they considered
17 themselves to be at a disadvantage?
18 A I don't know. I don't think they did indicate that in
19 a meeting.
20 Q Well, wasn't that --
21 A But -- but what -- but we were aware that there was
22 information and we offered our library to them. We
23 said they could come up and spend as long as they
24 wanted in our facilities, that if it was a problem of
25 getting to Ottawa that they could come to Hazelton and
26 have free access to our files.
27 Q And that was for the purpose of overcoming the
28 disadvantage which they felt themselves to be at?
29 MR. RUSH: Well, how can he state the purpose, my lord? I mean
30 he has just said that he didn't say anything to that
31 effect. He is asking Mr. Sterritt to project into the
32 minds of --
33 THE COURT: He has said that they have indicated they didn't
34 have proper funding, which is some indication of a
35 disadvantage, is it not?
36 MR. RUSH: Well, that might be a conclusion your lordship would
37 draw, my lord, but I mean the question is aimed at
38 eliciting from Mr. Sterritt what was in the mind of
39 other people at the meeting.
40 MR. GOLDIE: No.
41 THE COURT: From what they said.
42 MR. GOLDIE: I beg your pardon?
43 THE COURT: From what they said only.
44 MR. GOLDIE:
45 Q I am putting it to the witness that the purpose of the
46 offer that was made to use the library facilities was
47 in your mind to help them overcome any difficulty they

1 might have with respect to lack of information?
2 A I don't want to use those words. As I recall we had
3 met once, Don had met with them once. Then I had a
4 session with them. There was some difficulty during
5 the meeting in terms of an information exchange and
6 they did talk about wanting to do some research and
7 that they would have to go to Ottawa to do that. And
8 we pointed out that it was important to us that we
9 work on this issue. One of the things that we were
10 encountering is that meetings were being set up and
11 they would cancel them. But it was important that --
12 that we do meet and that we do discuss it and that
13 information -- that if they needed information and
14 they couldn't get to Ottawa, that they would be
15 welcome to come to our library and use it.
16 Q Well, my suggestion to you was that the purpose for --
17 the reason you made this offer was to get them up to a
18 level where they could start talking to you about
19 details?
20 A I don't recall whether that was part of it. They
21 had -- they had -- we had a copy of their map. It
22 went over some of our areas. We didn't know what the
23 basis for it was and they said that those were areas
24 that were of concern to them. We also provided them
25 with some of the information of the hereditary chiefs
26 in addition to what -- to offering them our library.
27 And we wanted to get discussions underway.
28 Q Yes. Now, was a Mr. Mel Bevan, B-e-v-a-n, present at
29 any of your meetings?
30 A He was present at -- yes, he was present at one or two
31 of them. I don't recall how many.
32 Q And he was the president of the council of Tsimshian
33 nations in 1986, was he?
34 A Yes, I think he was.
35 Q Now, you say we've made a -- we invited them to use
36 our library. And that would have in your view made it
37 unnecessary for them to go to Ottawa?
38 A No. They may still have felt that they wanted to go
39 to Ottawa, but if they -- if what they were concerned
40 about was the Barbeau Beynon files, if that's what
41 they wanted to access, then we had them. I don't know
42 what other reasons they might have wanted to go to
43 Ottawa for.
44 Q But you also have there a very large number of copies
45 of the archive documents, do you not?
46 A Where?
47 Q In your library at Hazelton?

A Well, which archive documents?
Q RG10?
A I don't know that number.
Q You don't know that?
A No.
Q Well, I have made a request, my lord, that the -- there is an index to that library, that it be produced. My instructions are that there are a very large number of documents that have been copied from files in Ottawa. And I'll put the question to you once more, Mr. Sterritt. Did you not inform the representatives of the council of Tsimshian nations that the library at Hazelton contained not only Barbeau Beynon material but a great deal of archival material, however you might characterize that?
A I don't recall that. What I was referring to was the Barbeau Beynon and perhaps the Wilson Duff material. He also -- I don't know whether he actually did work with the Kitselas and Kitsumkalum, but he reviewed and had notes of the Barbeau Beynon material and so one way or the other there would have been material appearing in both.
Q Now, you presented him with some material, did you not?
A Yes, I did.
Q I refer to question 1628 to 1630, my lord:

"Q Excuse me, before you go on, could you summarize for me the nature of the evidence that you presented to Mr. Bolton that satisfied you that this was Gitksan territory, just, without going into detail, what was the nature of the evidence that Mr. Ryan referred to in his affidavit?
A The, the material that I provided to the Kitsumkalum was part of the material that satisfied me about who the area belonged to.
Q And what satisfied you?
A Well, you asked me about the material that I provided to them, and that's what I am referring to.
Q Yes.
A And that material is from the Barbeau Beynon records of 1920."

You gave those answers and those answers -- you were asked those questions and you gave those answers and

1 the answers are true?
2 A Yes.
3 Q Yes. And you were relying upon the Barbeau Beynon
4 material that you had identified and which you gave to
5 them as supporting your assertion that the property --
6 the territory was part of the Gitksan territory?
7 A That's partly true. The -- the hereditary chiefs had
8 defined their territories and had provided the detail
9 of creeks, lakes and mountains within those
10 territories. They were the ones who provided the bulk
11 of the information. But I also because of this --
12 because the Kitsumkalum were -- and Kitselas were --
13 when they had submitted that map and also indicated
14 that they had an interest in that area, then I
15 reviewed the Kitsumkalum files and the Kitselas files
16 to see what was in them and to what extent their --
17 those files came into Gitksan territories. On that --
18 and those are the files that I handed over to the
19 Kitselas and Kitsumkalum.
20 Q Yes.
21 A But --
22 Q That was the material that you referred to and the
23 answer to your -- my question, the material that you
24 provided them was from the Barbeau Beynon records of
25 1920?
26 A Yes. And based on the information from Kitsumkalum or
27 Kitselas and Kitsumkalum hereditary or knowledgeable
28 people from the 1920's that Barbeau had -- Barbeau and
29 Beynon had talked to.
30 Q Yes. Precisely. You were relying upon Barbeau Beynon
31 to persuade them that your version of the boundary was
32 correct?
33 A I was providing them with the information from the
34 files, if they could -- couldn't find it to do that,
35 but I was relying on the information of the hereditary
36 chiefs as to their territories.
37 Q But you didn't supply them with that information. You
38 supplied them with files from Barbeau Beynon, didn't
39 you?
40 A I think that I -- I don't recall, but there was no
41 reason why I wouldn't give them the Gitksan -- the
42 information from Barbeau Beynon on the Gitksan side.
43 And that was the -- if I didn't, then the offer was
44 there for them to come and look at all of those files
45 in our library. And there is no reason why they
46 couldn't have done that. Mel Bevan himself is very
47 familiar with our tribal council. He lived in our

1 area for a long time. He was the -- an administrator
2 for the tribal council in the area and he knew what
3 was in those files or if he didn't know the details,
4 but he knew that they were there, he could have come
5 and looked at them.
6 Q And he could speak then with authority when he
7 complained to the Federal Government that the council
8 of Tsimshian nations didn't have the research and
9 documentation that would place them on an equitable
10 basis with you?
11 A Well --
12 MR. RUSH: There has been no evidence that he complained to the
13 Federal Government.
14 MR. GOLDIE: Well, you know he did.
15 THE COURT: I don't know he did.
16 MR. GOLDIE: No. I appreciate that, my lord. We may have to
17 subpoena Mr. Bevan.
18 Q My question, however, was that he would be in a
19 position to know the nature of the documentation that
20 you had, that's your evidence, isn't it?
21 A Yes. He would -- he knew that we had acquired the
22 Barbeau Beynon files.
23 Q And a lot of other material, too?
24 A I don't know what you are referring to.
25 Q Well, a good deal more historical material?
26 A In what kind?
27 Q Historical. Do you not know what I mean when I say
28 historical material?
29 A Well, I don't know what you are referring to.
30 Q Well, I am asking you haven't you got other historical
31 material in your library other than Barbeau Beynon?
32 A There is a lot of material in the library. I can't
33 tell you everything that's there. There is --
34 Q I am not asking you that.
35 A -- a lot of current information and historical.
36 Q Yes.
37 A But I can't say what all is there. But I know that
38 the Barbeau Beynon files are there.
39 Q Yes.
40 A And in terms of an advantage or disadvantage, they
41 could have had complete access to our files. There
42 was no reason why they couldn't have gone through
43 them.
44 Q But that's not my question, Mr. Sterritt. From your
45 evidence you say that Mr. Bevan would have knowledge
46 of the documentation contained in the library of the
47 Gitksan-Wet'suwet'en tribal council?

