July 5, 1989
VANCOUVER, B.C.

THE REGISTRAR: Order in court. In the Supreme Court of British Columbia, this fifth day of July, 1989, in the matter of Delgamuukw versus Her Majesty the Queen at bar, my lord.

May I remind you you are still under oath and would you state your name for the record, please?

THE WITNESS: Dora Wilson-Kenni.

THE REGISTRAR: Thank you.

THE COURT: Koenigsberg.

CROSS-EXAMINATION BY MS. KOENIGSBERG:

Q Madam registrar, would you put Exhibit 1063, 1064 and 1065 in front of the witness, please? Yes, it's Samoox, Goohlaht and Smogelgem. Looking first at 1064, yesterday you gave some evidence about an addition to 1064 on page 7. There's an addition of a line of people at the top of that genealogy coming over from page 6 and beginning with, is it, Ghonnow?

A Uh-huh.

Q Yes. And that line adds -- well, I guess we can call them a small lineage of people ending with on the right Paddy Isaac. Do you see that?

A Yes.

Q Yes. Was it your information that added that to this genealogy or did you -- was that information given to you by someone else?

A Well, I noticed that Paddy Isaac was not on there and I started asking about him and that's -- that's the information that I got.

Q Okay. What was your source that Paddy Isaac was in the house of Goohlaht, or is it Caspit?

A It's Goohlaht.

Q And from what source did you learn that Paddy Isaac was in Goohlaht?

A Well, I heard Rita George talking about it and so I asked Alfred Joseph.

Q Okay. And Alfred gave you the information that Paddy Isaac was in Goohlaht and that his mother was Agnes Augusta and Old Isaac?

A Yes.

Q And also that Agnes' mother was Ghonnow?

A Yes. And that was mainly because of Steve Morris who was Roy Morris' father that I wondered where they -- what house they were in.

1 Q Okay. Have you ever heard of, or do you know, that
2 Satsan, S-a-t-s-a-n --
3 A Yes.
4 Q -- is a name in the house of Samoox?
5 A Yes.
6 Q Yes. And have you ever heard that Paddy Isaac --
7 A Yes.
8 Q -- held the name Satsan?
9 A Yes.
10 Q Yes. And had you heard that Paddy Isaac was indeed in
11 the house of Samoox?
12 A Yes.
13 Q Why would you or why does he not appear on the
14 genealogy for Samoox?
15 A Because that's the only place I could connect it here.
16 Q Had you heard that Paddy Isaac was the brother of
17 Miriam David, who appears on Exhibit 1063 on the
18 genealogy of Samoox?
19 A I wasn't sure about it, though I did hear that.
20 Q If we just look then at 1063, I'm finished now with
21 Goohlaht, just looking at 1063 then, you have told us
22 that -- explained this genealogy and your knowledge
23 that Harvey Naziel took the name Samoox?
24 A Yes.
25 Q And did he take that name after Moses David passed
26 away?
27 A Yes.
28 Q And who was it that would have adopted Harvey Naziel
29 into the house of Samoox?
30 A That was a puzzle to me, and I was told that it was
31 through the decision of the chiefs and those, Goohlaht
32 and Knedebeas, that placed him there.
33 Q Okay. Because, of course, you'll agree with me that
34 there is no member of the house of Samoox alive at the
35 time that Harvey was adopted in?
36 A No, there's Jennifer --
37 MS. KOENIGSBERG: I'm --
38 MR. GRANT: Just let her finish.
39 MS. KOENIGSBERG:
40 Q I'm sorry.
41 A No member.
42 Q I should say no chiefs?
43 A Oh, no one with that name. Yes.
44 Q But your point is that, of course, Jennifer David, a
45 member of the house of Samoox --
46 A Yes.
47 Q -- was alive and --

A Yes.
Q -- and in the house at the time that Harvey was adopted in?
A Yes.
MS. KOENIGSBERG: If we look at --
THE COURT: Are you saying she was the only living member at the time of the adoption?
THE WITNESS: As far as I know, yes. And I did bring it up with Lucy Namox and -- like I just made a comment about how small the house was and I wondered, you know, like you wondered why it just wasn't included with Goohlaht because of like you're talking about Paddy Isaac.
MS. KOENIGSBERG:
Q Yes.
A And how he used to be Satsan, and I said to her that, you know, this house is very small. There's -- like right now there's only seems to be Harvey and Jennifer and her children in there, and she said "That's right." And I said it's quite apparent now that Harvey is going to have a job and making sure that that house, you know, stays alive, and it seems like with Jennifer being starting to be prepared it -- there is hope for it.
Q Okay. And do you know when Maggie Seymour passed away?
A It was quite some time ago, and she died away from the territory so I'm not too certain about when she died.
Q Okay. And we've seen from looking at Goohlaht and Paddy Isaac there that he has passed away?
A Yes.
MS. KOENIGSBERG: Do you know when he passed away?
THE COURT: Who's that?
MS. KOENIGSBERG: Paddy Isaac.
THE COURT: Oh, yes.
THE WITNESS: Paddy Isaac? I should know that because it has to be within the last 15 years.
MS. KOENIGSBERG:
Q Might it have been within the last five since the lawsuit was commenced?
A No.
Q Okay. And then, lastly, if we could deal with Smogelgem, just a question on that, it's Exhibit 1065, and looking at page 6 and 7, pages 6 and 7, and you've given evidence already of course about having -- I believe your evidence was that you didn't personally know Adele Charlie, but that you had heard of her.

She's on page 6. She's on the second line if there were a line there, page 6. See Adele Charlie?
A Uh-huh.
Q And her children, two daughters, Mary Charles and Elsie Charles?
A Uh-huh.
Q And Elsie goes over on to page 7?
A Uh-huh.
Q Do you know what -- do you know Mary Charles?
A Yes.
Q And Elsie?
A I don't know Elsie personally.
Q Do you know what names in the house of -- are they in Kloumkhun or?
A Mary, she's in Smogelgem.
Q Okay. And is Elsie in Smogelgem or --
A Yes.
Q All right. Do you know what names, chiefly names, they hold in that house?
A Oh, gee, I know Mary's name, I just can't remember.
Q Well, I see that Sk'okum -- it looks to me, it's very hard to read, as though that's Sk'okumlahah, but I'm not sure. Is that -- I tried it with a magnifying glass and I still wasn't sure.
A Yeah, that is Sk'okumlahah, but --
Q Had you heard that she held the name Sk'okumlahah -- Skokumhalyt?
A Could be, but I can't say yes or no on that.
Q Okay.
A I know her name. I've heard it mentioned and I just can't be certain right now.
Q Had you heard what name Elsie Charles holds?
A No.

MS. KOENIGSBERG: Those are all my questions. Thank you.
THE COURT: Thank you. Re-examination?

RE-EXAMINATION BY MR. GRANT:

Q If I could just have a moment. Just very briefly, my lord. Could you put in front of the witness the provincial document book Exhibit 1068? It has all the documents in it, madam registrar. Could you turn to tab 1 of Exhibit 1068, please? This is a reproduction, according to my friends, of Exhibit 998-20, Marvin George's interview with Elizabeth Jack. Is Elizabeth Jack a Gitksan or a Wet'suwet'en?
A I think she is Gitksan.
Q Okay. Now, you see there on that chart Baptiste Louie

equals Louie Baptiste, question mark, and the Baptiste Louie that is being referred to on that chart is the brother of a person referred to as Chief Louie. Now, you've given evidence with respect to the genealogies that you tendered of a Louie Baptiste, the brother of Canyon Creek Mary; you recall that yesterday?

A Yes.

Q Where is the Louie Baptiste, the brother of Canyon Creek Mary, buried?

A Hagwilget.

Q On that genealogy of Mary -- Canyon Creek Mary and Louie Baptiste, you do not list a person named Chief Louie?

A No.

Q Do you know or have you heard that Chief Louie is the brother of Canyon Creek Mary and Louie Baptiste?

A No.

THE COURT: Pardon?

THE WITNESS: No.

MR. GRANT:

Q Have you heard of a person referred to as Baptiste Louie, the brother of Chief Louie?

A No.

Q Okay. Do you know if there is a Baptiste Louie that is buried at Hagwilget?

A No, it's Louie Baptiste.

Q Based on your knowledge of the genealogies and what you've concluded, can you -- is this Baptiste Louie, the brother of Chief Louie, the same person as Louie Baptiste, the brother of Canyon Creek Mary?

A I don't think so.

Q Okay. Now, Jennifer -- I'd like to refer you to tab number 7. This is an affidavit, an interrogatory answer of Lucy Namox, which was prepared and sworn March 30th, 1987. Now, you see paragraph 2 of the affidavit, the second sentence, says -- or in context it says "Samoox died in November 1985." Now, would that be referring to Moses David?

A Yes.

Q Okay. Then she says "He was the last living member of the house of Samoox." Then, if you go over to question 1, she says:

"A Samoox died in November 1985. He was the last member of the house of Samoox and the house is now vacant."

A Excuse me, where is --
MR. GRANT: I'm sorry, I'm on tab 1 -- tab 7.
THE COURT: On the third page, tab 7.
MR. GRANT:
Q Third page over right there.

"A Samoox died in November 1985. He was the last member of the house of Samoox and the house is now vacant. I, Goohlaht, also known as Lucy Namox, am authorized pursuant to Wet'suwet'en law to be the caretaker of the name Samoox and of the territories of Samoox until such a time that a successor is named."

And then Question 24, the next page, her answer is:

"A The house of Samoox is presently empty. We are planning a feast to be held in May of 1987 to choose the next Samoox."

Now, in January -- in March of 1987, Jennifer David was alive; is that right?
A Yes.
Q From -- was she in March of 1987 a member of the house of Samoox?
A Yes.
MR. GRANT: Okay.
THE COURT: You mean was Lucy Namox a member of the house of Samoox?
MR. GRANT: No, Jennifer David.
THE COURT: Jennifer David.
MR. GRANT:
Q Was Jennifer David in the house of Samoox in March of 1987?
A Yes.
Q And is your -- have you confirmed -- or in your -- you've referred in your cross-examination to discussion with Lucy Namox. Does she agree with you that Jennifer's a member of the house of Samoox?
A Yes.
THE COURT: Mr. Grant, really, are you asking now to have the witness now tell me that she disagrees with what she said earlier.
MR. GRANT: Okay. In reading what I've just read to you, does that change your opinion of Jennifer David being a

house -- member of the house of Samoox?
MR. MACKENZIE: I object to that, my lord. We've had the question twice and it's been answered.
THE COURT: Well, doesn't it speak for itself? She's done her investigation. She prepared or she verified the genealogy and it shows Jennifer David in it. The only thing that's obvious about all this is that there's a contradiction, and surely that's a matter that can be dealt with by counsel. Surely this witness can't help in that regard, can she?
MR. GRANT: Well, only that my friend repeatedly asked her with respect to each genealogy that "Would you prefer the evidence of the chief or -- "
THE COURT: Oh, I know counsel always ask that question, but judges have long ago given up any reliance on that kind of question or answer. The question of reliability of evidence is for the court, not for the witness. I don't know why, with respect, lawyers keep asking that question. It's like saying to a witness "Are you as sure of that as you are of all of your evidence?" It's a wonderful question.
MR. GRANT: A classic 15 years ago.
THE COURT: A classic question for television, but judges pay no attention whatsoever to it.
MR. GRANT: I certainly -- I just want to say I take from what you say, my lord, that this whole question of looking at interrogatories and looking at genealogies is a question for argument and that's the position that I would take as well.
THE COURT: Certainly.
MR. GRANT:
Q And if I -- with that understanding, that shortens up my redirect considerably.
I'd just like to -- well, I don't have to refer you to a specific genealogy Mrs. Wilson-Kenni, but Mr. Mackenzie yesterday referred you to different lineages as shown on some of the genealogies, you recall that, where there was no connection on your genealogy between two lineages, and in some cases you said "but they are in the same house"?
A Yes.
Q Okay. Why -- within the Wet'suwet'en system, according to your knowledge and the genealogies, can there be more than one lineage in the same house?
A Yes, I think so.
Q Okay.
A You notice that especially when they work together in

the feast house. Once they walk in the door of a feast house they work together.
Q Okay. And is that known by you and by the others in the community?
A Yes.
Q That -- of the house membership?
A Yes.
Q Now, you were asked about Seymour Dennis yesterday, you recall that?
A Yes.
Q And you said -- and Mr. Mackenzie asked you, it doesn't appear on the genealogy, and you said his name should be on the genealogy?
A Yes.
Q I believe we were -- that was with respect to Woos' genealogy; is that right?
A Yes.
MR. GRANT: Okay. Maybe I could just have that put before you. That's exhibit number, what is it, 1066? Can you indicate for the court where Seymour Dennis should appear on that genealogy?
MR. MACKENZIE: I object to this line of questioning, my lord. Mr. Grant is now going to fill in the genealogy, which he of course was attempting to do -- which of course he was trying to do on his examination in chief.
THE COURT: Did you raise the question of Seymour Dennis in your cross-examination?
MR. MACKENZIE: Yes, I did, my lord.
MR. GRANT: Yes. It was never mentioned at all before, and the witness said yes, the answer is -- he asked he doesn't appear on the genealogy, and the witness said his name should be on the genealogy, and Mr. Mackenzie went no further. So I'm saying where does it appear.
THE COURT: I think if it was brought up in cross-examination that way, then it's proper re-examination.
MR. GRANT: Thank you. I think it was with reference, if I recall rightly --
MR. MACKENZIE: Excuse me, my lord, I don't want to interrupt my friend's re-examination too much, but I trust he is not going to instruct Mrs. Dora Wilson-Kenni where that name should be on the genealogy.
MR. GRANT: No, I'm not. My friend was referring to it in my -- according to my notes he was referring to page 11 I believe.
MR. MACKENZIE: I'm sorry, my lord, that's not true. I was not referring to it with respect to any page.
THE WITNESS: It would be -- it would be on page 11, but I'm

not prepared to put it on there right this minute.
MR. GRANT:
Q Uh-huh.
A Because I understand that he was very closely related to Woos.
Q When you say Woos, which Woos are you referring to?
A To Topley Matthew Sam.
MR. GRANT: You were asked questions about Big Seymour Gyolugyet's mother, do you recall that, by Mr. Mackenzie yesterday who asked you a number of questions about Big Seymour's mother, Big Seymour Gyolugyet's mother, who's unnamed on the genealogy; you recall that? From what you know, can you -- have you concluded as to whether she was Gitksan, Wet'suwet'en or some other group?
MR. MACKENZIE: I object to that question, my lord.
THE COURT: Why?
MR. MACKENZIE: Because the witness gave evidence about that person in chief and a circle with a dot was placed on that, was placed on that position in the genealogy, and there was an opportunity to go into the identification of that person in great detail, and then the questions in cross-examination went into that in great detail and the witness didn't answer. Now, I don't -- in my submission that's not a topic that should be opened again in re-examination.
MR. GRANT: There was no question or issue raised at all in direct with respect to the issue of whether this person was Wet'suwet'en or non-Wet'suwet'en.
THE COURT: Oh, I know, but the rule's broader than that, isn't it, Mr. Grant. If you embark upon a subject you've got to deal with it in chief. You can't hold back, otherwise there'd have to be another cross-examination. Surely if you embark upon a subject you've got to complete it. I mean, that's the rule.
MR. GRANT: Yes. No, I --
THE COURT: It's not always strictly followed. Why shouldn't it be strictly followed in the circumstances we find ourselves now? It seems we should apply the rules somewhat strictly at this point, inasmuch as we're more than half a day, well, more than half a day, over the time estimate for this witness.
MR. GRANT: That was my ultimate question in any event, my lord.
THE COURT: Well, I'm not sure that everyone would agree with that description of it, Mr. Grant.
MR. GRANT: My final question I should say.

THE COURT: Your final question.
MR. GRANT: It's not the ultimate question.
THE COURT: Thank you, Mrs. Dora Kenni, you're excused, Wilson-Kenni, I'm sorry.
THE COURT: Do we have to page Mr. Rush?
MR. GRANT: No, it will just take us a little reorganizing. Maybe I should just say this: I've spoken to Mr. Rush, and I'm going to excuse myself. I anticipate from what Mr. Rush has said and Mr. Willms that the next witness would not commence until after the noon hour at two o'clock, and I would like to be excused to be with that witness.
THE COURT: Well, you don't need to be excused, Mr. Grant, but whether you're here or not is between you and your client.
MR. GRANT: That's true. The witness and I will be away from the court until two o'clock. I just wanted to advise your lordship.
THE COURT: Well, Mr. Rush will take up the rest of the morning will he?
MR. GRANT: I suspect Mr. Rush will take the rest of the morning.
THE COURT: Do you want to adjourn for a minute?
MR. RUSH: No, it's not necessary. My lord, the next witness is Mr. Lou Skoda, S-k-o-d-a, a cartographer, and I'll be asking that the court determine him to be an expert to give expert opinion in cartography including the research, design, preparation and production of maps using specialized cartographic techniques.
Mr. Skoda, would you come forward, please?
MR. WILLMS: My lord, qualifications are not in issue.
THE COURT: Thank you.
MR. RUSH: Thank you.

