

1 April 20th, 1989

2 VANCOUVER, B.C.

3
4 THE REGISTRAR: Order in court. In the Supreme Court of British
5 Columbia, this Thursday, April 20, 1989, calling the
6 matter of Delgamuukw versus Her Majesty the Queen at
7 bar. I caution the witness you're still under oath.

8 THE COURT: Mr. Rush, is there anything you can tell me about
9 the question of funding?

10 MR. RUSH: No.

11 THE COURT: Then I think I should say -- sit down for a moment
12 if you wish to, Mr. Rush. I think that I should say
13 that I have been giving worried consideration to the
14 statement made by Mr. Rush on Tuesday, March 28th,
15 1989, that the plaintiffs may find themselves unfunded
16 and unable to carry on with this trial past the end of
17 May, 1989. In brief response to Mr. Rush I said I
18 consider such an eventuality to be intolerable.

19 I think it necessary to record that this
20 incredibly important trial, which commenced in early
21 May 1987, was estimated at that time to last about 13
22 months. We have now been at trial a total of about 15
23 months and at least the rest of this year will be
24 required to complete the evidence. Counsel estimate
25 the arguments will require us to continue at trial
26 until late spring of next year, after giving counsel
27 some time for the preparation of their arguments after
28 the completion of the evidence. It appears to me that
29 other counsel for these plaintiffs or defendants might
30 have adopted trial plans which would have shortened
31 this trial, but it is equally obvious to me that other
32 counsel might have taken much longer. Further, while
33 I have not made a detailed study, it is my impression
34 that the defendants have probably taken about as much
35 trial time as the plaintiffs, which is not surprising
36 having regard to the fact that at least during the
37 course of the expert evidence testimony there are
38 lengthy reports which form part of the evidence in
39 chief upon which the defendants' counsel have found it
40 necessary to cross-examine. Thus, it cannot be said,
41 in my view, that the trial has been unnecessarily
42 prolonged delayed or extended, except by the one
43 matter I'm about to mention.

44 Counsel will recall that the trial was unable to
45 proceed during the fall of 1987 because of funding
46 difficulties encountered by the plaintiffs. As a
47 result, the trial was stood down and we missed four

1 full months. But eventually, as everyone knew would
2 ultimately be the case, funding was arranged and the
3 trial got underway again in January 1988. It
4 continued throughout all of that year and further to
5 the present date this year with the court sitting
6 extra hours on many days and some Saturdays in order
7 to maintain a reasonable schedule.

8 By my count today is the 217th day of this trial.
9 I have heard the evidence of 32 witnesses whose
10 evidence comprises over 16,000 pages of transcript.
11 Well over 4,000 exhibits have been filed and there are
12 many more to come. I know of one set of documents
13 that is going to be tendered in which there are 500
14 separate documents each of a number of pages duration.
15 In addition, the evidence of an additional 41
16 witnesses has been taken on commission. At the end of
17 May of this year we will be close to the completion of
18 the plaintiffs' case, and we have already scheduled
19 ourselves to sit during the months of July so as to
20 ensure that the defendants' case and rebuttal
21 evidence, if any, can be completed by the end of this
22 year.

23 The case is one of overwhelming importance. At
24 stake in the action is title to over 20,000 square
25 miles of priceless unalienated land in the Skeena and
26 Bulkley Watersheds, and the judgment in this case will
27 be the first comprehensive judgment on non-treaty
28 aboriginal rights since the inconclusive Calder case
29 in 1974. There are other serious issues in the case
30 additional to the title of the land I have just
31 mentioned. At least five other similar actions are
32 pending in this court awaiting judgment in this case.
33 I doubt if a more important case has ever been tried
34 in the courts of this province.

35 It is for the foregoing reasons that I have stated
36 that it will be intolerable for this trial to be
37 delayed again, and I say that again. I have therefore
38 concluded that, as this is a matter of utmost
39 importance and urgency, the trial must be completed
40 without further undue delay. It is not for me to
41 pronounce in any way upon the obligation of anyone to
42 fund this action. I feel obliged to comment, however,
43 that as arrangements must sooner or later be made for
44 the completion of this case, then there can be no
45 reason why those arrangements cannot be made now
46 rather than later, as this trial must not be further
47 delayed.

Proceedings

M. George (for Plaintiffs)

In chief by Mr. Rush

1 I therefore wish counsel to understand that while
2 I will give proper judicial consideration to any
3 application for an adjournment that may be made, and I
4 am hopeful that it will not be necessary for such an
5 eventuality, I am not presently disposed to disrupt
6 the schedule that has been set, and that I presently
7 intend to proceed with the trial during the months of
8 June and July and again in September until the
9 completion of the case in accordance with the schedule
10 that has already been settled with counsel.

11 I wish to mention, however, that I do not suggest
12 for a moment that counsel have an obligation to
13 proceed with this trial if they are not properly
14 funded. The rule that counsel in trial must see it
15 through to the end was developed at a time when trials
16 seldom lasted for more than a few days. Such a rule
17 cannot apply to a case of the importance and duration
18 of this one. I do say that it is essential and very
19 much in the public interest that everything be done
20 which must be done to ensure that the trial will not
21 be interrupted.

22 Thank you. Mr. Rush?

23 MR. RUSH: I have a few more questions for Mr. George, my lord.

24 THE COURT: Yes.

25 MR. RUSH:

26 Q Madam registrar, could you produce, please, Exhibit
27 1011, which is the map boundaries external and
28 internal? It is the mylar rolled map. Thank you.

29 Mr. George, I'm showing you this map which
30 yesterday was marked as Exhibit 1011 and I drew your
31 attention to the fact that there appear initials and
32 notations of a Mr. Skoda in the right-hand corner, and
33 you identified in the upper right-hand corner that the
34 words "map 9B" --

35 A November 18, 1988.

36 Q -- and the date November 18th, 1988, and the signature
37 of Mr. Skoda appears there. And underneath that is a
38 notation that indicates "map 9A, June 28th, 1988", and
39 again the initials of Mr. Skoda.

40 Was there a map that was prepared by you showing
41 the Gitksan internal boundaries which was given to Mr.
42 Lou Skoda of Canadian Cartographics for the
43 preparation of overlay map 9A?

44 A Yes, there was.

45 Q And that was used for the making of overlay map 9A?

46 A That's correct.

47 Q And you, of course, are aware of that map and you've

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1 observed overlay map 9A, and what can you say about
2 the two maps?
3 A The boundaries that appear on both map are identical.
4 Q Okay. And that, as you've indicated by reference to
5 the map 1011, that other map was initialled by Mr.
6 Skoda on June 28th, 1988?
7 A Yes, that's correct.
8 MR. RUSH: Now, my lord, it turns out that we thought that that
9 map was in Vancouver. It isn't in Vancouver, it's in
10 Mr. George's office in Hazelton. I've told my learned
11 friend Mr. Willms about this and upon Mr. George's
12 return he will get the map and produce it for counsel.
13 THE COURT: Thank you.
14 MR. WILLMS: My lord, then with, of course, if there's anything
15 arising out of it, our right to cross-examine Mr.
16 George on it when we get it.
17 THE COURT: Yes.
18 MR. RUSH: I will simply state that, my plaintiff response, that
19 we of course have concerns about logistics and so on,
20 but I will make those representations at that time if
21 it's necessary.
22 THE COURT: Something I'm sure can be arranged.
23 MR. RUSH: Thank you.
24 Now, Mr. George, from your interviews with the
25 hereditary chiefs and your knowledge of how the chiefs
26 described their territorial boundaries and how they
27 described them to you, what is your understanding
28 about how the chiefs understand their boundaries?
29 MR. WILLMS: I object, my lord. That's something that's far
30 beyond anything this witness can say.
31 THE COURT: You are really asking the witness to put himself
32 inside the heads of the chiefs, are you not, Mr. Rush?
33 MR. RUSH: Not really. I'm -- your lordship has heard extensive
34 evidence about how it was that the internal boundaries
35 and the external boundaries were described to the
36 witness, and it seems to me that from that the witness
37 is entitled to say what his understanding is from
38 those descriptions about how the chiefs understand
39 those boundaries.
40 THE COURT: Well, is the understanding of the witness as to
41 the -- as to his perceived understanding of the chiefs
42 of any assistance to me?
43 MR. RUSH: I think it is.
44 THE COURT: His understanding may be wrong.
45 MR. RUSH: It may be. It may be. But, my lord, the chiefs are
46 not self-analytical. One doesn't say that "I
47 understand it this way." One says something.

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1 THE COURT: Yes.
2 MR. RUSH: Whereas a cartographer, who has the expertise of
3 drawing on existing information, can be, on the basis
4 of receipt of that information, much in the same way
5 he would if the information were an aerial photograph,
6 say what he understands to be the source and basis of
7 that information. And that's what I'm asking the
8 witness. I'm not asking him to say what do the chiefs
9 themselves say about how they understand it, but what
10 does he say from having gone through this process.
11 And my next question will be "And in terms of that
12 understanding, what -- how did you apply that in
13 respect of your mapping?"
14 THE COURT: It would never be allowed in most trials, Mr. Rush.
15 Anything else, Mr. Willms?
16 MR. WILLMS: The only other thing, my lord, is in my submission
17 it shouldn't be allowed in this one. It's just going
18 far beyond the scope of any evidence that a witness --
19 I mean, understanding -- well, nothing further.
20 THE COURT: Koenigsberg?
21 MS. KOENIGSBERG: I don't think, my lord, that it is of
22 assistance to you and I think it's a most unfortunate
23 precedent if we start going that far. I don't have
24 any difficulty with Mr. Rush's second question that he
25 proposes to put to this witness. I don't think it
26 requires an answer to the first.
27 THE COURT: I'm not sure that I understand what the second
28 question is.
29 MS. KOENIGSBERG: Well, I don't want to repeat my understanding
30 of it, but I don't think there's any difficulty in
31 ascertaining from this witness the procedure that he
32 employed --
33 THE COURT: Oh, yes. All right.
34 MS. KOENIGSBERG: -- in determining where to put a line.
35 THE COURT: No, I don't think the first question is one that is
36 admissible, Mr. Rush. Why don't you try your second
37 question?
38 MR. RUSH:
39 Q All right. Mr. George, in the process of the
40 interviews that you had with hereditary chiefs, how
41 was it that the hereditary chiefs told you about the
42 information concerning their territories and the
43 topographical and geographical features of those
44 territories?
45 A During the interviews with the hereditary chiefs they
46 would indicate to me a particular feature where their
47 boundary was on. They would identify a feature as

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1 being a river or a creek. They would give a name to
2 it and I would identify that particular feature on the
3 map, and they would tell me that "My boundary goes to
4 this hill, and this particular hill has a geograph --
5 has a name." And they would give me that particular
6 name, and they would indicate to me that "I do not go
7 over that. Over there belongs to somebody else. You
8 would have to go to talk to him about that particular
9 area." Then they would say "We will go to this
10 particular feature." I would identify that on the map
11 and if there was a name given to that particular
12 feature that would be labelled, and they would
13 identify those features to me and I would identify
14 those features on the map. And they would also
15 identify features which were within their territories.
16 "These features are in my territories.", and they
17 would give me a name of those geographical features.
18 And from that information I could then identify that
19 particular hill that they would not go over. I would
20 identify that particular creek that they identified to
21 me, and with that information I could then put a line
22 to that boundary and put a description to it.

23 Q And, Mr. George, you've -- I know you've touched on
24 some of this previous in the previous two days of your
25 evidence and you've mentioned some of the features
26 today, but can you just once again tell us what those
27 features are that would be mentioned to you? I think
28 you said a river and a hill and a mountain. What
29 other types of features would be the type that would
30 be mentioned to you?

31 A There would be rivers, creeks, lakes, mountains,
32 hills, ridges, and on some occasions trails.

33 Q And given this kind of information, in your opinion is
34 that the sort of information that can be drawn onto a
35 map on a lined boundary?

36 A No question about it.

37 Q Now, Mr. George, I'm going to show you a map. My
38 lord, I'm producing a sketch map which I'm going to
39 ask to be exhibited for identification. This is a map
40 that is a sketch produced by one of the expert
41 witnesses who will be called, Mr. -- Dr. Robert
42 Galois, and this is an appendices to his opinion.
43 This sketch in a different form was also introduced in
44 the evidence of Dr. Daly, and the map is entitled "Map
45 number 2, copy of Wet'suwet'en map of claims handed to
46 Reverend J. McDougall 1910", and the source is "RG10
47 Volume 4052, file 371968", and that's an archival

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1 reference from the National Archives.
2 And, Mr. George, I'd like to ask you if you can
3 site yourself with reference to this sketch by your
4 knowledge of the Wet'suwet'en territory and your
5 knowledge of course of the NTS government maps?
6 A Yes, I can locate myself by this notation here which
7 identifies Hazelton. That would be at the confluence
8 of the Bulkley River and the confluence of the Skeena.
9 And there is reference on this map to a Bear River
10 which is identified on the NTS series as the Suskwa.
11 Q That's S-u-s-k-w-a River?
12 A Yes, it is.
13 Q Yes.
14 A And the location of Moricetown appears consistent with
15 the location as it appears on the NTS series and its
16 relationship to the Suskwa and the Bulkley River and
17 in relationship to its location from Hazelton.
18 Q All right. And I'd ask you to cast your eye farther
19 down to about the middle of the map where it says
20 "Morris River", M-o-r-r-i-s, River. Do you see that?
21 A Yes, I do.
22 Q Does that also help to locate you in reference to this
23 sketch?
24 A Yes, it does. That -- the information on this map
25 would be consistent to the information that would be
26 found on the NTS series, but this map is nowhere to
27 scale. It would be a pretty good representation of
28 where those features are, but not to scale.
29 THE COURT: Where does the Morris River run, into the Bulkley?
30 THE WITNESS: Around Houston, your honour.
31 THE COURT: At Houston or near Houston?
32 THE WITNESS: Near Houston, yes.
33 THE COURT: Yes. All right.
34 THE WITNESS: At that location the Morris River does swing and
35 run towards the -- towards Morice Lake.
36 THE COURT: Well, runs out of Morice Lake?
37 THE WITNESS: Yes, runs out of Morice Lake to the confluence
38 here, then towards Hazelton, your honour.
39 MR. RUSH: Okay. Now, my lord, my instructions are that the
40 names of the features which appear in square
41 parentheses were added by Dr. Galois.
42 THE COURT: I see.
43 MR. RUSH: And those features which are not in squared
44 parentheses are on the document that is contained in
45 the archives.
46 THE COURT: Uh-huh.
47 MR. RUSH:

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- 1 Q Now, just with respect to the confluence of the Morris
2 River and the Bulkley, what can you say about the
3 relationship of where the name of Morice Lake is
4 placed on this map in relation to the figure which
5 appears to be a lake?
- 6 A That would be consistent with the location on the NTS
7 series, like I said, but not to scale. It's a pretty
8 good representation of the features around that area
9 on this map, but like I said, not to scale.
- 10 Q Yes.
- 11 A The line that would go to Morice Lake would be the
12 Nanika River and that -- no, excuse me, that is the
13 Morris River. The drainage that is running into there
14 would be the Gosnell Creek identified as Talbiits kwe.
- 15 Q Would you just spell that?
- 16 A Talbiits kwe, T-a-l-b-i-i-t-s k-w-e.
- 17 Q And I want to ask you about the name of the feature
18 that is just below where it says "Morris River" and
19 there in parentheses "Owen Lake". What can you say
20 about the placement of that feature on this sketch and
21 the name that is associated with that feature?
- 22 A It's identified on this map as Owen Lake and it would
23 be consistent with the information that would be on
24 the NTS series.
- 25 Q Now, if you travel down from the confluence of the
26 Morris River and the Bulkley River you see where it's
27 stated to the right there, the Bulkley River, that
28 line, is that what you understand to be the Bulkley
29 River running from the middle to the lower portion of
30 this sketch?
- 31 A Yes, it is.
- 32 Q And just as you go down that line, what can you say
33 about the features that are identified in the square
34 parentheses? I think the first one in sequence is
35 the --
- 36 A Bulkley Lake.
- 37 Q Yes.
- 38 A Yes. It's also identified as Big Lake and in square
39 parentheses would be Bulkley Lake. That would be a
40 pretty good representation of where that particular
41 feature would be. And Maxan Lake again would be a
42 pretty good representation of where those
43 particular -- or that particular feature would be.
44 There is also lakes identified on this map which look
45 like Ducla Lake.
- 46 Q Yes.
- 47 A And Burns Lake is identified on this map and --

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- 1 Q Both of those are identified without square
2 parentheses?
3 A Yes.
4 Q And just in terms of those reference points, would
5 those be relative to the scale that is absent on this
6 sketch? What do you have to say in terms of where
7 those would appear on the NTS series?
8 A It would be consistent with the NTS series. Decker
9 Lake is in that particular location in relationship --
10 in its relationship to Burns Lake, which is also
11 identified on this map.
12 Q Okay. Now, just taking from the place where Burns
13 Lake is named, to the left of that there is a lake in
14 parentheses called Tchesinket Lake,
15 T-c-h-e-s-i-n-k-e-t Lake. Do you know of such a lake
16 and what is its relationship, if any, to the Burns
17 Lake that's shown here?
18 A Yes, I do know of this particular feature. It is
19 located south of Burns Lake as indicated on this
20 particular map.
21 Q Okay. And then if you'll go to a -- to the left of
22 Tchesinket Lake there is named running up a feature
23 Francois Lake that's not in square parentheses and it
24 looks like a long hot dog shape. What can you say
25 about the feature that is in that particular area from
26 your knowledge of the NTS series and geographic
27 references there?
28 A The way Francois would appear on the NTS series today
29 is not represented by that particular -- by this -- on
30 this map as it would appear on the map today. I
31 believe this would be pre-flooding.
32 Q Okay.
33 A Or just -- it's identified as Francois Lake and
34 Francois Lake is south of Tchesinket Lake, as it
35 indicates on this map.
36 Q But you're saying the shape of the lake today would be
37 different than what appears --
38 A Well, it's identified as being a long line. There are
39 a series of dots on the north of that particular line,
40 and the lake does not appear like that on the NTS map,
41 but it is in that location.
42 Q Okay. And I just want to ask you if you'll go to the
43 top of what appears to be the Francois Lake feature
44 and then to the right of that there appears to be an
45 irregular circle with Tsichgass Lake,
46 T-s-i-c-h-g-a-s-s Lake, in square parentheses. What
47 can you say about the relationship of those two

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- 1 features as shown here?
- 2 A That would be consistent with the NTS series also, but
- 3 not to scale. There is another line below that which
- 4 is running toward a lake identified on this particular
- 5 map as Tagetochlan Lake and that line would be the
- 6 Nadina River and the location of Tagetochlan on this
- 7 particular map would be consistent with the NTS series
- 8 along with Newcombe Lake -- Nadina Lake, I'm sorry,
- 9 your honour.
- 10 Q Oh, I see. You're -- you're somewhat --
- 11 A I've gone ahead of you.
- 12 Q Yes, you've gone ahead of me. You're farther up the
- 13 Tagetochlan -- how do you say that?
- 14 A Tagetochlan.
- 15 Q That's Tagetochlan Lake. That's in square parentheses
- 16 as well.
- 17 And in that area there's the Bill Nye Lake, the
- 18 Bittern Lake and the Newcombe Lake. Are all -- what
- 19 can you say about those in reference to their
- 20 placement on this sketch?
- 21 A Those lakes would be in those locations, like I said,
- 22 but not -- this isn't to scale, but it's a pretty good
- 23 representation of what would appear on the NTS series.
- 24 Q All right. Now, if you just go over one lake water
- 25 system to the left again on the far left of the
- 26 sketch, at the bottom without square parentheses is
- 27 the lake that is labelled as Ootsa, O-o-t-s-a, Lake,
- 28 and in relation to that to the north of that is one
- 29 that is in square parentheses called Whitesail. What
- 30 can you say about the relationship of those two lakes
- 31 from your knowledge of the NTS series?
- 32 A It would be consistent with what would be in the NTS
- 33 series in relationship from Morice Lake in its
- 34 relationship to Francois, and Whitesail, the -- where
- 35 it's identified on this map would be consistent to the
- 36 NTS series.
- 37 Q And what -- can you say anything about the lake,
- 38 apparent lake or feature, that is in square
- 39 parentheses called Tahtsa, T-a-h-t-s-a, Lake?
- 40 A That would be consistent also.
- 41 Q Okay. And one further one, Mr. George, at the --
- 42 right at the bottom there is a lake that's identified
- 43 as Takysie, T-a-k-y-s-i-e, in square parentheses. Can
- 44 you say anything about where it's placed on this map
- 45 in relation to where Ootsa Lake is as shown?
- 46 A Takysie would be situated between Francois and Ootsa
- 47 as it indicates on this map on the NTS series.