A He would be aware of it. I don't know to what extent he would have knowledge about what was there.
Q All right. But wouldn't you agree with me that that would provide him with at least the basis of comparing the resources of his own people with the resource available to you?
A Well, can you explain to me what the disadvantage would be if he has access to that file, all that material?
Q Well, perhaps --
A There is no disadvantage.
Q Yes. Well, that is based upon your conclusion that what is in the Gitksan tribal council is complete?
A No. But we also --
Q No. Isn't that correct, Mr. Sterritt?
A In terms of that it was still open to the Tsimshian to go to Ottawa if they wished.
Q Yes.
A But in terms of -- they had -- they identified that they had an immediate problem. They didn't have the money to get to Ottawa right now.
Q Yes. They identified that to you, didn't they?
A They said they didn't have a budget then to get to Ottawa then and I said, "Well, in the meantime -- "
Q Excuse me just a moment.
A I said, "In the meantime you have complete access to our files in Hazelton."
Q Yes.
A And that offer was open. I think I phoned and followed up on that. I said, "You have access." Where is the disadvantage? They could still go to Ottawa if and when they got some money.
Q Mr. Sterritt, you knew that they were applying to Ottawa, didn't you?
A I think it was on the radio. I think that they mentioned that they wanted to -- when they were applying for money, I don't know if that was in a specific sense or a general sense, but I think I heard it on the radio. Yes.
Q And the basis was that they considered themselves to be at a disadvantage to you?
A I didn't hear that on the radio and they never said that in front of us.
Q All right. I want to go back to your discovery now.
THE COURT: Just a minute. Mr. Sterritt, did they ever take you up on your offer?
A No.

THE COURT: Thank you.
MR. GOLDIE:
Q Page 369. Yes. Actually it's beginning at page 367, my lord, question 1680.

"Q Now, can you indicate to me on Exhibit '10' the approximate area of the Nishga claim and I am going to refer you to your Document Number 1858, which is a copy of something entitled: 'Nishga Land Claim Area,' and contains a note at the bottom: 'January 10th, 1983 C.T.C.' That would be the Gitksan-Carrier tribal council?
A Can I look at that, please.
Q Yes."

Question 1682:

"Q 'Yes'?
A Yes.
Q All right. The original of that document, or whatever that was copied from (indicating), this being the copy that we have of plaintiffs' documents 1858 was received by the tribal council along with the Nishga tribal council's response to the Pearse Commission's final report. Now, setting that aside a minute, the Pearse Commission reference, was that the first time you had knowledge of the extent of the Nishga land claim?
A One of the difficulties in, in determining what the Nishga were actually saying might be an overlap was sorting out which map they were using."

Were you asked those questions and did you give those answers?
A Yes, I did.
Q They are true?
A Yes.
Q Question 1684:

"Q Yes.
A Because this map was one of a number. And, in fact, the Nishga have a declaration that they have produced and a number of times we

have asked them to tell us -- or pardon me -- we have sat down and analysed what it is that that declaration is saying, and in our opinion the declaration did not support what the Nishga were saying about their boundary; about where their boundary was, and, in fact, one of the subsequent meetings we have had with the Nishga since, let's say, July of '86, they have engaged a consultant who did an analysis of that and determined that their interpretation of the, I believe, the 1916 Declaration was not right. And that in itself resolved a large part of the so-called 'overlap.'.

Q That was in what, the northwestern end?

A Beginning, beginning -- I couldn't say, I don't know how far down, because I don't have the map with me. But in any event approximately, beginning around, number '6'."

Now, you were asked those questions and you gave those answers?

A Yes, I did.

Q And the answers are true, are they?

A Yes.

Q And the 6 is something you placed on Exhibit 10 or Exhibit 731 here?

A Yes. That's the same map we were talking about before.

Q Yes.

A The other numbers, yes.

Q Yes. And then some questions were put and Mr. Grant objected on the grounds that matters involving the Kitwancool have nothing to do with this lawsuit. And then I go to page 384, which is in the next volume, my lord. Now, after a discussion relating to the nature of the meetings, I -- question 1728:

"Q Yes.

A And then I want to explain what has happened subsequent.

Q Yes, please do.

A Okay.

MR. GRANT: You are referring to Exhibit '15'

(EXHIBIT SHOWN TO WITNESS)

A From a map entitled 'Nishga Land Claim Area'

from Exhibit '15' onto Exhibit '10' I am going to draw the degree of overlap between those two maps, and I will begin at, just south and west of Dam Gitax 'ol, which is Sand Lake.

Q Which is already marked with a '4' on Exhibit '10'. Would you identify that starting point with a numeral, and I think we are probably up to about seven.

MR. GRANT: For the record, he is using a pencil, marking this line (indicating).

A I have marked it with a red -- orange pencil number '7' at, just west, barely west of Sand Lake and then going to the height of land (indicating) just north of Sand Lake, and then at that point there is no -- because of the scales it's difficult to get it, but my understanding that basically no separation between the lines in to that area until we get -- basically it follows that line to a point, there is a mountain just south of that area, known as Tsim Sto'ot."

1731:

"Q Is there an English name for that name?
A The English name of that mountain would be Mount Priestly."

And were you asked those questions -- well, I am sorry I will ask the next one.

"Q Is it in the area of Mount Priestley, it is, Mount Priestly is right in the area of the second '7' that you have drawn?
A Yes."

And then he continues his answer:

"A And then at that point the line would, the line would converge and go east along the height of land and then around the drainage of the Gyehl 'Din River.
Q And the English name for that, please?
A Kiteen.
Q Yes.
A And then back to the third '7' in an area

near Xsi Anxtimiiyit."

And were you asked those questions and did you give those answers?

A Yes, I did.

MR. RUSH: My lord, I think that the witness should have Exhibit 10 in front of him.

MR. GOLDIE: Yes. If that would be helpful. It's 731 here.

THE REGISTRAR: 731?

MR. GOLDIE: Yes.

Q Now, without going into the detail of your discovery, you were marking with a series of sevens in an orange pencil the overlap as claimed by the Nishga, is that correct?

A I think that the red pencil indicated the overlap as -- or pardon me, the area as it would be defined in the Nishga Declaration in an interpretation of the Nishga Declaration. It goes from near Sand Lake around the headwaters of the Kiteen River and then --. Oh. And then goes up north to near to south of Mezziadin and then back down. It's either -- I'd have to read that again.

Q Wasn't that taken from a map that you had received for the Nishga called -- identified as Exhibit 15 on your examination for discovery?

A It may have been. I'd like to --

Q And then you got around to the Nishga Petition a little later, didn't you?

A But what is Exhibit 15?

Q It's a map entitled "Nishga Land Claim Area."

A Prepared by who?

Q It's the plaintiffs' document 1858.

MR. RUSH: The title is on page 377 which is in the previous volume as a map of Nishga land claim area.

MR. GOLDIE: Yes. And it's plaintiffs' document 1858. If my friends have their list of documents that would give the origin of it.

Q Isn't this a map that you were given by the Nishga, Mr. Sterritt?

A Well, I want to be sure of that.

Q Yes. Well, in the plaintiffs' list of documents it's dated January 10, 1983, "Nishga Land Claim Area." And you have no idea now of the origin?

A No, I am not saying that. I would like to see which map that is that we were interpreting here.

Q Well --

MR. RUSH: There may be some.

MR. GOLDIE: It's referred to at page 367 and I have --
MR. RUSH: 378.
MR. GOLDIE:
Q I have read this:

"Q Can you indicate to me on Exhibit '10' the approximate area of the Nishga claim and I am going to refer you to your Document Number 1858, which is a copy of something entitled: 'Nishga Land Claim Area', and contains a note at the bottom: 'January 10, 1983 C.T.C.' That would be the Gitksan-Carrier tribal council?
A Can I look at that, please?
Q Yes."

Question 1683:

"Q All right. The original of that document, or whatever that was copied from, this being the copy that we have of plaintiffs' document 1858 was received by the tribal council along with the Nishga tribal council's response to the Pearse Commission's final report."

Isn't that the case?
A Oh. Okay. That -- yeah. That -- that was what we were putting on here.
Q Yes. And is indicated by the series of sevens?
A Yes. That's right.
Q All right.
A That's right.
THE COURT: Is that a -- is that an overlap into Kitwancool territory or is it some -- I suppose this would not be Kitwancool?
A No, this isn't.
THE COURT: This would be --
A All of this and all along in this area.
THE COURT: Yes.
A Down to a point about there, is.
THE COURT: Is this area between the two -- between the two sixes a territory that we are talking about the other day as having been deleted from one of the territories?
A That's right.
THE COURT: Yes.