LOU SKODA, a witness called on behalf of the Plaintiffs, having been duly sworn, testifed as follows:

THE REGISTRAR: And would you state your full name and spell your last name please, sir?
THE WITNESS: Lou Skoda, S-k-o-d-a.
THE REGISTRAR: Thank you, sir. Please be seated.

EXAMINATION IN CHIEF BY MR. RUSH:
Q Now, my lord, I thank my friends for admitting qualifications. I'm just going to submit his curriculum vitae and an updated document of his

personal details for the -- to be exhibited. My friends have these. I just ask you Mr. Skoda if you can identify the first document entitled "Curriculum vitae" to be yours?

A It is mine.

Q And the next document entitled "Personal details of L. Skoda, Principal and research cartographer", and that is yours?

A That is also mine.

MR. RUSH: Thank you. Can those be the next two exhibits?

THE COURT: Do I have them both?

THE REGISTRAR: No.

MR. RUSH: Here, there are --

THE COURT: Yes. All right. The next exhibits are --

THE REGISTRAR: 1069, my lord.

(EXHIBIT 1069: Curriculum vitae of Lou Skoda)

THE COURT: Do you want them both one exhibit or separate exhibits?

MR. RUSH: Separate, my lord, please.

THE COURT: And 1070.

(EXHIBIT 1070: "Personal details of L. Skoda, Principal and research cartographer)

MR. RUSH: Now, my lord, I'm going to file a notice to admit and responses relating to certain of the maps in the map atlas, and here's a copy of the notice to admit.

THE COURT: 1071.

(EXHIBIT 1071: Notice to Admit)

MR. RUSH: And the response by the provincial defendant with a covering letter.

THE COURT: 1072.

(EXHIBIT 1072: Response by the AGBC)

MR. RUSH: Thank you. Response by the federal defendant.

THE COURT: 1073.

(EXHIBIT 1073: Response by the Federal Defendant)

MR. RUSH: Thank you. And I wonder if we can place the map atlas, Exhibit 358, before Mr. Skoda. I have it here. Mr. Skoda, I'm going to ask you to look at this,

please. Your lordship has your desk copy. Mr. Skoda, you have reviewed in this map atlas maps 1 through 23?
THE COURT: What's the number of the map atlas?
MR. RUSH: It's 358, Exhibit 358, my lord, and I believe the individual maps sub --
THE COURT: Oh, yes.
MR. RUSH: -- numbers of that map exhibit.
THE WITNESS: I did.
THE COURT: I'm sorry, Mr. Rush, I don't seem to have marked the first one or maybe they've all been marked. I have number three marked and I have number two marked. I don't seem to have number one marked anywhere.
MR. RUSH: My lord, the larger version of this was marked as Exhibit 1052.
THE COURT: All right.
MR. RUSH: And if need be what I will do is ask Mr. Skoda to identify map number one.
THE COURT: Madam registrar points out that her copy has it marked as 350-1, but she says that's wrong.
MR. RUSH: All right. Well, perhaps I could just take that, my lord.
THE COURT: We'll just straighten this out. Where did you get this 1005 number from Mr. --
MR. RUSH: From this larger map.
THE REGISTRAR: No, that's 1052.
MR. RUSH: That's what I said, 1052. Did I say 1055? I misspoke if I did. It's 1052 entered as an exhibit here and I think identified by Susan Marsden.
THE COURT: 1052 --
MR. RUSH: It's not dashed, my lord, I think it's just one of --
THE COURT: 1052. All right.
MR. RUSH: Yes.
THE COURT: Well, then I think the map atlas should be 1052-1. The large one is 1052.
MR. RUSH: Yes, my lord, but I think that the map atlas itself has already been marked as an Exhibit 358.
THE COURT: Oh, I see. All right.
MR. RUSH: And it's only the larger blown-up version of that one particular map which is 1052.
THE COURT: Yes. All right.
MR. RUSH: And I can perhaps --
THE COURT: Yes, you're quite right, because the other ones are marked by tab number 358, 2, 3, et cetera. Mrs. Ritchie has had the small map atlas copy marked 358-A, which sounds like a number for identification.
MR. WILLMS: What happened there is that's the flip side of the biogeoclimatic map, if you turn the page over, and it

was marked -A to differentiate it from what was on the other side. It was during Miss Haeussler's evidence.

THE COURT: Thank you. The mystery's all cleared up. Thank you.

MR. RUSH: May I have that map, please?

THE REGISTRAR: Yes, sorry.

MR. RUSH:

Q Mr. Skoda, I would just ask you, if you will, please, to compare map 1, identified as "Ancient times - the arrival about 10,000 years BP" in the map atlas, Exhibit 358, with this large map 1052, and what can you say about the two?

A They're identical images. One is a larger scale, a photographic enlargement of the smaller one, smaller size.

Q 1052 is a photographic enlargement of map number 1 and 358; is that right?

A That's correct.

Q And the text that's on the map, Mr. Skoda, is the same text on 1052 as appears on the map number 1?

A That's correct.

Q All right. Now, maps 1 through 23, which are in Exhibit 358, can you -- you can identify these can you?

A I can.

Q And did you design and prepare these?

A Yes, I did.

Q And can you generally say in respect of the over-printed material what the source of that material was?

A Generally that material came from the specialized researchers, the experts in their particular field.

Q Okay. Now, in terms of the maps themselves, what can you say about what they reflect?

A The base maps?

Q Yes.

A The base maps reflect information which was garnered -- collected from National Topographic Series maps of different scales from gazetteers that provided information about names and perhaps some specialized maps that were published by the Department of Energy Mines and Resources.

Q And, Mr. Skoda, are the maps 2 through -- excuse me, 1 through 23, an accurate reflection of the information provided to you and generated by yourself?

A They are.

Q All right. Now, I want to ask you, if you will,

please, to turn to map number 2, and for the purposes of this discussion, my lord, I'm going to ask Mr. Skoda to refer to this blown-up version of map 2. And, Mr. Skoda, can you confirm once again that this map 2, which is a blown-up version, is a photographically enlarged version of what appears as map 2 in Exhibit 358?

A Yes, it is so photographically enlarged, yes.

Q And what is described as the mapping units running along the left-hand side of that, can you --

A The mapping units on the large version are an abbreviation of the information that's provided on the small maps on the back of map number 1. There was not enough room on the board and only two items of information were selected, one that identifies the colour on the map itself, and then the name of the particular biogeoclimatic unit to which -- the name of the unit itself.

Q All right. Thank you. Now, my question both in relation to map number 2 -- and you can perhaps illustrate this by reference to its photographically enlarged version, what is the orientation of this map, Mr. Skoda?

A Well, if we refer to north, north on that map is approximately left side of the map. The view, therefore, that we are presenting is from the Pacific Ocean inland.

Q All right. Now, are not most maps constructed so that north is at the top?

A It is a general convention to construct maps so that the north is up.

Q And can you -- can you explain to the court why these maps were constructed with north to the left?

A It was my understanding at the time when the project was defined -- designed, that there will be a relatively large size of territory that needed to be presented, and that therefore the constraints on how the information will be reviewed, read, will be severe. It was also apparent that the size and the shape of the territory was approximately two squares left to right. With the understanding of how the maps were to be used, it was apparent that the maps should be oriented so that the information would be readily available to a viewer on a smaller desk, perhaps your lordship's size, and also when a larger size map was to be viewed in a courtroom, that the information would be available generally at an eye level. In the

1 traditional orientation it would be very difficult to
2 read the information at the bottom and at the top.
3 Q All right. Now, in terms -- in terms of the scale of
4 the maps in the map atlas, Exhibit 358, what's the
5 scale that is utilized?
6 A We have two scales here. One scale is a general
7 scale, 1 to 1.4 million.
8 Q Is that illustrated on map 2?
9 A It is illustrated on map 2. There's a scale bar and a
10 statement to that effect at the bottom right-hand
11 corner. That statement is repeated on every map of
12 that scale.
13 Q And what's the other scale?
14 A The other scale is 1. -- 1 to .7 million. It's a
15 larger scale. The reasoning for having two scales was
16 that initially it was necessary to show the study area
17 in a regional setting that is providing information
18 surrounding the study area. One other objective was
19 to have information, more detailed information,
20 presented of the study area itself, then the larger
21 scale was chosen to achieve that purpose.
22 Q And is the larger scale shown on maps 22 and 23?
23 A It is.
24 Q All right. And what did you say that larger scale was
25 again, please?
26 A 1 to .7 million.
27 Q All right. Now, you have directed our attention, Mr.
28 Skoda, to the legend at -- on map 2. Could you just
29 refer to that now? It's in the --
30 A The legend in the bottom right-hand corner?
31 Q Yes. And could you explain the various elements of
32 this legend, please?
33 A Okay. The legend was constructed specially separately
34 from any other legend material because it reoccurs and
35 reappears on every one of the sheets forming the same
36 series.
37 Q Did you prepare this?
38 A Yes, I did.
39 Q Okay. And just if you will take us through very
40 quickly what the elements of this are and how you
41 arrived at it?
42 A Okay. The symbol -- the first symbol explained is
43 that of the outer boundary of the study area,
44 Gitksan-Wet'suwet'en claim territory.
45 Q Yes.
46 A This information was provided to us in a document and
47 was transferred to the base at the appropriate scale.

Q And who provided that to you?
A That came from Marvin George and that was a document early May, I think May 2nd, that provided that information.
Q Of what year?
A '87.
Q All right. And just carry on. The other elements here, Mr. Skoda?
A The second line of information provides an explanation for symbols that we call linear symbols relating to roads, major roads, and railways.
Q And the source of that information?
A Would be National Topographic Series.
Q The NTS series as it's known?
A NTS.
Q Yes. And the next?
A The next line explains a settlement symbol. We have two sets of symbols, one that -- one set that describes a Gitksan or Wet'suwet'en settlement, and the second symbol that explains other than the Gitksan and Wet'suwet'en settlements.
Q And the source of that information?
A The source of that information would be NTS series, and in case of the Indian settlements, a document that was also referred to was a map prepared by Department of Indian and Northern Affairs.
Q Thank you. Now, the contours, please?
A The next two boxes, one refers to contours which were derived from NTS series, glaciers and snow fields, again from NTS series and from aerial photographs and possibly from satellite images to define the edge of the ice. We have two scales on the map. On the right-hand side we show the aerial scale to give a reader an approximate size of a unit, such as 10,000 hectares, and a linear scale, which is a fairly conventional way of representing distances on a map.
Q All right. And the contours, the glaciers, and snow fields, were these colours and shapes added by you?
A Yes, they were.
Q All right. Around the edge of this map there are certain what appear to be references to degrees, and if you follow around the whole of the map, and I believe this appears on each and every one of the series, there are these references. To what do these refer, please?
A These are references to parallels of latitudes and to meridians. It is a standard practise in serious

cartographic effort to provide clues to absolute location. These reference lines are just such clues that place a map in relation to the earth reference system. Around the periphery each of the meridians, for example, is identified at the opposite end of the map. The meridian then forms a straight line between those two points, and is further identified by small black crosses where the meridians and the parallels of latitude insect.

Q All right. Now, taking map number 2, Mr. Skoda, there seems to be a difference in colour and shading between, if I may put it, the light green band at the bottom and then various colours which appear throughout the rest of the map, blue, green, grey, et cetera. Now, can you just express for us the source of the information which led to the colourations in the area other than the green and shaded contours at the bottom?

A Well, there could be two distinct areas recognized on the map. One area shows the specialized information, that's the thematic information that was provided to us by the field researchers, and the other area that was referred to by the counsel was light green I think. Simply represents part of the base map which does not carry that specialized information.

Q And that base map was prepared by you?

A The base map was prepared by me, yes.

Q And the specialized information was provided to you and placed on the map?

A The specialized information on the base map?

Q No, in terms of the -- you said the thematic information was provided by you?

A The thematic information, yes, was provided by us.

Q And where it indicates the source in this example map 2 is "S. Haeussler" etc.?

A Yes.

Q Is that the person who provided you with that information?

A That is so.

Q Now, just in terms of the base map information, Mr. Skoda, the shading in green that appears, for example, at the -- let's take Queen Charlotte Island, which is a discreet element of this map number 2, the shading in green, is that designed -- what is that designed to show if I --

A That's to show the shape of the land itself. It's an attempt to present the relief in a shaded form that

attempts to show where steep slopes exist and perhaps anyone present can view that map and recognize that there is a darker contorted green area at the bottom closest to the observer on the Queen Charlotte Island. On the top left-hand side of the island the green is rather flat and less -- less dramatic in presentation. That represents the flat part of the island and the more intense colouring represents the mountainous part of the island.

Q All right. Thank you. Now, decisions were made about the design of the maps 2 to 23?

A Yes.

Q And who made these design decisions?

A I made the decisions.

Q And I want to ask you now -- I'm going to show you again an enlarged version of a fishing distribution map, map 20. Can you again confirm this to be an enlarged version of map 20 that is in the atlas?

A It is so.

Q And in terms of the design of this particular map, and the symbols used to show the distribution of salmon, who made those decisions?

A I made those decisions.

Q Okay. Are those cartographic decisions?

A They are cartographic decisions. Perhaps it may, my lord, if I mention that the information to us comes in the form of numbers that describes the information like this collected statistically and perhaps in field observations. It is our tasks as cartographers to understand the numbers and come up with an appropriate design and prescription how these numbers can be represented graphically. Our task is to analyse the information, group it, and assign symbols that would be suitable to represent that information. In this particular case when the numbers were analysed for the purposes of graphic presentation, it was obvious that there was a group of species of salmon that were dominant and required very large symbol area. That more or less determined how large a symbol we may have on the map.

Q Okay. And in terms of the pie symbols that were utilized here, that is your design, is it?

A We came up with the appropriate presentation that indeed represents the species, salmon species, as pie shapes, and each area of the pie is proportional to the number of fish that that segment represents.

Q All right. Thank you. Now, would you please turn to

map 23? Perhaps I should ask in relation to map 23, Mr. Skoda, this is the salmon map, the photographs that were utilized by you for the production of this map, the source of the information is attributed to the takers at the -- that appear beside the photograph?

A Yes. Each photograph is identified as to source.

Q Okay. Now, I want to ask you about map 23, in particular, Ootsa Lake, and there is by reference to Ootsa Lake a notation, and I'm quoting, "1952 pre-flooding shore line". Do you see that?

A Yes.

Q It's on the right-hand side of map 23?

A Yes, I do.

Q And firstly, could you tell his lordship what the source of the information is for the shore line as it appears in the map, and then I want to ask you what the source of the information is for the line indicating the 1952 pre-flooding shore line?

A The source of the information of the blue line?

Q Yes. Well, there are two lines there.

A Okay. Well, the hydrographic information, the information defining lakes, streams, and so on, was derived from NTS series.

Q Yes.

A The black information with the notation of saying "1952 pre-flooding shore line" was also derived from NTS series, but a series -- the map sheets that were created before 1952 and therefore had the information on hydrography defined before the flooding.

Q All right. Thank you. Now, if you will please turn -- well, perhaps I can use map 23. On map 23 there are English names for topographic planimetric and hydrographic features. And can you tell his lordship what the source of the information is for those English names?

A The source of that information is NTS series, sometimes verified or checked from gazetteers that are produced by Energy, Mines and Resources.

Q A department of the federal government?

A That is a department of the federal government. Yes.

Q All right. Now, in relation to, again, utilizing map 23 as an example, there appear to be, and you've made reference to this by reference to your legend, the names of village sites which are Gitksan -- appear to be Gitksan and Wet'suwet'en village sites. What's the source of that information, and I direct your

attention to Gitanmaax as an example and Tse Kya, T-s-e, new word, K-y-a, as a second example in the middle of the map?

A This information was confirmed on maps that we received from Marvin George --

Q Yes.

A -- through the system, and verified further by documents I referred to earlier, that's the Department of Indian Affairs and Northern Development.

Q All right. Now, may I take you back, please, to map number 2, and in relation to map number 2, Mr. Skoda, there are what appear to be Gitksan and Wet'suwet'en names for topographic features on the base map, and I would like to ask you how this information came to you and the source of it, please?

A This information came to us in a map form, maps generated by Marvin George. The selection of -- you will notice, your lordship, that most of the names are in English. Only some names are in Gitksan, Wet'suwet'en. We selected few major features and provided the Indian names to those in brackets.

Q And how did you select the major features?

A Well, the major features of rivers were selected on the relative lengths of the river. The longer the river, the more important the river we assumed the connection.

Q If you look in the middle of what appears to be in the middle of the map number 2, the biogeoclimatic land classification, in the light green you see the Nass River and in parentheses after that --

A Yes.

Q -- appears to be the word Xsi Tsemsen, that's X-s-i, new word, T-s-e-m-s-e-n. Is that a Gitksan word provided to you of the kind that you have referred earlier --

A Yes.

Q -- as having been provided by Marvin George?

A It is.

Q All right. And where the map -- where this map refers to names of that kind, are we to take -- what are we to take from that in other topographic and planimetric features?

A Sorry, I didn't get the significance.