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1 Q Yes. And then there's a lake that's below that and a
2 line drawn to it and it appears to be -- it says past
3 "Tatalaskau Lake", T-a-t-a-l-a-s-k-a-u Lake. Can you
4 say anything about that? Do you see right at the
5 bottom?
6 A Yes, I see it. I don't really recall. There is a
7 Tatalrose Lake in that particular area and there may
8 be a Tatalaskau. I'd have to check the NTS series to
9 be certain of that.
10 Q All right. Okay. And just if I may take you to two
11 other lakes, the McLure Lake, do you see that, and
12 Lacroix?
13 A Yes, I do.
14 Q Those are again both in square parentheses. Do you --
15 are you familiar with a McLure Lake?
16 A Yes, I am.
17 Q And do you know what that lake is on the NTS series
18 and how would that be in relationship to Moricetown
19 which appears without square parentheses?
20 A In its relationship to Moricetown and its relationship
21 to the Bulkley River, McLure Lake I believe now is
22 identified as Tyee Lake on the NTS series.
23 Q That's T-y-e-e?
24 A T-y-e-e, yes.
25 Q And Lacroix Lake?
26 A Lacroix. I'm not familiar with that name.
27 Q Okay. And just one other feature. There's a line
28 that comes off to the left again about three inches --
29 two inches below the indication of Moricetown and it
30 is in square parentheses, "Telkwa River". What can
31 you say about the relationship of the placement of
32 that feature and name in relation to Moricetown?
33 A Again, it would be consistent with the NTS series.
34 Telkwa River is in that general area.
35 MR. RUSH: Thank you, my lord. I propose to have this marked
36 as an exhibit for identification.
37 THE COURT: All right.
38 THE REGISTRAR: The next number my lord is 1016.
39 THE COURT: Okay.
40
41 (EXHIBIT 1016 FOR ID: Sketched Map of Galois - Map #2
42 Copy)
43
44 MR. RUSH: Thank you. Now, I wonder if you could place, madam
45 registrar, the Exhibit 17-9-A before Mr. George.
46 Thank you. I just ask you, Mr. George, if you can --
47 I'm showing you a -- excuse me, it's -- I errored. It

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1 should be Exhibit 19. I'll keep both of them here,
2 but if I may have Exhibit 19 first?

3 My lord, just while we're waiting for madam
4 registrar to obtain another map, I can advise you that
5 in relation to the exhibit that we just marked for
6 identification it's -- the original sketch, if I may
7 put it that way, was entered in the testimony of Dr.
8 Daly and it's Exhibit 897.

9 THE COURT: This one here?

10 MR. RUSH: Yes. It wasn't that precise rendering, but in order
11 to allow you to cross-refer it to --

12 THE COURT: Exhibit 897?

13 MR. RUSH: Yes. And that's at tab 88.

14 THE COURT: Thank you.

15 MR. RUSH:

16 Q Now, Mr. George, this is a map that's marked as the
17 traditional territory of Antguliilbiiksw,
18 A-n-t-g-u-l-i-l-b-i-i-k-s-x-w, and it's stamped "Draft
19 copy". Can you identify this for me?

20 A Yes, this would be a base that I -- map that I would
21 have produced. It's at a scale of 1 to 50,000 and
22 it's a topographic series and is on a base that was
23 prepared for me by Terra Surveys, T-e-r-r-a.

24 Q This is Exhibit 19?

25 A Yes. And the information on here would be based on the
26 information on the original coded map, your honour,
27 except there's one small change. We've identified
28 Tsii Baasa in there also, which was information that
29 would have come to me.

30 Q That's T-s-i-i, new word, B-a-a-s-a.

31 Now, I just want to show you Exhibit 17-9-A, which
32 is also a map that's entitled "Territory of
33 Antguliilbix", A-n-t-g-u-l-i-l-b-i-x, and dated May
34 13th, 1987. Can you identify this, Mr. George?

35 A Yes. This is a map of Antguliilbix and it's on a scale
36 of 1 to 50,000 also, and again a topographic series,
37 and again from a base that was prepared for me by
38 Terra Surveys. And the boundaries from -- on this
39 particular map differ from the boundaries on the
40 previous map and would be based on information that
41 was brought to me by Neil Sterritt.

42 Q Yes. That's what I wanted to ask you. What led you
43 to make the change?

44 A Information from Neil Sterritt based on his interviews
45 with hereditary chiefs.

46 Q Okay. And do you recall at what time it was that you
47 received the information from Mr. Sterritt that led

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- 1 you to make the alterations in the map Exhibit number
2 17-9-A?
- 3 A It would be previous to May 13th, the date May 13th's
4 on this map, which would indicate that's the day that
5 I finished preparing this actual map, but the
6 information would have come to me before that.
- 7 Q Okay. And are you able to give any more precise time
8 that that happened other than sometime before May
9 13th, 1987?
- 10 A No, I can't.
- 11 Q And in relation to this territory, you are aware from
12 your mapping of the territory of Antgulilbix, was
13 there a subsequent change from the description of the
14 boundary as shown in Exhibit 17-9-A?
- 15 A Yes, there was.
- 16 Q And what led you to make that change?
- 17 A Again, information from Neil Sterritt, his
18 understanding of where Xsu Wil Masxwit was. It was
19 identified as Date Creek, and the location of Date
20 Creek is the -- where Xsu Wil Masxwit is labelled.
21 It's -- Xsu Wil Masxwit is X-s-u W-i-l M-a-s-x-w-i-t.
22 Date Creek on the NTS series is where this particular
23 feature is labelled on this map.
- 24 Q And the information you received, that led you to an
25 alteration in the map, and is that alteration now
26 shown on overlay map 9A? If you want to look at it --
- 27 A Yes, it is. I know it is.
- 28 Q All right. Thank you. My lord, if you'll just have
29 reference to the document book, I'd like to direct
30 your attention to tab 1 and, Mr. George, I'd just ask
31 you to identify for me what is in tab 1?
- 32 A Tab 1 would be cartographic evidence on the Gitksan
33 and Wet'suwet'en house boundaries prepared by myself.
- 34 Q Yes. And this was prepared by you?
- 35 A Yes, it is.
- 36 MR. RUSH: All right. My lord, I'd like to have this marked
37 exhibit -- the next exhibit, or to have this tab
38 marked subject to your ruling in respect of the first
39 clause of paragraph 6 on page 2. I think it should
40 be -- in the sense of your ruling, it probably should
41 be all of the first sentence of paragraph 6 on page 2
42 over to page 3. Thank you.
- 43 THE COURT: All right. Thank you.
- 44 MR. WILLMS: My lord, my objection, and I advised my friend of
45 this, to -- we've all heard what the witness did,
46 which is take information from other people and put it
47 on a map. These opinions go further than what the

Submission by Mr. Willms

Submission by Ms. Koenigsberg

1 witness did. These opinions go directly --

2 THE COURT: I'm sorry, Mr. Willms, are you directing your
3 remarks to paragraph 6?

4 MR. WILLMS: No, I'm going much further than the invitation of
5 my friend.

6 THE COURT: Okay.

7 MR. WILLMS: Each of paragraphs 1 through 5 contain a statement
8 by Mr. George which would probably be part of a
9 submission at closing argument as to what your
10 lordship could and could not find, that is, that those
11 are the external boundaries of the Gitksan and
12 Wet'suwet'en territories. This witness can say "I've
13 been told by individual chiefs that these are their
14 boundary lines. I put that on a map and there's the
15 map." I don't object to that. I object to this
16 witness giving an opinion that after you put it all
17 together those are the external boundaries of the
18 Gitksan-Wet'suwet'en territories in his opinion.
19 That, in my submission, is a matter solely for your
20 lordship and is not something that this witness can
21 give evidence about. It assumes that this witness has
22 made a finding as to the truth of the underlying
23 bases, the facts upon which it's based, and so each of
24 paragraphs 1 through 5 contains language which is --
25 which constitutes a direct trespass, in my submission,
26 on your lordship's function.

27 Now, with respect to paragraph 6, your lordship
28 has already ruled in terms of this witness' competence
29 to say what people understood, and in my submission
30 mental maps of the territories and anything about
31 those mental maps, in other words, the whole first
32 line of paragraph 6, should be excluded.

33 Now, I'm content, my lord, to leave paragraphs 1
34 through 5 the way they are on the understanding -- on
35 the clear understanding that this witness is not
36 giving an opinion that those are the external
37 boundaries and that those are the internal boundaries,
38 that all that he's doing is taking information given
39 to him and putting it on those maps. But with respect
40 to paragraph 6, the first line should be excluded, in
41 my submission.

42 THE COURT: Thank you. Miss Koenigsberg?

43 MS. KOENIGSBERG: I have the same problem with the wording of
44 the opinion. It is not qualified in any of the ways
45 in which the witness' evidence has in fact been
46 qualified.

47 THE COURT: All right. Well, I don't think that I'm going to be

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Ruling by the Court

M. George (for Plaintiffs)

In chief by Mr. Rush

1 unduly persuaded or inflamed by this language. I
2 recognize it for what it is. It's very much in one
3 sense an argument, but in another sense it's perhaps
4 not nothing much more than a seal that an engineer or
5 an architect would put on a drawing. He's verifying
6 that to the best of his skill and ability this
7 represents the boundaries as he understands them and
8 as he clearly says he got them from the various
9 sources that have been described, and I think that
10 there's no great harm going to come by having it
11 marked as an exhibit. It has infirmities that may be
12 completely destructive of the exhibit or they may in
13 the ultimate analysis be proven to be something that I
14 find on grounds not yet fully explored to be
15 admissible. I'm going to have it marked subject to
16 the infirmities that I have mentioned and subject to
17 the objection. The next exhibit will be --

18 THE REGISTRAR: 998-1, my lord.

19 THE COURT: 998-1.

20

21 (EXHIBIT 998-1: Tab 1 of the Plaintiffs' witness book,
22 M. George opinion)

23

24 MR. RUSH: And, my lord, I say only this: You didn't call on
25 me, but I simply say that it will be our submission
26 now, and later if it's raised again, that the language
27 in the report is appropriate to the expertise for
28 which Mr. George was qualified and to the evidence
29 that he gave.

30 THE COURT: I'll be glad to hear your submissions in that regard
31 in due course.

32 MR. RUSH: Now, my lord, as well, to the extent that overlay
33 maps 9A and 9B relate to the opinion and to the
34 witness' evidence, I ask that they be marked as
35 exhibits proper in the proceedings.

36 THE COURT: They're for identification now?

37 THE REGISTRAR: 9A was marked.

38 MR. RUSH: It was. Thank you. And 9B?

39 THE REGISTRAR: Was marked for identification, my lord.

40 THE COURT: Yes, on the same basis that I just mentioned, I
41 think that can be done, and also the desktop copy.

42 THE REGISTRAR: Yes. Exhibit 646-9B and 647-9B.

43

44 (EXHIBIT 646-9B, 647-9B: Overlay maps)

45

46 MR. RUSH: And I think, my lord, that although your lordship
47 suggested that Exhibit 1011 be for identification, my

M. George (for Plaintiffs)
In chief by Mr. Rush
Cross-exam by Mr. Willms

1 friend of course is permitted to cross-examine on that
2 exhibit and I ask that that not be subject to that
3 rider at this point and that it be marked as an
4 exhibit proper.

5 THE REGISTRAR: It's for Id.

6 MR. RUSH: Now, that's the mylar in respect of the Wet'suwet'en
7 internal territories which Mr. George identified.

8 THE COURT: Any problem with that, Mr. Willms?

9 MR. WILLMS: Well, I had made an objection, my lord, which
10 continues to all of those series of maps that your
11 lordship has --

12 THE COURT: Well, I think it would be convenient to remove the
13 identification designation. There's no great magic in
14 having these made part of the evidence in the case.
15 The objections have all been properly made and again I
16 say that I don't think there's any magic in it. That
17 will be Exhibit 1011 not for identification.

18 THE REGISTRAR: Yes.

19

20 (EXHIBIT 1011: Mylar map of Wet'suwet'en internal
21 territories)

22

23 MR. RUSH: Yes. And I think it would be appropriate, my lord,
24 to reserve a number for the underlying map in respect
25 of 9A as well at this juncture.

26 MR. RUSH: Perhaps that could be the next exhibit?

27 THE COURT: What number -- I see. All right. So you're saying
28 that 1017 --

29 MR. RUSH: Be reserved for that purpose, yes.

30 THE REGISTRAR: As an exhibit or for identification?

31 MR. RUSH: Well, I think I'll reserve the number as an exhibit
32 and we'll deal with it --

33 THE COURT: And that's underlay 9A?

34 MR. RUSH: Yes. Thank you. Those are all my questions for Mr.
35 George.

36 THE COURT: Thank you. Mr. Willms, are you going first?

37 MR. WILLMS: Yes, I am, my lord.

38 THE COURT: Thank you.

39

40 CROSS-EXAMINATION BY MR. WILLMS:

41 Q Mr. George, what courses have you taken in field
42 surveying?

43 A In the drafting course I took on topographical
44 drafting with the -- in Victoria in B.C. Vocational
45 School there was some references to surveying and
46 drafting from surveying notes, but it wasn't my
47 intention to become a surveyor. It was my intention

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

- 1 to become a draftsman working with topographical maps
2 and working with maps.
- 3 Q Prior to 1983 had you ever done or assisted on a legal
4 survey in the field?
- 5 A Again, it's not my job.
- 6 Q The answer is no, you hadn't?
- 7 A There was no need for me to do it. I wasn't hired on
8 as a surveyor in the field with the Ministry of
9 Forests.
- 10 Q How many maps did you plot before 1983 when you went
11 into the field to obtain a metes and bounds
12 description to plot?
- 13 A Where I went into the field to do a legal description
14 in metes and bounds?
- 15 Q Yes, where you went out to a particular location, made
16 observations at that location about the metes and
17 bounds, went back and plotted those metes and bounds
18 on a map. How many times did you do that before 1983?
- 19 A With the Ministry of Forests there was no need to do
20 that. The external boundary of the Prince George
21 forest region was already described in a legal
22 description and there was a map of that particular
23 boundary and there was an Order in Council and it was
24 provided to us. And there were legal descriptions and
25 maps of the districts within the Prince George forest
26 region. There was no need for me to go out there and
27 do that.
- 28 Q So your answer is that -- none?
- 29 A None.
- 30 Q Before 1983 how many times did you go into the field
31 and lay out a metes and bounds description on the
32 ground; in other words, take a metes and bounds
33 description that was written, go out into the field,
34 and lay it out on the ground to see where everything
35 was?
- 36 A Prior to 1983 I hadn't done that. Again, it wasn't my
37 job.
- 38 Q And prior to 1983 you did mapping work in the office,
39 but not in the field?
- 40 A That's correct.
- 41 Q And so during your period of time in training, while
42 you may have transferred metes and bounds descriptions
43 from a written document on to a map, you didn't create
44 metes and bounds descriptions from field work, did
45 you?
- 46 A I created metes and bounds descriptions, yes, I did.
- 47 MR. WILLMS: From field work? From going out into the field?

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 THE COURT: You mean from his own field work?
2 MR. WILLMS:
3 Q From your own field work?
4 A No, not from my own field work. No.
5 Q You are a member of the house of Goohlaht?
6 A Pardon?
7 Q You're a member of the house of Goohlaht?
8 A Goohlaht. Yes, that's correct.
9 Q And this was by birth?
10 A By birth. That's correct.
11 Q And what houses were your parents members of?
12 A My mother's Gilseyhu. Also she would be from the
13 house of Goohlaht, and my father was Gitdumden.
14 THE COURT: I'm sorry?
15 THE WITNESS: Gitdumden.
16 MR. WILLMS:
17 Q And what house?
18 A The name just escapes me right now. I know what house
19 he is in, but the name of it just doesn't come to me
20 right now.
21 Q Now, as a member of the house of Goohlaht, do you have
22 an interest in the territories that are so named on
23 Exhibit 646-9B?
24 A As a member of the house of Goohlaht I would have
25 certain rights within certain territories, yes.
26 Q And which territories are they?
27 A They would be in the territories that are identified
28 as the territories of Goohlaht. Yes, that's correct.
29 Q Those -- there are a number of them in the southern
30 area on 646-9B; correct?
31 A That's correct.
32 Q What is your chiefly name?
33 A I do not have a chief name.
34 Q Have you ever had a chiefly name?
35 A No, I haven't.
36 Q When were you first retained to do any mapping or
37 cartographic work for the Gitksan-Wet'suwet'en Tribal
38 Council?
39 A October 1983.
40 Q So prior to that date you had not done or been
41 retained to do any mapping work for the
42 Gitksan-Wet'suwet'en or Carrier Tribal Council?
43 A That's correct. Prior to that I was working with the
44 Ministry of Forests in Prince George.
45 Q Now, in your evidence in chief you identified or you
46 had pointed out to you Exhibit 646-1, which is the
47 1977 map presented to Mr. Falkner?

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

- 1 A That's correct.
- 2 Q And when you were first retained by the
- 3 Gitksan-Wet'suwet'en Tribal Council, you reviewed the
- 4 document that's now been marked Exhibit 113 which is
- 5 the base map for the overlay; correct?
- 6 A That's correct, yes.
- 7 Q Did -- I take it you took no part in preparing that
- 8 map? That had been prepared by others?
- 9 A That was prepared by others. That's correct.
- 10 Q Do you know who it was prepared by? Did Mr. Sterritt
- 11 tell you?
- 12 A No, I don't. That information was already available
- 13 when I started with the Gitksan-Wet'suwet'en Tribal
- 14 Council.
- 15 Q When you first saw Exhibit 113, which is now
- 16 represented by the overlay 646-1, did you understand
- 17 that it was supposed to represent the external
- 18 boundaries of the Gitksan-Wet'suwet'en territories?
- 19 A That's correct. Yes. It was their attempt at finding
- 20 the boundaries of the Gitksan-Wet'suwet'en
- 21 territories.
- 22 Q Did you also understand that it was an attempt to
- 23 depict the territorial boundaries as they existed
- 24 prior to European contact?
- 25 A That would be my understanding. Yes.
- 26 Q Now, when you look at Exhibit 646-1, which is that
- 27 heavy grey line, which is the overlay of 113, you'll
- 28 see in the north that the north boundary of 646-9A has
- 29 moved south from that line on 646-1; correct?
- 30 A That's correct.
- 31 Q Did you understand that that movement took place as a
- 32 result of discussions with the Tahltans?
- 33 A No, that boundary was changed in the discussions that
- 34 Neil had with the hereditary chiefs.
- 35 Q So, as far as you understand it, the boundary movement
- 36 had nothing to do with discussions with the Tahltans,
- 37 as far as you know?
- 38 A As far as I know, that's correct.
- 39 Q Now, just looking at the overlap again on the western
- 40 side, you will see that the boundary on the west, say
- 41 from midway up the map, has moved to the east between
- 42 Exhibit 646-1 and 646-9A; correct?
- 43 A That's correct. The area there is the claim by the
- 44 people from Kitwancool. They were putting forward
- 45 their own claim so they didn't want to be part of the
- 46 Gitksan Wet'suwet'en claim. They were advancing their
- 47 own claim.