A Yes.
THE COURT: Thank you. From whose territory was that deleted?
A Yal, Y-a-l.
THE COURT: Yes. Thank you.
MR. GOLDIE:
Q Now, I was at page -- in Volume 4, page 384 and rather than reading an extensive part of the discovery, I think we have it now, the sevens were the transference onto Exhibit 10 of that map that the Nishga had submitted to the Pearse Commission?
A Yes.
Q Then page 392, and my lord, this simply has to do with the identification of the figure eights on Exhibit 731.
THE COURT: All right.
MR. GOLDIE:
Q Question 1753. Well, I go back. 1751:

"Q The question I wanted to put to you is that it is not indicated on Exhibit '10' with respect to the Nishga claim in the Bowser Lake area; have you sufficient knowledge of that interest to indicate on Exhibit '10' the extent of their claim as you now know it?
A What I would like to do is put on this map my understanding of the Nishga Petition and then also, then I would like to talk to you about the area that the Nishga say is theirs in the northwest, and so I will do that. I will try to put on this map where the Nishga go in relation to the Petition of 1913.
Q And do you --
A As they now interpret it.
Q Do you have a copy of the Petition of 1913 here?
A I, I am not sure whether I have or not.
Q I suggest that you continue to use the orange pencil for Nishga."

And then Mr. Grant says:

"..... I handed him a red one.....
MR. GOLDIE: It will be identify by the '8'.
Q Will there been any overlap between the lines that you are about to draw and the lines identified by '7' on Exhibit '10'?

A In this case we would begin with the letter '7' -- the number '7', as we did before and go to -- and this is very approximate because I don't have a map in front of me.
Q In this case I will take Mr. Grant's suggestion and we will use a different -- a black --
A That's good. And I will do a dashed line.
Q All right.
A The Nishga Petition, as I understand, it would be beginning at number '8' (indicating) -- pardon me, beginning at number '8', right beside number '7' (indicating)
Q Yes.
A The first number '7', would follow number '7' around to the second number '8' (indicating)."

Perhaps your lordship might wish to see that.
A The first seven is here.
THE COURT: Yes.
A The first eight is here. The eight follows the seven until we get to that point.
THE COURT: Yes.
A And then at that point the line departs and goes -- well, that's how far we are right now. We got to here.
THE COURT: Yes, all right.
MR. GOLDIE: Yes.
Q The question 1758 -- answer -- question:

"Q Yes.
A The first number '7', would follow number '7' around to the second number '8' (indicating).
Q Yes.
A From that point an approximation, and this could vary some, but would go northeast and then would go northwest, approximately (indicating). I could be wrong about the northern part, but in any event --
Q You are tracing the dotted line along the western boundary of the Gitksan claim on Exhibit '10'?
A (Indicating). The Nishga Petition of 1913 would follow that line fairly closely except

in the lower area near the village of Kitwancool. I don't recall where that goes exactly, so I will put a question mark there (indicating) and a question mark, say, from in the area of the Nass River, because I don't recall whether it follows the boundary or goes straight across (indicating). I will put two lines there (indicating)."

Now, the --

A The Nass River is running down right there, under my finger. That's it.

THE COURT: Yes.

A Yes.

MR. GOLDIE:

Q And the balance of your recollection of the Petition is indicated by the dashed lines identified from time to time with the numeral eight?

A Yes.

Q Now, I want to go to the next numbering, question 1764. I am starting there not because the question means anything, my lord, but because the answer deals with the beginning of the use of the numeral nine.

THE COURT: All right.

MR. GOLDIE:

Q

"Q All right. Thank you.

A And in doing that they then, I guess you could say leaped outside of their Nishga Petition, which was something that their hereditary chiefs in 1913 stood on, but they leaped outside of it to say that they owned land. And I will draw that line approximately, but we will start with the number -- I will try and do a solid line, I guess, (indicating) but with the number '9'; that which is on the Nass River.

Q Where it crosses the Gitksan boundary; is that about right?

A Near Xsi Txemsem; the Nass River is Xsi Txemsem, and Bell Irving River is Sto'ot Xsi Txemsem (indicating). In that area the line would be something like so (indicating), meeting farther east (indicating), but I am not sure about that

(indicating). And I believe something like so (indicating), and then that would be number '8'.
Q Now, you concluded --
A Pardon me number '9'.
Q You concluded that line by marking a '9' close to the number '2', which was one of the boundaries that you drew for the Tahltan?
A That's right."

Were you asked those questions and you gave those answers?
A Yes, I did.
Q And the answers are true?
A Yes.
Q Now, Mr. Sterritt, you have described Feasts with the Nishga --
MR. RUSH: Excuse me, my lord, I have just looked at the answer preceding that and it seems to me that the passages just read, 1764 and so on, don't make much sense without a reference to 1763. I think that should be put to the witness.
MR. GOLDIE: I am content to do that, my lord.
THE COURT: All right.
MR. GOLDIE:
Q
"Q -- that was created -- "

Well, actually it should begin further up if we are going to do that.
THE COURT: Well, you read up to 1761.
MR. GOLDIE: Yes. I am going to start, I think, 1761.
THE COURT: You have already read that.
MR. GOLDIE: Is read.
Q So I will just continue. 1762:

"Q That is the same overlap -- "

THE COURT: Sorry, you didn't include 1761.
MR. GOLDIE: Oh, I am sorry. I thought I had.
Q 1761 then:

"Q Now, as you have drawn it so far there does not appear to be any overlap in the northwest sector?
A That's correct -- well, the only overlap in

relation to the map would be once again in the Gitksan area.

Q That is the same overlap essentially --

A As number '7'.

Q -- that was created in the line that you drew with the number '7'?

Well, Mr. Sterritt, is it your understanding then that there is no overlap or claim by the Nishga in the areas around Bowser Lake or near Bowser Lake claimed by the Gitksan?

A I maintain that there is no overlap. The Nishga qualified, followed up and qualified their Petition by saying that they owned the Bowser Lake area, and they, they, they told a story that the Gitksan hereditary chiefs are quite familiar with; in particularly the hereditary chiefs of Kitwancool. And the story applies to Meziadin, to the area near the Meziadin not to the Bowser Lake; but the story told by the Nishga purports to apply to the Bowser area."

And you were asked those questions and you gave that answer?

A Yes, I did.

Q Thank you. Now, having gone around the map that is Exhibit 731, I am going to leave that and refer you to Feasts that were attended with the Nishga and you have attended some, have you?

A Yes. But what I should point out on that is that the Nishga interpretted their Petition to include all of the watershed of the Nass River and then subsequently -- and we had had a couple of meetings and in one of the meetings I informed them that if they were following their 1916 Petition or 1913 Petition that it was -- it wasn't interpreted right and subsequently they went and hired a consultant who did an analysis of the Petition which was almost identical to ours. At that point the Nishga called us to the Nass and indicated to us that they had done this review, revised what it was they were claiming and that's the basis for that line from nine to nine. I just want to clarify that. That's -- originally they had gone right out and included the area around Geel's territory. They had gone as far as that where the height of land was there that included the Nass

1 River. They included those territories. Including
2 Blackwater Lake and all of that. So that's the
3 background to this and why I drew the line nine to
4 nine.
5 Q Now, I asked you a minute ago that you have attended
6 Feasts with the Nishga where the so-called overlap was
7 discussed?
8 A Yes.
9 Q And you took notes?
10 A Yes.
11 Q And they are as accurate as you could make them at the
12 time?
13 A The -- yes. To the best of my ability the language,
14 it was spoken in Gitksan and in -- well, for the
15 purposes of the common language between the Gitksan
16 and the Nishga we call it Sim Algyax, and that's S-i-m
17 space A-l-g-y-a-x. And so the Nishga also used their
18 own language as well.
19 Q And the Feast in October 1984, do you recall where
20 that was? I think you have given evidence on this.
21 A Well, the first Feast was at Kitwanga and I am not --
22 I don't recall the date of that. It was in May of --
23 Q Well, did you --
24 A It may have been '84. I don't recall. But the first
25 meeting of our Feast was in 19 -- or was in May and
26 then the follow-up, the second one was in, I think,
27 October.
28 Q Yes. And --
29 A And I don't know which one you are referring to.
30 Q Well, I'm -- I'm going to refer to the one in October.
31 That was the one in which the Nishga were the hosts?
32 A Yes.
33 Q And at which they told their adaawk?
34 A Well, we differed on that. Whether they were telling
35 adaawk or not.
36 Q Yes. They characterize it as such and at least to my
37 recollection one of the Gitksan characterized it as
38 such. But in general you felt they were not telling
39 adaawks. They were telling myths?
40 A They were telling what they call anda mahlasxw.
41 That's a-n-d-a space m-a-h-l-a-s-x-w. Anda mahlasxw
42 and adaawk are different.
43 Q Yes. That's precisely the point I was putting to you.
44 In your view they were telling myths?
45 A They were telling anda mahlasxw.
46 Q Well, would you give me the English translation for
47 that, please?