Q Where there are other examples of references to topographic and planimetric features, other than the one I've just pointed you to, such as for the Bulkley River you see that you have Wedzen Kwe?

A Yes. I can also refer you to some of the lakes.
Q Yes.
A Major lakes. That's basically it.
Q My question is where the Wet'suwet'en name appears in parentheses behind the English name, are we to take it that the Wet'suwet'en name refers to that feature?
A Yes, indeed.
Q Or for that matter the Gitksan name?
A Right. Correct.

MR. RUSH: All right. I want to hand another map, map 24, up to his lordship and a copy for the map atlas.

THE REGISTRAR: This is going to be tab 24?

MR. RUSH: Yes, it will be the next --

THE COURT: You've seen this before have you, Mr. Willms?

MR. WILLMS: Yes, my lord.

THE COURT: I can safely put it in the atlas now?

MR. WILLMS: Well, my lord, this one is a little different than the other ones. We've been putting in the over-printing -- the documents have been going in with the note on the record without the over-printing and it's my submission here that we should go a little bit further. In my submission, it is entirely improper to have "The Homeland" up in the upper right-hand corner. Not only is it irrelevant to any legal issue in this case, it's argumentative in itself. It adds nothing to the plaintiff's case, and should be deleted and not put in in any form as it is right here. The rest of it we can delete the over-printing, the text that is objectionable, but I object to "The Homeland - a Satellite Image of the Gitksan and Wet'suwet'en Territories". That's borderline breaches, in my submission, because it's totally irrelevant.

THE COURT: Well, it's certainly not going to inflame anyone. I don't think that I'm going to be influenced by a little editorializing. I don't see any real problem with it.

MR. WILLMS: That's not the point at all, my lord. The point is that it's not evidence in any way, shape or form and it shouldn't be admitted. It's simply not evidence at all. I'm not suggesting that your lordship might be inflamed by it. I'm suggesting that it's not evidence and it has no place in a court of law.

THE COURT: Are you urging its inclusion in the exhibit, Mr. Rush?

MR. RUSH: I see nothing wrong with it. I'll direct the witness' attention to it. Perhaps your lordship should hear the evidence before --

THE COURT: Yes. All right.
MR. RUSH: Yes.
THE COURT: Yes. All right.
MR. RUSH:
Q Could you show that to Mr. Skoda? I wonder, Mr. Skoda, if you could place that in the map atlas at the appropriate place? This was prepared by you, Mr. Skoda?
A Yes, it was.
Q And the over-printing, that is to say, the printing that appears at the top, was that prepared by you as well?
A Yes.
Q The map that's to your right, the -- what appears to be a photographic enlargement, was that similarily a photographic enlargement of map 24 as the previous enlargement?
A It was.
Q And the material that appears vertically on the left-hand side of that, is that the same or different than the material that appears across the top of map 24 in Exhibit 358?
A It's the same material rearranged slightly.
Q All right. And can you tell us in general terms what this map 24 depicts, please?
A It provides a satellite image, an objective description of the terrain or the landscape of the study area. The idea was to provide such an objective because we had a whole lot of maps that had very specific, very specialized, very thematic information, but what I felt was appropriate was to provide an objective general information about the landscape. A satellite image provides such an information.
Q And you will explain in the upper left-hand corner how the information was generated?
A Yes.
Q And is this information that you -- is the means by which this type of information is generated known and utilized by cartographers in Canada?
A It's a fairly standard procedure to make the satellite images available for general inspection, yes.
Q And you have direct and personal knowledge about the means by which satellite imagery is generated and reproduced in the form such as map 24?
A Indeed.
MS. KOENIGSBERG: It might assist my friend, we have an admission on this, of course, and we don't have to prove it. We

had an admission on the other material as well, but this particular one, this entire means, there's no issue at all.

THE COURT: All right. Well, I'm not sure that it isn't useful information for me to hear. I think that I will benefit from some instruction on this.

MR. RUSH: And Mr. -- thank you, my lord.

THE COURT: I'm glad to be reminded that I don't have to concern myself with admissibility.

MR. RUSH:

Q Well, I'm not sure that you don't, my lord, but anyway, I'm always grateful for another admission.

Mr. Skoda, just with reference to the satellite image on map 24, what are the physical phenomena that are discernible by reference to this satellite image?

A It's possible for a general viewer to recognize a network of interconnected valleys, mountains, fairly prominent ice caps, or a series of ice caps, lakes, and perhaps some other features of linear nature which are generally obvious on a satellite image.

Q And --

A Perhaps the other aspect which may be also obvious on inspection is that the area between the valley floors and the ice-capped mountains or snow-capped mountains are green. That indicates a general healthy vegetation cover.

Q All right. And on the right-hand side of the map there are a number of what appear to be small squarish looking brown patches. What does that represent, if you know?

A That indicates clear-cut logging.

Q And can you -- do you cross-reference that to anything?

A We have a legend on the map that explains a number of these features that are apparent on the mosaic.

Q Is that the document or the representation that's entitled "Key to map images" at the top?

A Yes, it is. Yes.

Q And the sources that are indicated here on the right-hand side of map 24, Mr. Skoda, do they represent the origin of the information which led to map 24?

A That is correct, yes.

Q And what can you say about these sources? Are they -- how can you assess the confidence level that you place on those sources?

A Entirely reliable. Most reliable objective

1 presentation of the facts that were gathered.
2 Q Okay. All right. And Mr. Skoda, the title which --
3 to which objection has been taken "The Homeland - a
4 Satellite Image of the Gitksan and Wet'suwet'en
5 Territories", how was this title arrived at, if you
6 know?
7 A As a cartographic designer we often require a
8 statement in a heading that summarizes the gist of the
9 presentation. We dealt here with a fairly objective
10 presentation of terrain of landscape, but that
11 landscape represented valleys where people lived.
12 That landscape represents area where people settled
13 and made their living, functioned as a community, and
14 since that was the general background for the
15 presentation, it seemed appropriate to identify that
16 satellite image as a homeland.
17 Q And whose choice was that?
18 A It was mine.
19 MR. RUSH: Now, my lord, I'd like to have map 24 as the next
20 map in the map atlas series as 358-24.
21 MR. WILLMS: Well, my lord, there's been an admission on the
22 other parts of the map. The only thing I object to,
23 and I've stated my reason, I say it's not evidence in
24 any way, shape or form, and doesn't belong in a court
25 of law as "The Homeland". And, as I said, I'm not
26 suggesting your lordship will be swayed or inflamed by
27 it, it's just not evidence.
28 THE COURT: Well --
29 MR. RUSH: Surely --
30 THE COURT: -- certainly the map can be admitted into evidence,
31 and unlike our American neighbours we can't strike
32 words out of the record, and I don't think that this
33 document needs to be defaced or mutilated or edited by
34 crossing out the title. I do not think the title is
35 part of the evidence in this case, but the map itself
36 may be the next exhibit which will be in the same
37 series as the others which makes it -- what is it,
38 3 --
39 MR. RUSH: 358-24, my lord.
40 THE COURT: Yes.
41
42 (EXHIBIT 358-24: Map 24 in the Map Atlas)
43
44 MR. RUSH: Now --
45 THE COURT: Is it convenient to take the morning adjournment,
46 Mr. Rush?
47 MR. RUSH: Yes.

THE COURT: All right. Thank you.
THE REGISTRAR: Order in court. Court stands adjourned for a short recess.

(PROCEEDINGS ADJOURNED FOR THE MORNING 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

(PROCEEDINGS RECONVENED PURSUANT TO THE MORNING BREAK)

THE REGISTRAR: Order in court.
THE COURT: Mr. Rush.
MR. RUSH: My lord, I'd like to file another notice to admit and response by the provincial defendant dated cover letter of Mr. Grant's June 28 containing the notice to admit with reference to Map number 1, and I believe --
THE COURT: You're putting them both in as one exhibit?
MR. RUSH: No, I'll put them in separately. The notice to admit --
THE COURT: Notice to admit Map 1?
MR. RUSH: No, it is the inset in Map number 1. And I'll be coming to that in a moment. The inset is called "Retreat of the Recent Ice-sheet in British Columbia."
THE COURT: That Map 1 is --
MR. RUSH: It's the "Ancient times - the arrival about 10 000 years BP."
THE COURT: Oh, yes. All right.
MR. RUSH: And it's only with respect to the inset that I'm directing your lordship's attention in the notice to admit.
THE COURT: What exhibit number is that large --
MR. RUSH: 1052, my lord.
THE COURT: All right. The notice then will be Exhibit 1074 -- no.
THE REGISTRAR: Yes.
THE COURT: Yes, 1074, and the response of the province 1075.
MR. RUSH: Thank you.

(EXHIBIT 1074 - NOTICE TO ADMIT)
(EXHIBIT 1075 - RESPONSE OF AGBC)

MR. RUSH:
Q Mr. Skoda, would you please direct your attention to Exhibit 1052, which is Map number 1 of the atlas map series, and in particular to the inset which is there shown and entitled "Retreat of the Recent Ice-sheet in British Columbia." Who prepared and designed that inset?
A I did.
MR. RUSH: And the purpose of that?
THE COURT: I'm sorry, Mr. Rush, I'm not up to speed yet. Which one is the inset, the one at the top?
MR. RUSH: No, my lord, it should be the one in the right-hand corner of Map number 1. Yes, in the right-hand corner entitled "Retreat of the Recent Ice-sheet in British

Columbia," right underneath the title.
THE COURT: Oh, yes. All right. Thank you.
MR. RUSH: And it's perhaps somewhat more discernible by its enlargement on 1052.
THE COURT: Yes. All right.
MR. RUSH:
Q Referring to that, the purpose of that, Mr. Skoda?
A Was to illustrate the extent of the ice cover or the extent of the retreat at the time of about 10,000 years ago when the general map presents information.
Q And the source of the information for that, please?
A Was a federal government publication, a map, very large document.
MR. RUSH: All right. And I'm showing you --
MR. WILLMS: My lord, at this point I would like the witness to say how he knows that this is the source of the information other than reading it from the bottom of the document? If that's where he got the information, that's fine, but the inset is taken from the text. If you look at the notice to admit of the plaintiffs, there's a photocopy of a page taken from the textbook, and it was my understanding that all that this witness did was just recreated the photocopy from the textbook. I don't know if your lordship has that in the notice to admit.
THE COURT: Well, I just received it this morning for the first time. What should I be looking at?
MR. WILLMS: In the notice to admit, my lord, the second to the last page, there's a -- it looks like a photocopy from a textbook.
THE COURT: I should be looking at the notice to admit?
MR. WILLMS: Yes. You see, my lord, as I understood it, we got this notice to admit, and the document that we're supposed to admit authenticity of is attached to the notice to admit.
THE COURT: Yes.
MR. WILLMS: And so when I read the notice to admit, I saw that there's a claim that this inset map is in Prest's publication.
THE COURT: Yes.
MR. WILLMS: That's how I read it because this is the only map that was attached to the notice to admit.
THE COURT: Yes.
MR. WILLMS: So as I understand it, this is what the witness used to make map 1052. At least that's what the notice to admit says to us anyway. So I'd just like the witness to confirm that. If that isn't the case,

then I've got an objection because there's something going on here that we have no notice of.

MR. RUSH: Well, if my friend would permit me to further examine the witness, I think this can be cleared up.

THE COURT: Yes. All right.

MR. RUSH:

Q It seems to revolve around a misconstruction of the word "text" on everybody's part.

Mr. Skoda, I'd like you to refer to the inset on Map number 1 and explain what the source of the information is and the language used by you to describe the source and what you intended to mean by that?

A Well, the source is a map, as I mentioned earlier, and the author of that map is Prest, publication was by Geological Survey of Canada, date 1969. That's where the information on which this inset was based came from.

THE COURT: Yes. All right.

MR. RUSH:

Q Is there any reference intended to be conveyed that this inset was derived from a text in the sense of a textbook or a larger book form of publication?

A There is none.

Q All right. And what is the map that the source of this information is derived from?

A Which map?

Q The map that led to the inset.

A Well, I see a copy of the map in front of counsel.

Q All right. I want to show you a map, and I'll ask you if this is that source?

A Yeah, this is the source.

Q All right. And this document is entitled "Retreat of Wisconsin and Recent Ice in North America," and it gives as its -- gives as its source or description of its author, and I'm quoting, "Ice-marginal positions by V.K. Prest, 1969, Ice-margin shading by Surveys and Mapping Branch, Cartography by Geological Survey of Canada." And the Geological Survey of Canada is indicated as a department of Energy, Mines & Resources. Now, is this document the source of the inset that is on Map 1?

A Yes, it is the source of the information on the inset.

Q All right. And in terms of your use of this source, did you -- did you utilize any cartographic methodology in the design of the inset from this source?

A Well, the procedure that was used here was to accept the contours that indicate the position of the ice front as defined by the publication and then enhance that information by showing where the ice front was about 10,000 years before present. On that inset there are small sort of islands indicating where the ice was supposed to be according to Prest's interpretation. That was the only cartographic enhancement other than colouring the map to show the areas which were not covered by ice.

Q Now, if you refer to, please, the inset on Map 1, in the overprinting there is what appears to be a legend showing a 10.5 reference and green shading, and who added this material -- who provided this material?

A Sorry, can I ask the counsel to direct me again where to look?

Q Do you have the inset?

A Yes, I'm looking at the inset.

Q And you see to the left-hand side of it underneath the word "retreat" --

A Yeah.

Q -- there are two boxes?

A Yes.

Q And who -- what is the source of the information for those two boxes that appears beside those?

A Well, that's my explanation as to what symbols I used on that map to convey the information that was derived from the publication that I referred to before.

MR. RUSH: Thank you. I'd like the map to be marked, my lord, as the next exhibit.

THE COURT: Who provided the refugium on the right-hand side or southern side of the inset map? That doesn't seem to come from the Geological Survey of Canada map, does it, or does it?

THE WITNESS: Yes, it does, your lordship.

THE COURT: Does it?

THE WITNESS: Yes. The scales -- if I direct you to the scales, that might perhaps explain the apparent anomaly. The inset map is very small compared to the very large map, original map --

THE COURT: Yes.

THE WITNESS: -- and so the sudden refugium would appear to be or should be a long way from where we are viewing it, but because of the small scale -- I direct your lordship to the name Columbia River on the right-hand side.

THE COURT: Yes.

THE WITNESS: And on the main map, on the large map, if you do have it in front of you, that Columbia River is identified and is in an ice-free area on the regional map.
THE COURT: All right.
MR. RUSH:
Q Well, would it be fair to say, Mr. Skoda, that what appears in white on Mr. Prest's geological survey map appears in green on yours?
A That's correct.
THE COURT: Is there a date that -- for this map, the inset, "ice-margin positions during the last ice-sheet retreat..."? Oh, I see. So it goes from the -- what do these numbers indicate, 14.5 and 15.5? This was all explained to me, but I've forgotten it already.
THE WITNESS: Those indicate thousands of years before present.
THE COURT: Yes.
THE WITNESS: And the most recent ice front represented on the map is eight and a half thousand years ago, and the most ancient ice front is I think about 15,000 years, if I remember correctly, on the large map.
THE COURT: Yes. All right. All right. What do you say about the inset map, Mr. Willms?
MR. WILLMS: Well, it's not the inset. I think my friend wants to mark this map, and had he sent it over --
THE COURT: Oh, this one here?
MR. WILLMS: Yes.
THE COURT: Oh, I see.
MR. WILLMS: Had he sent that one along with the notice to admit instead of the other one, we probably wouldn't be dealing with this right now. I don't have any problem with this being marked.
THE COURT: Yes. All right. Okay. The next exhibit then. How should it be described?
MR. RUSH: Perhaps just in terms of its description that's attributed to it as --
THE COURT: Geological Survey of Canada.
MR. RUSH: Geological Survey of Canada map entitled "Retreat of Wisconsin and Recent Ice in North America."
MR. WILLMS: "Speculative ice-marginal positions" --
MR. RUSH: -- "during recession of last ice-sheet complex."
THE COURT: Speculative what is it?
MR. RUSH: This is a sub-note here. "Speculative ice-marginal positions during recession of last ice-sheet complex."
THE REGISTRAR: Exhibit 1076, my lord.
THE COURT: Yes. All right. Thank you.

(EXHIBIT 1076 - MAP ENTITLED "RETREAT OF WISCONSIN AND RECENT ICE IN NORTH AMERICA")

MR. RUSH: Thank you.
THE COURT: Let me see it for a moment. What does the blue indicate? Blue is ice, is it?
THE WITNESS: It's a representation of the ice front at the time indicated by the black contour that is marked by numbers that refer to thousands of years.
THE COURT: Yes. So it's suggesting that at the time of the map, which is 8500 BP, the whole length of the Yukon River, for example, was ice free? Is that what it says?
THE WITNESS: Correct. Actually, even further back.
THE COURT: Yes. All right. Thank you.
MR. RUSH:
Q All right. Now, Mr. Skoda, if you will, please, I just want to direct your attention to the enlargement of Map 3, Map 22, and 23, and if you can just confirm for me that these maps represent enlargements of maps contained in your -- in the map atlas by those same map numbers?
A I can confirm that.
MR. RUSH: Now, my lord, I would propose marking these enlargements of the maps by the series that began Exhibit 1052, and I just propose that we do it Exhibit 1052-1, -3, etcetera.
THE COURT: Yes.
MR. RUSH: And the ones that are here are Map 1, 3 -- excuse me -- Map 1, 2, 3, 20, 22, 23, and 24.
THE COURT: These are the large size, yes. All right. And they'll be exhibits -- what number are you suggesting for them?
MR. RUSH: 1052 was the exhibit number attributed to Map number 1, and I suggest we just run a series under that exhibit number.
THE COURT: Yes. All right. So they'll be Exhibits 1052-1, -2, -3, -20, -22, -23, -24.