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

- 1 Q So you do understand that that particular movement is
2 a result of not simply discussions with the Gitksan
3 hereditary chiefs, but also discussions with the
4 Kitwancool chiefs?
- 5 A The Kitwancool people are Gitksan. They just wanted
6 to advance their own claim.
- 7 Q If you look to the boundary on the east and south, you
8 will see that the boundary on the east in 646-1 has
9 been extended to the east on 646-9A; correct?
- 10 A Which area are you referring to?
- 11 Q Just dealing with -- 9A is the Gitksan area, so if you
12 look here at 646-1, the shaded area, about the middle
13 of the map, that has been extended out to include the
14 territory of Haiwas on 646-9A?
- 15 A Yeah, the boundary that would appear on the map that
16 was produced in 1977 is different from the boundaries
17 that appear on the overlay map 9A, which was done from
18 the affidavits.
- 19 Q And what do you understand that change resulted from?
20 Was that meetings between Mr. Sterritt and Gitksan
21 hereditary chiefs, or were there meetings with
22 Carrier-Sekani as well, or do you know?
- 23 A My job was just to take the information that they had
24 gathered and transfer that information and define the
25 boundaries as they described them to me. That's what
26 my job is.
- 27 Q So you never asked them -- when you saw that it was
28 different from Exhibit 113, you never asked Mr.
29 Sterritt "What's going on here? This is a change.
30 What's the explanation for that?" You didn't ask him
31 that?
- 32 A That would be information that would have been in the
33 land use data sheets and information that would be on
34 Neil Sterritt's and Glen Williams' 1 to 250,000
35 working maps. They had gathered some information.
36 They had identified features in that area and those
37 boundaries were changed based on that information.
- 38 Q But when you got a map of a particular area from Mr.
39 Sterritt or anyone else that was different from a
40 previous map of the area, weren't you interested in
41 why there was a change?
- 42 A All the time.
- 43 Q Didn't you ask Mr. Sterritt or whoever showed you that
44 extension why that extension had been made, why that
45 boundary moved out to the east?
- 46 A Yes. Any time there was a change to any map I
47 wouldn't make the change blindly. I would always ask

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

- 1 "Why is this change being made?", and they would
2 always refer me to a particular meeting, refer me to
3 some notes they had and who this information came from
4 and why this change was there, and based on that
5 information I would change my maps.
- 6 Q What explanation were you given for why the eastern
7 boundary and its -- in particular the territory of
8 Haiwas, why that boundary moved to the east from
9 Exhibit 113? What were you told was the reason for
10 that?
- 11 A Based on information that they were given by the
12 hereditary chiefs, it was their understanding that the
13 boundary would -- was not in the area as indicated on
14 the map dated 1977, but in fact as indicated on that
15 particular map overlay map 9A again which was produced
16 from the affidavits.
- 17 Q Now, moving down to the Wet'suwet'en territories, if
18 you look at the heavy line that is Exhibit 986-1 and
19 compare it to 987-9B, you'll see that the territories
20 of Namox, Hagwilnegh, and Goohlaht, on the eastern
21 boundary appear to be extended or added when you
22 compare it with the underlay. Did you ask anyone why
23 that change and that move of that boundary to the east
24 had taken place from Exhibit 113?
- 25 A From my understanding that map produced in 1977 was a
26 crude attempt to identify the boundaries of the
27 Gitksan and Wet'suwet'en and those boundaries that
28 were placed on that map -- are you referring to
29 overlay map 9B?
- 30 Q Overlay 646-9B.
- 31 A The boundaries that appear there is information that
32 would be based in the affidavits which describe those
33 particular features and those boundaries and those
34 people in those particular areas.
- 35 Q So is what you're saying that they're just -- they
36 got -- whoever was doing the interviews obtained
37 further information in respect of that area?
- 38 A Yes, that's correct. That's what I'm saying.
- 39 Q Now, if you look down to the southern boundary and
40 compare 646-1 with 646-9A, you'll see that the
41 boundary in 646-1 has moved to the south and that now
42 there are territories of Goohlaht, Samooh, Samooh, and
43 a territory of Goohlaht that has been added. What
44 were you told was the reason for that extension of the
45 boundary to the south to include what looks like three
46 new territories and to extend one?
- 47 A Based on information that was gathered by Alfred

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 Joseph and Leonard George, based on your research with
2 the hereditary chiefs, and based on the areas that
3 those hereditary chiefs described to them, based on
4 the features that they identified, based on the
5 knowledge that they gave to these people defining
6 where their boundaries are, that's where that boundary
7 went.
8 Q So you were told that the boundary moved to the south
9 because there was further information available; is
10 that fair?
11 A No, the boundary moved south because there was more
12 information available.
13 Q Yes. Now, the first map that you prepared, as I
14 understand it, of the whole territory, was that
15 Exhibit 1010 that's depicted up there in the 646
16 series as 646-8?
17 A I would like to look at Exhibit 1010.
18 MR. WILLMS: Could you please -- sorry, my lord, that's not the
19 first one.
20 THE COURT: What one are you talking about, 1011?
21 MR. WILLMS: I think it's 102, my lord, which is the 646-4.
22 THE REGISTRAR: 101 or 102?
23 MR. WILLMS: I think the external boundaries is 102. It's two.
24 I'm sorry, my lord, these are marked. 646-2.
25 THE COURT: All right. Thank you.
26 MR. WILLMS: And my lord 646-2 is the statement of claim of
27 October 23rd, 1984.
28 THE COURT: Yes.
29 MR. WILLMS: Schedule B.
30 THE REGISTRAR: Is it 650 or 648 you're looking for? I have
31 schedule B, external boundaries, Gitksan --
32 MR. WILLMS: 648.
33 THE COURT: Well, 646-2 is the statement of claim.
34 THE REGISTRAR: Yes, I have it, my lord.
35 THE COURT: Is that what you're looking for?
36 MR. WILLMS:
37 Q My lord, what I have is the statement of claim of
38 October 1984, schedule B, which is Exhibit 648.
39 Now, when you prepared that exhibit, how was that
40 exhibit -- did you prepare a mylar of that along the
41 same size as the mylar that has been marked Exhibit
42 1011 to be used for reproduction?
43 A No. What I had done was I had put together a
44 composite of 1 to 250,000 base maps federal and
45 provincial series onto which I would have transferred
46 the boundaries and this composite went to VANCAL's
47 here in Vancouver and under the instructions from me

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

- 1 they produced for me a mylar of that composite, and
2 along with that mylar they also -- I also instructed
3 them to produce for me a 50 per cent reduction. So
4 they gave me two maps, the 50 per cent reduction of
5 the actual map, plus the three-by-six map, the one to
6 scale.
- 7 Q And the map that you sent to be reproduced and to have
8 the mylar produced, is that the Neil Sterritt working
9 map or what map was it that you sent off for
10 reproduction for the preparation of the mylar?
- 11 A The 1 to 250 base as provided to me by -- ones that I
12 ordered from the government, the provincial and
13 federal series, 1 to 250,000 bases.
- 14 Q No, but did you send a map that depicted the whole
15 outline that is shown on 648? Did you send a map that
16 depicted that whole outline away for reproduction?
- 17 A Yes.
- 18 Q And what map is that? What was it that you sent for
19 reproduction, was it something with 1 to 250,000 taped
20 together like a home-made map?
- 21 A Yeah, I just explained it was a composite of 1 to
22 250,000 bases that I would have used that would
23 incorporate the claim area.
- 24 Q And is that --
- 25 A And they were spliced together and then the boundary
26 was transferred to this particular map and that map
27 itself was sent to VANCAL's here in Vancouver from
28 which they produced for me a mylar and a 50 per cent
29 reduction which is what this is.
- 30 Q Now, which composite map was it? Has -- I thought,
31 and correct me if I'm wrong, but there's a composite
32 map, a working map with Neil Sterritt and yourself of
33 the whole territory, was that what was sent?
- 34 A If you take a look at that composite map and compare
35 it to this map, you would see for yourself that it
36 would not be the same map because if they produced for
37 me a mylar of those particular maps, you would see on
38 here all the circles and the boundaries that would
39 appear on that map, and you don't see that on here so
40 it can't be a reproduction of that map.
- 41 Q Well, where is the map that it is a reproduction of?
- 42 A That map was in my office and may have been used for
43 other purposes, but I don't have that particular map.
44 There was no need to keep it. I then have a map from
45 which I can produce duplicate originals from. That
46 particular map that I sent, there was no way I would
47 run prints from it. I couldn't use that map. That

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 was the purpose of sending it to VANCAL's for them to
2 reproduce for me an original that I could use and from
3 which I could produce duplicate originals.
4 Q Okay. So just so that I'm clear, the original
5 document that you sent for reproduction which forms
6 the basis for Exhibit 648, and the original which you
7 sent for reproduction which forms the basis for 646-2
8 you no longer have; is that correct? You don't have
9 that original anymore?
10 A I have the original from which this was produced.
11 Q Where?
12 A This was produced from the original of what they would
13 have made for me, the duplicate original of the one
14 that I sent them, the composite. They spliced
15 together the 250,000 provincial and topographic series
16 that I used to -- which would incorporate this area.
17 That was sent to them.
18 Q Yes.
19 A I asked them to produce for me a mylar from which I
20 could use and also to give me negatives of that
21 particular area and to do a 50 per cent reduction, and
22 that's what this is.
23 Q Okay.
24 A They didn't use -- this map wasn't made -- it was made
25 from the negatives of the -- of the area that they
26 produced for me.
27 Q The underlying foundation map though was a taped
28 together map which you sent down and you received it
29 back; correct?
30 A That's correct.
31 Q Where is that map?
32 A I imagine it may be back home in my office. It may
33 not be. I'm not too sure of it.
34 Q Do you know right now what information is on that map,
35 whether there are notes on the front or the back of
36 that map?
37 A The information that is contained on that map would be
38 the exact information that is on this map. If there
39 was other information on that map, that would have
40 appeared on this map.
41 Q No, but what I'm suggesting is do you know whether or
42 not you've added anything to that map after you got it
43 back or did you just fold it up and put it in a box
44 and forget about it?
45 A I may have folded it up and put it in a box and it may
46 have been used for other purposes. I just finished
47 telling you I'm not too sure about that right now.

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M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 MR. WILLMS: We can take the morning break.
2 THE COURT: We'll take the morning adjournment now.
3 THE REGISTRAR: Order in court. This court will recess.
4

5 (PROCEEDINGS ADJOURNED FOR THE MORNING RECESS)
6
7

8 I hereby certify the foregoing to
9 be a true and accurate transcript
10 of the proceedings herein to the
11 best of my skill and ability.
12

13
14 _____
15 Tanita S. French
16 Official Reporter
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M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 (PROCEEDINGS RECONVENED PURSUANT TO THE MORNING BREAK)

2

3 THE REGISTRAR: Order in court.

4 THE COURT: Mr. Willms.

5 MR. WILLMS:

6 Q Mr. George, is it your understanding that the
7 information that was transferred to you to prepare
8 Exhibit 648 came from the hereditary chiefs?

9 A That's correct.

10 Q Now, Exhibit 646 and 647-8, dash 8, those overlays are
11 the external boundaries to schedule B of the statement
12 of claim filed May 11th. That again, it's your
13 understanding, came from evidence from the hereditary
14 chiefs?

15 A 646? Which one?

16 Q Dash 8. It's the overlay 8.

17 A Can I -- that information that is on that map is
18 information that was provided to me in the data sheets
19 and the working maps and would be Neil and Glen and
20 Alfred and Leonard's understanding of what the
21 hereditary chiefs were saying, yes.

22 Q But you understood that that -- it wasn't Mr. Sterritt
23 drawing a line, it was a hereditary chief telling Mr.
24 Sterritt where to draw the line and he drew it? Is
25 that your understanding?

26 A It would be their understanding of where the
27 boundaries were.

28 Q Yes.

29 A Neil's understanding where the boundaries were.

30 Q You prepared all of the schedule B's to the statements
31 of claim and the amendments, didn't you?

32 A That's correct, yes.

33 Q All right. And in respect of each one of those
34 schedule B's, each one of those maps, you understood
35 at the time that you prepared it that the information,
36 although it may have come through Alfred Joseph or
37 Neil Sterritt or someone else, that the information
38 came from the hereditary chiefs?

39 A That's correct.

40 MR. WILLMS: And you'll agree that the external boundaries on
41 every one of schedule B to the amended statement of
42 claims, on every one is different than 9A and 9B in
43 some respect?

44 MR. RUSH: Well --

45 THE COURT: You mean for each amendment to the statement of
46 claim, I suppose, do you?

47 MR. WILLMS:

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

- 1 Q Well, no, I'm just suggesting that putting them all --
2 each and every one of them when compared to 9A and 9B
3 is different?
- 4 A Each one of those maps would be based on information
5 that I had, and as more information came to me as
6 amendments were being made, as changes were made to
7 some of the boundaries based on more information, this
8 information would come to me, and those changes would
9 be made to the maps, yes.
- 10 Q But each and every one of the external boundary lines
11 on those maps is different from 9A and 9B?
- 12 A Yes, that's quite obvious.
- 13 MR. RUSH: It should be just recognized, my lord -- it's obvious
14 I think from the question, but there only are three of
15 the schedule B's before the court or at least on the
16 overlays at the moment. The others are before the
17 court but in the trial record.
- 18 MR. WILLMS:
- 19 Q Well, I'm including those, my lord, and if the witness
20 knows that any one of those happens to be identical to
21 9A and 9B, I'm inviting the witness to give that
22 evidence.
- 23 Do you know -- you've seen the ones that are
24 depicted in court by the overlay series. Are you
25 aware of any schedule B to any statement of claim that
26 is identical to 9A and 9B?
- 27 A Map 9A and 9B.
- 28 THE COURT: I'm sorry.
- 29 THE WITNESS: That would be correct, yes.
- 30 MR. WILLMS:
- 31 Q None of them are?
- 32 A None of them are, no. 9A and 9B is based on the
33 affidavits as sworn by the hereditary chiefs, and
34 those map make up the external and internal boundaries
35 as identified in the affidavits.
- 36 Q And in addition, in respect of internal boundary
37 lines, each and every map has in some respect
38 different internal boundary lines than the other maps?
- 39 A Yes, that's correct. None of those internal
40 boundaries were -- were thought to be the final
41 boundaries until the time that each one of those areas
42 were reviewed by the hereditary chiefs, and that was
43 done in the affidavit process.
- 44 MR. WILLMS: Could I have Exhibit 101, please?
- 45 THE COURT: Can you remind me, Mr. Willms, what is 101?
- 46 MR. WILLMS:
- 47 Q Mr. George, Exhibit 101 is a map that you prepared,

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

- 1 correct?
- 2 A That's correct, yes.
- 3 Q And it is a map which depicts the external boundaries
- 4 of the Gitksan-Wet'suwet'en territories as they were
- 5 at the time the map was prepared, correct? In other
- 6 words, they don't -- they're not the same as 9A and
- 7 9B, but at the time that that was prepared those were,
- 8 let me put it this way, the draft external boundaries?
- 9 A That's correct, yes.
- 10 Q And what you have drawn on that in a heavy line
- 11 starting in -- just to the west of Thutade Lake you
- 12 have drawn a heavy line which intersects the Gitksan-
- 13 Wet'suwet'en territorial boundary about the middle of
- 14 the map on the right-hand side and then another heavy
- 15 line which appears to move from the north-west --
- 16 north-east to the south-west. You put those lines on
- 17 that map?
- 18 A That's correct, yes.
- 19 Q When those lines were put on that map by you, it was
- 20 your understanding that that depicted the
- 21 Carrier-Sekani claim into Gitksan-Wet'suwet'en
- 22 territory?
- 23 A There was a map that was provided to me in which a
- 24 boundary was on that was labelled Carrier-Sekani claim
- 25 area, and that boundary that was provided to me was
- 26 then transposed on to this map, yes, that's correct,
- 27 and that was put on by me.
- 28 Q And who gave you the map that you used to draw that
- 29 line?
- 30 A That map would have come from the Carrier-Sekani
- 31 Tribal Council.
- 32 Q They gave it to you?
- 33 A It was sent to the office and then it was brought to
- 34 my attention, yes.
- 35 MR. WILLMS: Now, just to relate this to some of the other maps
- 36 that have been marked, that is the same external
- 37 boundary line as Exhibit 5 -- as Exhibit 5 without the
- 38 colouring, is that?
- 39 MR. RUSH: No, I think he should have both in front of him.
- 40 THE WITNESS: I can't. How am I going to compare it?
- 41 MR. WILLMS: Sorry, you were quite adept at it in your evidence
- 42 in chief, but if you want to take a look.
- 43 My lord, it was identified by the witness as
- 44 overlay 5 from the overlay series, and that's good
- 45 enough for me.
- 46 THE COURT: Overlay 5?
- 47 MR. WILLMS: Yes. 646-5.