A Well, they carry a moral. They -- the Wiigyet -- that's W-e -- pardon me, W-i-i-g-y-e-t, the Wiigyet stories are anda mahlasxw and they are taught -- they explain how mountains were created or creeks or rivers, lakes; they explain -- and they also provide a moral so as to train young people to do or not to do -- to act properly. And whereas adaawk are based on history and events.

Q Yes. The distinctions that you make have already been given in evidence. I asked you if there is an English translation for what I have referred to as myths and you don't know one, I take it?

A Well, I don't know whether there was a perfect translation. So --

Q All right. But at any rate whatever it is that the Nishga told, whether they were adaawk or whether they were what I have described as myths, there was a sharp response from some of the Gitksan present, is that not right?

A No. I think that the Gitksan hereditary chiefs felt that because eagle down had been blown in the meeting, that a sharp response couldn't be given, that it would -- that it would have to be dealt with later. There were responses given, but I know that one or two hereditary chiefs did come to me and say that we really couldn't deal with it because we were so far apart on it. They were -- by and large had given anda mahlasxw. And when we were in Kitwanga the Gitksan hereditary chiefs had given an adaawk about the event. For example, at Bowser Lake where the feather was given over to the house of Skiikm Lax ha by the Stikine and other examples down the boundary. But in terms of sharp response, there was one hereditary chief gave a humorous response and played on the theme that had been had developed, which was a story about Wiigyet.

Q Yes. Wasn't the word "aggression" used by at least one chief in describing what he had heard?

A It might have been. I don't recall.

Q Well, would you agree with me that if I describe something you have said as aggression, that that's a reasonably sharp response?

A Well, you would have to remind me about that.

Q All right. I will. Now, the -- have you described all of the -- well, I will put it a little differently. Following that Feast in October of 1984, what further steps have been done to resolve the

1 difference as it was outlined by you in Exhibit 10
2 that appears to exist between the Nishga and the
3 Gitksan on the question of this overlap?
4 A I think there were one or two sessions with the Nishga
5 and at one of the sessions I urged the Nishga that it
6 was very important that if there was going to be any
7 differences, further differences, that the way to deal
8 with those differences was to -- either by vehicle or
9 by helicopter to go out to those spots with
10 knowledgeable hereditary chiefs from both parties and
11 to determine the nature of the problem. I urged that
12 very strongly with the Nishga. And I got no response.
13 I followed up with phone calls and I got no response.
14 But subsequently there was a meeting where the Nishga
15 called us to -- well, I don't know whether it was
16 subsequently. I don't know at what point it fell into
17 place, but we were called over and they did a -- is
18 when they did the last presentation which I have
19 described here with the line -- which includes the
20 lines nine to nine, but not the other -- well, I am
21 not sure about the other parts.
22 Q And that's where matters now stand?
23 A To the best of my knowledge that's where it stands.
24 We maintain that -- that there are details within the
25 territories, creeks and lakes and mountains that can
26 be identified by knowledgeable hereditary chiefs
27 within the areas that they are talking about and that
28 with -- and that the Gitksan hereditary chiefs have
29 done that. They have identified the adaawk that
30 relate to those areas, in particular at Bowser Lake.
31 They have named the creeks, lakes and mountains in
32 that area. And that if the Nishga are going to
33 continue to make that claim in that area, they will
34 have to provide equal detail and evidence of the
35 history, and there is no evidence of that. The
36 history is very clear in that area.
37 Q Yes. I said is that where matters now stand and I
38 understood you to say yes. Are there notes of the
39 meetings that you have referred to in October 1984?
40 A I am not sure about that.
41 MR. GOLDIE: Well, I ask my friend to produce them if there
42 are. My lord, I am going to to another subject if --
43 THE COURT: All right. Should we look forward to hearing about
44 that at 2 o'clock then.
45 MR. GOLDIE: Very well.
46 THE COURT: Thank you.
47 (PROCEEDINGS ADJOURNED PURSUANT TO LUNCHEON

ADJOURNMENT)

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

Laara Yardley,
Official Reporter,
United Reporting Service Ltd.

(PROCEEDINGS RESUMED AT 2 O'CLOCK P.M.)

NEIL B. STERRITT, Resumed:

CROSS-EXAMINATION BY MR. GOLDIE: (Continued)

MR. GOLDIE: My lord, I wish to put before the witness tab 5 of the document book of Mr. Solomon Marsden. It's been marked Exhibit 454 for identification, my lord. The Registrar's mark is reserved, reserved for 454.

Q Mr. Sterritt, do you identify that as notes in your handwriting?

A Yes, I do.

Q And of what event, please, or what period, I should say?

A That is the notes that I made at the Nisga'a feast at Canyon City, I believe, October 27th of '84. Yes.

Q Yes.

THE COURT: The date again, please?

A October 27th, 1984.

THE COURT: Thank you.

MR. GOLDIE:

Q And it is at this feast that the Nisga'a told their histories or what they suggested were their histories and the Gitksan listened and made some remarks in reply; is that right?

A Yes.

Q The Nisga'a were the hosts?

A Yes, they were.

Q And the discussion was with respect to the overlap?

A Yes, it was with -- yes.

Q On page one, you have under the heading "Opening Ceremony - Gosnell, overlap is not serious", is that James Gosnell, the president of the Nisga'a Tribal Council?

A I think it was. He has a brother too but I believe it was him that was speaking at the time.

Q His brother was there also, was he not?

A Yes, he was.

THE COURT: That's spelled with one L, is it?

A I have two here.

MR. GOLDIE: G-O-S-N-E-L-L.

THE COURT: Thank you.

MR. GOLDIE: I am sorry, I don't have an extra copy of this.

THE COURT: Just with attempted computer retrieval, we are all going to be in difficulty.

MR. GOLDIE: I hope this is spelled uniformly. I am sorry, my

lord, I have this under tab 14 of the document book.
THE COURT: Thank you.
MR. GOLDIE: The reason I requested the witness to identify it is so that I could tender it as Exhibit 454, and have that exhibit confirmed as such.
THE COURT: Where within tab 14 might I find it? Oh, I think I have it. This is page 2.
MR. GOLDIE: Yes.
THE REGISTRAR: Tab 5 is now going to be an Exhibit, my lord?
MR. GOLDIE: Yes, I think the number was reserved for it.
THE REGISTRAR: 454.
THE COURT: And what is tab 4 going to be, these notes?
MR. GOLDIE: Yes, my lord.

(EXHIBIT 454:NOTES OF NEIL B. STERRITT)

MR. GOLDIE:
Q And your notes indicate the statements that were made by the various speakers from the Nisga'a, including the story of Meziadin as they recounted it. That, my lord, is on the number at page 26 on the -- page 26 on the --
THE COURT: Yes, I have it.
MR. GOLDIE:
Q And then --
A Well, as I recall it on page 26, there is some stars there, I don't know if those are mine or someone else's, but that -- they were talking about -- I don't recall whether they were talking about what the Nisga'a call the Tahltan Concession or talking about the history then. I can't remember.
Q At any rate, the observations of the Nisga'a went on to page 37?
A Yes, that's right.
Q And then you record there a speaker, what was his name?
A Elmer Derrick. Are you referring to the top of the right hand page?
Q No, about midway down, Gwas Laam --
MR. RUSH: What page are you on, please?
MR. GOLDIE: 37.
A Yes, G-W-A-S space, L-A-A-M.
Q And that is Mr. Abel Campbell?
A Yes.
Q A Kitwancool chief?
A Yes.
Q And at the bottom of that page, he is recorded as