(EXHIBIT 1052-1 - ENLARGED MAP - ANCIENT TIMES)
(EXHIBIT 1052-2 - ENLARGED MAP - ECOLOGY)
(EXHIBIT 1052-3 - ENLARGED MAP - SOAPBERRY)
(EXHIBIT 1052-20 - ENLARGED MAP - FISH)
(EXHIBIT 1052-22 - ENLARGED MAP - FISHING SITES)
(EXHIBIT 1052-23 - ENLARGED MAP - THE SALMON)
(EXHIBIT 1052-24 - ENLARGED MAP - THE HOMELAND)

MR. RUSH:
Q Thank you. Now, my lord, I'm going to direct the witness's attention to the base map of the small overlay series, and this is to your left-hand side on the easel. It is map 646. I'm not directing the witness's attention to any of the overlays.

Mr. Skoda, if you would just please look at this base map of Exhibit 646, and can you tell me from what is -- what -- from what is this base map derived?

A Okay. The base map itself is identical to the base map in the atlas at the scale of 1 to 4 million. We were requested to re-orient the map, and so we placed it north up and then repositioned the names. So that's the only difference between the base maps in the atlas and the base map that are being shown now.

MR. RUSH: All right. Thank you. Now, Mr. Skoda, I want to ask you, if you will, please, to look at the large overlay series map, which is Exhibit 646, in which case I must be wrong, my lord. The little series must be 647.

THE COURT: Yes, I think that's right.

MR. RUSH:
Q So the large overlay map series is 646. And, Mr. Skoda, I direct your attention, please, to the base map of 646, and could you just tell his lordship how the base map of large overlay series Exhibit 646 was prepared?

A Your lordship, it was necessary according to our task to put together a base map at the scale of 1 to 250,000, and that base map was to be opaque because it was to display or provide a base on which overlays were to be presented. The only way to produce such a base map was -- or the most effective way, I should say, was to take printed maps from the NTS series and put them together to provide a continuous presentation of the study area. We had a couple of problems in doing that, and perhaps some of those problems are obvious in the base, because the paper copies were unstable, therefore the boundaries of individual NTS sheets that form parallels of latitudes and meridians didn't quite connect properly, and there are gaps between edges of the sheets that represent this kind of a problem.

We also had a problem with one map. The information that was coming to us was defined on the basis of a map published by the provincial government. That map, unfortunately, was out of print, and we had to substitute a map that was produced of the same area

by the federal government agency. These two maps were of different vintage, and we had a problem with an information in one area which was quite different between the two maps. That was the other problem we had. It was probably due to the fact that the maps were produced with different control, and, therefore, the information that was published was slightly different.

Q Can you say anything in general terms about difficulties encountered in matching maps of different series?

A Yes. It is a fact that in general terms when maps are produced they are produced under certain control, that's the trigonometric stations that control the position of the map, and as more control is -- is established, there is a more precise representation of the information, so that when new maps are prepared, it is always mandatory to make sure that the new information is checked against the edge of the map with the information presented previously on an older map, and if it's within the error of the publication, that error is adjusted automatically. If it's major difference, which perhaps is induced by the fact that more appropriate or more accurate control was used, then that information would not be touched because it would be too severe a manipulation of the data.

Q Now, Mr. Skoda, in terms of the maps utilized for the construction of the base map on Exhibit 946, what were the two series used?

A They were both NTS series, but one was produced by the provincial mapping agency, and other was the Energy, Mines & Resources, which is the federal agency. Now, I don't recall what the provincial agency was called. It could have been environment -- Ministry of Environment or perhaps Ministry of Lands and Surveys. There seemed to be a change in that ministry name quite often.

MR. RUSH: Thank you. Those are my questions.

THE COURT: Thank you. Mr. Willms.

CROSS-EXAMINATION BY MR. WILLMS:

Q My lord. Mr. Skoda, when were you first retained by or on behalf of the plaintiffs to do cartographic work?

A In 1986.

Q Were you retained by letter or by a contract?

A We were retained by an agreement and subsequently by a

contract.
Q Do you have that contract?
A I do.
Q Do you have it with you?
A No, I don't.
Q For the cartographic work that Canadian Cartographics has done, what are the total billings to the plaintiffs for that work, approximately?
A Perhaps 300 --
MR. RUSH: Excuse me. My lord, I can see a rationale for probing an expert's billings providing the court with an expert opinion in a subject that is other than technical, and in this case the underlying information is fundamentally of a technical nature, and, therefore, my friend is asking a question of what it had cost to produce this type of mapping, and I wonder what the relevance of that is in terms of probing the value, if you will, of the opinion, which I think was the basis upon which your lordship decided to permit the questioning in this area previously. And while I can see it in that respect, this is essentially a question designed at what is the cost of preparing a map from a technical perspective, and I think it's -- I really think it's irrelevant to the -- to the proceedings.
MR. WILLMS: Well, my lord --
THE COURT: Mr. Willms.
MR. WILLMS: -- the witness has given evidence that he personally put interpretations and put them on as part of his cartographic expertise in explaining what he was depicting.
THE COURT: Wouldn't you have to challenge something that's depicted before the price he was paid would become relevant?
MR. WILLMS: Well, my lord, there is a challenge. You'll see the notice to admit does not admit the overprinting of Indian names, place-names for example, does not admit some of the opinion evidence that graces each sheet, some of which was written by this witness.
MR. RUSH: None.
THE COURT: Well, unless there's some objection to what was written though, Mr. Willms, it doesn't seem to me that it matters what he was paid. If there isn't any -- if you're challenging some of the labelling or some of the designations, then I would have to give the matter some further thought, but at the moment it doesn't seem to me to be a matter that's going to advance the

1 resolution of these issues in any way.
2 MR. WILLMS: Well --
3 THE COURT: You see, a good part of what the company was paid is
4 going to be technical cost that has nothing to do with
5 the area that you're seeking to explore. To be a
6 useful figure, it would have to be broken out into the
7 non-production cost, wouldn't it?
8 MR. WILLMS: Well, that would be helpful, my lord. We don't
9 have the contract. My friends haven't given me the
10 contract with Mr. Skoda as they have with other
11 witnesses. I don't know why. We know that Mr. Skoda
12 has a contract, but I don't have it. Maybe it's all
13 answered in the contract. But I don't know any other
14 way to get at this point than this way. Frankly,
15 maybe it's set out in the contract. Maybe it's X
16 dollars fee per day plus costs, but I don't know. I
17 don't have the contract.
18 THE COURT: Well, have you asked for the contract?
19 MR. WILLMS: My lord, letters have been written as recently as
20 last Friday. I didn't expect to see Mr. Skoda in
21 light of the exchange of the notices to admit. We had
22 received no letter from my friend setting out what
23 opinion evidence in addition to what we'd admitted
24 they wanted to lead from Mr. Skoda. I have to admit
25 that we did not send our standard letters in respect
26 of Mr. Skoda because in light of the non-delivery of
27 any extra opinion last Thursday, we thought it wasn't
28 necessary. It wasn't until Saturday morning, when I
29 got into the office, that I got my friend's letter
30 that Mr. Skoda was indeed going to be called as a
31 witness. Now --
32 THE COURT: Well, Mr. Willms, I think that until you challenge
33 something that's on the -- on the maps or question the
34 accuracy of them in some way, and in some serious way,
35 I don't think what he billed for it is going to be of
36 any assistance. If there's an issue about the
37 reliability or the bone fides of any of the material
38 that's been displayed, then it might become relevant,
39 but until that happens, at the very least, I would not
40 be disposed to order the disclosure of this
41 information.
42 MR. WILLMS: Well I'll come back to that, my lord.
43 THE COURT: All right.
44 MR. WILLMS: I do request the contract though, my lord. And
45 it's my submission that there's no -- in light of your
46 lordship's earlier ruling on what counsels'
47 obligations were in terms of a list of documents in

the possession of a witness, there's no obligation on us to ask for anything until my friends produce a list, and that was part of your lordship's order. We got no list. We fully anticipated that Mr. Skoda's attendance at this trial would be unnecessary as late as Friday afternoon, and I don't think my friend can duck behind the fact that we didn't specifically ask for information from a witness we didn't expect.

THE COURT: Is there any problem about the contract, Mr. Rush?

MR. RUSH: No. I should express to my friend that I only learned of the existence of such a contract this morning.

THE COURT: Yes.

MR. RUSH: And furthermore, I can't really see why my friend is so concerned about the opinions. The opinions are in the maps all over this courtroom.

THE COURT: Yes. Well, that's why I'm not disposed to get into the area unless there's some serious challenge of what is on the maps that have been prepared. But if there's no objection, I don't see why the contract shouldn't be produced.

MR. WILLMS:

Q Have you ever done on-the-ground survey work?

A Ever?

Q Yes.

A Yes.

Q All right. Did you attend at any time in the claim area in respect of the work that you've done in this case?

A I don't understand the question did I attend.

Q Did you attend in any of the land claim territory? You know you've drawn these boundaries on each map, which purport to be the boundaries of Gitksan and Wet'suwet'en territory --

A Yes.

Q -- correct?

At any time after you were retained did you attend at any location within those -- within that claim territory?

A I visited Hazelton, but perhaps that's not the question.

Q All right. When did you visit Hazelton?

A In spring of 1986.

Q Is that the only time that you have been up in the claim area?

A No. I was in the area subsequently.

Q When was that?

A That was '87. But perhaps I should say that even though I was in the claim area, I was not necessarily there in connection with the project.
Q All right. Well, that was going to be my next question. Did you meet any of the plaintiffs when you were there in '86 or '87 in respect of this -- the evidence that you're giving?
A I met with the people on the project, yes.
Q And who did you meet with?
A Neil Sterritt, Marvin George, for example.
Q Anyone else?
A Yeah, the research people, such as Susan Marsden, Richard Overstall.
Q Was this in '86?
A Yes.
Q Was this prior to you, Canadian Cartographics, being retained?
A Yes.
Q And then you say that the description of the work that you were to do was set out in the contract that you ultimately signed?
A Most of the work, the gist of the work.
Q Have you determined at any time whether any or all of the boundaries that you have laid out on the 358 series can be laid out on the ground?
A I'm not really sure what counsel is asking me.
Q Well, you've done survey work to survey lines on the ground?
A Yes.
Q All right. Have you taken a map before out to the field to determine whether or not a boundary or a line on the map can be physically laid out in the field? Have you ever done that?
A Yes. Location surveying, yes.
Q Did you take any of your maps up to the field, and I'm talking about the 358 series, to see whether or not any of the boundary lines that you drew on the 358 series could be laid out on the ground?
A The answer to that, no is no, but I really fail to see what that would achieve. It's possible to locate information on the map on the ground. Can counsel help me there? I don't really understand why you asking me that.
Q Did you prepare drafts of any of the maps for the 358 series or did you just do one final version?
A We prepared a final graphics from the information that -- that we gathered for the purpose, yes.

1 Q But just for example, you're looking at -- let's look
2 at the map 2, 358-2.
3 A Yes.
4 Q Did you do draft sketches or outlines before you
5 prepared the final version?
6 A Well, perhaps I should describe the process to the
7 counsel. Information that comes to us is in such a
8 form that it's usable presumably, in some cases lines
9 on another map. It is our function to take that
10 statement as is because it has authority of a
11 scientific investigation, take those lines and locate
12 them on our base map the most precise possible way.
13 Q All right. So you take the information that comes in
14 from whatever source, and you put it on to your base
15 map --
16 A Yeah.
17 Q -- correct?
18 A Yes.
19 Q Do you then send that back to the plaintiffs or their
20 counsel for their comments on what you've done?
21 A What we normally do is that we continue with the
22 production process, and when the transformation of the
23 information to the new scale and all the design
24 components have been completed and the final graphics
25 have been prepared, we make a proof of what we've
26 done, and that proof is sent back to the author of the
27 thematic information to verify, agree with, find
28 possible spelling mistakes.
29 Q So, for example, looking at 358-2, after you prepared
30 that you would make a proof and send it to Miss
31 Haeussler?
32 A Yes.
33 Q And she would send it back with comments?
34 A yes.
35 Q And did that happen?
36 A It did, yes.
37 Q Do you still have those proofs?
38 A No. Information -- information that's produced during
39 the work is normally sent back with the original
40 information to the contributors.
41 Q All right.
42 A The authors.
43 Q So that any of the maps, for example Map 1, 358-1,
44 which is the ancient times --
45 A Yes.
46 Q -- map, you would prepare a proof, you sent the proof
47 to Miss Marsden, she sent it back to you with

1 comments, you produced the final and sent everything
2 else back to her?
3 A Miss Marsden's project is different to the procedure
4 that we described previously. Miss Marsden's did not
5 have anything defined in line form. She had concepts,
6 she had descriptions, she had sketch ideas. It was
7 our function to put it in some form that we understood
8 reflected her opinion, her findings. Any of those
9 definitions would have been passed back to her to make
10 sure that we are continuing on the lines that she
11 agrees with.
12 Q Okay. Other than the NTS series that you described
13 that you used to produce the base maps, and I think
14 you mentioned the DIA maps, do you still have any of
15 the information or copies of the information that you
16 used to make any of the 358 series maps, or did you
17 send them all back?
18 A This one here?
19 Q All the three -- the whole --
20 A The original maps?
21 Q The whole series.
22 A Well, if it's NTS information, we have that as part of
23 our resource material. We have that on file. When
24 the maps are used up, we go and buy another copy kind
25 of thing. So that information exists in our -- in our
26 map library.
27 Q No, I mean other than the NTS maps --
28 A Yes.
29 Q -- and other than the DIA maps and other than
30 government maps that you used to produce base maps,
31 you also received information from people noted on the
32 maps that gave you the information to put on the map,
33 correct?
34 A Um hum.
35 Q All right. You have to say yes or no.
36 A Yes.
37 Q Do you have any of that information still in your
38 possession?
39 A No. The general procedure is when the project's
40 finished, the information is sent back to the
41 originator.
42 Q All right. And you followed that process here?
43 A Yes.
44 Q Now, did you communicate in writing or receive written
45 communications from the Gitksan-Wet'suwet'en Tribal
46 Council or Richard Overstall?
47 A Occasionally, yes.