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 THE COURT: Yes.
2 THE WITNESS: Do you still want me to compare it?
3 MR. WILLMS: No. Thanks very much.
4 THE COURT: Does Exhibit 101 have a date on it?
5 THE WITNESS: Which one is Exhibit 101?
6 THE COURT: The Carrier-Sekani overlap.
7 MR. WILLMS: My lord, it's described in the desk series and in
8 the 646 series as April, 1986.
9 THE WITNESS: But there's no date attached.
10 THE COURT: There's no date?
11 THE WITNESS: No.
12 THE COURT: Thank you.
13 MR. WILLMS:
14 Q Did you draw any similar maps to depict overlapping
15 claims of the Nishga?
16 A I don't recall. I may have. If it was asked of me, I
17 would have produced one, yes.
18 Q So you may have?
19 A I may have, yes.
20 Q And if you did, where would it be?
21 A If I did, I imagine it would have been here. If I
22 didn't, then it obviously is not here.
23 Q How about overlapping claim of the Tahltan? Do you
24 recall drawing a map showing an overlapping claim of
25 the Tahltan?
26 A No, I didn't.
27 Q Do you recall drawing an overlapping claim of the
28 Kitwancool?
29 A No, I don't recall drawing such a map, no.
30 Q Do you recall drawing an overlapping claim of either
31 the Kitselas or Kitsum Kalum people?
32 A No, I didn't. I don't recall unless you can show me
33 one. I'll identify it if I did.
34 Q All right. And how about Kaska-Dena, K-a-s-k-a-dash-
35 D-e-n-a?
36 A No, I don't recall drawing a map to show those
37 boundaries, no.
38 Q Do you have an estimate of the number of maps you've
39 made showing the external boundaries of the Gitksan-
40 Wet'suwet'en territories?
41 A I imagine the ones that you have here would be a
42 pretty good representation of the ones that I've made.
43 Q But are these, the ones that we have here, the only
44 ones that you've ever made or are there more?
45 A There may be copies of them.
46 MR. WILLMS: Now, as you've been drafting and redrafting these
47 maps, the external lines changed from time to time,

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 and I wonder if Exhibit 1009 -- on this exhibit there
2 is writing in the -- on the right-hand side, "87-04-08
3 External," boundary, "Bndy will now exclude Nii Kyap,"
4 N-i-i K-y-g-p, "following -- follow Miluulak" --
5 MR. RUSH: "...will follow Miluulak."
6 MR. WILLMS:
7 Q "...will follow Miluulak bndy," and those are your
8 initials; is that correct?
9 A Yes, it is. And Nii Kyap is spelt K-y-a-p.
10 Q Oh, a-p. I'm sorry. And who told you to exclude Nii
11 Kyap?
12 A That information would have been -- would have come to
13 me from Neil based on information that he got.
14 Q And the information that he got, as you understood it,
15 was from the hereditary chiefs?
16 A That's correct, yes.
17 MR. WILLMS: And so there is one draft of the overlap series
18 where you have excluded Nii Kyap? It's 646-8.
19 THE COURT: 8?
20 MR. WILLMS:
21 Q 8. You'll see that the boundary on 646-8 stops at
22 Miluulak?
23 A Yes, that's correct, yes.
24 Q And then you put it back in again?
25 A That's correct, yes.
26 Q And where did you get the information to put that back
27 in again?
28 A Again that information would have come to me from Neil
29 based on information that he got.
30 Q From the hereditary chiefs?
31 A That's correct, yes.
32 Q Now, another one, and this is on Exhibit 101. You
33 will see on Exhibit 101 that if you go to the eastern
34 boundary about the middle the territory of Smogelgem
35 has the territory of Wah Tah Keg'ht immediately to the
36 south of it?
37 A That's correct.
38 Q Correct. And in Exhibit 646-9B you'll see that
39 between those two territories there is now a territory
40 of Goohlaht?
41 A That's correct, yes.
42 Q And Goohlaht, that's your house, isn't it?
43 A That was already identified for the courts, that's
44 correct, yes.
45 Q Yes. So when you drafted Exhibit 101, you didn't have
46 any personal knowledge that the House of Goohlaht had
47 a territory between Smogelgem and Wah Tah Keg'ht,

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

- 1 correct?
- 2 A The information that I drafted is information that was
- 3 provided to me.
- 4 Q Well, maybe I should put it this way: As a member of
- 5 the House of Goohlaht, did you have any idea where the
- 6 Goohlaht territories were? Just as being a member,
- 7 without having anybody give you information, did you
- 8 know where your house territories were?
- 9 A No, I had left Hazelton when I was 15 years old and
- 10 had been away for 20 years and just came back in 1983,
- 11 and there was a lot of information that they had, and
- 12 the information that they had provided to me made its
- 13 way on to these maps.
- 14 Q So certainly prior to you leaving you didn't have any
- 15 recollection -- at least when you started drafting
- 16 these maps you didn't have any recollection that you'd
- 17 ever heard that there was a territory belonging to
- 18 Goohlaht in the location between Smogelgem and Wah Tah
- 19 Keg'ht? You didn't know that at all?
- 20 A No. There was no need for me to know.
- 21 Q That's something that the chiefs know but you as a
- 22 member of the House of Goohlaht wouldn't know?
- 23 A No, I was too young. I didn't have a chief name. I
- 24 had no business being in the feast hall. There were
- 25 other people in the feast hall. I imagine they would
- 26 have been discussing it.
- 27 Q When is the first time that you attended a feast where
- 28 territorial boundaries were discussed?
- 29 A I can't give you the exact date, but there were many
- 30 feasts where I've gone to where territorial boundaries
- 31 were discussed, Gitksan feasts and Wet'suwet'en
- 32 feasts.
- 33 Q Well, when was the first feast that you attended where
- 34 the territories of Goohlaht were discussed?
- 35 A The feast in Moricetown.
- 36 Q When?
- 37 A That would have been -- I can't remember the exact
- 38 date.
- 39 Q Well, would it be before you drafted Exhibit 101?
- 40 A No, there was no need for me to go to the feast hall
- 41 and find out where all these territories are. That
- 42 information was passed on to the researchers, and that
- 43 information was then passed on to me based on
- 44 information that they had obtained. My job was to
- 45 transfer the information that they had obtained and to
- 46 draw a map which would depict that information that
- 47 they could use.

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

- 1 Q Now, from map to map that you've produced internal
2 boundary lines have changed and house territory names
3 have changed as well; is that correct?
- 4 A That's correct, yes.
- 5 Q And an example of that, if you look at Exhibit 101,
6 you'll see that the house territory down near Tahtsa
7 Lake is called Chief Louie and now on 646-9B the same
8 territory is called Goohlaht?
- 9 A That's correct.
- 10 Q And you know that Chief Louie is not in the House of
11 Goohlaht?
- 12 A That's correct. Yes, I know Chief Louie is not in the
13 House of Goohlaht, and I know Chief Louie is not a
14 Wet'suwet'en chief name.
- 15 Q Now, the process of drafting boundary lines had been
16 going on before you even arrived on the scene, if I
17 can put it that way, in 1983; correct?
- 18 A The process of gathering information and attempt to
19 delineate boundaries had started, yes.
- 20 Q And you carried on with that after you came?
- 21 A Based on information and based on instructions that I
22 had been given, yes, that's correct.
- 23 Q And as more information was gathered, boundary lines
24 were changed, place-names were changed, house
25 territory names were changed?
- 26 A That's correct. The more information that you have,
27 the -- the more accurately you could define a
28 particular boundary. But it's --
- 29 Q Or whose territory it was?
- 30 A That's correct, yes.
- 31 Q And with further information and further research
32 Exhibit 646-9A and 9B could change tomorrow?
- 33 A If there was a particular reason for a particular
34 boundary to change hands, yes, that information would
35 come to me, and it is quite possible to -- to say that
36 that's the way it's going to be from now until
37 eternity. It would mean that the whole system is
38 static and nothing's going to change.
- 39 Q And that includes the external boundary lines, that
40 process?
- 41 A The internal and external boundaries of map 9A and 9B
42 are based on the affidavits, and those affidavits have
43 all been sworn and are now in court, and based on that
44 information, that's the information that is on those
45 maps.
- 46 Q But I'm just talking about house names and territorial
47 boundaries, internal and external, and I'm suggesting

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

- 1 that if you were to carry on with your work tomorrow,
2 it's conceivable that the external boundaries of that
3 map could change with further information, it's
4 conceivable the internal boundaries could change?
- 5 A There would be no reason to carry on that work. That
6 work is now complete. The external and internal
7 boundaries are described now in the affidavits.
- 8 Q And so those will never change, as far as you know?
- 9 A I didn't say never change. I just explained to you
10 that there is a possibility that there could be a
11 change. And it would be based on some reason or
12 another. There could be -- territory may change hands
13 for some reason or another, but that would all be --
14 that would all take place in the feast, and there
15 would be a reason for that change. And based on that
16 information, yes, it is quite possible that a
17 territory may change hands, yeah.
- 18 Q And a line may change?
- 19 A But based on the affidavits those are the correct
20 boundaries of the external and internal boundaries of
21 the Gitksan and the Wet'suwet'en.
- 22 Q Now, your maps 646-9A and 646-9B purport to show that
23 all internal boundary lines are contiguous, that is,
24 where one territorial boundary ends, another one
25 starts?
- 26 A That's correct, yes.
- 27 Q But you know from your experience that some of these
28 lines run across fairly inaccessible territory?
- 29 A Yes. What they explained to me is that I do not go
30 over, and with my experience I can identify that point
31 on the map where they will not go over. On the other
32 side belongs to somebody else. That's what they would
33 explain to me. And with my experience and my
34 expertise I could identify that point on the map for
35 which they would not go over, that's correct.
- 36 Q And, of course, it would be important, if that was the
37 basis for your description, that the description be
38 taken from the informant from the ground, for example,
39 so that the informant could say, well, there's the
40 mountain, and on the other side of the mountain -- my
41 territory goes to the top of the mountain, but on the
42 other side someone else's territory starts? I mean
43 that would be the vantage point, wouldn't it?
- 44 A There were instances where some of that information
45 was gathered on field trips by vehicles, and there
46 were a lot of instances where the information was
47 gathered on helicopter flights --

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

- 1 Q Yes.
- 2 A -- where they were on mountain peaks and they could
- 3 see those geographical features and they could
- 4 identify them and they could identify those boundaries
- 5 and say that is my boundary, on the other side of the
- 6 mountain is so and so's. If you want information, you
- 7 go see him.
- 8 Q In fact, many of the vantage points on these field
- 9 trips were places where the chiefs had never been
- 10 before, like the top of a mountain peak by helicopter?
- 11 A How do I know that?
- 12 Q All right. You couldn't take that educated guess --
- 13 A Could you?
- 14 Q -- just by looking at the terrain?
- 15 A I can't assume that they have never gone there. No, I
- 16 can't.
- 17 Q All right.
- 18 A You're asking me to guess.
- 19 Q Did you go along on some of these helicopter trips
- 20 where locations were pointed out by the hereditary
- 21 chiefs?
- 22 A Yes, I did.
- 23 Q And you're saying that from your observations none of
- 24 the places where you stopped with the helicopter
- 25 appeared to be relatively inaccessible other than by
- 26 helicopter?
- 27 A Do you want to repeat that question again, please?
- 28 Q Well, what I'm suggesting to you, and correct me if
- 29 I'm wrong, but based on your knowledge of the
- 30 topography in this area, based on your knowledge
- 31 gathered by flying over this area, based on your
- 32 knowledge in driving through this area what I'm
- 33 suggesting to you is that there are locations within
- 34 the Gitksan-Wet'suwet'en claim territory that are
- 35 inaccessible except by something like helicopter. You
- 36 just can't get there any other way.
- 37 A I can't agree with that, no.
- 38 Q No. Okay. Could you agree that some places you can
- 39 get to if you're an experienced mountain climber?
- 40 A Many of the Gitksan and Wet'suwet'en people were very
- 41 experienced in the mountains. Had --
- 42 Q Now, did you understand from your topographic drafting
- 43 course that boundaries between adjoining political
- 44 entities are usually contiguous, that is, the
- 45 boundaries between Alberta and British Columbia are
- 46 contiguous, the boundaries between the United States
- 47 and Canada are contiguous? That was something that

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

- 1 you understood from your drafting course?
- 2 A That's common knowledge.
- 3 Q Yes. And that's based on, if I can put it this way, a
- 4 view of the world that on a map you've got to divide
- 5 everything up if you're talking about political
- 6 entities?
- 7 A I don't know about the view of the world and why they
- 8 have to divide everything up.
- 9 Q All right. But when you brought your skills to bear
- 10 on mapping these territories, you bore in mind that
- 11 adjoining territorial boundaries should be contiguous,
- 12 is that correct, as a principle of laying them out?
- 13 A If there was a need for two boundaries to be
- 14 contiguous, then those two boundaries would be drafted
- 15 on maps as being contiguous.
- 16 Q In other words, if they were adjoining territories,
- 17 you made sure that the boundary line was contiguous,
- 18 that there weren't gaps between the boundary lines?
- 19 A If the chiefs identified a particular geographical
- 20 feature and said that they did not go past that and
- 21 the other side belongs to somebody else, yes, I would
- 22 bring that particular feature to the height of land.
- 23 And in the affidavits, every affidavit identifies
- 24 people who are around them. These people are to the
- 25 left, right, north, immediately north-east of me,
- 26 south of me, and north-west of me. That information
- 27 was all in the affidavits.
- 28 Q Isn't it the case though that most of the informants,
- 29 the ones that you interviewed, told you about their
- 30 territory in terms of what was in the territory rather
- 31 than where the boundary line ran?
- 32 A It was my experience in interviewing the hereditary
- 33 chiefs on the Wet'suwet'en side they explained to me
- 34 where the boundaries were and the geographical names
- 35 and identified them and also identified geographical
- 36 features within the territory also.
- 37 Q But your -- are there more interview notes that you
- 38 made other than the ones that have been marked in
- 39 Exhibit 998 or are these all of your interview notes?
- 40 A Those would be all my interview notes.
- 41 Q And isn't it fair to say, Mr. George, that there are
- 42 very, very few interview notes there which contain a
- 43 detailed statement of a boundary line? The notes
- 44 contain statements that a mountain is in a territory,
- 45 a lake is in a territory, a river is in a territory,
- 46 but those statements do not include descriptions of
- 47 the boundary line, do they?

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

- 1 A No, they don't.
- 2 Q And that was something that you filled in?
- 3 A During the interview process, I already explained to
- 4 you, when I went there, I had information that was
- 5 already gathered, took this information to them,
- 6 explained to them where this particular boundary was
- 7 and asked them: Now, is this correct; is this your
- 8 boundary; is this particular feature here that is
- 9 identified by this particular name, is it located in
- 10 this position, in this location; is that right. They
- 11 would say my boundary runs along this particular
- 12 creek. I do not go past. That is on my working map.
- 13 That's all that information went on. And based on
- 14 those boundaries the legal description was then made
- 15 to identify that particular territory and identify
- 16 those geographical features in there.
- 17 Q My suggestion was simply based on your notes, Mr.
- 18 George, and we've all -- I've reviewed them, and
- 19 correct me if I'm wrong, but most of those notes show
- 20 that lakes are in a territory, rivers are in a
- 21 territory, mountains are in a territory, but very few
- 22 of the notes say this is where the boundary line runs?
- 23 A Because that information would have gone on to the
- 24 working maps.
- 25 Q For the territory?
- 26 A For the territory.
- 27 Q Are you -- is that the interrogatory maps that you're
- 28 referring to? Are those the working maps for the
- 29 territory?
- 30 A They would be in some instances a similar base. There
- 31 were already boundaries defined on the original coded
- 32 map, and like I said, that information was brought to
- 33 them.
- 34 MR. WILLMS: Now, my lord, I'm going to start marking some
- 35 documents, so perhaps we could give a number to the
- 36 next grey binder.
- 37 THE REGISTRAR: The next number, my lord, is Exhibit 1018.
- 38
- 39 (EXHIBIT 1018 - A.G.B.C. CROSS-EXAM BOOK - M. GEORGE)
- 40
- 41 MR. WILLMS:
- 42 Q I am showing you, Mr. George, a copy of the affidavit
- 43 of Elizabeth Jack, which has been marked Exhibit 666
- 44 in the trial, and will you agree with me that this
- 45 affidavit speaks to the territory around Tahtsa Lake,
- 46 which is noted as Samooh on Exhibit 9B?
- 47 A Yes, that's correct.

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 Q And is this the affidavit that you relied on in
2 mapping that territory?

3 A That's correct, yes.

4 MR. WILLMS: Could that be tab 1, my lord?

5 THE REGISTRAR: Thank you.

6 THE COURT: Yes.

7 THE REGISTRAR: 1018-1.

8

9 (EXHIBIT 1018-1 - TAB 1 - AFFIDAVIT JULY 19, 1988,
10 ELIZABETH JACK - EXHIBIT 666)

11

12 MR. WILLMS:

13 Q Now, when you read this affidavit, you noted that the
14 affiant is not Wet'suwet'en, that she's Cheslatta?

15 A It's identified in there, yes.

16 Q Yes. And you also noted that the boundaries of the
17 territory were pointed out, and this is in paragraph 3
18 of the affidavit, that the boundaries of the territory
19 were pointed out to Elizabeth Jack by her father,
20 Batise Louie, and her uncle, the former Chief Louie?

21 A That is also in there, yes.

22 Q Yes. Now, did you in preparing Exhibit 646-9B review
23 the cross-examination on affidavit of Elizabeth Jack?

24 A Yes, I did. I think I made reference to it.

25 Q Well, I'm showing you -- it's December 2nd, 1988, and
26 it's the cross-examination on affidavit of Elizabeth
27 Jack. Did you review this affidavit, Mr. George?

28 A Yes, I would have made reference to this.

29 MR. WILLMS: Now, the first thing -- and if you can turn to
30 page -- might this be Exhibit 1018-2, my lord?

31 THE COURT: Yes.

32 THE REGISTRAR: Thank you.

33

34 (EXHIBIT 1018-2 - TAB 2 - EXTRACT FROM TRANSCRIPT OF
35 CROSS-EXAM ON AFFIDAVIT OF ELIZABETH JACK, DEC. 2/88)

36

37 MR. WILLMS:

38 Q If you turn to page 10, you will see at line 12 in the
39 cross-examination that Miss Jack confirms that Chief
40 Louie was Cheslatta, correct?

41 A Yes, she does say that. And I also mentioned that
42 Chief Louie as identified on those other maps was not
43 a chief name.

44 Q Well, let me just finish with this and then go to --
45 if you turn to page 13, and this is in the re-
46 examination of Mr. Adams, at the bottom of the page,
47 line 44, in the re-examination by Mr. Adams he asks

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 this question:

2
3 "Q Now, you were asked a question about the
4 Tahtsa Lake territory and you were asked
5 whether that was Chief Louie's territory and
6 you said that it was. My question is: Was
7 that Chief Louie's territory because he had
8 a government registered trapline there or
9 was it Chief Louie's territory because it
10 was his traditional Indian territory?"

11
12 And the answer was:

13
14 "A They own territory in Indian way."

15
16 Now, that would indicate that the territory was not
17 Wet'suwet'en, wouldn't it?

18 A When I had done the interview with Elizabeth Jack when
19 she identified the boundaries and the geographical
20 features to me, she indicated that she didn't know
21 whether Chief Louie had owned the territory or not.
22 And if you look further in my notes, you'll find notes
23 from Micheal Charlie which say that the area is
24 Wet'suwet'en. And if you look further in there, you
25 will find notes from Johnny David which says that this
26 area is Wet'suwet'en and from the House of Samooh
27 because Chief Louie was married to a lady from the
28 House of Samooh and he was in there under privilege.
29 And if you look at the affidavit of Johnny David, he
30 says that he has read the chief -- Elizabeth Jack
31 affidavit and identified that area as being from the
32 House of Samooh.

33 Q That sentence was struck, my lord.

34 A And if you look at the Jimmy Morris affidavit, you
35 will see in there that it identifies the area as being
36 Gilseyhu also, G-i-l-s-e-y-h-u.

37 THE COURT: I'm not following this, Mr. Willms.

38 MR. WILLMS:

39 Q Well, my lord, I can deal with what the witness just
40 said in argument and what your lordship has already
41 ruled.

42 One thing that's clear if you refer to Elizabeth
43 Jack's affidavit, Mr. George, is that nowhere in
44 Elizabeth Jack's affidavit does she say that it's
45 Samooh's territory?