1 saying, "I listened to your Adaawk this evening where
2 you have mentioned your territory and various high
3 chiefs." It appears that he regarded what he had
4 heard as an Adaawk; is that right?
5 A I don't know whether he did or not.
6 Q You just recorded his words?
7 A He was -- I don't recall. I think he was speaking in
8 Gitksan and I am not sure what it was he said. He may
9 have said Adaawk.
10 Q Well, that's what you thought he said, isn't it?
11 A Yes, that's what I have there.
12 Q And the -- then he tells some history and at page 39,
13 you record Mr. Solomon Marsden as speaking, are you
14 not, Gamlakyeltxw?
15 A Yes.
16 Q And Mr. Marsden goes on for a couple of pages and then
17 at the bottom of the right hand column on page 40, he
18 is recorded as saying "I hope from deep in our hearts
19 we will give you our Gugwihl Gyoo, that's Mr. Peter
20 Williams, is it not?
21 A Yes, he is the president of the Kitwancool.
22 Q Yes. And on the next page, Mr. Williams is -- you
23 have recorded his statements?
24 A Yes.
25 Q And he is here addressing the Nisga'a, is he not?
26 A Yes, he is.
27 Q And you have recorded him as saying, "Your high chiefs
28 brought out their strong points. I will relate to you
29 something I remember." Then he goes on to speak about
30 the Royal Commission and various other matters of an
31 historical nature; is that right?
32 A Yes, he did.
33 Q And he re-tells the Meziadin story from the Kitwancool
34 perspective?
35 A Yes, he tells the history of Meziadin with respect to
36 the Kitwancool.
37 Q And on page 41, he says on the second column, he says
38 at the top -- well, I start at the bottom of the left
39 hand column he says, the last two lines: "This is why
40 Kitwancool owns Meziadin and Bowser Lake is part of
41 Kitwancool and Gitksan own part of Bowser."
42 THE COURT: Where are you reading that from?
43 MR. GOLDIE: That's on page 41 -- I am sorry, 42.
44 THE COURT: Thank you.
45 MR. GOLDIE: And it begins at the bottom of the left hand
46 column.
47 THE COURT: Oh, yes.

MR. GOLDIE:

Q And he goes on to say, as you recorded him, "I don't know how long NTC overlap." NTC is Nisga'a Tribal Council?

A Yes.

Q And he says, "NTC claims all of the lands of Gwinuu"?

A Yes.

Q That's Mr. Godfrey Good, a Kitwancool chief?

A Yes.

Q And he says "this is aggression"?

A Yes. What he was saying there at that time was that the effect of what the Nisga'a was doing was that it was an act of aggression on their part and at this point it's the Kitwancool who are responding to the Nisga'a, the -- and that's why Solomon Marsden had called on Peter Williams, because Peter has been the president of the Kitwancool since, oh, I think as far back as possibly as far back as the mid-1920s or, pardon me, the -- well, it could be in the 1910 to 1920 or somewhere in that period where he became -- probably in the '20s, he became the president.

Q He succeeded his father, did he not?

A Yes, he did.

Q And then he, or at least you record him as saying "NTC claims all of Gogak, nil left." I take it your use of the word "nil" is simply to indicate that the speaker is suggesting that the Nisga'a claim would leave nothing for a number of the hereditary chiefs of the Kitwancool?

A Yes, that's what Peter Williams was saying there, as I recall from reviewing this, is that based on what the Nisga'a are saying there is nothing left for Gogak, G-O-G-A-K, and then the other names that are there, including Gwinuu.

Q And the last name is the Kitwancool name that Mr. James Morrison bears, not the last name but the first name on the last list or the last line of the chiefs' names?

A Yes. Tkawok, and there it's spelled T-K-A-W-O-K.

Q And that's Mr. James Morrison?

A Yes.

Q And he says "aggression has taken it not overlap"?

A Yes, aggression by the Nisga'a, that it wasn't overlap but it was an act of aggression by the Nisga'a because they were not in that area, there was no basis for their claim in that area.

Q That's a fairly sharp rejoinder, is it not?

A I don't think so. Peter Williams is quite a gentle individual. He was simply -- he stood up and spoke in a pretty calm manner and felt that -- pointed out that based on what the Nisga'a were saying, that it was an act of aggression but it wasn't, there was nothing sharp about that.
Q And over the next page, left hand column, second paragraph, you record him as saying, "This is why Kitwancool will not use the term overlap but aggression." That's a correct recording of what he said?
A To the best of my recollection, yes.
Q And in the next column, second from the bottom, he is recorded as saying, "But tonight another act of aggression" and he is referring to the statements made by the Nisga'a at that feast?
A I don't see where -- that's on the second side?
Q The right hand column on that page, second to last paragraph?
A Yeah, yeah.
Q When he says, "but tonight another act of aggression", he is referring to the statements made by the Nisga'a at this feast?
A Yes.
Q All right. Thank you.
A And in that he is speaking on behalf of the Kitwancool. The hereditary chiefs, like Stanley Williams, had passed information along to me that since the eagle down had been spread it was not a place to respond to the stories of the Nisga'a but a place to hear them out and then to go away and consider it. And Stanley himself got up and told a, as I mentioned already, a story about Wii Gyet, and in his commission evidence he told that same story, at some length, exactly what he said to the Nisga'a. And it drew laughter from the entire audience, because it's quite humorous.
Q That was a sort of attempt to smooth things over after Mr. Williams had characterized the speeches of the Nisga'a as an act of aggression?
A I wouldn't say that.
Q What was it done for?
A Peter Williams, the messages had come to me before, Peter Williams had talked in terms of how we should deal with the evening, whether we should respond, and no, I wouldn't characterize it that way at all. Peter Williams was speaking on behalf of the Kitwancool, it

1 was not up to us how they responded but certainly
2 Stanley Williams was not trying to smooth over
3 anything that Peter Williams said.
4 Q I see. The evidence that has been given here is that
5 Kitwancool are Gitksan; is that correct?
6 A Yes.
7 Q There is still an outstanding dispute with the
8 Nisga'a?
9 A I don't know. That's a matter for Kitwancool.
10 Q Well -- and what about the matter with respect to the
11 territories which are the subject matter of this
12 claim?
13 A The Nisga'a wrote a letter -- pardon me, they invited
14 us to come over to the Nass in October of '86, or '87,
15 must have been 1986, and we went over and they
16 outlined what they had to say, they said that they
17 still or that they were -- had claims to land in the
18 Bowser Lake area, that by reason of family, they
19 had -- that there was land in the Blackwater area,
20 that there was an area around Sand Lake and an area on
21 the Kiteen River, I am not sure whether it was just
22 prior to that or just after that, that we had a
23 meeting with the Nisga'a and I urged on them very
24 strongly that we take their knowledgeable elders and
25 ours and go out to those territories we are talking
26 about, and that they provide the same kind of detail
27 that the Gitksan had provided and I also advised them
28 that it would be my highest priority, whatever I had
29 planned, and I was making trips back and forth to
30 Ottawa and so on, that everything would -- nothing
31 would take priority over a trip with them at the
32 shortest of notice. And I urged that on them and at
33 no time did they follow-up with that. No such trip
34 occurred. And there was, based on the history that
35 Jessie Sterritt has told them on a couple of
36 occasions, and David Gunanoot, about the Bowser area,
37 there is simply no basis for their claim to that area,
38 other than -- I will say something that at one point I
39 asked them the nature of their claim in the Blackwater
40 -Bowser area and they called it their common -- not
41 their common land, they called it their -- not the
42 word common, it was -- I think it had a connotation if
43 not the same word as common lands, and I said what do
44 you mean by that? Because we have set a standard and
45 that the areas are owned by individual hereditary
46 chiefs, that they can define the creeks, lakes and
47 mountains in those areas and they have a history that

1 goes with it. And at no time have we seen this. They
2 also talked about the Bowser area as being what they
3 call the Tahltan Concession and the Tahltan
4 Concession, I understand that at some point, I think
5 in the 1970s, the Tahltans and the Nisga'a met, the
6 Nisga'a were considerably south by about 40 miles of
7 where the Tahltans had a line, and that during the
8 meeting the Nisga'a assumed that the area between
9 where their line was and where the Tahltan was, was a
10 Tahltan concession to them. And I have at no time
11 determined any other basis for the Nisga'a being in
12 that area.
13 Q Well, my question was, what is the status of the
14 matter today, is the -- have the Nisga'a agreed to the
15 boundary which is shown on map 9-A?
16 A I don't know.
17 Q Well, your last contact with them was such that you
18 could not say they have agreed to that outline?
19 A Yes, that's in October of 1980, whatever, that was my
20 understanding. And the hereditary chiefs of that area
21 have -- they know those territories, they know the
22 history of it and they have signed affidavits to that
23 effect.
24 Q We know what the Gitksan chiefs have done, Mr.
25 Sterritt. I was just trying to get your assistance
26 with respect to the position the Nisga'a have taken in
27 relation to the claim that is now before us on map 9-A
28 and I take it your evidence is that they have not
29 agreed to that?
30 A The last discussion I had with them was in October of
31 19, I guess, 1986, which a number of us attended on
32 the Nass River at short notice. There was about five
33 or six of us.
34 Q And there was an agreement at that point on the
35 boundary of the Gitksan-Wet'suwet'en land claim, was
36 there?
37 A At that time, the Nisga'a pointed out several areas
38 which I have already identified and I had urged on
39 them that we had to get out, if they felt that they
40 had more to say that it had to be done out and on the
41 ground, or just prior to that or just afterwards, I am
42 not sure, but I had indicated to them that we had to
43 get out, that they had to -- there would have to be
44 more work done if that's how they felt, and they never
45 took us up on that.
46 Q Now I just want to ask you a couple of questions about
47 an item that you dealt with in your examination for