Q Do you still have those?
A Yes, some.
MR. WILLMS: All right. I'd ask for those too, my lord.
THE COURT: What is your suggestion, Mr. Willms, that these materials be obtained at lunch-time?
MR. WILLMS:
Q Well, my lord, if they can be obtained. I don't know. I understand that he's in Vancouver. I'd assumed that he would just have a file folder, a job file folder. Maybe I'm wrong.
But is your correspondence related to the work that you did for the plaintiffs in a particular file folder or filing cabinet?
A Yeah, it's in a folder.
Q And so it's easy for you to retrieve it?
A Could be done, yes.
MR. WILLMS: All right. As soon as the witness conveniently can, my lord.
THE COURT: All right.
MR. WILLMS:
Q Did you communicate in writing or receive written communications from Dr. Hatler, Mr. Chilton, Miss Haeussler, Susan Marsden, Mike Morrell or Marvin George? And I'm talking about non-map, just a letter back and forth.
A Transmittal letters?
Q Transmittal letters, yes.
A Probably notes sending information back, please change something, that kind of thing.
Q Right. Yes. And you still have those?
A No, I don't.
Q Those all went back?
A If they referred to the -- to the material on the map, then those would stay with the map.
Q You didn't keep a copy?
A No.
Q Dealing with the series -- if I can put Dr. Hatler's series of maps in with Miss Haeussler's series, you know that Dr. Hatler's series is the animal distribution, Miss Haeussler's is the berry distribution, the series of maps?
A Yes.
Q All right. Can you describe the type of information that you received from Dr. Hatler and Miss Haeussler to prepare those maps?
A Starting with Hatler, information was in form of an overlay, a transparent overlay that fitted a 1 to 1

1 million map, which is equivalent to the NTS series.
2 That's the international map of the world published by
3 the federal government. That overlay had the
4 boundaries of the distributions.
5 Q On it?
6 A On it. Information that -- that were received from
7 Miss Haeussler was in the form of paper copies marked
8 and coloured with crayons that provided the
9 information for the distribution of the berries and
10 the biogeoclimatic zones.
11 Q All right. How did you orient the material that you
12 received from Dr. Hatler to the base map that you had?
13 A I remember we had a particularly tough task because
14 the overlays didn't fit too well the bases that Hatler
15 used, and so we had to take extra precaution and went
16 through extra work to make sure that we understood how
17 best to fit it to the bases and then transfer the
18 information to our base.
19 Q But when you got the overlay from Dr. Hatler --
20 A Yeah.
21 Q -- were there geographic features on the overlay that
22 you keyed on to transfer the information on the
23 overlay on to your map?
24 A Yes. Not geographic features. That was graticule
25 intersections, that is, the intersections of the
26 parallels of latitude and meridians as little crosses.
27 Q And do you know where Dr. Hatler received the overlays
28 that he sent to you? Did you prepare them for him?
29 A No. He prepared them.
30 Q He prepared them?
31 A That was his work, yes.
32 Q All right. Including putting on the bearing notes
33 that you've --
34 A The little crosses.
35 Q The little crosses.
36 A Registration marks.
37 Q So that came to you from Dr. Hatler?
38 A Correct.
39 Q And how about Miss Haeussler, same thing?
40 A No, Miss Haeussler's was a paper copy which had the
41 background information on it --
42 Q Yes.
43 A -- as well. It had the base map information as well
44 as her own information superimposed, so it was very
45 easy to recognize where her lines are located in
46 relation to the topographic detail, and we can then
47 transfer with great accuracy her lines to our base

maps.
Q Okay. She was using some NTS, is that your --
A Correct, yes. 1 to 1 million series, yes.
Q All right. Now, did you use any information from Marvin George in preparing the 358 series?
A Yes, we used the definition of the outer boundary of the Gitksan-Wet'suwet'en territories.
Q And what you got from him was a -- what did you get?
A A large map.
Q A large map?
A About 1 to 250,000 scale.
Q Susan Marsden I think you described already. You received notes from her?
A Sketches, notes, text.
Q And that was all returned?
A It was all returned, yes. If it wasn't returned, then it wouldn't have been kept because we don't normally keep any information which is of an intermittent nature.
MR. WILLMS: Madam registrar, do you have Exhibit 1051?
THE REGISTRAR: Yes.
MR. WILLMS:
Q Could you turn in exhibit -- this is from Miss Marsden. Mr. Skoda, could you turn in Exhibit 1051, and you might want to -- you might want to have Map 1 in front of you at the same time, 358-1. Did you use the map at 1051-16? You'll see at the very bottom there's a note at the bottom: "Lou, please call me when you get this. Thanks, Susan." You have to sort of turn it sideways. No, tab 16. Sorry.
A Yeah.
Q Did you use that in preparing 358-1?
A Yes.
Q All right. And what part did -- what part of the map did you use -- did you prepare 358-1 from from that? You'll see that there's two parts to 358-1. There's a large map. And maybe if I can point you to 1052 here, there's the inset "Creation of the Fireweed Clan" down in the lower left-hand corner, and then there's the main, if I can call it, main map. Which part did you use that for?
A Both. I should point out that this was the initial information in the sketch map form which started the cycle of iterations where we -- as we went through we were able to more precisely determine what Miss Marsden had in mind when she was formulating her concepts. So this is an initial contribution to the

preparation of the map.
Q And how did that process work? Was Miss Marsden down in Vancouver with you?
A No, she wasn't. She was up north in Hazelton, and we exchanged notes in this way. This I would regard as a note from her. I would react to it. I would prepare a sketch that would represent my interpretation of what she sent me, and I would perhaps send it back to her to react to. We would talk on the phone in between.
Q Mr. Skoda, I'm showing you a map that says in the upper right-hand corner "Gitksan and Wet'suwet'en Chiefs Map 1 Ancient times - the arrival 10 000 BP to 250 BP." Is that -- did you prepare that --
A Yes, I did.
Q -- or part of it?
What did you use to prepare this?
A Information that I gathered from Miss Marsden, information that perhaps came in the form as demonstrated by the previous exhibit.

MR. RUSH: Excuse me, by letter of June the 30th Mr. Grant delivered this copy -- or this map to my learned friends, and I provided it to Mr. Willms yesterday, and the text of this letter is this:

> "Upon a review of my documents it appears that there was an additional draft map of Exhibit 358(1) which was prepared and reviewed by Susan Marsden. My understanding is that this map was actually prepared by Lou Skoda as a culmination of the data referred to by Susan Marsden.
>
> I am not in a position to be able to copy this map in a manner which would render all the data on the copy. Therefore I am arranging to have the map with me on Tuesday morning July 3rd, 1989. I anticipate that Lou Skoda may refer to this map in his evidence."

MR. WILLMS:
Q I thank my friend. That was most helpful. Now, returning to the document, Mr. Skoda, which parts of this is your work and which part is Miss Marsden's writing?
A I would say everything is my work except the notes in green. That is not my handwriting.
Q All right. Now, there are some notes in green in

boxes.
A Yes.
Q Those are not your handwriting?
A No.
Q And then there are some notes -- there are two Post-it notes, the little yellow stickies on the map. Whose writing is that?
A I don't know. Not mine.
MR. WILLMS: Not yours.
THE COURT: Is it convenient to adjourn, Mr. Willms?
MR. WILLMS: Yes, my lord. Perhaps we should just mark the map before we break, my lord, and then we'll carry on after lunch. Could it be the next exhibit?
THE COURT: Yes. What's the number?
THE REGISTRAR: 1076 -- no. 1077.
THE COURT: 1077, I think.
MR. WILLMS: 77.
THE REGISTRAR: Yes. Exhibit 1077.

(EXHIBIT 1077 - MAP TITLED ANCIENT TIMES)

THE COURT: All right. Thank you. Two o'clock.
THE REGISTRAR: Order in court. Court stands adjourned until two o'clock.

(PROCEEDINGS ADJOURNED AT 12:31 P.M.)

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

Leanna Smith
Official Reporter
United Reporting Service Ltd.

1
2 (PROCEEDINGS RECONVENED PURSUANT TO ADJOURNMENT)
3
4 THE REGISTRAR: Order in court.
5 THE COURT: Willms.
6 MR. WILLMS: My lord. My lord before I carry on with the
7 cross-examination, I would like to hand up and have
8 marked my friend's --
9 THE COURT: Before you do that, Mr. Willms, how should I
10 describe this Exhibit 1077 which we marked just before
11 lunch. I suppose the title on it is as good as any,
12 is it?
13 MR. WILLMS: I think the title is as good as any, my lord.
14 THE COURT: All right. Yes. All right. What do you want to do
15 now?
16 MR. WILLMS: My lord, my friend marked a notice to admit as
17 Exhibit 1071, and I thought just for completeness his
18 cover letter should be marked as well, and that's what
19 I handed up, and it could either be 1071-A or it could
20 be the next --or 1078. It doesn't matter, but it's
21 just that you'll see, my lord, that my friend did not
22 ask us for any admissions with respect to the
23 over-printed materials. I just thought that that
24 should be clear.
25 THE COURT: All right. Well, this should be 1071-1 then.
26 There's no objection?
27 MR. RUSH: No, I shouldn't think so, but if my friend is really
28 interested in true completeness, then we'd file all
29 the preceding correspondence between Mr. Goldie and
30 myself.
31 MR. WILLMS: I'm happy to do that, my lord, if my friend wants
32 to.
33 MR. RUSH: Might as well.
34 THE REGISTRAR: 1071-A.
35 MR. WILLMS: A?
36 THE COURT: Yes. Capital A.
37
38 (EXHIBIT 1071-A: Covering letter to Exhibit 1071 of
39 Mr. Rush)
40
41 MR. WILLMS:
42 Q Thank you, my lord.
43 Mr. Skoda, the -- you've identified on Exhibit
44 1077 the writing of Miss Marsden. Anything underneath
45 it that looks like a blueprint, is that something that
46 you put on?
47 A I don't think I identified the handwriting as Miss

1 Marsden's. I cannot do that.
2 Q You just said it wasn't yours?
3 A Right.
4 Q All right. Which part of this is information that you
5 put on, and which part is information that someone
6 else put on, aside from the handwriting which you've
7 already given evidence about?
8 A All the information, other than the green handwriting
9 plus the stamp with red handwriting identifying this
10 document as a court document, I think is all mine.
11 Q All yours, including the identification of the
12 document at the top? Was that your --
13 A The heading?
14 Q Yes.
15 A Yes.
16 Q Was that your heading?
17 A Yes.
18 Q That's not Miss Marsden's heading?
19 A No.
20 Q So -- and you're the one that put "10,000 years" on it
21 "BP"?
22 A Yes.
23 Q That's your heading?
24 A Yes.
25 Q And you got that from your interpretation of the ice
26 sheet map; is that right?
27 A No.
28 Q No?
29 A I got that interpretation from information supplied to
30 me by Miss Marsden.
31 Q Oh, okay. And that's where you got the 250 BP as
32 well, from information --
33 A Yes.
34 Q -- supplied by Miss Marsden. Now, you'll note that in
35 the final Exhibit 358-1, and also the larger one which
36 I think is 1052, that it just says "Ancient times -
37 the arrival about 10,000 years BP". Who told you to
38 take 250 BP off the map?
39 A That was done in consultation with Miss Marsden.
40 Q All right.
41 A Maybe I can describe, your lordship, how this map was
42 created. Would that help?
43 Q Well, perhaps you could just tell me what she said to
44 you. Did she just tell you take 250 BP off and change
45 the language? She told you to do that?
46 A To that effect, yes.
47 Q Now, this map Exhibit 1077 is a draft of, if I can

1 call it that way, the body of the larger map; correct,
2 the main body?
3 A I would not use the term draft.
4 Q What would you call it?
5 A It's the first attempt to put the information into
6 graphic form within the context of a base map.
7 Q So it's the first attempt to put the information into
8 a graphic form for the, if I can call it this, the
9 large part of 1052; correct?
10 A Correct.
11 Q It's not -- you've got a reference in the upper
12 right-hand corner to "proposed inset map"; do you see
13 that?
14 A Yes.
15 Q And what you're contemplating there is putting in your
16 ice sheet?
17 A Ice information, that is correct.
18 Q And then later on -- when was the fireweed clan added?
19 A Subsequently.
20 Q All right.
21 A Actually, may I just amplify on this? The proposed
22 inset map was in fact for the fireweed, and the -- on
23 this document here there is a little inset map on the
24 bottom left-hand corner. That inset map was intended
25 for the ice --
26 Q All right.
27 A -- information.
28 Q Now, if you still have Exhibit 1051, which is a grey
29 binder, in front of you?
30 A Yes.
31 Q And you've already looked at 1051-16, and this is a
32 document that was prepared by Miss Marsden and sent to
33 you; correct?
34 A Looks like a copy of it, yes.
35 Q Yes. Now, I'm just turning back one tab to 1051-15,
36 which has been identified as another map prepared by
37 Miss Marsden. Did you see that map?
38 A There is nothing on the document to identify that I
39 did see it. I might have.
40 Q Do you recall what the map looked like or whether you
41 got a map that showed the origin of the fireweed clan
42 as depicted on Exhibit 358 and 1052?
43 A No, I don't recall the detail.
44 Q Well, do you recall generally that you got a map --
45 A Yes.
46 Q -- from --
47 A Yes.

1 Q All right. And you don't have any of those any more?
2 A No.
3 Q They all went back to Miss Marsden?
4 A That's correct.
5 Q Right. Now, I'd just like to deal with the inset map
6 on 358-1 now, and perhaps -- madam registrar, I don't
7 need the grey binder 1051 any longer but, Mr. Skoda,
8 if you could turn to 358-1, which should be the
9 first -- your first map?
10 A Okay.
11 Q And the inset map where the reference is to Prest,
12 where did you get the text for that? Is that your
13 opinion in the text there? By text I mean there are
14 written words, "ice margin positions during the last
15 ice sheet retreat at intervals of 10,000 BP, southern
16 and northern refugia", all of that where you cite
17 Prest as the source. Is that your language, your
18 interpretation of Prest?
19 A Yes.
20 Q Where did you -- what does refugia mean? Perhaps
21 Prest could be put to the witness, and when you refer
22 to Prest you're referring to the large -- that's
23 Exhibit 1076. Now, just so that we're clear, when you
24 refer to Prest in Exhibit 358 you're not referring to
25 any text, you're referring to this map?
26 A Correct.
27 Q Correct. All right. Would you please show me where
28 the word refugia appears on the Prest map?
29 A I cannot do that.
30 Q Why not?
31 A I'm not aware that there is a word like that.
32 Q Oh, well, who told you what refugia meant?
33 A I'm trained in geography. I had training in geology.
34 I'm familiar with the process of glaciation
35 deglaciation. The term refugia is a well known
36 technical term that describes an area that was not
37 glaciated. I used it because of my knowledge of this
38 phenomenon.
39 Q Nobody told you to put that language on there, you put
40 it on yourself?
41 A Correct.
42 Q Now, you also put on that document -- Prest says
43 "recent ice" and you say "recent glaciation". Is that
44 just a mistake? Did you mean to say -- what I'm
45 referring to here is you say "areas", if you look in
46 your text, third line down, after you use the word
47 "refugia", you have " - areas not glaciated during the

Wisconsin and recent glaciations." That's what you say, and Prest talks about the Wisconsin and "recent ice". Do you know whether there's a geological difference between a glaciation and the term Wisconsin ice or recent ice? Do you know whether there's a geological difference in the terms?

A There shouldn't be a geological difference. There is a difference in terms of meaning of these words. One describes a phenomenon, the other describes a process. But the ground resolution of both should be identical.

Q All right. And that was another interpretation that you were able to use in your skills to add to this; is that right?

A Yes.

THE COURT: I was told this represents 8,500 BP.

THE WITNESS: One of the lines on the map is 8,500 Before Present, yes, your lordship.

THE COURT: Well, where it says "present ice cover", what does that mean?

MR. RUSH: My lord, which map are you referring to now?

THE COURT: Well, this is --

MR. RUSH: The large Prest map?

THE COURT: Yes.

MR. RUSH: The witness is not looking at that map.

THE COURT: Oh, sorry, haven't we got the same thing?

THE WITNESS: Is this the map?

THE COURT: We have the same thing, don't we?

THE WITNESS: Like this?

THE COURT: This has a number on it. I'll find the number. 1076.

THE WITNESS: 1076, yes your lordship.

THE COURT: Down here it says, with the dark blue, it says "present ice cover".

THE WITNESS: Okay, your lordship, this means the current mountain tops covered by ice and snow. That's the modern one.

THE COURT: Oh.

THE WITNESS: As defined by NTS topographic maps and that kind of a presence. Most recent. That's these very dark areas.

THE COURT: Yes.

THE WITNESS: Those are the highest mountains of the coastal range.

THE COURT: Yes.

THE WITNESS: And indeed I can point out --

THE COURT: There's lots more mountains in the Rockies there covered all year round that are shown there?

THE WITNESS: At this scale I guess it's not possible to show all the little caps.
THE COURT: I see.
THE WITNESS: So there may be a lot more because they are high, but not very large.
THE COURT: So you think "present ice cover" there means at the date of the map?
THE WITNESS: Publication, '69.
THE COURT: '69. All right. So -- wasn't I given something this morning that talked about 8,500 BP?
MR. RUSH: You were, my lord, but that was in relation to the inset map.
THE COURT: Yes.
MR. RUSH: And the inset map shows contour lines of various ages of glaciations. And if you look at the inset map on map 1, Mr. Skoda illustrated that the most recent of those lines was 8,500 BP and I think he said that the most aged of those lines was 1,500 -- or 15,500 BP, and your lordship can see the dotted contour lines on the inset map for that.
THE COURT: All right. What map number was that?
MR. RUSH: Map 1 in the map atlas.
THE COURT: Map 1?
MR. RUSH: Yes.
THE COURT: Oh, yes. Thank you. 15,500 wasn't it?
MR. RUSH: Yes, my lord.
THE COURT: Thank you.
MR. WILLMS: Now, I have finished with those maps, my lord.
THE COURT: Okay.
MR. WILLMS: I wonder if Exhibit 10 -- is that 1061?
THE REGISTRAR: Yes.
MR. WILLMS:
Q -- could be put to Mr. Skoda? This is a mylar prepared by Marvin George. You recognize this?
A I recognize the territory. I recognize the images.
Q If we can go down here maybe we can find your -- and do you recognize your note? Is that your note in the corner there?
A That is my note.
Q Map 9A?
A Yes.
Q And you prepared an overlay which you know has been marked and described as 9A, an overlay of your base map?
A That's correct.
Q And is all the information that you used to produce the overlay contained on Exhibit 1061, which is the

mylar from Marvin George, or was there further information that you received from Mr. George in order to prepare the overlay?
A My recollection is that this would have been the source of information for map 9A.
Q And you recall that map 9A is the claimed Gitksan territories?
A The northern part of the map, that's correct, yes.
Q Right. And you'll see on this mylar that there are pencil marks?
A Yes.
Q Are those, the pencil lines, the lines that you used to outline the boundaries that are depicted on 9A?
A Yes.
Q All right. And where Mr. George has -- and perhaps you can tell me whether what the -- there is just south of Ritchie on -- looks like just south of Glutch Canyon, you'll see that he's -- it looks like a backwards "S" that Mr. George has put on the map. Is that -- what cartographic significance does that have?
A That indicates that two areas are a part of one polygon. Two separate units are part of one distribution.
Q Does it mean that there's an overlap?
A No, it doesn't mean an overlap. It means that either they're joining or that they belong to one and the same territory.
Q Oh, so this shows you that --
A That the small polygon and the large polygon connected by that crooked sign are one and the same territory.
Q All right. Now, did you do anything other than taking the information from 9A and putting it on to an overlay or did you phone Mr. George and discuss with him any difficulties that you saw with the boundaries that he'd laid out?
A We would have simply taken that information and transformed it to where I repositioned that information onto our base.
Q Well, did you not call him and say to him "Mr. George, it appears that you're trying to follow the height of land here, but when I put it onto my base map it's not following the height of land?" Do you remember conversations like that?
A I don't remember.
Q No. All right. I'm showing you now Exhibit 1011 -- oh, just before we leave 1061, you'll see that on 1061 there are named territories in pencil. There we are.