46 A No, she doesn't. She doesn't say it isn't Samooh's
47 territory, and she doesn't say in her affidavit that

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

- 1 it belongs to Chief Louie.
- 2 Q But you recognized when you read the cross-examination
- 3 on the affidavit that she said that it was Chief
- 4 Louie's territory, and you also recognized that that's
- 5 the name that you put on it in Exhibit 101, right?
- 6 A And I also identified to you that Chief Louie is not a
- 7 Wet'suwet'en name. The only reference that we could
- 8 have to a person being in there was a reference to
- 9 Chief Louie, and that is not a chief name. If you
- 10 look all over that map, all you see are Wet'suwet'en
- 11 chief names and all of a sudden Chief Louie. That is
- 12 not a chief name.
- 13 Q Well, all that I'm suggesting to you, Mr. George, is
- 14 that if Elizabeth Jack is right --
- 15 A If she's right.
- 16 Q -- in her re-examination -- just let me finish. If
- 17 she's right in her re-examination by Mr. Adams that
- 18 it's Chief Louie's territory, then it shouldn't be
- 19 included in the Wet'suwet'en territory on 9B, should
- 20 it, if she's right?
- 21 A I have notes in there. If you look in my notes, you
- 22 will see from the notes of Micheal Charlie that he
- 23 identifies that area as being Wet'suwet'en. And if
- 24 you look at the affidavit of Johnny David, he
- 25 identifies that area as being Wet'suwet'en and being
- 26 Gilseyhu and being from the House of Samooch. And if
- 27 you look at the affidavit of Jimmy Morris, which is
- 28 also sworn to by Stanley Morris, you will see in there
- 29 where he identifies the area as being Gilseyhu. And
- 30 if you also look in my notes when I'm talking to
- 31 Elizabeth Jack, you will see it indicates in there
- 32 that she doesn't know who owned it. And when I say is
- 33 it possible that Chief Louie is in there under
- 34 privilege because he is married to a lady from the
- 35 House of Samooch, she said, yes, it can -- it might be
- 36 that way.
- 37 Q Let's just make it clear. Those notes were all taken
- 38 before she swore her affidavit, right?
- 39 A Yes.
- 40 Q All right. And before she was cross-examined on her
- 41 affidavit?
- 42 A Yes, that's true.
- 43 Q You took all those notes before then? Okay.
- 44 A And if you look in her affidavit, she does not make
- 45 any reference in there to say that the area is Chief
- 46 Louie's.
- 47 Q Now, could Exhibit 998, which is the big book, be put

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 before the witness, and could you turn to tab 20?
2 This is a meeting that you had with Elizabeth Jack on
3 February 5th, 1988?
4 A Yes, that's correct.
5 Q And you have made the note at the top, "Chief Louie is
6 not Wet'suwet'en"? That's your note --
7 A Yes, it is.
8 Q -- on the first page?
9 A Yeah. Chief Louie is Cheslatta.
10 Q Now, if you turn to page 3 of 5, you'll see in the
11 middle of the page right by the three-hole punch your
12 note:
13
14 "Elizabeth didn't know the names of these two
15 peaks,"
16
17 referring to mountains described above,
18
19 "but phoned Margaret..."
20
21 And what's that? Do you know the person's last name
22 there? It's covered over by the punch.
23 A Casimel, C-a-s-i-m-e-l.
24 Q And what house is she from; do you know?
25 A No, I don't.
26 Q
27 "...and got the names,"
28
29 and then this,
30
31 "both peaks being in Chief Louie's
32 territory."
33
34 That's what Elizabeth Jack told you in February of
35 1988, right?
36 A No, this is -- this is -- here's where -- looking at
37 that map, which I had -- was labelled Chief Louie,
38 those two peaks were in there, so I made a reference
39 there, a note to myself.
40 MR. WILLMS: Well, the two peaks are -- there's Mt. Baptiste and
41 Swing Peak. Those are the two peaks, right, if you
42 look up above?
43 THE COURT: Swing Peak, and what's the other one?
44 MR. WILLMS:
45 Q Mt. Baptiste. Those are the two that are being
46 referred to, isn't that correct, Mr. George?
47 A I'm reading and trying to reconstruct what happened.

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 It says:

2

3

4

"New areas identified."

5

Q Well, I'm sorry, maybe I misread this.

6

A You probably did.

7

Q But the middle of the page says:

8

9

"Elizabeth didn't know the names of these two peaks,"

10

11

12

and when I read above on that page, I just see two peaks, Mt. Baptiste and Swing Peak mountain area.

13

14

Now, maybe it's something else, but when I read:

15

16

"Elizabeth...both peaks being in Chief Louie's territory,"

17

18

19

I read that as meaning that she says Mt. Baptiste and Swing Peak mountain area are.

20

21

A No, you're -- you're -- you missed the point altogether.

22

23

Q All right.

24

A It says:

25

26

"New areas identified:

27

Mt. Baptiste - identified this as

28

Teldzet..."

29

30

I don't know whether that's a -- that's a slashed "l," which would mean Teldzet. And also right below

31

32

that --

33

THE COURT: I'm sorry, how would you have Madam Reporter spell that?

34

35

THE WITNESS: It's T-e-slashed l-d-z-e-t and d-z-e-slashed l.

36

And right under there it says:

37

38

"Swing Peak mountain area - the highest peak is Quintzeez Dzet meaning

39

40

'on top is dry, grey hair'

41

the peak beside this is Chiq'uz Dzet 'half head'

42

43

story behind this is:

44

A long time ago there was this guy and his wife, he had big eyes and something happened

45

46

and they both turned into mountains. The

47

two eyes can be seen from Grassy Plains, two

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 big holes in the mountain, if you look at
2 the mountain and he doesn't know you, the
3 weather changes for the worse.
4 Elizabeth didn't know the names of these two
5 peaks..."

6

7 Q So where on the map? Can you point out where these
8 two peaks that you think she's referring to, where
9 they are on the map?

10 A No, I didn't identify -- I couldn't identify it from
11 the information that she gave me.

12 Q All right.

13 A And it's those two peaks, not the new areas
14 identified.

15 Q All right. Well, perhaps you could turn to the fifth
16 page of this note. You've got a telephone call to
17 Elizabeth Jack noted on February 8th, 1988, and some
18 questions. Are these questions that you asked
19 Elizabeth Jack and followed by the answers that she
20 gave you?

21 A Yes, they are.

22 Q All right. And you see that you wanted to know what
23 clan Chief Louie was, and the answer was Beaver Clan,
24 and then you asked:

25

26 "Did Chief Louie own the territory or was he
27 there by permission?"

28

29 And Elizabeth Jack told you that he owned the area,
30 correct?

31 A That's what she said, but in the previous notes she
32 also says that she doesn't know who owned it. And she
33 also tells me from other notes that he may be in there
34 under permission by -- because of his marriage to the
35 lady from the House of Samooh, it may be that way.
36 And Micheal Charlie says that the area is
37 Wet'suwet'en, which contradicts what she says. Johnny
38 David identifies in his affidavit that this area is
39 Wet'suwet'en and from the House of Samooh because
40 Chief Louie was married to a lady from the House of
41 Samooh, which also contradicts what she says. And in
42 the affidavit of Jimmy Morris he identifies the area
43 south of him as being Gilseyhu, which also contradicts
44 what he (sic) says. So I have this information, and I
45 have information based on sworn affidavits, and it's
46 information from the sworn affidavits that I used to
47 identify that area as being Samooh.

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 Q What about evidence from Miss Jack's sworn testimony?
2 You ignored that?
3 A There is contradiction between what she's saying and
4 what she told me when I first met with her and
5 contradictions in here and contradictions to sworn
6 affidavits.
7 Q Okay. You made a judgment call there and put it in?
8 A No, it's not a judgment call. Every boundary on there
9 was per affidavits. There was no judgment call and no
10 need for a judgment call. It's identified in the
11 affidavits of what territory it is.
12 Q Can you turn to tab 21, 998-21. Is this July 6th or
13 June 7th?
14 A I always make reference to the year, month, and the
15 date.
16 Q Okay. So this is July 6th, 1988. And is this -- what
17 are these notes for? What do you mean "for Elizabeth
18 Jack"? Can you explain what you meant by that?
19 A I made some notes to myself that I was going to ask
20 of -- I was going to bring this information that I had
21 to Elizabeth Jack's attention, but I never did make
22 contact with her. She was always away, so I never did
23 get to ask these particular questions of her.
24 Q Okay. Now, the first note is:
25
26 "I have spoken with Micheal Charlie..."
27
28 A Micheal Charlie.
29 Q Oh, Micheal Charlie.
30
31 "...he says that the area around Tahtsa Lake
32 is Wet'suwet'en."
33
34 A That's correct, which I have just explained to you.
35 Q All right. Now, Micheal Charlie -- did Micheal
36 Charlie swear an affidavit?
37 A No, he didn't.
38 Q No. Okay. And Micheal Charlie is Cheslatta?
39 A That's correct.
40 Q That's your note. All right. Now, the next note is:
41
42 "Jimmy Morris,"
43
44 and,
45
46 "...Jimmy says Tahtsa Lake area is Gilseryu."
47

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 A That's correct, and he did swear an affidavit, and the
2 affidavit was sworn for that particular area.
3 Q And Jimmy Morris is what house?
4 A Jimmy Morris I believe is Gitdumden.
5 Q No, but the house. Do you know what house?
6 A Not off the top of my head, no. And if you look at
7 number 3, it says:
8
9 "Johnny David says Chief Louie's wife was
10 from the House of Samooh,"
11
12 which would indicate why Chief Louie was in that area,
13 under privilege because his wife was from the House of
14 Samooh.
15 Q Now, at the bottom --
16 A And because he is Cheslatta is why we don't have an
17 Indian name for that particular area. He was only
18 identified as Chief Louie.
19 Q And, in fact, it was identified as Chief Louie by you
20 in Exhibit 101?
21 A Because that's the information that I had, yes.
22 Q Yes.
23 A I told you that the information that I had based on
24 the research that was provided to me is information
25 that went on those maps.
26 Q Well, now, at the bottom you say -- you set out your
27 options. I guess these are the solutions to your
28 problem?
29 A Yes, they are.
30 Q
31 "Do an affidavit of the Tahtsa Lake area,
32 identify boundary and geographic features
33 without references as to who owns the
34 territory."
35
36 And option 2 is:
37
38 "Do an affidavit saying territory is
39 Gilseryu,"
40
41 G-i-l-s-e-r-y-u,
42
43 "belonging to the House of Samooh reason I
44 believe that Chief Louie was there under
45 privilege of his wife, in his wife's clans
46 territory."
47

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 Now, you took option one, right? That's what
2 Elizabeth Jack did? She just swore to the territorial
3 boundaries, but not to who owned it, right?

4 A I had developed this set of questions based on
5 information that was provided to me, the
6 contradictions that identified the ownership of that
7 particular territory.

8 Q Well, I'm just suggesting --

9 A I was going to ask these questions of Elizabeth Jack,
10 and like I said, I didn't get a chance to meet with
11 her. And when I finally did meet with her, yes, we
12 did do option one because she couldn't tell me whether
13 or not for certain that Chief Louie owned it because I
14 already explained to her these contradictions between
15 what she's telling me. And then when I asked her is
16 it possible that he was in there under privilege
17 because of his wife, his wife being from the House of
18 Samoooh, is it possible that he is in there because of
19 that, the privilege that goes along with his wife, he
20 (sic) says, yes, it may be that way. If you will look
21 in those notes, you will find it there.

22 THE COURT: Can we adjourn until two o'clock?

23 MR. WILLMS: Thank you, my lord.

24 THE COURT: Okay.

25 THE REGISTRAR: Order in court. Court will adjourn until 2:00.

26

27 (PROCEEDINGS ADJOURNED AT 12:30 P.M.)

28

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

33

34

35

36

Leanna Smith

37

Official Reporter

38

United Reporting Service Ltd.

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M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 (PROCEEDINGS RECONVENED PURSUANT TO ADJOURNMENT)
2
3 THE REGISTRAR: Order in court.
4 THE COURT: Willms.
5 MR. WILLMS:
6 Q Before we return back to tab 21, could you turn to tab
7 51, please, Mr. George? This is an interview with
8 Michelle Charlie on May 12th, 1988, in your note,
9 right?
10 A Yes, it is.
11 Q And so this took place before you went in and
12 interviewed Elizabeth Jack before her affidavit was
13 sworn?
14 A That's correct, yes.
15 Q And here you noted in Exhibit 998-51 that in the
16 middle of the page by the three-hole punch "Chief
17 Louie was Cheslatta, Tsayu clan", and then "Chief
18 Louie's wife was Sekai." S-e-k-a-i?
19 A Sekai.
20 Q Sekai?
21 A Yes.
22 Q What's that? What does that mean?
23 A I don't know.
24 THE COURT: What's the next word, A-g-a-t?
25 THE WITNESS: Sekai Agat.
26 THE COURT: Yes.
27 MR. WILLMS:
28 Q And then Michael Charlie's aunt, and then "She was
29 Amelia's sister. She is also Cheslatta." Who was
30 Cheslatta? Who are you referring to there, do you
31 know?
32 A Referring to Chief Louie's wife.
33 Q And then the note there "Most everyone was from
34 Cheslatta except Michelle father's people."; is that
35 right, or "Michelle Charlie's people"?
36 A Michelle Charlie's people. Yes, that's right.
37 Q So from this note it appears that Michelle Charlie
38 told you that Chief Louie was Cheslatta, Chief Louie's
39 wife was Cheslatta?
40 A That's correct.
41 Q Okay. Let's -- if we can just go back to 998-21?
42 A That would be information that he understood. Yes.
43 THE COURT: Whose handwriting is this?
44 THE WITNESS: At 51? That's --
45 THE COURT: That's yours?
46 THE WITNESS: That's my handwriting.
47 THE COURT: That's yours. Yes.

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 THE WITNESS: Uh-huh.
2 MR. WILLMS: And so if we go back to 21, which is also your
3 handwriting except for that one page --
4 THE COURT: What page -- what tab are you on?
5 MR. WILLMS: I'm back to 998-21, my lord, that's the interview
6 with Elizabeth Jack.
7 THE COURT: Yes. That's right.
8 MR. WILLMS:
9 Q And just skip past the page of Peter Grant's notes,
10 please, to the third page in which was the second
11 page, and these are your notes on this page? That's
12 your hand on the page that says "Elizabeth Jack
13 88/07/07" and then it appears to be "Z-e-l", with a
14 slash, "e-e-k"?
15 A Yes, that's my handwriting.
16 Q At the bottom of the page you note that "Elizabeth is
17 willing to sign the affidavit on Tuesday without
18 referencing as to who owns the area. She agrees that
19 the area is Wet'suwet'en, but doesn't know which clan
20 it belongs to. I explained that I think that the area
21 may belong to Samooh and that Chief Louie was in there
22 under privilege under his wife's side. She said maybe
23 it's that way the old people know."
24 Now, is that what you were talking about before
25 lunch about the -- Elizabeth Jack agreeing that there
26 may be something more about the territory?
27 A That's correct. Yes.
28 Q All right. But Chief Louie's wife was Cheslatta?
29 A According to Michelle Charlie she was from Cheslatta,
30 but according to Johnny David Chief Louie's wife is
31 from the house of Samooh.
32 MR. WILLMS: Okay. Now, if we can just get to these questions
33 that you'd set out for Mr. Grant, and those questions
34 are at page 998 -- sorry, Exhibit 998, tab 53, my
35 lord.
36 THE COURT: Yes.
37 MR. WILLMS: And these, you've said that the notes in the upper
38 right-hand corner are not in your handwriting?
39 THE COURT: I'm sorry, Mr. Willms, I've lost you. I don't
40 have --
41 MR. WILLMS: 53.
42 THE COURT: -- 53.
43 MR. WILLMS: Yes.
44 THE COURT: I have a blank in 53. Maybe -- I filed it as 54. I
45 apologize. Thank you. All right. Go ahead.
46 MR. WILLMS:
47 Q Now, you -- the first problem you say there, you've

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 listed some problems about the Chief Louie area at
2 Tahtsa Lake, and you say -- in your commissioned
3 evidence you say that Chief Louie's was Nuutsenii from
4 Cheslatta, and you said he had the area south of -- is
5 that Sebola, S-e-b-o-l-a --
6 A That's correct, yes.
7 Q -- Mountain. Did you mean trapline? Now, are you
8 talking about Johnny David's commissioned evidence?
9 A Yes, I am.
10 Q All right. So what you're setting out here is
11 questions that are to be put to Johnny David?
12 A Yes. These questions were designed to be put to
13 Johnny David. That's correct. Yes.
14 Q Okay. So then -- and so those are the questions, and
15 I think you've already given evidence the answers or
16 the notes were made back at 998-21 on the second page
17 in Mr. Grant's hand?
18 A That's correct.
19 Q Correct.
20 A Yes.
21 Q And so the answer here at the beginning, does that --
22 Alfred asks if it was a registered trapline. Is that
23 what that means to you or is that what you understood
24 that to mean?
25 A Maybe you should ask Peter Grant. It's his
26 handwriting.
27 Q Well, did you use these notes at all?
28 A Yes, I did.
29 Q All right. Well, what did you understand the note to
30 mean when you used it?
31 A Alfred asked if this was a registered trapline in
32 Chief Louie's name.
33 Q And then I take it that this is the response or you
34 understood that it was the response --
35 A This is the response from Johnny David.
36 Q -- from Johnny David? And so it's Johnny David that
37 says that it's Samooh's territory?
38 A Uh-huh.
39 Q And this is the information that you relied on in
40 plotting it on 646-9B as Samooh territory?
41 A The information is in the affidavit of Johnny David.
42 That's the information that I relied on and identified
43 and labelled that territory as being the territory of
44 Samooh.
45 Q So what you did was when you were faced with Elizabeth
46 Jack's testimony in her commissioned -- in her
47 cross-examination where she says it's Chief Louie's

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 territory and Johnny David and that note, you picked
2 Johnny David and made it Samooh; is that fair?
3 A No, that's not fair at all.
4 Q You will agree with me that what Elizabeth Jack said
5 in her cross-examination is inconsistent with it being
6 Samooh?
7 A And you will agree with me the cross-examination of
8 Elizabeth Jack is also inconsistent with her affidavit
9 when it doesn't say in her affidavit who owned it?
10 Will you agree with me on that?
11 Q Well, if you want to look at the affidavit for a
12 moment.
13 A Of Elizabeth Jack?
14 MR. WILLMS: Yes. It's --
15 THE REGISTRAR: 1018.
16 MR. WILLMS:
17 Q 1018-1. You'll see in paragraph 3 that the boundary
18 was pointed out to Elizabeth Jack. She swears in her
19 affidavit by her father Batise Louie who's Cheslatta,
20 right?
21 A I ain't disagreeing with that. That's what the
22 affidavit says, and that's what she says, but that
23 doesn't say that the territory belongs to Chief Louie,
24 does it?
25 Q And then by the former Chief Louie. And she said in
26 her cross-examination that Chief Louie is also
27 Cheslatta, right?
28 A No one's arguing the fact that Chief Louie is
29 Cheslatta.
30 Q Okay. So in Elizabeth Jack's affidavit she describes
31 a territory that was pointed out to her by two
32 Cheslatta people; correct?
33 A Because they were in there under that privilege. Yes.
34 Q Yes. And in her cross-examination -- sorry, in her
35 redirect on her affidavit she says that it was Chief
36 Louie's territory owned in the Indian way?
37 A And when I talked to her she said she didn't know who
38 owned it, and when I put the question to her "Is it
39 possible that this territory is Samooh and that Chief
40 Louie was in there under privilege?", she says "Yes,
41 it may be that way."
42 Q And it's that note that you rely on in contrast to the
43 sworn testimony?
44 A It's the affidavit that I rely on which described that
45 area being Samooh.
46 MR. WILLMS: Could you turn to Exhibit 998-26, please?
47 THE COURT: 26?

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

- 1 MR. WILLMS: 26, my lord.
2 THE COURT: Okay.
3 MR. WILLMS:
- 4 Q And it's the very last page of that and this note --
5 you made this note May 18th, 1988?
6 A That's correct. Yes.
7 Q And you made it in a meeting with Jimmy Morris and
8 you -- you've got a note just above the star "Skin and
9 Keom" K-e-o-m, "Morris fight over Tahtsa Lake."
10 Now, first of all, who's Skin Morris or is that --
11 who's Skin? Who are you referring to there?
12 A I forget.
13 Q Who's Keom Morris?
14 A Keom Morris I believe is related to Jimmy Morris and
15 also to -- yeah, related to Jimmy Morris.
16 Q And what was Jimmy Morris -- what fight was Jimmy
17 Morris describing to you there?
18 A I don't recall. You'll notice beside that asterisk on
19 this particular date Jim Morris also said that Tahtsa
20 Lake area is Gilseyhu.
21 Q That may be part of the fight. Do you know?
22 A No, I don't think that's a part of the fight. No.
23 Q Now, you don't need to turn to the tabs, but the
24 following tabs all contain notes that Mr. Overstall
25 was present at an interview meeting with you at tabs
26 15, 16, 17, 34, 38, 39, 40, 41, and 44.
27 Did you observe Mr. Overstall taking any notes at
28 the meetings that you attended where hereditary chiefs
29 or other informants were interviewed?
30 A No, I didn't.
31 Q And you've never seen any notes made by Mr. Overstall
32 about house territories?
33 A No, I haven't.
34 Q Who decided who it would be that would swear an
35 affidavit as to a particular territory? Did you make
36 that decision?
37 A No, those decisions are not mine to make. My job is
38 to identify on the map the geographic features that
39 were identified to me.
40 Q Well, who told you to go to a particular person with a
41 draft map or a draft affidavit and go through it with
42 them?
43 A There were meetings held in Moricetown with the
44 Wet'suwet'en chiefs and it's at that meeting that the
45 Wet'suwet'en chiefs identified people who they thought
46 would be the most knowledgeable people in those
47 particular areas.