1 discovery, volume three, my lord, page 308, question
2 1451 to 1454. The witness is being asked about a
3 video that was earlier identified, question 1451:
4
5 "Q Do you recall stating in that video that new
6 political institutions will be developed based on
7 traditional Gitksan laws?
8 A Yes."
9
10 Now my lord, I should provide my friend with the
11 name of that particular video. I believe it is on
12 Indian Land. Question 1452:
13
14 "Q Can you describe for me the nature of the new
15 political institutions you had in mind?
16 A Well, the new political institutions would be the
17 Feast Hall and the hereditary chiefs
18 administering the territories today in a
19 contemporary sense. They would -- the ongoing
20 administration of policy making in the territory
21 would have to be a subject that the hereditary
22 chiefs themselves sit down and work out. There
23 would have to be a definition of the relationship
24 between the Gitksan and the Wet'suwet'en and the
25 provincial government and municipalities and
26 other institutions. Those are the --
27 Q Well, Mr. Sterritt that is a relationship, I
28 asked you what the new political institutions
29 were and I understood you to say, the feast?
30 A Well, the Feast Hall.
31 Q Feast Hall?
32 A The Feast Hall and the governing by the
33 hereditary chiefs. We would have to define those
34 new institutions. There are -- there are some
35 people working on that. Those have not been
36 resolved yet. Those have not been defined in
37 detail."
38
39 Were you asked those questions and did you give
40 those answers?
41 A Yes, I did.
42 Q And volume two, page 196, questions 1057 to 1070:
43
44 "Q I refer --"
45
46 Well, I should have asked you if I didn't, whether
47 the questions I asked you -- I asked the questions --

did you give the responses that I read to you to the questions I read, and were the answers true?
A Could I look at them again, please?
Q Yes, that's volume four. Three. 1451 to 1455. 1454.
A That was through how far?
Q 1454.
A Yes, those are the answers I gave and that was true to the best of my knowledge at that time.
Q Is it true today? Are those answers true today?
A I can't say.
Q Because of your lack of knowledge?
A I don't -- I haven't been involved in any of those discussions since spring of 19 -- since I began to work on the affidavits and --
Q Well, that would be some time --
A Pardon me, that's 19 -- that's over -- I started in the summer of '87 but I basically was, from the time about May or June, I was involved in detail in the review of the territories and the affidavits and I don't know what discussions went on in those areas.
Q Well, when did you cease to be president of the Tribal Council?
A In October of 1987.
Q And the evidence you were giving was in February of 1987, so your knowledge about this particular area only takes you down to May or June of 1987?
A Yes, I was basically working full-time on those matters. I spent very little time on my duties as a president from the time that I really got engrossed in reviewing the territories.
Q All right. I am now going to refer you to volume two, page 196, questions 1057 to 1070:

"Q I refer you to paragraph 4 of the prayer for relief which claims 'a declaration that the plaintiffs' rights to jurisdiction includes the right to govern the territory themselves and the members of the houses represented by the plaintiffs in accordance with Gitksan and Wet'suwet'en laws administered through Gitksan and Wet'suwet'en political, legal and social institutions, as they exist and develop.' The worth 'themselves' is of course limited to the hereditary chiefs who are plaintiffs in this action?
A Word themselves would refer to the plaintiffs and the members would refer to all of the Gitksan and

Wet'suwet'en people."

Did you give that answer to question 1057 and was that answer true?

A Yes, I gave that answer and to the best of my knowledge, that was true.

Q Question 1058:

"Q So it is the hereditary chiefs and the members of their houses who would govern the territory; is that correct?

A On a successful declaration the Gitksan and Wet'suwet'en people would be in a position to negotiate with the federal government and the provincial government to define the relationship with those two institutions and to determine how the resources of territories would be harvested and how the benefits would flow to all people within the territory.

Q But that declaration speaks of governing and I take it the governing would be done by the hereditary chiefs and members of their houses; is that correct?

Objection was taken. Question 1060:

"Q Are the present residents of the territories who are not members of the Gitksan and Wet'suwet'en excluded from governing if that declaration is made?"

Objection was taken. Question 1061:

"Q Would you identify for me, please, Mr. Sterritt, the political institutions that are referred to there?

A Hereditary chiefs are best able to speak to that but the hereditary chiefs in and of themselves are a political institution.

Q The only political institution referred to in that paragraph?

A Feast Hall.

Q Pardon?

A Feast Hall.

Q Tribal Council?

A Not necessarily.

Q Is it at all?

A It may have not be at all in this case.

Q Is it excluded from that word?
MR. GRANT: In paragraph 4?
MR. GOLDIE: Yes.
A It may be."
And then the next is, on the bottom of page 198 is indicated as question 1067 but my recollection is that it was part of the answer, my lord. If it is the answer, it would read, "It may be the hereditary chiefs would have to speak to that. It may well be."
THE COURT: Is that agreed?
MR. RUSH: I can't say one way or the other. It seems to fix there.
THE COURT: All right.
MR. GOLDIE:
Q Do you have a recollection, Mr. Sterritt, of stating that the hereditary chiefs would have to speak to the question of whether the Tribal Council was to be excluded from the words "political institutions"?
A I don't recall that.
THE COURT: Well, unless told otherwise, I will read it as that. Because there is no question mark and it's more likely to be a statement made as part of the answer than as a separate question. There is another question following.
MR. GOLDIE: It may be cleared up in the next questions, my lord.
Q Question 1068:

"Q What are the legal institutions referred to in paragraph 4?
A Legal institutions of the Gitksan and Wet'suwet'en hereditary chiefs.
Q What are they, please?
A They are exercised in the Feast Hall.
Q Does that exclude the Tribal Council?
A Definitely."

Mr. Sterritt, were you asked the questions that I have read to you and did you give the answers that I have read?
A Yes.
Q And were those answers true?
A To my understanding at the time that was my information there.
Q And, Mr. Sterritt, if the concept that you have referred to in which the compensation for damages, if such compensation is awarded, is to be distributed

amongst the Gitksan and Wet'suwet'en Houses, rather than being paid to the chief of the house claiming the damage, if that concept is instituted it would require something other than the feast hall to implement, would you agree with that?

A I don't want to comment on that. That's a fairly complex matter that would take some consideration by a lot of people.

Q Well, is it something beyond your knowledge?

A I can't say whether it is or not.

Q You just don't want to answer the question; is that right?

MR. RUSH: Well, my lord, it's a hypothetical question, asking the witness to posit himself at some point in the future and in relation to all of the other plaintiffs, and my friend is asking him what if in the future something happens and what is your opinion at that point, or can you project your opinion into the minds of the other plaintiffs? And I think it's not an appropriate question.

THE COURT: Mr. Goldie?

MR. GOLDIE: Well, I am not going to press the matter, my lord. My lord, at this point I have reached that part in my cross-examination where I would ask the witness to stand down. And my friends are at liberty to call the next witness if they are so minded but I have a number of things that I wish to clear up. But at this point, I have -- I apply to have the witness stand down.

THE COURT: Mr. Rush?

MR. RUSH: Well, I take it this is an application for an adjournment?

THE COURT: Well, I suppose in one sense -- well, not really, because Mr. Goldie is suggesting you go on with some other witnesses. He is applying to stand the witness down.

MR. RUSH: But Mr. Goldie doesn't determine the sequencing of the plaintiffs' witnesses.

THE COURT: Oh, no.

MR. RUSH: And I take this as an application for an adjournment and our view is we would wish to proceed with Mr. Sterritt's evidence.

THE COURT: You object to standing the witness down? The question of whether you want another witness or not seems to me a different question.