1 For example, you can see in each territory there is a
2 name written in?
3 A Yes.
4 Q All right. And those -- that's where you obtained the
5 information for the names that you put on 9A?
6 A That's correct.
7 Q All right. And were there any changes that took place
8 as a result of phone calls or did you just simply take
9 the information that was on that document and transfer
10 it?
11 A I presume that it was simply taken from the document
12 we're looking at.
13 Q All right. All right. Now, I'm showing you Exhibit
14 1011, and you'll see in addition to having a
15 reproduction of your note respecting map 9A, you also
16 have a note on this document map 9B and your
17 signature?
18 A Yes.
19 Q All right. And this is the document that you received
20 from Mr. George in order to prepare overlay 9B?
21 A That's correct.
22 Q And you simply took the information that Mr. George
23 had provided on this and transferred it onto 9B onto
24 your overlay; is that correct?
25 A Yes.
26 Q All right. And to the best of your recollection were
27 there any telephone discussions about whether
28 boundaries should be shifted to conform to
29 topographical features once you'd reviewed your base
30 map?
31 A I don't recall a telephone conversation, but I do
32 recall we had a problem fitting the information to
33 the -- to our base.
34 Q All right. And how did you resolve that?
35 A We adjusted the line to conform to the definition of
36 the feature on our base.
37 Q So that you -- because you had a topographic base that
38 showed heights of land and drainages and the like?
39 A Yes.
40 Q And so when you got this map where a boundary looked
41 like it should follow a height of land, you changed it
42 from the mylar in putting it onto the overlay; is that
43 correct?
44 A Yes.
45 Q Once again, in respect of the named houses here you
46 took the names and put them on 9B?
47 A Yes.

1 Q Were -- you said earlier that Mr. George sent you a
2 copy of a map. Did you know that the map that he
3 originally sent you was appended to a statement of
4 claim or an amended statement of claim in this action?
5 A No, I didn't know.
6 Q Did you prepare any of the statement of claim maps
7 or --
8 A I'm not sure what statement of claim maps are.
9 Q Well, maybe I can put it this way. You can see behind
10 you the overlay series, the 646 overlay series and the
11 base map?
12 A Yes.
13 Q Correct. You've got the 358 series in front of you;
14 correct?
15 A Yes.
16 Q And you've made some larger versions of the 358
17 series?
18 A Yes.
19 Q Have you made any other maps for the plaintiffs as
20 part of your work?
21 A Yeah, we might have made some maps.
22 Q Do you recall what was depicted on those maps?
23 A Administrative boundaries.
24 Q Sorry, those -- do you mean the administrative
25 boundaries of the province, provincial administrative
26 boundaries?
27 A Yes.
28 Q Yes. Do you still have that map or copies of that
29 map?
30 A Yes.
31 Q All right. And that is still in your possession; is
32 that correct?
33 A Yes.
34 MR. WILLMS: All right. I'd ask that that be produced.
35 MR. RUSH: I oppose that.
36 MR. WILLMS: Well, my lord, my friend -- now, if I can just
37 find, my lord, Exhibit 1018-13 was the opinion summary
38 that my friends provided us with in March of 1987.
39 THE COURT: For which witness?
40 MR. WILLMS: For Marvin George.
41 THE COURT: Yes.
42 MR. WILLMS:
43 Q And during the cross-examination of Marvin George on
44 page 12 I asked Mr. George, and this is the opinion
45 that my friends presented us with in 1987. On page 12
46 Mr. George said: "I also produced an overlay showing
47 all administrative boundaries based on information

obtained from the Ministry of Forests and the Ministry of Lands, Parks and Housing." I asked Mr. George in cross-examination where that was. He said it was with Mr. Skoda. He says he also produced an overlay showing transportation routes based on the 1 to 250,000 series.

Do you have that map, the transportation routes overlay?

A No, I don't. I recall that information was supplied to us and was sent back to Hazelton.

MR. WILLMS: All right. Well, my lord, the transcript note for Mr. George is Volume 220, page 15989, lines 5 to 23, where he identifies that he did the work and to the best of his knowledge the material was in the possession of Mr. Skoda. Now, it's an opinion that was delivered to us along with a document which we expected. We asked for it when Mr. George was here, and I'm asking for it again. I don't know how many times I have to ask for something before my friends produce it, but I've asked for it and I'm asking for it again. And my friend advised us of it. It was part of Mr. George's opinion. It's not a draft. It's part of his opinion report delivered to us in '87, the summary of it, and in my submission I'm entitled to it.

THE COURT: Miss Koenigsberg?

MS. KOENIGSBERG: Well, I have to agree, but it is my friend's request. I can't understand the basis upon which it would not be produced.

THE COURT: We'll find out. Mr. Rush?

MR. RUSH: Well, I think you should find out whether or not the two documents that are being referred to by -- the two documents talked about here are the same ones.

THE COURT: Well, they're described in the same terms.

MR. RUSH: Well, they might be.

THE COURT: Administrative boundaries.

MR. RUSH: They might be. I don't know if they're the same ones. I don't know. There's a map with administrative boundaries that was produced for counsel, and my position is that's part of counsel's brief.

THE COURT: Well, can you assist us in that, Mr. Skoda, or you cross-examine if you wish, Mr. Willms.

MR. WILLMS: Well --

THE COURT: Well, how many maps of administrative boundaries did you prepare?

THE WITNESS: There was one.

MR. WILLMS: Well, that kind of narrows it down, my lord.
MR. RUSH: I agree with that.
THE COURT: Sounds like the same one. I think it should be produced.
MR. RUSH: Well, my lord, there's a map that is said in that transcript that was produced by Mr. George, and what is not known is if the map that is being talked about by Mr. Skoda is the map that is talked about by Mr. George. I don't know the answer to that question.
MR. WILLMS: Well, I mean, Mr. George says --
THE COURT: What troubles me, Mr. Rush, is the series -- or this investigation started with Mr. Willms asking the witness what other maps he prepared for the plaintiffs, and he said he prepared a map with administrative boundaries.
MR. RUSH: Yes.
THE COURT: Not if Mr. George prepared a map.
MR. RUSH: Yes, but the two maps may be entirely different.
THE COURT: He says he only prepared one.
MR. RUSH: Well, but Mr. George prepared one. This witness said he prepared one. Are the two maps the same? I -- my understanding is they aren't. They might be. I think we should ask the witness. But if the map that was produced --
THE COURT: All right.
MR. RUSH: -- with the administrative boundaries about which the witness is talking about is the one that I'm aware of, then that was produced for me.
THE COURT: Well, I'm sure this isn't going to come to anything, but let's explore it further then, Mr. Willms. Perhaps you want to cross-examine further and see if that problem can be cleared up.
MR. WILLMS:
Q Well, do you -- in Mr. George's report, Mr. Skoda, Mr. George describes the map in these terms: He says:

> "I also produced an overlay showing all administrative boundaries based on information obtained from the Ministry of Forests and the Ministry of Lands, Parks and Housing."

Do you recall -- and, my lord, just to be fair, I should put what the witness said about that. I asked him:

> "Do you still have an overlay showing some or

all administrative boundaries based on information obtained from the Ministry of Forests and the Ministry of Lands, Parks and Housing?"

And his answer was:

"I don't have them anymore. No. They have gone out of my possession and I don't know where they are. I believe they may have been sent to Lou Skoda to use. I don't know where they are."

Now, Mr. Skoda, do you have in your possession an overlay showing administrative boundaries based on information obtained from the Ministry of Forests and the Ministry of Lands, Parks and Housing?

A Mr. George sent us a number of maps and I recall those two you mentioned would have been part of that batch that he's referring to. I agree what he described was something I'm familiar with. I've seen it. What we normally do is that when we finish with the information we send it back to the originators. To the best of my knowledge that information was sent back to Hazelton.

Q All right. But you'd have to check the document to make sure of that, wouldn't you?

A I could go through our stores and just double check, make sure that that was done.

Q Right. Now, Mr. George also said in his opinion report provided to us by my friends in 1987:

"I also produced an overlay showing transportation routes based on the 1 to 250 thousand series which I obtained from the Ministry of Environment and the Ministry of Forests. This overlay was produced to show where resources are transported through the territories."

Now, do you recall seeing that overlay?

A Yes.

Q Do you still have it or do you know?

A I believe I don't have it. I believe that that information, plus any other information in that series, was sent back to Mr. George.

Q All right. And you'd have to check the documents that

1 you have in your possession to make sure?
2 A I would be pleased to do that.
3 Q All right. Now, what else could there be in your
4 possession, and just give it a general description, in
5 terms of a map prepared of this area, any mapping
6 work, what else do you still have?
7 A All the published information.
8 Q No, I'm talking about maps that you produced or you
9 took a part in producing?
10 A What I've all described here in the atlas.
11 Q All right. So other than perhaps these overlays which
12 may or may not be in your office, everything else is
13 in court either in the map atlas or in the overlay
14 series behind you on the wall, the 646 series, or the
15 larger blowups; is that right?
16 A No, that is not right.
17 Q All right. What else do you have?
18 A We have other maps. I mentioned the transportation --
19 sorry, the administrative boundaries.
20 Q Administrative boundaries. Yes.
21 A Transportation is incorporated in all the maps that we
22 produced.
23 Q Yes.
24 A So the transportation network would not be
25 appropriate.
26 Q Anything else that you can recall?
27 A Not right now.
28 Q But if you searched your files you might be able to
29 locate other maps?
30 A Anything specific?
31 Q Yes, specifically anything that you prepared in
32 relation to this case and anything that you prepared
33 on the instructions of the plaintiffs or plaintiffs'
34 counsel?
35 A Okay.
36 Q But you can't think of anything other than what you've
37 just outlined right now?
38 A I would like to check.
39 MR. WILLMS: All right. Well, my lord, just -- I'd like the
40 witness to check and I'm sure if he finds anything
41 that it will be forthcoming.
42 THE COURT: All right. Well, I think we ought to bring some of
43 these things to a conclusion. I think the witness
44 should deliver the maps that he has within the
45 category we've been discussing to Mr. Rush and Mr.
46 Rush can --
47 MR. RUSH: My lord, I can tell you I have maps of administrative

1 boundaries --
2 THE COURT: Yes.
3 MR. RUSH: -- that have been prepared for plaintiffs and
4 plaintiffs' counsel, and I'm claiming that they are
5 part of solicitors' brief.
6 MR. WILLMS: Well, you know, unless my friend can come up with
7 Marvin George's map, in my submission, my lord, the
8 map that Marvin George referred to is the map that my
9 friend has, and he can't claim privilege for it.
10 Unless there's some other map out there that fits
11 Marvin George's description of which we had notice of,
12 then in my submission it can't be privileged whatever
13 Mr. Rush may have.
14 MR. RUSH: This has got nothing to do with Marvin George's map.
15 THE COURT: Marvin George described a map in his opinion
16 report --
17 MR. RUSH: Yes, he did.
18 THE COURT: -- in these terms, and I would think that it is
19 probably producible unless it is contended that it was
20 included by mistake and it was never intended to form
21 any part of the opinion or something of that kind.
22 Failing that, it seems to me that when you filed --
23 when that opinion was delivered it was -- it became at
24 large and could be inspected I should have thought.
25 MR. RUSH: So far as I know, my lord, what has been produced for
26 counsel has got nothing to do with what was produced
27 by Marvin George, although I see now that a map of
28 administrative boundaries, which apparently was an
29 overlay, was delivered to Mr. Skoda. Now, whether he
30 relied on that map for the production of the map that
31 I have or maps that I have, I don't know. He hasn't
32 said so.
33 THE COURT: Well, I think we can waste any amount of time on
34 this, and I think that -- we'll see. I think the map
35 will have to be given to Mr. Rush and Mr. Rush will
36 have to make a formal claim for privilege if after
37 looking at whatever it is the witness has, which he
38 says he has --
39 MR. RUSH: Well, my lord, I have the maps that the witness is
40 referring to.
41 MR. WILLMS: Well, you know, my lord --
42 THE COURT: Well, you see the other problem is there's been no
43 claim for privilege for them until this moment, has
44 there?
45 MR. RUSH: Well, it's not a -- my lord, if the witness produces
46 something for me and I choose not to lead it, I don't
47 have to lead it.

THE COURT: Well, you've got to disclose it in order to claim privilege for it.
MR. RUSH: Well, that might be so, and I haven't done that, but I'm claiming privilege now.
MR. WILLMS:
Q Mr. Skoda, how do you make a base map? You received mylars from Mr. George and you transferred those onto a base map, is that -- how do you do that?
A Information that I received from Marvin George was the information specially that he added to the base maps. That's the information that we would have taken as instruction to us, not the base map on which that information was presented to us.
Q Right. But then you can take that transparency and using that transparency make a hard map, a paper map?
A Yeah, we would take that information and we would generate another graphic that would restate the same case.
Q Did you create paper maps from the overlays given you by Marvin George or do you recall? The administrative boundary overlays that you received from Marvin George, did you create paper maps from that overlay?
A No.
Q No?
A No.
Q All right. So if you have an overlay, if you still have it, it's not related to what Mr. Rush has been describing as his paper map?
A Well, if I still have it, I would still -- I promise to check our stores and if I find it I would be -- I would bring it forward.
MR. WILLMS: All right. Well, I think that takes care of that, my lord.
THE COURT: All right.
MR. WILLMS:
Q Now, Mr. Skoda, I'm showing you Exhibit 24 A. in these proceedings entitled "Registered Traplines". Have you seen that map or a copy of that map before your appearance in court?
A Yes, I've seen similar maps.
Q All right. Well, let's just -- have you seen a map identified as "Registered Traplines" and either identified to you by someone else as an exhibit in these proceedings or noted on a copy of it as an exhibit in these proceedings? Have you seen this document --
A I've seen --

Q -- or a copy of it?
A I have seen that document.
Q All right. And have you looked at this document to determine whether or not there are any difficulties with, except -- skip the over-printing for a minute, the base features, the topographic features?
A No, I didn't examine the topographic features critically.
Q Did you examine this map or a copy of this map in conjunction with underlying documents which are mapped onto it?
A I did see maps in the documents that were passed to me at some stage in the past for storage and for custody, and I handled a series of maps, I forget how many exactly, and stored them away and those are an accompanying series of 8 and a half by 11 publications that came with those.
Q But have you ever looked at any of the documents which purported to underly this map to determine whether or not they've been accurately depicted cartographically on the map?
A No, I didn't examine those maps that way.
Q All right. And did you examine these maps to determine whether there were cartographic inaccuracies or difficulties with the topographic features?
A I did not examine the map critically to that extent.
Q Okay. I'm showing you Exhibit 36 A which has use, recreation, right-of-ways, license of occupation, B.C. Hydro right-of-way, Pacific Northern Gas right-of-way, depicted on it. Did you -- and you'll see that it's the same base map as Exhibit 24. It's different. Have you seen this one before?
A Yes, I've seen a copy like that.
Q All right. And did you look at this to determine whether or not the topographic features noted on the map are cartographically inaccurate in any way?
A I didn't examine it critically.
Q No. Did you examine this to determine whether or not the underlying information that is depicted on this map was accurately depicted on the map, that is, that where it says there's a use, recreation, and enjoyment of the public noted on the map, did you look at any of the underlying information to see whether that was accurately depicted?
A I did not verify any of the information, nor attempted even to verify it.
Q All right. Now, in respect of any of the -- you're