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 Q When was that meeting?
2 A I can't remember the exact date, but it was in
3 Moricetown.
4 Q Do you remember the year?
5 A It would be probably the time when the affidavit
6 process was being started or maybe even before that.
7 Q Did you attend the meeting?
8 A Yes, I did.
9 Q Did you make any notes?
10 A No, I didn't.
11 Q Did anyone there make notes that you could see?
12 A I imagine someone was making notes, but I wasn't
13 making notes.
14 Q All right. Have you ever seen any notes of that
15 meeting?
16 A I'm sure I got a copy of the decisions that were made
17 that -- where they identified the particular people
18 that would speak to these different territories.
19 Q Do you still have that note or document that
20 identified who would speak for a particular territory?
21 A I imagine I would, yeah, because it was based on that
22 information that we sought out those people and had
23 conducted interviews with them, but that was a
24 decision of the hereditary chiefs. They made that
25 decision.
26 Q Do you have that note with you in Vancouver?
27 A I don't think so. No, I don't.
28 MR. WILLMS: My lord, from time to time there may be documents
29 that arise through the testimony. I don't want to
30 deal with them each individually, but I have an
31 overall request for production of documents that the
32 witness identifies during the course of this
33 cross-examination, and then if anything turns on it we
34 can deal with it after the document is produced or it
35 can't be found.
36 MR. RUSH: Well, I'm -- in respect of this particular document
37 I'll advise that I don't have any instructions at this
38 point, but I would assume that I would receive
39 instructions to claim privilege for it. I don't know
40 the document. I can only contextualize the meeting
41 and I can't imagine it not being in the -- without
42 being in the presence of counsel or counsel's agents
43 and for the purposes of determining who the witnesses
44 for the trial should be and what -- in what order they
45 should be called, and so on, which I think is
46 peculiarly within counsel's brief and within the
47 instructions that the plaintiffs give to counsel.

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 It's a matter -- it's clear from the way that I hear
2 the description that it is an instruction to counsel
3 that these are potential witnesses for the trial.
4 THE COURT: But which of course must be -- must be elicited or
5 disclosed in some way in order properly to be the
6 subject of a claim for privilege.
7 MR. RUSH: Yes. I don't know the document. I've never heard of
8 it and it may well be there, but I haven't been in a
9 position to make any kind of an assessment of such a
10 document.
11 MR. WILLMS: My lord, by asking for it I don't mean to take away
12 my friend's right to list it and claim continuing
13 privilege, but I would like to know about it.
14 THE COURT: Yes. All right.
15 MR. WILLMS:
16 Q On -- just respecting notes of Mr. Overstall, can you
17 turn to 998-16, please? The last -- second to last
18 page at -- oh, 998-16 is a meeting in Moricetown with
19 Johnny David and you'll see that Mr. Overstall is also
20 present?
21 A Yes, he was.
22 Q Okay. Now, if you can turn to the second to the last
23 page? Can you explain just above the three-hole punch
24 there is a reference to words of "B-i-i-y-u-z-i-i, by
25 J. David on tape with George Holland around 400 foot
26 mark.", and then "When he was small, Biiyuzii said"
27 and then it looks like a little mark, and then a note
28 "This is being written by Richard Overstall."
29 Now, what was being written by Richard Overstall,
30 parts of a meeting?
31 A I think he was going to transcribe that particular
32 tape. When we were there talking with Johnny David he
33 had identified something around this Swan Lake I
34 believe. There were -- one of the chiefs was buried,
35 and that something should be placed at this particular
36 feature to identify that the chief had been buried in
37 that particular area, and he was referring to a story
38 or something and he was talking fairly fast and that
39 particular story was taped.
40 Q Did Mr. Overstall transcribe any other tapes that you
41 know of?
42 A I don't know.
43 Q You don't know?
44 A No, I don't.
45 MR. WILLMS: Can you turn to tab 22 which is the Warner
46 Williams note March 1st, 1988? 998-22, my lord.
47 THE COURT: Yes.

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

- 1 MR. WILLMS:
2 Q And at the top of the page, the last page, you've got
3 a note: "N.B. Actual boundary between Knedebeas and
4 Gyolugyet starts at Teekwilyil", T-e-e-k-w-i-l-y-i-l,
5 "then runs west along hillside to Teezdliidzel.",
6 T-e-e-z-d-l-i-i-d-z-e-l.
7 All right. Now, who told you that? Where did --
8 A That was from Warner Williams at this meeting.
9 Q It was? Because you carry on and you say "Agrees to
10 leave boundary at confluence of", and then I'll spell,
11 it T-a-l-d-i-i-t-s, new word, kwe, k-w-e.
12 A Kwe.
13 Q Kwe. And Wedzen kwe, W-e-d-z-e-n k-w-e. Correct me
14 if I'm wrong, but has somebody convinced Warner
15 Williams to leave a boundary some place different than
16 what he thought it was?
17 A No, he didn't see any reason to change that particular
18 boundary. There was an affidavit that was already
19 signed and he didn't see no reason to change it. He
20 said it was an old boundary. It's a small area, and
21 it wouldn't really have made that much of a
22 difference.
23 Q It wasn't a big deal so he agreed to leave the
24 boundary there?
25 A Yes.
26 Q Now, at the bottom of the page you've got a note to
27 Richard. Is that a note to Richard Overstall?
28 A Yes. Johnny had identified in the Johnny David -- he
29 identified the Thautle River, as Tahty kwe(ph), and
30 Warner identified that same river as Tet'ay kwe, so I
31 wanted to bring that information to Johnny David and
32 cover it with him.
33 Q And this information, this is referencing Johnny
34 David's draft affidavit?
35 A Yes, it was.
36 Q All right. So that the draft affidavit was changed so
37 that the name was the right name?
38 A That name was brought back to Johnny David and Johnny
39 David had agreed yes, it is Tet'ay kwe, and he signed
40 his affidavit to that effect.
41 Q Now, I think you said earlier that all of your notes
42 are in Exhibit 998?
43 A That's what I said. Yes.
44 Q All right. You also mentioned in your evidence in
45 chief draft affidavits that you prepared. What did
46 you do with those draft affidavits?
47 A Well, the draft affidavits were destroyed. They were

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 of no use.
2 Q Who destroyed them, did you?
3 A I did, yes.
4 Q So let me just try to understand. Did you take a
5 draft affidavit to a meeting with a person who was
6 supposed to swear the affidavit and go over the draft
7 with him or her?
8 A When they identified their boundaries, I had done a
9 draft affidavit and brought it back with them.
10 Q And then you went through that draft affidavit with
11 the person who was to swear it ultimately?
12 A That's correct. Yes.
13 Q And if there was something on the draft affidavit that
14 the person who was going to swear it didn't agree
15 with, what did you do, make a little note on the draft
16 affidavit to change it?
17 A If there was something on the draft affidavit that the
18 person didn't agree with, that affidavit was changed.
19 Q But I want to know how. Did you make a note on it?
20 A Made a note on it and that information would have been
21 brought back to the office and that information was
22 punched into the computer and the computer was updated
23 and that information would be -- would also be updated
24 and those drafts would have been destroyed.
25 Q All right. And so you get back -- did you get back
26 the updated affidavit along with the draft with your
27 notes on it?
28 A I would make comparisons to see that the changes that
29 had occurred indeed did get into the affidavit.
30 Q And then you destroyed the draft?
31 A That's correct. Yes.
32 Q Did you do that on your own or did somebody tell you
33 to do that?
34 A On my own.
35 Q You also took, as I understood it, maps to the people
36 who were swearing the affidavits as well; is that
37 correct?
38 A That's correct.
39 Q Right. Were the maps that you took to them the --
40 sorry, the interrogatory maps or what were they? What
41 maps did you take?
42 A Maps that I brought them would have been the most
43 up-to-date maps that I had at the time, and if the
44 draft maps that were attached to the interrogatories
45 were the most up-to-date maps that I had at that time,
46 that would have been the maps that I brought. If
47 there was subsequent changes made to those draft

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

- 1 affidavits, then the amended map would have been
2 brought along.
- 3 Q When you took the draft maps, were they draft maps of
4 the whole territory or were they -- and what I mean by
5 that is all of the Wet'suwet'en territories, for
6 example, or were they just draft maps of the
7 particular territory that the affidavit was to cover?
- 8 A The particular territory.
- 9 Q That the affidavit was to cover?
- 10 A Uh-huh.
- 11 Q And so that in respect of the Wet'suwet'en
12 territories, did you have such a map for each and
13 every territory that you took to the person who was
14 going to swear the affidavit?
- 15 A I may have had a base for each and every territory.
16 The area for Knebebas had changed from the original
17 territory that is described in the land use data
18 sheets and as depicted on the working map that was
19 provided me from the information gathered by Alfred
20 and Leonard -- Alfred Joseph and Leonard George, and
21 then the area was subsequently extended further east
22 on the north shore of Nadina River and subsequently we
23 got information from Irene Daum when we were preparing
24 her affidavit that the area identified as Knebebas
25 there, the territory had included all of Nadina Lake
26 and had gone down to the Shelford Hills and ran along
27 the height of land at the Shelford Hills, which she
28 identified as Tseetsaac. So I did not have a draft
29 map of that territory, so no, I can't say I had a
30 draft map of every territory.
- 31 Q For the draft maps that you did have, if the person
32 that you were interviewing said that the boundary was
33 incorrectly placed, did you mark on that particular
34 draft map where the boundary should now go?
- 35 A Yes, I did.
- 36 Q What did you do with those maps that you marked on
37 after meeting with the witness? Where are they?
- 38 A That information would have gone on to the -- to the
39 individual base maps of that particular territory and
40 those base maps would have been updated based on that
41 information.
- 42 Q I'm asking about the physical document just like the
43 affidavit, the physical map that you placed in front
44 of the person who was going to swear the affidavit,
45 after you had finished with it, changing it, whatever,
46 what did you do with that document with your amended
47 lines on it?

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 A I believe I still have them at home in the drafting
2 office.
3 Q You have them in Hazelton?
4 A Yes, I do.
5 Q Another category, my lord.
6 You prepared a -- maybe I should put it this way.
7 You know that one of the metes and bounds descriptions
8 to a statement of claim and one of the maps was
9 submitted to the land title office in Prince Rupert in
10 support of an application for certificates of lis
11 pendens; is that correct?
12 A That's correct.
13 Q And you're also aware that there was proceedings in
14 the Supreme Court and the Court of Appeal as a result
15 of that?
16 A I'm aware of that. Yes.
17 Q And you swore an affidavit in those proceedings?
18 A Yes, I did.
19 Q I'm showing you a copy of an affidavit sworn the 20th
20 of December 1985, and this is an affidavit that you
21 swore in that lis pendens proceeding?
22 A Yes, it is.
23 MR. WILLMS: My lord, can that be the next tab?
24 THE REGISTRAR: 1018-3.
25 THE COURT: Yes.
26
27 (EXHIBIT 1018-3: Affidavit of Marvin George sworn
28 December 20, 1985)
29
30 MR. WILLMS:
31 Q The affidavit that you filed that you swore and was
32 filed that's been marked 1018-3 was a response in part
33 to an affidavit of Mr. Frank Edgell sworn and filed
34 October 2nd, 1985?
35 A Yes, that's correct.
36 MR. WILLMS: And, my lord, can that affidavit be 1018-4?
37 THE COURT: Yes.
38
39 (EXHIBIT 1018-4: Affidavit of Frank Edgell sworn
40 October 2, 1985)
41
42 MR. WILLMS:
43 Q Just -- you didn't respond to the whole affidavit of
44 Mr. Edgell, the part that you responded to were -- are
45 set out and referenced in paragraph 9 of Mr. Edgell's
46 affidavit where he in that affidavit sets out that
47 there are some discrepancies in the metes and bounds

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 description in schedule A to the affidavit and he
2 describes those discrepancies, and your affidavit was
3 in response to the alleged discrepancies?

4 A That is correct.

5 MR. WILLMS: Okay. And, my lord, the -- that's set out in Mr.
6 George's affidavit that it's just paragraph 9 in
7 Exhibit D to Mr. Edgell's affidavit that Mr. George is
8 responding to and not the balance of the affidavit.

9 THE COURT: Thank you.

10 MR. WILLMS:

11 Q Now, in your affidavit, Mr. George, you respond in
12 detail to each of the alleged discrepancies, and then
13 in paragraph 66 --

14 A Of my affidavit?

15 Q Of your affidavit, you said:

16
17 "Except for the three areas referred to in
18 Paragraph 22, 38 and 41 of my affidavit
19 where there were errors, the remainder of
20 the description in schedule B is accurate.
21 The purpose of the assessment of schedule B
22 was solely to find fault where none existed.
23 I refute the opinion that the description
24 was vague, uncertain or unusable. For the
25 most part, if the entire description had
26 been read there would have been no
27 confusion."

28
29 Now, that was your view then and that's still your
30 view today?

31 A That's still my view today, yes. If you want I would
32 take you through every one of those ambiguities and I
33 could show you where I describe in my affidavit where
34 he didn't read the entire description, and if he had
35 read the entire description and if he knows anything
36 about drafting from legal descriptions, he wouldn't
37 have had any problems.

38 Q Okay.

39 A He took information that was based on one of his
40 employees and adopted that as his own and I'm sure if
41 he read it he wouldn't have signed that affidavit.
42 There is one area where I describe a measurement as
43 going east. In actual fact it was going west. And
44 there was one area, an area along Hadenchild Creek
45 between the area of Sand Lake and the Cedar River.
46 The difference between the 1 to 250,000 base map and
47 the 1 to 50,000 base map in that particular area was

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

- 1 so great that I relied for accuracy on the area as
2 defined on the 1 to 50,000 base map, and I should have
3 made mention in that, in this affidavit, but there was
4 still some -- some ambiguities in the actual
5 distances. I went over this entire affidavit and I
6 found only three areas in this whole affidavit where
7 there are minor errors. And he says that -- let's
8 find one and let's compare it.
- 9 Q But the point -- no, the point I want to make here,
10 Mr. George -- the question --
- 11 A He identifies areas on this map as being on a certain
12 map. When I go to the affidavit, when I go to the map
13 that he has provided me, those areas don't even appear
14 on the map that he identifies them as being on. He
15 identifies areas as being on a certain map in this
16 affidavit, and when I go to that certain map and look
17 for that number, that number does not appear on that
18 map.
- 19 Q I'm more --
- 20 A So when he's talking about ambiguities and things
21 being vague, man --
- 22 Q Okay. I'm more interested in your statement in the
23 affidavit in paragraph 66 that the description in
24 schedule B is accurate.
- 25 A 66?
- 26 Q Yes. You say there that except for the three errors
27 that your description is accurate, and I wanted to ask
28 this question: In respect of that schedule and every
29 other map that you've drawn, what you mean by accurate
30 is that it accurately reflects the information that
31 you had at the time? That's what you mean by
32 accurate?
- 33 A What I mean by accurate here, he's saying that my
34 legal description of the external boundaries of the
35 Gitksan and Wet'suwet'en as I described was wrong.
36 That's what he's saying. He's saying there are 60
37 areas on that map along that border which are wrong,
38 which are vague, and which are useless and can't be
39 mapped. And I go through the entire affidavit. I
40 checked every one of those areas that he described as
41 being vague and uncertain, and he only identifies a
42 small portion of that particular description. And if
43 he had read the description in its entire content,
44 there was no question that the area goes to where I
45 want it to go.
- 46 Q Okay.
- 47 A That's why I said I'm sure if he had gone through that

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

- 1 himself he wouldn't have signed this affidavit.
- 2 Q But --
- 3 A And I identify only three errors on that in that
- 4 description --
- 5 Q Right. But the --
- 6 A -- and not 60. And I even identify errors all along
- 7 his description where he's saying my descriptions are
- 8 wrong, and I refute them, and I notice he didn't make
- 9 any response to my response.
- 10 Q Yes. But based on the information that you had before
- 11 you drafted each and every map you drafted, your
- 12 ability was reflected in the map and each and every
- 13 map accurately reflects the information that you had
- 14 at the time you drew the map?
- 15 A Each and every map. That's correct.
- 16 Q Now, do you accept that in order to map a metes and
- 17 bounds description that the description must be clear
- 18 and unambiguous?
- 19 A I'd be willing to compare my description to any legal
- 20 description that you can produce for me and compare it
- 21 and I can tell you that my description is more
- 22 accurate than any description that I've ever used, any
- 23 Order in Council which I've had to use, along with a
- 24 map that showed where those particular boundaries
- 25 were, any one that I use. And the Ministry of Forests
- 26 plotting those boundaries on the provincial forest
- 27 maps are vague and uncertain, and I made that point to
- 28 them and I said these -- you can't -- there's no way
- 29 you can draw a description, no way you can plot these
- 30 boundaries based on these description, and they said
- 31 "Well, it's already passed through Order in Council
- 32 and it would be too expensive to amend."
- 33 Q So is your answer that you don't need to have a clear
- 34 and unambiguous metes and bounds description in order
- 35 to plot it? That was my only question.
- 36 A If you read this, my descriptions are not vague. My
- 37 descriptions are not uncertain. To plot a boundary,
- 38 the description has to be done in the way that that
- 39 boundary can be plotted by someone who knows how to
- 40 map and someone who knows how to do drafting and take
- 41 that information and identify those features on the
- 42 ground, measure out the distance that are scaled in
- 43 the description, and plot that boundary if the area's
- 44 described properly.
- 45 Q Okay.
- 46 A And my description was not vague or uncertain.
- 47 Q Do you agree, and I'm not -- I'm not saying that your

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 description either is or isn't, but do you agree that
2 in order to map a metes and bounds description the
3 description should be clear and unambiguous?
4 A I agree, and that's what I say in here. If he would
5 have read my description, there's no way he would have
6 signed that affidavit because -- let's go to one.
7 Q No, no, I'm not --
8 A I want to do it. Let's do it. Come on.
9 Q I would like to ask a few more questions first just
10 about general drafting.
11 A Well, you're talking about my -- you have an affidavit
12 from Mr. Edgell, a pretty high man in the government
13 and who knows all about drafting, and he's saying that
14 my descriptions are not very good or are vague and
15 ambiguous, and you're hinting that too, so I would
16 like to go to a description and say my -- show you my
17 response to that.
18 Q Well, perhaps we can go to some descriptions in a
19 moment, but I would like to put another couple of
20 propositions to you first to see if we're both coming
21 from the same starting point. The second one is do
22 you agree that in order to map a metes and bounds
23 description the description should stand alone without
24 visual aids; in other words, you should be able to
25 read the description without any visual aids and plot
26 it?
27 A Yes.
28 Q You agree?
29 A I agree.
30 Q Do you also agree that in order to plot a metes and
31 bounds description that the description must be
32 capable of interpretation by any person with a
33 reasonable level of skill without the assistance of
34 the author; do you agree with that proposition, Mr.
35 George?
36 A Yes. Let me show you this one thing.
37 Q No, no, could you answer my --
38 A 9301 of Frank Edgell's affidavit says, number one,
39 where he --
40 THE COURT: No, Mr. George. I'm sorry. If Mr. Willms doesn't
41 give you a chance to demonstrate your position, I'm
42 sure Mr. Rush will.
43 THE WITNESS: Okay.
44 THE COURT: So just bear with us and we'll get along fine.
45 MR. WILLMS:
46 Q The question was do you agree that in order to map a
47 metes and bounds description that description must be

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 capable of interpretation by any person with a
2 reasonable level of technical skill without the
3 assistance of the author of the description; do you
4 agree with that?
5 A Anybody with a reasonable level and technical skill
6 could have taken my legal description and drafted it.
7 That's what I'm telling you. That's why I'm telling
8 you that.