MR. RUSH: Well, I don't object to it in relation to -- firstly, I don't view this as standing the witness down. I view this as an application to adjourn Mr. Sterritt's

1 testimony.
2 THE COURT: Well, I think it's the same thing. Do you oppose
3 that?
4 MR. RUSH: With respect to Mr. Goldie's application, I don't.
5 THE COURT: I don't think Mr. Goldie is suggesting that I order
6 you proceed, are you?
7 MR. GOLDIE: No, I just said I am ready to proceed.
8 THE COURT: I don't think I would accede to Mr. Goldie's
9 application if he was asking me. I would take the
10 view that the plaintiffs could, if they were
11 agreeable, call another witness now. But I wouldn't
12 order them to call another witness now in these
13 circumstances until Mr. Sterritt is finished his
14 cross-examination. And there may be times, and I
15 would not preclude the court's authority to order
16 another witness to be called, that -- there is no
17 reason for that sort of judicial intervention at this
18 time in this case. And I am disposed, unless anyone
19 is opposing it, to order that we either stand the
20 witness down or adjourn the completion of the cross-
21 examination, however it's to be described, and the
22 only question is, when do we resume? I take it that
23 your suggestion, Mr. Goldie, would be -- I take it
24 it's a week from this coming Monday or do you think
25 you might be ready to proceed before then? That is
26 this week. I am not available next week.
27 MR. GOLDIE: Well, I take it, my lord, it's now my friend's
28 application to adjourn. Perhaps he should suggest
29 when we should start again. I certainly will be ready
30 on the -- subject to some comments that I make here
31 about production, I will certainly be ready to proceed
32 in the next week on.
33 THE COURT: You won't be ready by, say, Friday of this week?
34 MR. GOLDIE: No.
35 THE COURT: Well, I am not going to put it in a formal basis, I
36 think we will adjourn this trial, subject to whatever
37 else needs to be done this afternoon, and to a week
38 from this coming Monday, at which time Mr. Sterritt's
39 cross-examination will be continued to completion.
40 MR. RUSH: Well, the only avenue I was going to explore was the
41 question of the cross-examination, if there is
42 cross-examination of the federal defendant. If there
43 is any that could be done that should be done now.
44 And I was -- I have been advised by the -- Ms.
45 Koenigsberg that they are not prepared to proceed and
46 I advised them last week that in the event that Mr.
47 Goldie applied for an adjournment that they should be

prepared to proceed. They say they are not. But in my view, it's an appropriate situation, that if there is cross-examination they can do they should embark upon it now.

THE COURT: Well, has Mr. Rush stated your position, Ms. Koenigsberg?

MS. KOENIGSBERG: Yes, and I communicated that both before he advised the court and afterward.

THE COURT: I think that if the position hadn't been taken that there is to be a unity of portions of the examination of this witness and if there is objection, I think I would not order Mr. Goldie's cross-examination to be interrupted any more than I would order another witness to be called in the intervening period. So, I think that that's the appropriate order to make. And Ms. Koenigsberg's cross-examination will follow the completion of Mr. Goldie's cross-examination, unless other circumstances arise that make it necessary to review or reconsider that ruling.

What else is there to do now?

MR. GOLDIE: My lord, I do want to make it clear that I did not apply for an adjournment. I continued my or I commenced my cross-examination despite the failure to provide me with the notice required.

THE COURT: I don't think if matters how these matters are described. Mr. Sterritt's evidence in chief was interrupted by adjournment for a day, as I recall. I don't know whether it was adjourned or stood down, and that happened, and those things happen from time to time in the course of a trial and I don't think it matters now whether someone is seeking an adjournment or what they are doing. I think we all know what happened.

MR. GOLDIE: I just didn't want the word attached to me for further reference.

My lord, we do ask for delivery to us of the band council minutes. That's a matter which has been outstanding now for a considerable period of time.

THE COURT: Is this still relating to the question of the B. C. Fund?

MR. GOLDIE: Yes, and a couple of other things. And we are now coming up to a point where the request that I made, which was to be fulfilled by the end of August, I don't know whether there is anything in there for Mr. Sterritt's cross-examination, but I do know that there will be things in there which we will be examining in terms of the cross-examination of the Wet'suwet'en

1 witnesses. So that's number one.
2 THE COURT: Well, let's deal with that. How is your
3 investigation coming along, Mr. Grant?
4 MR. GRANT: I think we have to anticipate, since we talked about
5 this I have been in court. As I indicated, I am just
6 in fact in the process of reviewing a list with
7 respect to the one band, which I have completed. If
8 Mr. Goldie is concerned about the Wet'suwet'en bands,
9 at some level of priority, I have absolutely no
10 problem with my next foray into that maze of documents
11 going to the Wet'suwet'en bands, although, with
12 respect, I must say for the record, with respect to
13 the B. C. Special, there has been production with
14 respect to Moricetown, Kitwanga and Hagwilget already
15 through the witnesses and that's been full disclosure
16 of the existing documents in the hands of the band
17 councils. With respect to Kispiox, from my
18 recollection there are -- and in fact I am pretty
19 certain of this, I can advise the court that there
20 were no band documents relating to the B. C. Special.
21 So, I am -- I prefer to -- it's easier, in order to
22 get the whole process done, to deal with all areas
23 that Mr. Goldie wants disclosed at once per band. But
24 if he is concerned about, for example, B. C. Special
25 documents as a priority, then with some
26 reorganization, I guess I could check those first.
27 But I am basically going by band by band basis. And
28 aside from computerized list production, which is -- I
29 don't have any problems with that, I see or I
30 anticipate delivering this list to him shortly with
31 respect to the Kispiox band. There will be an
32 adjournment, I will going to take advantage of some of
33 this time to go into some of the other bands. But I
34 had said that -- I had said that that entire project
35 with respect to all the bands, given that legal
36 counsel must be involved in it, I do not anticipate
37 that can be completed prior to the end of October with
38 respect to all bands. But I had indicated that the
39 first band I would be producing a list and that's what
40 I am in fact doing right now.
41 THE COURT: I am only dealing at the moment with the special
42 fund and it seems to me that this has been around for
43 so long, I would like you to tell me, Mr. Grant, if it
44 would be unreasonable that that disclosure be
45 completed by the end of next week?
46 MR. GRANT: I just want to -- just a second. There is three
47 bands left. I wanted to be sure. I don't think there

is a problem with that. Given the fact that that's the focus of the documents. That's not the focus of the way I was focussing but I don't have any difficulty in re-focussing that. There is three bands and I think that can be handled.

THE COURT: By the end of next week then.

What else?

MR. GOLDIE: During the course of Mr. Sterritt's cross-examination we made several requests, the list of trapline holders Mr. Sterritt reviewed with Mary and Ben McKenzie, that's volume 131, page 809, lines 1 to 20, that's a request; our request for a list of or index to the material in the Gitksan and Wet'suwet'en Tribal Council Resource Centre, that's at volume 130, page 8100, lines 21 to 28; the notes with respect to the interviews with the Tahltan people, Peter Dennis, Jim Dennis, et cetera, that's volume 134, page 8306; there is one audio tape, which was first requested in 1987, and has been requested in a series of times since then; it's number 5602, Mr. Sterritt's interview with David Gunanoot. And I would ask for that production.

And then, my lord, there is --

THE COURT: You can step down if you want, Mr. Sterritt. You're welcome to stay if you wish.

MR. GOLDIE: Then I asked for production of the plaintiffs' documents numbers 418 and 3013. Now, the history of that, my lord, is that Mr. Grant said that he was reviewing the map, the map which is document 3013, in his letter of June of 1988, and your lordship will appreciate that we would require that before the cross-examination is complete. The map at 418, which has been referred to before, is said to be privileged. I am not sure on what basis. But whatever the privilege is, I would like to have it clarified.

Now, my lord, there is one other thing, but perhaps we should deal with those.

THE COURT: All right. Mr. Grant or Mr. Rush?

MR. RUSH: Well, we are in the process of running down all of these requests. These are -- we have noted all of these and the only one of these which it's unclear to us just what the nature of the position taken was, is in relation to 418, where it is said that a claim for privilege is made. That does not accord with our recollection. And if the source of that information, whether it's a discussion or a letter or something of that order, or a statement in court, we would like to