1 aware that the defendant province has tendered maps
2 and series of maps in this proceeding? You've seen
3 some of them, including the two I just showed you?
4 A Yes.
5 Q All right. Have you been asked or have you reviewed
6 any of those maps to determine whether or not the
7 topographic information on the map was inaccurately
8 depicted?
9 A I was not asked to critically examine the material.
10 Q All right. And in respect of any of those maps were
11 you ever asked to determine whether or not the
12 underlying information had been properly transferred
13 or accurately transferred onto the map?
14 A I did not do that.
15 Q Now, if you could just -- I think you gave this
16 evidence with respect to 358-2. You recall giving
17 evidence that the Gitksan and Wet'suwet'en settlements
18 that are outlined in red, that you got that
19 information from DIA maps? Is that -- was that your
20 evidence?
21 A No, I referred to a document that was produced by
22 Department of Indian and Northern Affairs.
23 Q All right.
24 A I didn't get it from there. It was used as a
25 reference.
26 Q No, you got the names from the plaintiffs here, didn't
27 you? That's where you got the names for the red
28 settlements?
29 A Yes.
30 Q The Gitksan and Wet'suwet'en settlements?
31 A Okay.
32 Q Is that right?
33 A Yes.
34 Q Because you know that there is no -- you didn't see
35 any DIA map that shows an Indian settlement entitled
36 "Tse Kya" T-s-e K-y-a; correct?
37 A I'm not sure that would be correct. I'd have to refer
38 back to the information that I examined --
39 Q Do you still have that information?
40 A -- two years ago. It would be possible to search the
41 original of that data or a similar publication that
42 would provide a location of the reservation.
43 Q Well, but you still have it available to you? You
44 still have the DIA information available to you that
45 you used in preparing the 358 series?
46 A I think it's public information.
47 Q All right. And so you could identify that and you

1 can't identify that right now?
2 A Yes.
3 Q But you could search it out and identify it?
4 A If need be.
5 Q Well, I would like you to do that. I'd like to know
6 what DIA information you relied on in preparing that
7 and especially if you have any DIA information which
8 identifies a settlement called Tse Kya or Kyah Wiget,
9 K-y-a-h W-i-g-e-t. I'd like to know which DIA
10 information map you got that from?
11 A There are two components, may I just mention this,
12 that one is the position of the settlement and that's
13 where DIA information would be --
14 Q Yes.
15 A -- a confirmatory document. That -- there is the
16 actual name which was derived --
17 Q Yes.
18 A -- from instruction that was received from the
19 project --
20 Q From who?
21 A -- directorate. From -- I presume it would have been
22 passed and okayed by the linguists.
23 Q All right. Was there any reason, for example, why
24 Grassy Plains isn't shown in red? You'll see --
25 A Not that I know.
26 Q You'll see Grassy Plains. You've shown Grassy Plains
27 as a selected other settlement, but not in red. Did
28 somebody tell you to do that?
29 A That probably would have been the case.
30 Q Yes. Mr. Overstall maybe?
31 A No, I should imagine -- well, at this stage it's kind
32 of difficult to recall what actually happened, but the
33 process of preparing the map consisted of iterations
34 of preparing the information and then getting the
35 expert linguists to tell us what the name should be.
36 MR. WILLMS: My lord, earlier I had asked about -- a question
37 about billings, and in my submission there are a
38 number of items that the witness gave evidence that
39 were his creation and his creation alone. One
40 example is his view of what the Wisconsin ice sheet
41 map said, and especially refugia which your lordship
42 has heard about from various witnesses, also some
43 changes to some of the maps here and there. And it's
44 my submission that shades of grey, even if they're
45 light, are still shades of grey, and that I, in my
46 submission, as with the other opinion witnesses, am
47 entitled to explore the fees in conjunction with the

issue of credibility.
THE COURT: No, I don't think so, Mr. Willms. I don't think the issue of credibility necessarily has raised a sufficient level to warrant an investigation of that distasteful subject.
MR. WILLMS: Then, my lord, I have made some requests of the witness. At this point I have no further questions, but my friend has some documents to look at and list and claim privilege for if he is so inclined.
THE COURT: Yes. Thank you. Miss Koenigsberg.

CROSS-EXAMINATION BY MR. KOENIGSBERG:
Q I only have one question for the witness, and of course it relates to the DIA map that the witness has referred to, and I just want to have it clear that in the DIA maps that you say you referred to, you did rely on for the purposes of determining the location of the Gitksan and Wet'suwet'en settlements which are depicted on such maps as map 2; is that correct?
A That's correct.
Q And the maps that you did rely on are in your possession or you can find like ones so that we could have those identified?
A No, the maps were prepared for -- handed over to the planning section of the Pacific Coast Group some time ago.
Q I'm sorry?
A The maps are in possession of the Department of Indian Affairs in the Pacific Coast office somewhere.
Q Oh, these were not specially created maps for your purposes were they?
A No, they were specially created for the purposes of the Indian Affairs business.
Q Yes. And you purchased them or obtained them as a member of the public?
A No, they are not purchasable. We participated in preparing the maps for the Indian Affairs.
Q I see. And then what you're going to produce will be the map that you relied on or a copy of it?
A A copy of it perhaps. Yes.
Q Okay. Thank you.
A I should stress that it was a reference material. We used it for further refer and confirm a position location.
Q Was there an instance in which the DIA map that you've described showed a location for a reserve and you used different information than what was on that map in

locating that reserve on map 2, for instance, or any other map where you show those villages or reserves?

A I wouldn't like to try to remember that kind of detail, but I should mention that the process of verification was that initial position is defined by the NTS maps.

Q Yes.

A And it was on occasions that we looked and further verify that the position was as stated. In that case we looked at the special map produced for the Indian Affairs people.

MS. KOENIGSBERG: Okay. Well, we'll look forward to the production my lord. The production is particularly important in light of an admission which was asked for over two years ago by the federal government of the position of reserves as depicted on a map which was delivered to my friend. It would be of assistance to that admission to know what they had relied upon.

THE COURT: Rush.

MR. RUSH: Well, my friend's talking reserves and the witness is talking settlements. I don't know if they're talking about the same thing. I -- the witness has said that he'll look and they're in the hands of the DIA. Presumably my friend can get them as easily as I can, but if -- I rely on what Mr. Skoda says. If he has them, he'll get them and produce them.

THE COURT: All right. Thank you.

MS. KOENIGSBERG: Just so we're clear, and for the purposes of the admission, we did seek -- it won't be sufficient for me to go to DIA and try and figure out what it is that was produced. I would imagine, though I have no knowledge, that there is more than one map which has been produced by the federal government showing reserves.

THE COURT: Yes.

MS. KOENIGSBERG: I need to know what was in the possession and used by the plaintiffs.

THE COURT: I think that's clear. All right. Any re-examination, Mr. Rush?

RE-EXAMINATION BY MR. RUSH:

Q Yes. Just one question. This map was shown to you, Mr. Skoda. Mr. Willms showed it to you. It's a mylar and it's indicated as map 9B and it's dated November 18th, '88, and I take it this is your writing on here?

A Yes, it is.

Q And the question that I wanted to ask you is you

indicated that you made an adjustment or were required to make an adjustment between the mylar and your base, and my question is why did you need to make the adjustment from the mylar to the overlay map 9B?

A The base map which is used on the mylar that I'm looking at was derived from two sources, provincial mapping and the federal mapping. The base map which we produced behind me from the opaque copies of the maps available likewise was produced from maps made by two sources, federal government and provincial government mapping agencies. The area in question on Marvin George's base was produced by one agency and on our map on our base map, the map came from another agency. There was discrepancy in position of the detail. That was described earlier in our discussion. What we needed to do was to make an adjustment between the two bases.

MR. RUSH: Those are all my questions.

THE COURT: All right. Thank you. I have just two or three little questions, just a matter of just helping me to understand map 358-24. Do you have it in front of you? You may need Mr. Joseph's help on this, Mr. Rush. It will only take a moment. I don't know how well you know this territory, but I have located what I think is Morice Lake in the lower left-hand corner, and I think I can trace the outflow of Morice Lake, but I see it marked "Wedzen Kwe", and if you look further north in what we generally refer to now as the Bulkley Valley and north of Smithers, I see Wedzen Kwe there, and I assume that someone instructed you to name what is in English known as the Morice River as Wedzen Kwe, were you?

THE WITNESS: Yeah, I understand that the Bulkley River and Morice River, or at least in the local usage in Indian designations, that there is a slight difference between naming the different parts of Bulkley River.

THE COURT: Yes. All right. Well, I assumed that was probably it.

THE WITNESS: I was indeed.

MR. RUSH: My lord, I can assist you. That is the evidence by, your memory is right, by Mr. Joseph, who said that the Morice River to the point of its confluence with the Bulkley River is known as the Wedzen Kwe.

THE COURT: Yes.

MR. RUSH: And then downstream from that confluence where it continues with the English name, Bulkley River, it continues with the name in Wet'suwet'en, Wedzen Kwe.

THE COURT: All right. Now, nextly, or next, rather, I think that I have located Sam Goosley Lake on here, but it's -- it's quite small, and I wonder if Mr. Joseph could assist us if he could come forward and just make sure that I have got it located in the right place, and I'd like also to have his assistance in identifying Nadina Mountain for me. Perhaps if you could look at the map that the witness has, it's a little difficult because the lakes are in brown, but I think if we -- here's what I thought was Morice Lake and it seems to me Sam Goosley would be in here somewhere. Would that be it?
MR. RUSH: This is Wedzen Kwe. Morice here.
MR. JOSEPH: It's the end of Francois Lake here. It would be up in here.
THE COURT: Well, there's --
MR. JOSEPH: Oh, yes. That's Parrot Lakes. It would be right here.
THE COURT: That one there?
MR. JOSEPH: Yes.
THE COURT: Then where's Nadina Mountain from there?
MR. JOSEPH: It will be --
THE COURT: This one?
MR. JOSEPH: Yes, right there.
THE COURT: What's this one here or is that by any chance the mine?
MR. JOSEPH: That's the mine.
THE COURT: That's the mine?
MR. JOSEPH: Yes.
THE COURT: All right. Now, I don't know, can Mr. Joseph help us if -- as I read this map here, it shows us where Smithers is. It's very hard to find, but Smithers is -- there's Smithers. Where would Horetzky Mountain be? Here's Babine Lake, but we flew over Horetzky which is within the claim territory, is it not, and I was wondering if that would be it there. It's not snow covered all year round, is it?
MR. JOSEPH: I never flew over that.
THE COURT: All right. Well, then I'm asking too much. All right. Next, Mr. Skoda, can you tell us does it say here -- I haven't looked -- all this ice and snow in the north, do we know the time of the year this picture was taken?
THE WITNESS: Yes. It would be stated in here. Each one of the frame is recorded individually --
THE COURT: I see.
THE WITNESS: -- because of that significance.

THE COURT: Some are September, some are July, some are August?
THE WITNESS: Yes.
THE COURT: All right. So it's not a winter picture there?
THE WITNESS: No, no, it's mixed.
THE COURT: All right. Yes. All right. Thank you very much. Unless you're notified otherwise, Mr. Skoda, you're excused. Thank you. We'll take the afternoon adjournment. Thank you.
THE REGISTRAR: Order in court.
THE COURT: Before we go, will counsel find it convenient to sit until five o'clock this afternoon?
MR. RUSH: I don't see Mr. Grant, my lord, but he's prepared to go with Mr. Wilson next.
THE COURT: All right. All right. Thank you.
THE REGISTRAR: Order in court. Court stands adjourned for a short recess.

(PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)

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

Tanita S. French
Official Reporter

1 ⊥h2 W. Wilson (for Plaintiffs)
2 (PROCEEDINGS RECONVENED PURSUANT TO THE AFTERNOON BREAK)
3
4 THE REGISTRAR: Order in court.
5 THE COURT: Mr. Grant.
6 MR. GRANT: Good afternoon.
7
8 WALTER WILSON, a witness called on
9 behalf of the Plaintiffs, having
10 first been duly sworn, testified as
11 follows:
12
13 THE REGISTRAR: Would you state your full name and spell your
14 last name, please?
15 THE WITNESS: Walter Wilson, W-i-l-s-o-n.
16 THE REGISTRAR: Thank you, sir. Please be seated.
17 MR. GRANT:
18 Q Mr. Wilson, you are Djogaslee, a hereditary Gitksan
19 chief?
20 A That's right.
21 MR. GRANT: D-j-o-g-a-s-l-e-e.
22 THE COURT: I'm sorry, D-j --
23 MR. GRANT:
24 Q -- o-g-a-s-l-e-e. And it's spelt on Exhibit 1052-22
25 slightly differently, but we'll come to that. How
26 long have you held the name Djogaslee?
27 A Since my uncle passed away, the late William Wale, and
28 that was in the '50s I think it was.
29 MR. GRANT: Okay.
30 THE COURT: I'm sorry, I didn't get the surname. William
31 Wilson?
32 THE WITNESS: Wale.
33 MR. GRANT: William Wale.
34 THE COURT: Wale.
35 MR. GRANT:
36 Q And you live in Gitanmaax?
37 A Yes.
38 Q And how long have you lived in Gitanmaax?
39 A All my life.
40 Q And have you -- do you fish in the Skeena and Bulkley
41 River systems?
42 A Yes.
43 Q And how long have you fished in the Skeena and Bulkley
44 River systems?
45 A Since I was seven years old I think it was.
46 Q And if you will permit me, how old are you now?
47 A Sixty-two.

Q Okay. And where do you -- how do you determine where you fish in the Skeena and Bulkley River systems?
A What do you mean how do you determine?
Q How do you decide where to go and fish, what parts of the river to fish in?
A Well, it all depends on what time of year and how high is the river. There's quite a few fishing sites for those period of time. In spring we -- we have a place to fish for spring salmon, to gaff. And my late grandfather told me where to go for spring and where to go for sockeye. All those, they're different times.
Q Who was your late grandfather that told you that?
A Willie Wilson, the late Willie Wilson.
Q Was he from the House of Djogaslee?
A He was Djogaslee at the time.
Q Do -- does the House of Djogaslee have specific fishing sites in the Skeena and Bulkley River systems?
A Yes.
Q Do you know the locations of those sites?
A I know all of them.
Q And how have you learned where those sites are located?
A From my mother.
Q What was her name?
A Her maiden name was Kathleen Wale, and I forgot her --
Q And she's deceased now?
A Yes.
THE COURT: I'm sorry, just so we're sure we're all on the same system, how is Wale spelt?
MR. GRANT: W-a-l-e, my lord.
THE COURT: There is no "s" on the end?
THE WITNESS: No.
MR. GRANT: No.
THE COURT: Thank you.
MR. GRANT:
Q This would be a different Kathleen Wale than the present chief, Gwoimt, who's also Kathleen Wale. G-w-o-i-m-t. Go ahead.
A Kathleen Wale Wilson, that's my mother.
Q That's your mother. Who else taught you about the location to the fishing sites?
A Willie Wilson; and my great uncle, Frank Wilson; and Andrew Wilson; my great aunt, Sophia Mowatt. She -- I believe she's over 90 years old now. They're the ones that --
Q And except for Sophia Mowatt, are all of those other

1 people who taught you now deceased?
2 A Yes, they're all.
3 Q And Sophia Mowatt is very elderly?
4 A Very.
5 Q And bedridden?
6 A Yeah.
7 Q Now, do you know Nika teen, a chief by the name of
8 Nika teen, N-i-k-a t-e-e-n?
9 A Yes, I know him.
10 Q And who -- what is the English name he goes by?
11 A Jimmy Woods Jr.
12 THE COURT: Jimmy Woods?
13 THE WITNESS: Jimmy Woods Jr., yes.
14 MR. GRANT:
15 Q Do you know where his fishing sites are located?
16 A Yes.
17 Q Have you been authorized to -- by him to describe the
18 location of his fishing sites to the court?
19 A Not directly by him, but by his mother.
20 Q And who is she?
21 A Ellen Woods, Mrs. Ellen Woods.
22 Q Okay.
23 A Because Jimmy is down the coast fishing, down in
24 Prince Rupert.
25 Q And is his mother a chief in that house?
26 A Yes.
27 Q Do you know Gutginuxw, G-u-t-g-i-n-u-x-w, and
28 Woosimlaxha, W-o-o-s-i-m-l-a-x-h-a?
29 A Yes, I know them.
30 Q And have you been authorized to describe locations of
31 their fishing sites? First let me ask you this: Do
32 you know where their fishing sites are?
33 A I know where their fishing sites are.
34 Q Okay. And can you describe the location of their
35 fishing sites?
36 A Some of them, yeah.
37 Q You've said that you fished in the Skeena and Bulkley
38 Rivers since you were seven?
39 A Yes.
40 Q Fifty-five years. Have you fished there almost every
41 year since you were seven?
42 A Almost every year. When I was a little boy, I fished
43 with my dad. That's in the canoe. You have to excuse
44 me.
45 MR. GRANT: Okay. I'm sorry.
46 THE COURT: Do you want to adjourn, Mr. Grant?
47 MR. GRANT:

Q Would you like to take a moment?
A No.
Q Okay. My lord, I have a document book.
Now, you know the location of the Hagwilget Canyon?
A Yes.
Q Okay. And do you know Gitksan fishing sites in the Hagwilget Canyon?
A Yes, I do.
Q And do you know Gitksan fishing sites between the Hagwilget Canyon and the mouth of the Bulkley River?
A Yes.
Q Do you know -- do you have a fishing site yourself below the Bulkley River on the Skeena River, that is, downstream from the mouth of the Bulkley on the Skeena River?
A Below the mouth of the Bulkley?
Q On the Skeena River --
A On the --
Q -- downstream from the --
A Yes, yes, I have a place.
Q What is the name of that site?
A Saxwhl giist.
Q Okay. I'll get the spelling. Now, my lord, on map 22 -- I believe this is Exhibit 358. That is the map atlas. I'm going to ask the witness to -- well, actually, I will -- I'll show the witness the map, and he can probably identify it. Okay. I'm just pinpointing out for you, Mr. Wilson, that this map is on a north south -- north and south are going left and right. Okay. And here is Kitsegukla. This is the Skeena River. And here is -- you can see the -- part of the word Gitanmaax and Tse Kya.
A Um hum.
Q And then it goes up to the Bulkley Canyon. Now, can you show to the court if that site of Djogaslee's is on this map, the one that is downstream, Saxwhl giist?
A Saxwhl giist. Right there.
Q Okay.
A Saxwhl giist. That's below the mouth of Bulkley River.
Q Okay.
A The junction.
Q It's labelled on the map, my lord, as Anoodim saxwhl giist, and it's in a little labelled box with "Wiigoob'l above and Ts'ogoshle -- and the name of the site and Ts'ogoshle on the bottom, and the spelling of

saxwhl is s-a-x-w-h-l, one word, g-i-i-s-t. And in front of that word in the label is the word Anoodim saxwhl giist, and that first word is A-n-o-o-d-i-m. Now, which side, if you're looking downstream on the Skeena River, which side of the river is that fishing site on, the left or the right side?