9 THE COURT: I think the answer to your question is yes.

10 MR. WILLMS:

11 Q I think the answer is yes.

12 A Yes.

13 Q Now, when you reviewed the metes and bounds
14 description of the territories set out in the
15 affidavits, you needed to provide interpretation to
16 those in addition to what is set out in the affidavit
17 didn't you?

18 A There was some affidavits that went out without me
19 having cross-referenced the description, so that the
20 area can be drafted.

21 Q So that when you took some of the affidavits and
22 mapped them, you needed to use information from your
23 field notes, that is parts of your notes with the
24 interviews, in addition to the affidavit to map the
25 territory; is that correct?

26 A There was the affidavit of Stanley Williams that had
27 gone out and this affidavit was not checked by myself.
28 I had not checked the description in the affidavit,
29 and when I did check it it was after the affidavit was
30 signed and it was at that point that I realized that
31 those boundaries cannot be plotted as described in
32 that affidavit. So we had a meeting with Neil and made
33 a point to bring to Neil's attention that if we're
34 going to describe these boundaries in these
35 affidavits, these boundaries have to be described in a
36 way that someone competent would be able to take that
37 description and draw a boundary to it.

38 Q Now, in drafting some of these boundary lines you also
39 needed to use information from some of your draft
40 maps; correct?

41 A Drafting the boundaries of the --

42 Q Yes.

43 A You seem to think that the whole process starts with
44 a -- okay, here's a legal description, and we take
45 that and then draw a line to it. That's not the
46 process. That's not the process that is used. A line
47 is put to the map and then a legal description is

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 drawn based on the line that is on the map. It
2 doesn't go the other way around. You don't do it like
3 that.
4 Q So that the legal descriptions contained in the
5 affidavits came from the draft maps?
6 A The legal descriptions in the affidavit came from the
7 information that was provided to us by the hereditary
8 chiefs.
9 Q Through --
10 A Based on the lines that were on the draft maps that
11 they identified as being their boundaries.
12 Q Now, I'm showing you the affidavit of Roy Morris.
13 It's -- this is a copy of it, Exhibit 670, and you
14 recognize Mr. George that Mr. Morris' affidavit was
15 used to map territories of Madeek, M-a-d-e-e-k,
16 Hagwilnegh, H-a-g-w-i-l-n-e-g-h, Smogelgem,
17 S-m-o-g-e-l-g-e-m, and Kloum Khun, K-l-o-u-m K-h-u-n.
18 There's four territories in this affidavit?
19 A That's correct, yes.
20 MR. WILLMS: Correct. Now, if you can -- my lord, might that be
21 the next exhibit?
22 THE COURT: Yes.
23 MR. WILLMS: Dash 5.
24 THE REGISTRAR: Yes.
25
26 (EXHIBIT 1018-5: Affidavit of Roy Morris marked
27 Exhibit 670)
28
29 MR. WILLMS: Now, the first territory is Kloum Khun on page 2.
30 The description is in paragraph 5, and you'll see that
31 the description in paragraph 5 starts at the
32 confluence of an unnamed creek on government maps and
33 Francois Lake, and then at the very bottom when you
34 come back around to close the loop it comes along the
35 bank of this unnamed creek on government maps back to
36 the starting point.
37 Now, do you know how many unnamed creeks flow into
38 Francois Lake?
39 MR. RUSH: Well, excuse me, that's not -- I think my friend
40 should say that there is a name which is a
41 Wet'suwet'en name attached to the unnamed creek. It
42 is an unnamed creek on the government map.
43 THE COURT: I'm not sure I follow that, Mr. Rush. You say there
44 is --
45 MR. RUSH: There is a name.
46 THE COURT: What do you say the name is?
47 MR. RUSH: It says Dedzii'tse Kwe, which is a Wet'suwet'en name,

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 so the name --
2 THE COURT: Oh, I see.
3 MR. RUSH: The creek is named in Wet'suwet'en and my friend is
4 leaving the impression that it's neither named in
5 Wet'suwet'en or English.
6 THE COURT: Yes. All right.
7 MR. WILLMS:
8 Q Well, I didn't mean to do that, my lord, because it
9 does say unnamed creek on government map, so I'll just
10 use the whole phrase.
11 How many unnamed creeks on government maps flow
12 into Francois Lake?
13 A I imagine there would be quite a few unnamed creeks
14 that flow into Francois Lake, but the unnamed creek
15 we're talking about is identified as Dedzii'tse Kwe
16 which would have been identified on a map and it's at
17 the confluence of that creek and Niitaagh Ben, which
18 is identified as Francois Lake. It's at that
19 confluence that the description starts.
20 MR. WILLMS: But you will agree with me that if you had a
21 government map of Francois Lake in front of you and
22 someone gave you this description, you wouldn't know
23 where to start mapping?
24 THE COURT: Unless you knew the name Dedzii'tse --
25 THE WITNESS: Unless you knew the name Dedzii'tse Kwe.
26 MR. WILLMS:
27 Q Unless you knew the name?
28 A Right.
29 Q And of course that name was provided by the person who
30 swore the affidavit; correct?
31 A That is correct. And that feature would be identified
32 on the map. Yes.
33 Q Yes. And the person who swears the affidavit is the
34 person who's providing the description here, the metes
35 and bounds description.
36 A The person who swore the affidavit described to me
37 geographical features that were on his boundary,
38 identified those geographical features to me,
39 identified a name. There is a creek here and this
40 name -- this creek is called such-and-such, an
41 example, Dedzii'tse Kwe. And on the government maps
42 there isn't a name for that particular feature, and
43 that's why it's written in here unnamed on government
44 map.
45 Q Okay.
46 A They would describe to me where their boundaries were.
47 They would tell me it goes along this creek, goes to

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 this height of land. This height of land is called
2 such-and-such. I don't go over that boundary, and I
3 run down this particular height of land and I go to
4 this particular feature and that is on my boundary.
5 They identified to me geographical features that are
6 inside their boundary and give a name to it and tell
7 me where it is. When I have all that information,
8 then I do a description. And when we're translating
9 this description, I make a point to tell them now,
10 when you told me that this is where your boundary was,
11 that's what's in here, but I have to write this in a
12 way that someone who knows how to do drafting, knows
13 how to do a mapping, can take this particular
14 information and draw a map. That's why it's in here
15 like that.

16 Q All right. Let's just carry on with that boundary at
17 the -- starting at the top. You start at the
18 confluence of Francois Lake and the unnamed creek on
19 government maps. The boundary goes north to the
20 centre of the lake, then goes east along the centre of
21 Francois Lake for 18 and a half miles to a point north
22 of an unnamed island.

23 Now, do you know how many unnamed islands there
24 are in Francois Lake?

25 A There's only one unnamed island and it's 18 and a half
26 miles away from the centre of that feature where this
27 description starts. There isn't a big cluster of
28 unnamed islands in this particular lake at this
29 particular point 18 and a half miles away from where
30 this description starts.

31 Q Right, but --

32 A There's only one unnamed island which he identified to
33 me as being on his boundary and that's where my
34 boundary goes.

35 Q If this description was given to a cartographer
36 working in Prince George with a government map, he
37 couldn't draw that northern boundary could he?

38 A He would have to know where that particular feature
39 was.

40 Q Yes.

41 A And that's why I said when we drew the internal
42 boundaries of the areas as described in Order in
43 Council from the legal descriptions provided to me off
44 the boundaries of the Prince George forest region and
45 the boundaries of the Prince George forest districts
46 within that boundaries, they were so vague and
47 uncertain that they had to have maps also, and those

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

- 1 are passed by Order in Council and accepted by the
2 governments as being the most accurate description of
3 those particular features of those boundaries.
- 4 Q Now, this boundary -- this was the northern boundary
5 of Kloum Khun and you've got the southern boundary of
6 Smogelgem which meets up with it in paragraph 12, so
7 that we're -- if you look on Exhibit 646-9B, the first
8 part of Roy Morris' affidavit is Kloum Khun. Do you
9 see where I'm pointing, Mr. George?
- 10 A Yes, I see it. Yes.
- 11 Q All right. And then the next part is Smogelgem, then
12 he does Hagwilnegh and Madeek, and it's the Madeek
13 territory that forms part of the external boundary.
14 Those are the descriptions in Mr. Morris' affidavit;
15 correct?
- 16 A That's correct.
- 17 Q Okay. So if we go to the southern boundary of
18 Smogelgem which meets up with the northern boundary of
19 Kloum Khun, it's on page 4 of the affidavit in
20 paragraph 12, and if you come down from the three-hole
21 punch in the middle of the page, you'll see that the
22 boundary following from -- do you see where Allin
23 Creek is there?
- 24 A Yes, I see it.
- 25 Q Allin Creek. And at this point being about 3.5 miles
26 upstream from the confluence of Nes Tsee Dizdlee Kwe,
27 Allin Creek, and Beech Creek, here the boundary
28 crosses the creek and continues south-east along the
29 height of land east of Dzilgii Kwe, Henkel Creek, to a
30 point on Francois Lake, this point being north of the
31 unnamed island in this area.
- 32 Now, without that unnamed island -- all right.
33 Can you plot that boundary down to Francois Lake
34 without that unnamed island or do you need the unnamed
35 island to find out where it comes into Francois Lake?
- 36 A That unnamed island is on every map that is available
37 within the federal and the provincial governments.
- 38 Q So you need it? It's essential to the boundary?
- 39 A Yes.
- 40 Q Okay. Then the boundary continues to the middle of
41 the lake and runs west along the centre of the lake to
42 a point south of Nuu Coo, an unnamed island on
43 government maps, then runs north.
- 44 Now, just pausing there, I'm going to suggest
45 again that if this description was given to a
46 cartographer in Prince George with no other
47 information, he couldn't plot that boundary?

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 A He would have to know where those geographical
2 features are.
3 Q He'd --
4 A The same way as when you're drawing a boundary from
5 any legal description. They identify a particular
6 feature. You would have to know where that particular
7 feature is.
8 Q All right.
9 A And if that particular feature can't be identified on
10 a map, then that particular boundary can't be plotted.
11 Q And the normal way in a metes and bounds description
12 to describe a feature is by it's so many degrees west,
13 so many degrees north, longitude and latitude; isn't
14 that the normal way in a metes and bounds description
15 to describe an unnamed feature on a government map?
16 A You're talking about a boundary?
17 Q No, just a feature on a government map in a metes and
18 bounds description, if you're going to say that a
19 boundary runs through an unnamed island, which isn't
20 particularly useful in a normal metes and bounds
21 description using a government map that says an
22 unnamed island at 56 degrees north?
23 A Can you show me one?
24 Q Do you disagree with my proposition?
25 A You say it should be 50 degrees north and so many
26 degrees south of a particular feature? No, that's not
27 the normal way to describe a particular feature, no.
28 Q What -- do you just put down unnamed island and let
29 the mapmaker guess which unnamed island it is?
30 A He starts at a known point. He goes around based on
31 the information and when he gets to that particular
32 point, there's only one unnamed island there. So why
33 should he be confused?
34 THE COURT: Take the afternoon adjournment.
35 MR. WILLMS: Thank you, my lord.
36 THE REGISTRAR: Order in court. This court will recess.

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47

(PROCEEDINGS ADJOURNED FOR THE AFTERNOON RECESS)

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

Tanita S. French
Official Reporter

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 (PROCEEDINGS RECONVENED PURSUANT TO THE AFTERNOON BREAK)

2

3 THE REGISTRAR: Order in court.

4 THE COURT: Mr. Willms.

5 MR. WILLMS:

6 Q My lord. Mr. George, you'll recall that one of the
7 draft maps that you had made was a map that was
8 entitled Colleymount. Do you remember that? I can't
9 remember which exhibit number it is, but there's a
10 Colleymount.

11 MR. RUSH: I don't think there was any evidence.

12 A I never made any draft map of Colleymount.

13 THE COURT: Oh, yes, there was one.

14 MR. WILLMS: Working map.

15 THE COURT: It's a national topographic survey map.

16 THE WITNESS: And it's not one that I made.

17 MR. WILLMS: 1006. Oh, Alfred Joseph. Sorry. Anyway, I'm just
18 showing you a clear --

19 THE COURT: It's 1006.

20 MR. WILLMS: Yes.

21 THE COURT: L1.

22 MR. WILLMS:

23 Q You're familiar with maps -- Canada maps like this NTS
24 1 to 1,000? I'm showing you a clear copy of the
25 Colleymount, but you've used those before?

26 A At what scale?

27 Q At this scale, 1 to 1,000.

28 A That's not 1 to 1,000.

29 MR. WILLMS: Oh, well, at this scale then, whatever it is.

30 THE COURT: It's 1 to 50,000.

31 THE WITNESS: Yes, it is.

32 MR. WILLMS:

33 Q 1 to 50,000. Okay. Now, Mr. George, I wonder -- I've
34 made a little homemade map of Francois Lake, and I've
35 laid it out over here, and I wonder if you could come
36 over here to this side bar, and starting from the left
37 you'll see, and this is starting from the west, there
38 appear to be three islands in Francois Lake with a
39 number L-2709, L-2710, and L-2708 without any names.
40 Now, is that typical of an unnamed island on a
41 government map?

42 A From what I can see, there are only two unnamed
43 islands. There is a reference made to a lot 2708, but
44 it doesn't appear to be an unnamed island.

45 MR. WILLMS: All right. And then if we just proceed east in the
46 lake, you'll see it appears that there's an island at
47 L-2707 --

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 THE COURT: Proceeding east or west?
2 MR. WILLMS:
3 Q Proceeding east, my lord. -- an island at L-2707 and
4 another one at L-2706?
5 A Yes, that's right.
6 Q Yes. And then carrying on in the lake, it looks like
7 the next island -- it's got the number 27 -- L-2711,
8 but it's called Johns Island. You're familiar with
9 that island?
10 A No, I'm not.
11 Q You're not. And then finally, if you proceed to
12 almost the eastern end of the lake, there are two more
13 islands, L-2713 and L-2714; is that correct?
14 A Yes, that's right.
15 Q So I make six unnamed islands on Francois Lake based
16 on this homemade map. You'd agree with that, wouldn't
17 you?
18 A I would agree there would be six unnamed islands based
19 on your homemade map, yes.
20 Q Right. Now, maybe you could just come back to the
21 homemade map for a moment because your description in
22 the -- the description in the affidavit of the island
23 that the boundary crosses Francois Lake is an
24 island -- you come down the height of land east of
25 Henkel Creek. Now, can you find Henkel Creek?
26 A Yes, I can. Yes, it's on this map.
27 Q And can you identify the island that you're -- that
28 the description talks about? It's the island -- you
29 come down the height of land east of Henkel Creek to
30 an island. It's the island called Johns Island, isn't
31 it, correct?
32 A Your honour, all that proves is that he may have a
33 newer version of the map that I was using.
34 Q Well, Mr. George, could you come over to your base map
35 here, and do you see in Francois Lake in Exhibit 646,
36 the base map, do you see Johns Island named on that
37 map?
38 A Yes, I do.
39 Q And will you agree with me that when you overlay 9B
40 that 9B runs past Johns Island, a named island on a
41 government map? Is that correct? It's a named island
42 on that map, isn't it?
43 A And all that would prove is that that may be a newer
44 base than the base that I was using.
45 THE COURT: Mr. George, you're arguing the case.
46 THE WITNESS: No, I'm just --
47 THE COURT: That's Mr. Rush's job. He's going to be mad at you

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 if you usurp his function.
2 THE WITNESS: Yes.
3 THE COURT: The system only works if you answer the questions
4 and Mr. Rush makes the arguments.
5 THE WITNESS: Well, based on the map that I was using that
6 island was unnamed, and that's why it appears in that
7 description as being unnamed.
8 MR. WILLMS:
9 Q All right. And so if a map maker in Prince George got
10 this description and he had either the 1 to 50,000
11 series maps or he had the base map that you used for
12 Exhibit 646, plotting this would be very confusing?
13 A I'm sure if the map maker in Prince George was having
14 problems with it, I would help him out.
15 MR. WILLMS: All right. My lord, can my homemade map be the
16 next exhibit?
17 THE COURT: Yes, I think that it can be marked for the limited
18 purpose of explaining the evidence of the witness.
19 MR. WILLMS: Yes. I have all of the base maps, my lord, if my
20 friends want to look through them and see whether or
21 not they're --
22 THE COURT: I think it should be marked and preserved for
23 historical purposes anyway.
24 MR. RUSH: Definitely on that ground I would concede it should
25 be marked.
26 THE REGISTRAR: That would be Exhibit 1019, my lord.
27
28 (EXHIBIT 1019 - HOMEMADE MAP PREPARED BY C. WILLMS -
29 FRANCOIS LAKE)
30
31 MR. WILLMS:
32 Q Now, can you point out in -- oh, sorry, do you have
33 the affidavit of Roy Morris in front of you?
34 A No, I don't.
35 Q 1018-5. Now, you'll see depicted on Exhibit 646-9B
36 that there is a common boundary between Smogelgem and
37 Hagwilnegh, correct?
38 A Yes, that's correct.
39 Q All right. Now, can you in the paragraph 12 point out
40 that boundary? Where is that boundary between
41 Smogelgem and Hagwilnegh described in paragraph 12?
42 A Can I compare this to the map?
43 THE COURT: Yes.
44 MR. WILLMS: Yes.
45 THE COURT: Where are you in the affidavit now?
46 MR. WILLMS: My lord, I'm in paragraph 12 of the affidavit,
47 which describes the metes and bounds of the Smogelgem

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 territory, and I'm asking for the portion of that
2 description where the boundary of the Hagwilnegh
3 territory is also -- is described?

4 THE COURT: What page are you on?

5 MR. WILLMS: Page 4 of the affidavit, my lord.

6 THE COURT: Yes, all right.

7 THE WITNESS: Okay.

8
9 "...then follows the east bank of Nes Tsee
10 Dizdlee Kwe (Allin Creek) to C'eltaat
11 Wecoo..."
12

13 MR. WILLMS:

14 Q Okay. Where are you in the paragraph?

15 A Oh, that would be --

16 THE COURT: We have to have the spellings of those words.

17 THE WITNESS: Sure, okay. Nes Tsee Dizdlee Kwe is N-e-s, new
18 word, T-s-e-e D-i-z-d-l-e-e Kwe, which is identified
19 as Allin Creek, to C'eltaat Wecoo, C-'-e-s/ l-
20 t-a-a-t W-e-c-o-o, and it's identified as un-named
21 area on government maps. And here the boundary runs
22 north-east to Lepyaa Bedzel, and to Lepyaa Bedzel is
23 where the common boundary would occur. Lepyaa Bedzel
24 is -- where is it on here? Now, I just seen it.
25 L-e-p-y-a-a B-e-d-z-e-l.

26 MR. WILLMS:

27 Q Now, you pointed -- you pointed that out on 646-9B.
28 Where is that?

29 A Okay. Okay. It then follows the east bank of Nes
30 Tsee Dizdlee Kwe -- follows the east bank of Nes Tsee
31 Dizdlee Kwe, which is Allin Creek, identified there,
32 to C'eltaat Wecoo, and that is a feature at the
33 headwaters of Allin Creek. In here the boundary runs
34 north-west (sic) to Lepyaa Bedzel, and Lepyaa Bedzel
35 is this particular height of land. Right there is
36 where the common boundary starts between Smogelgem and
37 Hagwilnegh.