1 know that because that's not clear to us.
2 THE COURT: You don't think you have claimed privilege?
3 MR. RUSH: I am not sure. I must confess in this case I really
4 can't say or recall what the situation is with regard
5 to that document.
6 In terms of the others, we have been given enough
7 information to try and run them down and determine
8 where they are.
9 THE COURT: Well, in as much as these are matters that Mr.
10 Goldie says are required for his cross-examination,
11 or, I think he said that about all or most of them,
12 again it would have been reasonable to expect them to
13 have been produced, barring some unexpected exigency,
14 by the end of next week?
15 MR. RUSH: I would think that's a reasonable time frame.
16 MR. GOLDIE: Could we make if earlier, my lord, because the end
17 of next week is the Friday before the cross-
18 examination begins. With the gift of a couple of days
19 that my friends now have --
20 MR. RUSH: There is no gift of a couple of days. We were quite
21 happy to proceed.
22 THE COURT: Well, it may have not be a gift but it is a couple
23 of days.
24 MR. RUSH: It is a couple of days but it is no gift.
25 MS. KOENIGSBERG: Present?
26 MR. RUSH: What I can tell your lordship is that many of these
27 documents it now appears are in Hazelton and there
28 will have to be a search made of the files.
29 THE COURT: Well, Mr. Rush, I would think that it is reasonable
30 if the they are required for cross-examination, that
31 Mr. Goldie have them for the weekend before the
32 cross-examination starts. And subject to anything
33 else that might intervene, I would say not later than
34 Friday, a week from this coming Friday.
35 Mr. Goldie, what else?
36 MR. GOLDIE: One other thing, my lord, and this has just come up
37 today. In our examination of the materials that have
38 been given us, we have come to the conclusion that
39 certain of the materials have been edited. Now, I
40 drew the witness's attention to one of them this
41 morning and the explanation that was given was that
42 the photocopying machine had run into a problem and my
43 friend, Mr. Rush, was going through the job of
44 determining in what other instances that has taken
45 place. In a conversation that Miss Sigurdson had with
46 Ms. Koenigsberg, at which Iwas present, I understand a
47 question of privilege has been raised as a reason for

1 exclusion of certain of the passages in the materials
2 under 721.
3 MR. RUSH: Who told you that?
4 MR. GOLDIE: Pardon?
5 MR. RUSH: Who told you that?
6 MR. GOLDIE: I understood that from Ms. Koenigsberg.
7 MR. RUSH: Well, you should get your information from Mrs.
8 Koenigsberg correct.
9 MR. GOLDIE: Well, perhaps my friend will inform the court in
10 respect to what privilege is being claimed in the
11 documents that we have been given?
12 THE COURT: If any.
13 MR. GOLDIE: If any.
14 MR. RUSH: Well, firstly, my lord, in respect of the material
15 that my friend has referred to, there has been no
16 editing. And the allegation that he says that such
17 has occurred is wrong.
18 Now, the discussion I had with Ms. Koenigsberg, and
19 she would have, I hope, reported it accurately to Mr.
20 Goldie, and Mr. Goldie reported it accurately to the
21 court, was that in respect of some of the field
22 notebooks, there had been an editing for privilege of
23 communications with counsel, not in respect of any of
24 the material that's in 721, which are loose-leaf
25 notes.
26 MR. GOLDIE: Well, I was coming to that but you carry on.
27 MR. RUSH: No, I think you should carry on.
28 MR. GOLDIE: No, I would like to hear precisely where it is that
29 the editing has taken place. I was going to go
30 through 721, has it been done there? Here, here and
31 here. But my friend says my information is incorrect,
32 and probably it is. The point that is of any
33 importance right now is in -- where has the editing
34 been done? Because we have been struggling with
35 material which in some places seems to lack continuity
36 and if there is a claim for privilege, we want to know
37 on what the basis is and we have we want to have some
38 idea how to identify it.
39 THE COURT: Well, Mr. Rush says that there is no editing in
40 Exhibit 721 and unless he resiles from that, or you
41 can direct his attention specifically to an apparent
42 gap, I assume that that problem is out of the way.
43 With respect to a claim for privilege elsewhere in
44 documents, that is by way of editing in documents that
45 have been produced, it seems to me that the old wisdom
46 upon which we are often well advised to rely, where
47 there is a claim for privilege it must be -- the

1 document must be disclosed by way of an identifying
2 description and the claim for privilege made
3 specifically with respect to such material. And in --
4 my first reaction in the dialogue I am hearing from
5 counsel is that if there has been production of field
6 notes and, for example, and if there has been editing
7 for the purposes of privilege, there should be a
8 specific claim for privilege set out in some way,
9 usually an affidavit of documents, but we don't have
10 that sort of thing any more. But even in a disclosure
11 list. But I think ex necessity, documents are being
12 disclosed, when a list is being made where there is no
13 claim for privilege. But is there any reason, Mr.
14 Rush, to depart from conventional wisdom with respect
15 to a specific claim for privilege where one is being
16 advanced?
17 MR. RUSH: Just that we have to go back and review all of the
18 material, all the field notebooks which my friends
19 have had since March of 1987. If they had had a
20 concern about continuity or anything, we would have
21 hoped to have heard from them on it. But I think we
22 are talking about a task of considerable proportions,
23 to review the material that's been given to my
24 friends.
25 THE COURT: Well, all right. Excuse me. Mr. Goldie, are you
26 able to indicate to your friend, not necessarily right
27 now, but by a letter over the next couple of days
28 where it appears those places where there appears to
29 be some editing by reason of some lack of continuity?
30 MR. GOLDIE: Let me give your lordship jsut an example from 721,
31 and this may turn out to be the problem with the Xerox
32 machine.
33 THE COURT: Yes.
34 MR. GOLDIE: It's under tab 1, and it's one, two, three, four,
35 five, six, seven pages from the end.
36 THE COURT: Just a moment.
37 MR. GOLDIE: And it is -- it purports to be one of ten pages -- I
38 am sorry, it purports to be a ten page discussion with
39 Mr. Gunanoot and Mr. McLean and a Mr. Jerry Gunanoot
40 of March 12th, 1987, and your lordship will see in the
41 upper right hand corner, one of ten, two of ten and
42 then if we go over to the next page it says four of
43 ten and then about three or four lines down, three of
44 ten.
45 THE COURT: Sorry. Just a moment. Yes, I see it.
46 MR. GOLDIE: Then the -- I don't know what the explanation is
47 for that but it doesn't seem to be in -- the

1 continuity doesn't seem to be preserved.
2 MR. RUSH: Well, my lord, I think that it is self-evident what
3 happenedthere. Four of ten and three of ten,
4 obviously two pages in sequence have been pulled
5 through at the same time.
6 THE COURT: I can see the faint outline of a line under
7 "smoked", for example, you can just see where the top
8 of that page looks like it was photographed there.
9 But that's an example. Anything else you can point
10 to, Mr. Goldie?
11 MR. GOLDIE: Not right now, my lord.
12 THE COURT: No. Well, Mr. Rush has indicated that he is
13 reviewing this exhibit with respect to the kind of
14 mechanical, I will use the word failure, but in a
15 neutral sense, has occurred in connection with this
16 exhibit. And that should solve that problem. With
17 respect to the field notes, I am not sure if -- are
18 you able to state, Mr. Rush, whether the field notes
19 have been edited for purposes of privilege?
20 MR. RUSH: Well, my lord, I can remember one passage in respect
21 of one field note.
22 THE COURT: All right. Then let me ask Mr. Goldie, are you
23 aware of any specific examples in the field notes?
24 MR. GOLDIE: From time to time, I can say personally that in
25 reviewing the field notes I have had trouble in
26 picking up one page from another. What I am -- I
27 don't want to waste my time and I don't want to waste
28 my friend's time. I have some of those as -- I will
29 put it this way, being reviewed in the light of the
30 material that was supplied in September for the
31 purposes of my cross-examination. If I find that I
32 have a problem with continuity with those selected
33 ones, I will inform my friend.
34 MR. RUSH: I think that's the way to go and I wish my friend had
35 done this with respect to these 471, or 721, because I
36 think we could have resolved that a lot more quickly
37 and I was hoping to have a letter and the pages with
38 respect to the earlier entry mentioned for my friend
39 before the end of the day.
40 THE COURT: All right. I think that resolves that bit of
41 unpleasantness.
42 MR. GOLDIE: I have nothing further except to say this, my lord,
43 my friends are in receipt of requests from us with
44 respect to the sequence of the witnesses for cross-
45 examination on affidavit, and identification of those
46 who require translation. This has been brought up and
47 your lordship mentioned that this should be done in

good time. I don't want that lost sight of, because we won't be meeting until October 3rd, I think it is, and I would expect that material to be delivered in the interim period.

THE REGISTRAR: It will be next October 11th which is Tuesday.

MR. GOLDIE: Yes, October 11th. October 3rd is next Monday.

THE COURT: Yes.

MR. GRANT: Just to be clear on that, I had anticipated when I -- that we would have -- I would not have been here this week, but now that I can anticipate dealing with this matter on my return up north, I have to meet with the people, what the answer to those questions, but I can deliver it in advance.

THE COURT: I think that should be put behind you as soon as conveniently possible.

MR. GRANT: We need to know that as well, of course, so --

THE COURT: All right. Anything else? All right. I won't say -- I don't hope to see some of you in the Court of Appeal next week, but if you are not there, I will understand.

(PROCEEDINGS ADJOURNED UNTIL OCTOBER 11TH, 1988 AT 10 o'clock A. M.)

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

Wilf Roy
Official Reporter