38 THE COURT: Can I have that word?

39 THE WITNESS: L-e-p-y-a-a B-e-d-z-e-l.

40 MR. WILLMS:

41 Q And where does it end in the affidavit, the common
42 boundary?

43 A It then runs south-east along the height of land west
44 of Tasdleeagh Tl'enlii, Maxan Creek. It then runs
45 south-east along the height of land west of Tasdleeagh
46 Tl'enlii, which is the Maxan Creek.

47 THE COURT: And that's spelt again?

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 THE WITNESS: Sorry about that. T-a-s-d-l-e-e-g-h
2 T-l-'-e-n-l-i-i. And that particular description
3 here, that would be a common boundary between the
4 Smogelgem and the Hagwilnegh.

5 MR. WILLMS:

6 Q Okay. And where does that common boundary end, which
7 point in the affidavit as you're heading south-east?

8 A Where does -- where does the common boundary end? It
9 makes reference to a point on Nes Tsee Dizdlee Kwe,
10 N-e-s T-s-e-e D-i-z-d-l-e-e Kwe, Allin Creek, and here
11 I give -- this point being 3.5 miles upstream from the
12 confluence of Nes Tsee Dizdlee Kwe, N-e-s T-s-e-e
13 D-i-z-d-l-e-e Kwe, which is Allin Creek, and Beech
14 Creek. It's a reference to that particular point.
15 That's where the common boundary leaves.

16 MR. RUSH: And my lord, just for the sake of the record, that
17 Mr. George followed the line around the point where
18 the Hagwilnegh and Smogelgem boundaries seem to meet,
19 the line on this map, 9B, with his finger.

20 MR. WILLMS: Now, can you identify the same boundary in
21 paragraph 19 on page 7 from the Hagwilnegh side?

22 THE COURT: 19.

23 MR. WILLMS: 19 starts on page 6, my lord, and then carries
24 over.

25 THE COURT: All right.

26 THE WITNESS: This overlay doesn't match exactly the features
27 that it's supposed to match up with. That's where I'm
28 having problems with that, your honour. Your honour,
29 on page 7, on the sixth line, it says:

30
31 "...here the boundary runs southwest then
32 northwest along the height of land west of
33 Tasdleeagh Tl'enlii to Lepyaa Bedzel..."
34

35 THE COURT: You must spell those.

36 THE WITNESS: T-a-s-d-l-e-e-g-h T-l-'-e-l -- e-n.

37 THE COURT: e-n.

38 THE WITNESS: l-i-i. To Lepyaa Bedzel, L-e-p-y-a-a B-e-d-z-e-l.
39 So I'm back at that same feature again.

40 MR. WILLMS:

41 Q Okay. Now, that feature describes the mutual
42 boundary, and it is also an unnamed mountain on
43 government maps, right?

44 A Yes, but I know where that unnamed mountain is.
45 It's --

46 Q You know where it is?

47 A It's on the common boundary.

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

- 1 Q You know where that mountain is, right?
- 2 A Yes, and if someone's having problems with these
- 3 boundaries, we can provide that information to them,
- 4 and when they have that, they won't have any problems
- 5 identifying where the boundary is.
- 6 Q But without that information about where that unnamed
- 7 mountain was another map maker could not duplicate
- 8 your boundary line?
- 9 A Many times there are a description that describe a
- 10 particular feature which would be very hard to
- 11 describe, and it's for that reason that many times a
- 12 map is required. But once the person would identify
- 13 the starting point, he shouldn't have any problems in
- 14 identifying where those particular features are if he
- 15 knew where those features are.
- 16 Q Now --
- 17 A The only problem with the description is that someone
- 18 else would have to know where those particular
- 19 features are to plot that boundary.
- 20 Q The notes of your interviews with Roy Morris appear to
- 21 be at 998-24 and 998-28. And maybe we can just turn
- 22 to 998-24. This is your interview with Roy Morris of
- 23 Isaac Lake and Parrott Creek. Do you see your
- 24 reference there?
- 25 A Yes, I do.
- 26 Q And what territory does that fall in, Isaac Lake and
- 27 Parrott Creek?
- 28 A Isaac Lake would be in the territory of Kloum Khun,
- 29 and Parrott Creek would be in the territory of
- 30 Smogelgem.
- 31 Q Smogelgem, okay. And then at tab 28 you have another
- 32 interview with Roy Morris re Broman Lake and Maxan
- 33 Lake. Which -- Maxan Lake is Hagwilnegh; is that
- 34 correct?
- 35 A Pardon? Maxan Lake is Hagwilnegh?
- 36 Q Is Hagwilnegh.
- 37 A That's correct.
- 38 Q And what's Broman Lake?
- 39 A Madeek.
- 40 Q Madeek. And where is your -- so those are all of the
- 41 notes with Roy Morris for the four territories that
- 42 are described in his affidavit; is that correct?
- 43 A Those are the notes, plus I had the working maps which
- 44 those boundaries were on, the draft boundaries, and I
- 45 already explained that to you. I took all the
- 46 information that I already had, the draft boundaries
- 47 based on the information that was on the coded map and

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 all of the geographical features that were identified,
2 and it was on those draft maps that I went around the
3 geographical features with him, the boundary with him,
4 identified -- explained to him where -- the
5 information that we had placed those particular
6 boundaries and identified the geographical features
7 that were already identified.
8 Q Florence -- you've interviewed Florence Hall?
9 A I did conduct an interview with her, yes.
10 Q She's Kweese?
11 A She's Kweese, yes.
12 Q K-w-e-e-s-e. Have you heard Florence Hall say that
13 Maxan Lake is Tsayu, T-s-a-y-u.
14 A No, I haven't heard her say that. Unless you're going
15 to show me her records, I don't recall -- recall that.
16 Q Well, there is evidence at this trial that Florence
17 Hall said that Maxan Lake is Tsayu, but you've never
18 heard that?
19 A Can you show it to me?
20 Q Well, no, no, I'm just asking you.
21 A No.
22 Q You haven't heard that?
23 A No, I haven't heard.
24 Q But if it is Tsayu, then the description of Hagwilnegh
25 that you've put on it is incorrect?
26 A It's not Tsayu. The description that I used to
27 identify that particular boundary is identified in the
28 affidavit of -- Roy Morris identifies that area as
29 Hagwilnegh. And I --
30 Q Identified as Laksilyu?
31 A Laksilyu, yes.
32 Q Yes. Well, I'm just saying that if Florence Hall is
33 right, that is, if it's Tsayu, then you've got the
34 wrong house name on the territory, if she's right?
35 A I haven't seen anything that -- where Florence Hall
36 identified Maxan Lake as being Tsayu. Unless you can
37 show me something, I haven't.
38 Q You'll agree with me that the clan there is Laksilyu,
39 correct?
40 A Definitely the clan there is Laksilyu, yes.
41 Q So let's assume for a moment that his lordship finds
42 that the clan there is Tsayu, not Laksilyu, as you
43 have represented it, then it would not be the House of
44 Hagwilnegh, would it?
45 A Let's assume that his lordship finds that it is
46 Hagwilnegh and it is correct.
47 THE COURT: You're both right.

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 MR. WILLMS:

2 Q What do you mean by height of land?

3 A A height of land is used to differentiate between two
4 drainages.

5 Q And so that -- just so that I get this correctly, what
6 you want to know is the point -- if you have a
7 drainage on one side and a drainage on the other side,
8 the point at which -- I suppose it would be a toss up
9 which way the water went if it landed right on the
10 line. It could go down into one drainage, it could go
11 down into the other drainage. Is that kind of a crude
12 way to describe it?

13 A A crude way to describe it, yes.

14 Q Now, when you're describing a height of land, can you
15 also use height of land as a description without using
16 drainages or do you need a drainage? Is it always
17 associated with a drainage?

18 A Yes, because it's at that height of land where the
19 water starts to flow in either direction.

20 Q And I think you said in your evidence in chief that
21 some of the small adjustments that you made between
22 the draft maps and 9A and 9B were a redefinition of
23 where the height of land was?

24 A Yeah, there were some previous maps. It would depend
25 on the particular status of that particular map. The
26 1 to 250,000, the contour intervals that are on
27 that -- at that scale do not define all the particular
28 hills in that particular area, and at a smaller scale,
29 1 to 50,000, you get a better definition of those
30 particular features, and sometimes the height of land
31 may change in that particular area, and if there was a
32 difference between the two, I would go with the height
33 of land that is indicated on the 1 to 50,000 because
34 that area would be better defined.

35 Q Now, can you just turn back to Roy Morris' affidavit,
36 which is Exhibit 1018-5, and page 9, paragraph 26. In
37 describing the boundary there, in the middle you have
38 the boundary -- you say:

39
40 "...here it runs north along the west bank of
41 Toman Creek to Tsee C'es C'en,"

42
43 T-s-e-e C-'-e-s C-'-e-n,

44
45 "(unnamed ridge on government maps)."

46
47 The boundary then runs northwest along that unnamed

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

- 1 ridge to a point north of Ailport Lake, and then it
2 runs south along the height of land. Now, how do you
3 map that?
- 4 A I would start from the confluence of C'es Coo, C'-e-s
5 C-o-o, Ts'anlii, T-s--a-n-l-i-i, which is identified
6 on here as Ailport Creek, and Neeldzii Kwe,
7 N-e-e-slashed l-d-z-i-i K-w-e, which was also
8 identified on here as upper Bulkley River, and it's
9 from that point that I would start drafting that
10 particular boundary.
- 11 Q But how does the boundary run along the height of land
12 to a lake and along the west shore of the lake? I
13 thought the height of land was where it drained one
14 way or it drained the other way, so I'm just unclear
15 on how a height of land goes to a lake.
- 16 A Okay. From a particular ridge to a particular lake
17 there are contour lines on a map which would
18 differentiate between where the two ridges would go
19 and from this particular point -- from this particular
20 height of land to that lake along the height of land
21 in between the areas. It's -- it's no problem with
22 that.
- 23 Q Well, what you described sounds more like heading down
24 a creek bed to a lake than a height of land to a lake.
25 Or do you need to know something more? Do you need to
26 know that you're going down towards the lake along the
27 height of land between two creeks flowing into the
28 lake? Do you need to know that?
- 29 A No, you need to know -- it identifies C'es Coo Ben as
30 Ailport Lake, and it also identifies Tsee C'es C'en,
31 which I believe is the unnamed ridge that is along
32 the -- which is the height of land there. And you'd
33 run down that particular height of land till you get
34 to C'es Coo Ben, which is C'-e-s C-o-o B-e-n, Ailport
35 Lake, A-i-l-p-o-r-t. And it's at that point. It says
36 here it runs south along the height of land to that
37 particular lake.
- 38 Q So what drainage is being separated by that height of
39 land?
- 40 A You can have a height of land between two creeks that
41 are totally included within a drainage.
- 42 Q That's right. So it's important to know what
43 geographic features the height of land is running
44 between in order to --
- 45 A Yes.
- 46 Q -- map it?
- 47 A Yes, I identify on here Ailport Lake as C'es Coo Ben.

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

- 1 So we know where Ailport Lake is, and we already know
2 where that height of land is. We run down the height
3 of land to a point north of C'es Coo Ben, and then you
4 run down south to C'es Coo Ben and along the west
5 shore and south-west along the east bank of C'es Coo
6 Ts'anlii, C-'-e-s C-o-o T-s-'-a-n-l-i-i, which is
7 north Ailport and Ailport Creek, back to the starting
8 point.
- 9 Q Now, many of the affidavits contain metes and bounds
10 descriptions which involve unnamed lakes, unnamed
11 mountains, unnamed creeks, and unnamed rivers on
12 government maps? It says so right in the affidavit.
- 13 A Yeah, that would have been the most accurate way to
14 describe that particular feature at that particular
15 place, the boundary of that particular place.
- 16 Q And is it fair to say that if someone like you, but
17 without your knowledge of the area but with all of
18 your drafting skill, were to sit down in an office in
19 Prince George with the most detailed topographic map
20 available but no other map than the affidavits, you
21 could not plot the boundaries of many of those
22 territories?
- 23 A No other maps? How did you say that?
- 24 Q No other information other than the affidavits. If
25 somebody put you in a room in Prince George with the
26 affidavits and the best topographic map going and said
27 plot these territories, and it's a government map, and
28 you didn't have any other information about the names
29 of the locations, you could not plot the affidavit
30 metes and bounds on to the map in many cases?
- 31 A You would have to know where these geographical
32 features as are identified in this description are.
- 33 Q By their Gitksan or Wet'suwet'en name?
- 34 A By their Gitksan or Wet'suwet'en names, which is
35 information that I had. And with that information is
36 why these boundaries are so described.
- 37 Q Mr. George, I'm placing before you a photographic
38 reproduction of the base map of Exhibit 646 if you
39 want to look at it and compare it to that, but that is
40 the base map that you worked from in preparing the
41 various maps that you made that are now represented by
42 the overlays?
- 43 A Those are base maps as put together by Lou Skoda,
44 L-o-u S-k-o-d-a, to produce those overlays, and some
45 of those maps may be similar to the ones that I used,
46 yes.
- 47 Q But it's the Lou Skoda maps that you're familiar with

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 and that you've been working with with these overlays,
2 correct? In other words, that base map -- you're
3 familiar with that base map? You used that with the
4 overlays? That's what you've been doing?
5 A No, I haven't.
6 Q No.
7 A That's all the work of Lou Skoda. We provide him the
8 information, and Lou Skoda then makes the overlays.
9 Lou Skoda made those bases.
10 Q So you don't really have any detailed information
11 about any of that Lou Skoda material?
12 A The information that we provide to Lou Skoda, the maps
13 that I provide to him is the maps that he would use to
14 produce those overlays.
15 Q Okay. And so when the overlays came back and when the
16 base map came back, you compared it to the information
17 that you provided to him to make sure that he'd
18 accurately reproduced it?
19 A That's correct, yes.
20 THE COURT: Who actually drew the lines representing boundaries,
21 him or you?
22 THE WITNESS: Those boundaries on that overlay, those were done
23 by Lou Skoda based on information that I had provided
24 to Lou Skoda.
25 THE COURT: But the information --
26 THE WITNESS: But I didn't actually take my hand and actually
27 draw those boundaries on those overlay maps. No, I
28 didn't.
29 THE COURT: Didn't you draw the boundaries on maps that he
30 copied?
31 THE WITNESS: Yes, that's correct. That's what I'm saying. I
32 did that, but he's asking me to say that I did all
33 that. No, I didn't.
34 MR. WILLMS:
35 Q No. But let me put it this way: You're very familiar
36 with that base map that I just placed before you since
37 it's the base map for all of the overlays that you've
38 been giving evidence about for three days, two and a
39 half days?
40 A I said it would be similar to the one that I used, but
41 those wouldn't be the ones that I used. It would be
42 the same copies of the same editions.
43 Q Now, Mr. George, I wonder if it would be possible for
44 you to -- or maybe it isn't possible for you at all.
45 Is it possible for you to put this dark line from
46 Exhibit 101 into its roughly approximate point on the
47 base map that I've set in front of you there? Is that

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

- 1 something that you could do?
- 2 A Yes, it's something I could do.
- 3 Q Could you do that?
- 4 A Roughly?
- 5 Q Just roughly, yeah.
- 6 A You want this boundary on this map?
- 7 Q Yes.
- 8 A As it appears on here?
- 9 MR. WILLMS: Yes, as close as you can get it.
- 10 MR. GRANT: For the record, my lord, the witness just said to me
- 11 as I was holding the map, he said it's an altogether
- 12 different -- it's a different base altogether.
- 13 THE COURT: Well, that poses a problem, doesn't it, Mr. Willms?
- 14 MR. WILLMS:
- 15 Q That's why I asked.
- 16 A You see, this base is a topographic base, your honour,
- 17 and this base identifies -- I could use this base and
- 18 draw a line that would be similar to that, but on this
- 19 particular map there are no contour lines. So what
- 20 I'm doing here is trying to differentiate between the
- 21 two drainages and drew my line according to the
- 22 information I had on this map. And on this map there
- 23 are topographic features from which I could draw a
- 24 line which would be different to that but would
- 25 represent the same area.
- 26 Q And that's all I'm asking for, my lord. I'm just
- 27 asking for some -- a rough approximation using all of
- 28 Mr. George's skills in transferring it from the one to
- 29 the other. If that's not possible for him to do -- I
- 30 thought it was. That's what he said.
- 31 A How about if I draw a boundary based on the height of
- 32 land that is on this map to this map rather than try
- 33 to trace this on to here? I can do that.
- 34 Q Maybe I can put it this way: When you drafted Exhibit
- 35 101 from the map that you were provided with, did you
- 36 note that the map that you were provided with followed
- 37 the height of land?
- 38 A This is a planimetric base which does not show height
- 39 of land. So the boundary that I put on here is my
- 40 interpretation of where the height of land would be
- 41 based on this planimetric base, which does not show
- 42 height of land. If it showed height of land, I would
- 43 have been able to accurately plot where that height of
- 44 land was in this particular area.
- 45 Q So -- but what you were trying to do on 101, as best
- 46 you could on a planimetric map, was draw the height of
- 47 land?

M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 A Yes.
2 Q All right.
3 A Based on the information that was on the planimetric
4 base
5 Q Okay.
6 A Which does not show height of land.
7 Q But it would be easier for you to do the height of
8 land on the topographic map?
9 A Yes, it would.
10 Q And that was what you were trying to depict on 101 in
11 the first place, was where the height of land was,
12 correct?
13 A On this particular base what we wanted to show was to
14 give an approximate location of where the boundaries
15 of the Carrier-Sekani, their claim, was, the overlap
16 boundaries, and this is a planimetric base that I was
17 using, which I had, which identified certain features.
18 It was on this map that I attempted to differentiate
19 between where I thought the drainage pattern was based
20 on this planimetric base, yes.
21 Q All right. But what -- all right. So what I'm asking
22 you to do is do what you were trying to do on 101 but
23 with the advantage of having the topography?
24 A That's what I was asking you, if that's what you
25 wanted me to do.
26 MR. WILLMS: Yes, that's what I would like you to do.
27 THE COURT: Suppose we should do that tomorrow morning?
28 MR. WILLMS: That's agreeable, my lord.
29 THE COURT: How are we getting along? I have what may be very
30 bad news for counsel, that is, I could sit Saturday if
31 we have to now.
32 MR. WILLMS: Well, my lord, I have bad news for all of us,
33 including me. I think I'll be the whole day, at
34 least. It's going a little bit more slowly than I
35 thought, and I'm willing to sit extra time, but I
36 think we're going into Saturday at this rate.
37 THE COURT: Well, as I said, I can't sit tonight. I have to
38 spend the evening with members of the Victoria Bar
39 Association. Any idea how long you'll be, Miss
40 Koenigsberg?
41 MS. KOENIGSBERG: No, but I don't expect to be very long.
42 THE COURT: And you think that you have perhaps drawn your time
43 map boundary carefully when you say, Mr. Willms, you
44 will possibly go into Saturday?
45 MR. WILLMS: I think that is accurate, yes. Well, I think it's
46 likely, unless my friend has no re-examination.
47 MR. RUSH: None so far, my lord.

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M. George (for Plaintiffs)
Cross-exam by Mr. Willms

1 THE COURT: All right. Well, I suppose we better plan for it.
2 I did have some plans for Saturday, but they have
3 perhaps mercifully fallen through, and if it's
4 necessary to sit Saturday, then we will have to do so.
5 So we will adjourn then I guess until ten o'clock
6 tomorrow morning.

7 THE REGISTRAR: Order in court. This court will adjourn until
8 10:00 a.m.
9

10 (PROCEEDINGS ADJOURNED)
11

12 I hereby certify the foregoing to be
13 a true and accurate transcript of the
14 proceedings herein to the best of my
15 skill and ability.
16

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19 _____
20 Leanna Smith
21 Official Reporter
22 United Reporting Service Ltd.
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