A I know it's on the south side of the river.

Q Okay.

A That's on the left going down.

MR. GRANT: Okay. South side. That's fine. Thanks. Now, my lord, the site above that, 'Wiigoob'l, is pointing to -- at the mouth of Seeley Lake. I believe there's already been evidence about it. I'm not going to pursue it further because I believe it's already been given -- explained. Now, I would just refer the court to tab 1.

THE COURT: I'm sorry, before you leave that, do you say that's your fishing site?

THE WITNESS: Saxwhl giist, yes.

MR. GRANT: Oh, yes. And the spelling of Djogaslee on this map is different --

THE COURT: All right.

MR. GRANT: -- than the spelling in the court record. It's spelled on the map as T-s-'-o-g-o-s-h-l-e.

THE COURT: Yes. All right.

MR. GRANT:

Q Now, at tab 1 of the document book I have a listing of Gitksan fishing sites, and I have on tab 1 an amended version of the enlarged -- Hagwilget Canyon Sites enlargement, which is at the top of Exhibit 358-22. Now, I'm not going to -- I just wonder, Mr. Wilson, if you can -- if you would like to refer to this listing, it's fine, but if you can tell us if you're going down the river on the Hazelton side as to the fishing sites of the Gitksan that go along the bank of the river at Hagwilget Canyon. Do you wish to refer to the list and the enlargement?

A Yes.

MR. GRANT: Okay. Maybe we can put that document in front of you. Now, I'll ask you --

THE COURT: What document is he looking at?

MR. GRANT: It's tab 1 of the document book.

THE COURT: Yes. Thank you.

MR. GRANT:

Q And it's the first site, which is -- the first name, which is the listing, and what I have done is followed -- this listing is depicted on the enlarge-

ment in tab 2, at least with respect to Gitksan sites. Now, can you tell us if you're starting upstream on the Hazelton side of the Hagwilget Canyon who -- what are the names of the sites and whose sites are they?
A Starting up above the Hagwilget Bridge --
Q Yes.
A -- and around the bend is Xsa an luu guu waaswx. That's the name of that creek.
THE COURT: Madam reporter has --
MR. GRANT: Yes, I'm just going to -- actually, what I'm going to do, my lord, is -- just a moment. Starting, just for the record, my lord, on the listing, it would be the names on the right bank on this list, and I've got a copy for madam reporter.
THE COURT: All right.
MR. GRANT: So he's just referred to the first one at the top of that list, madam reporter.
THE COURT: Starting X-s-a?
MR. GRANT:
Q Yes.
A And that's the name of that fishing site. The mouth of that creek I'm talking about.
Q Okay. Go ahead.
A Xsa an luu guu waaswx.
Q And who owns that site?
A Djogaslee.
Q Okay. Go ahead. What is the next site downstream?
A And just above the bridge is Gwin hahl hatlhl.
Q Yes.
A That belongs -- also belong to Djogaslee.
Q Yes.
A And in between these sites I'm talking about there's quite a few other fishing holes. We don't list them. But we're showing the very important holes from our house.
Q Okay.
A But our members, they use the sites in between.
Q Okay. And who owns -- I'm sorry, you did say who owned Gwin hahl hatlhl?
A Gwin hahl hatlhl.
Q Who owns that?
A Djogaslee.
Q Okay. What is the next major site going downstream on the same side of the river that you know?
A 'Hlaxw lo'op.
Q That's the third one on the list. And who owns that site?

A Also Djogaslee.
Q And where is that located in relation to the bridge?
A Right below the bridge on Hazelton side.
Q Okay.
A That's the right-hand side going down the river.
Q Yes. Okay. And what is the next site that you know?
A Wil tigwantxw min.
Q Yes. And who owns that site?
A Also Djogaslee
Q Now, between those two sites of Djogaslee is there another site that is used?
A Yes, there's one site in between the two, like 'Hlaxw lo'op and Wil tigwantxw min.
Q Yes.
A There's this fishing site in between that. It belongs to Wii'goob'l.
Q Okay. And do you know the name of that site?
A No, I don't know the name of that site.
Q Okay. That site, my lord, is not on the sketch map at tab 1, but it is listed. And for madam reporter, the two name sites you had were the third one listed and the fifth one listed, and then he referred to Wii'goob'l.
A The only time they use that site is when the river is really low in fall.
Q What do they use it to catch fish for?
A They catch coho and steelhead late fall, just before snow.
Q And is this the Wii'goob'l site you're referring to?
A Wii'goob'l site, yeah.
Q Now, after that last -- you've said -- the last site is Wil tigwantxw min of Djogaslee?
A Yeah.
Q What is the next site going down on the same bank?
A An luu gyahla.
Q And whose site is that?
A Also Djogaslee.
Q Okay. And which is the next site after that?
A Wil sagamhla'kxw. I think that's --
Q And who owns that site?
A Djogaslee.
Q Now, could you just describe for his lordship -- his lordship has crossed this bridge. He knows the scene. If you're on the Hagwilget Bridge, would you be able to see from the bridge on that bank that site, An luu gyahla?
A Yes.

Q And how far down would it be from the bridge --
A From --
Q -- in relation to where the river turns?
A From 'Hlaxw lo'op down to An luu gyahla is about -- between 100 and 200 yards.
Q And 'Hlaxw lo'op, where is it in relation to the bridge?
A Down further.
Q Okay.
A Oh, you mean 'Hlaxw lo'op?
Q Yes.
A 'Hlaxw lo'op is right below the bridge.
Q Okay. Now, if you were standing on the bridge, could you see that last site you've just referred to, and I'll try to pronounce it, Wil sagamhla'kxw?
A Wil sagamhla'kxw.
Q Can you see that from the bridge as well?
A Yes.
Q Okay. Now, where is that in relation to where the river turns?
A That's just where the river start to turn. You could see the upper end of it --
Q Okay.
A -- from the bridge.
Q Okay. Now, the next site after Wil sagamhla'kxw? Which is the next site?
A Gubokx.
Q And who owns that site, what chief?
A It belongs to Fireweed.
Q Do you know which house?
A Gutginuxw.
Q Could you see that site from the bridge?
A No.
Q Okay. That's around the bend?
A That's around the bend.
Q Okay. And what is the next site on that same side of the river of the Gitksan?
A Saxwhl lo'op. That's next to Gubokx.
Q Okay.
A That's also belong to Gutginuxw's house.

THE COURT: Is that the one that has a dot on the bank but no arrow going to it?

MR. GRANT:
Q You see there's a dot on this sketch map?
A Oh, yes.
Q Here's Gubokx with the arrow to it right there around the bend, and his lordship is asking is that where

that is located. This is the name Saxwhl lo'op.
A Saxwhl lo'op is down here.
Q It's down where that arrow --
A Yes.
Q -- points to that site?
A Yes.
Q So is it some distance from Gubokx or is it right next?
A Well, it's not too far.
Q Okay.
A So there's another site there, I guess, but it's --
Q Okay.
A But I know the site.
Q Saxwhl lo'op, the witness indicated for the record, is -- it's that second from the bottom, my lord, where that arrow points to.
Now, is there a site further below that in the canyon or at that part of the canyon that you know of?
A An yuswx.
Q That's the last name on that side of the list. And who is the holder of that site?
A Wii'goob'l.
Q Now, if we went back up on the other side of the river at the canyon above the bridge, are there any fishing sites on the Hagwilget side of the bridge that belong to the Gitksan?
A Yes.
Q Can you describe the Gitksan fishing sites on the Hagwilget side?
A Just above the bridge, almost straight below it -- above a little bit is Gaan gwats.
Q Yes.
A That's belong to Gyetm galdoo's house.
MR. GRANT: Okay. And next to that is there another site on that side of the river?
THE COURT: Going downstream?
MR. GRANT:
Q Going downstream. I'm sorry. Yes.
A Just below the bridge there's one big fishing site there. We call it Wii an haakwhl.
Q Yes.
A That belongs to Guuhadak.
Q Okay. Now, when you said just below the bridge, did you mean just downstream or just --
A Just downstream.
Q Okay. Now, there are on this sketch map, as there are on Exhibit 358-22, four sites referred to which are

Wet'suwet'en sites, my lord, and I'm not going to ask the witness about those four sites. I believe evidence was given of them by a Wet'suwet'en chief. Is there another Gitksan site on that side of the river that you know?
A Yes, there's --
Q Near the canyon I'm talking about.
A An ska skii.
Q Okay. And where is it located?
A It's down further, below those four fishing sites you're talking about.
Q Okay. Now, is it around the bend of the river?
A Yes, a little bit.
Q Okay.
A A little bit around the bend.
Q There is a back -- where the canyon -- where the canyon comes out there is a back eddy, isn't there, just downstream from the bridge?
A Yes, there's two back eddies there, one big one up just below the bridge --
Q Yes.
A -- and one further down before you get to the bend.
Q And then the river turns where that big one is?
A Well, the little one.
Q Where the little one is?
A Yeah.
Q And it goes further down?
A Yeah.
Q Is An ska skii below that back --
A Just below that little back eddy.
Q Okay.
A That's where the canyon ends, that Hagwilget Canyon, and then --
Q Did you fish in -- gaff in the Hagwilget Canyon --
A Oh, yes, quite a bit.
Q -- when you were young?
A Yes, before the fishery blew that rock out in the centre of the river.
Q Okay.
A I gaffed on that rock, and I gaffed on 'Hlaxw lo'op.
Q That's the one that's directly under the bridge?
A Yes. And I set net up above the bridge during the late '40s, early '50s.
Q Okay.
A I forgot the name of that fishing site up above the bridge there.
Q The one that's at the mouth of the creek or the one --

A Gwin hahl hatlhl.
Q Okay. That's the second named one on the list?
A Yes. And we also gaffed below, but not as much as we do right below the bridge because lot easier to get down to those places. Some of those places are pretty hard to get down to.
Q Did you gaff in some of those places that were hard to gaff?
A Oh, yes, we -- I make ladimsxw. I don't know if you know what we call ladimsxw.
Q Ladimsxw?
A Ladimsxw.
Q Ladimsxw.
A That's the Indian ladder.
Q Ladder.
A Yes. We cut a pole down, and we notch them in, and we hang them on a foot wall, cliff, and that's how we get down to some of the holes. And we hoist the fish up when we gaff down below. I did lots of that in my time. At one time I also explore underneath the water.
Q You went under the water?
A Yes. When there was -- that rock was still in the middle of the river below the bridge, right below the bridge, we put poles out to that rock, and we walked over, and we -- that's where we gaffed late fall. Two of my cousins were with me, and one of them, the youngest one, was going to fall backwards, so I went around and pushed him back, and I went in instead. And I grabbed a hold of the rock, and I told my cousin: "Gaff me, hook me." And they froze. They couldn't do nothing. So I finally let go, and I went under that big rock. And I don't know how I got out the other end, but I went around that big eddy I was talking about on the Hagwilget side. The third time I went around there, that's when -- I think it was Dora Kenni's uncle. They used a really long pole, and they were trying to reach me. The third time I grabbed on the tip with my fingers, and that's how they got me through.
Q When was that about that that happened?
A I think it was 1939.
MR. GRANT: My lord, I'd like to mark this book as the next exhibit and, utilizing Mr. Willms' practice, mark the tabs as separate tabs.
THE COURT: All right. What's the next exhibit number?
THE REGISTRAR: 1078.

THE COURT: The book will be 1078, and tab 1 thereby 1078-1.
MR. GRANT: Tab 1, thank you.
THE COURT: Well, the glossary and the map will be 1078-1.

(EXHIBIT 1078 - BLUE BINDER - PLAINTIFF - FISHING SITES - WILSON)
(EXHIBIT 1078-1 - TAB 1, HAGWILGET CANYON FISHING SITES)

MR. GRANT:
Q Right. Mr. -- okay. With respect to the first page at tab 1, this listing here that's typed out, was that listing typed out by someone in Mr. Rush's office today on your instructions when you -- is that a list based on the list of the names that you gave to me today?
A Yes.
Q Okay. Can you turn over the page? And was that handwriting on this map and these changes to this enlargement of Exhibit 358-22, the Hagwilget Canyon, were those made today on your -- under your direction?
A Yes.
Q And those were names that you provided to me?
A That's right.
Q And does that handwriting -- your son-in-law, Mr. Patsey, who's present in court, assisted in drafting those -- doing the handwriting?
A Yes.
MR. GRANT: Thank you. My friend asked for some clarification, my lord.
MR. MACAULAY: The next tab, my lord, tab 2, I haven't seen it. It was explained to me that it was an enlargement of an existing exhibit, but it's difficult to -- perhaps we could see what the registrar's copy shows and get a copy from her in due course.
THE COURT: Well, it's Map 22 of the map atlas, isn't it?
MR. GRANT: It is not at all like the first tab. It is quite simply an enlargement of the 4-Mile Canyon sites. Mine is marked up, and I don't --
THE COURT: Aren't they taken from the map atlas?
MR. GRANT: Exhibit 358-22.
THE COURT: Yes.
MR. GRANT: It's just an enlargement of the 4-Mile Canyon sites. And there was a mix-up, and we were short one copy. I apologize.
MR. MACAULAY: The reason I ask is that this first map I have never seen before, and your lordship may gather that a lot of these names we heard just this minute as the

evidence was being given.
MR. GRANT: Many of these names -- except for on the first map, my lord, the only names that -- the spellings of the names I concede are in some cases different, but the only names that were added -- on the 358-22 there's a Gyedimgaldo'o and a Guuhadakxw site on the left bank. And the names Gaan gwats, G-a-a-n, one word, g-w-a-t-s, second word, and Wii an haakwhl, W-i-i a-n h-a-a-k-w-h-l, those names, I agree, were not on the map. But once again, I don't know how many times I need say this, but all, all of the underlying documents used in the preparation of Map 22, which was file box of several thousand pages, has not only been disclosed to my friends but was delivered to them, that is, the provincial defendants requested it, and I believe the federal defendants requested it as well in March of this year, in advance of the evidence of Mr. Morrell. So all of -- but these two names, I agree, are not on the 358-22, and the other names that are -- I'm sorry. And then there's an additional site of Djogaslee further upstream. But the other names are spelled somewhat differently on 358-22 and may be located somewhat differently within the canyon, but those names are there.

Now, maybe I could just refer you once again to the large map. I'll just ask you this without -- I don't need to show you Exhibit 358-22. Does Djogaslee have any fishing sites at Kisgagas on the Babine River?

A Yes.

Q And can you tell his lordship where in relationship to the bridge that crosses the river at Kisgagas your site would be?

A The fishing site belonging to Djogaslee is across the bridge and up above the bridge.

Q Okay. That fishing site is shown on the enlargement of Kisgagas Canyon sites -- oh, I'd like to ask you this: Is that site -- do you know the name of that site?

A No, there's so many names there, and I don't know which one. I didn't ask my uncle the name of that site.

Q Okay. I won't lead this because -- you see the Kisgagas Canyon sites, Mr. Wilson, and this is where the river's going downstream. I'm just indicating where the arrow is there for you. There is a site referred to as Ts'ogoshle?

A Yeah.
Q Is that the location of the site that you were referring to?
A Yes, it's above the bridge.
Q Now, also that site says Ts'ogoshle, Meluulek. Does Miluulak have any rights to that particular fishing site to your knowledge?
A Not that I know of. I don't know why Miluulak is on there, but she has quite a few other fishing sites.
Q Okay. You know that she has other fishing sites at Kisgagas Canyon?
A Yes, I knew that.
MR. GRANT: Okay.
THE COURT: I don't see Djogaslee's site on the map atlas.
MR. GRANT: Kisgagas.
THE WITNESS: Kisgagas.
THE COURT: Yes.
MR. GRANT: Up on the upper right-hand corner, Kisgagas Canyon Sites.
THE COURT: Yes.
MR. GRANT: On the left-hand side, the third one down, and there's a scare box where the name usually goes.
THE COURT: It would be quicker if you showed me.
MR. GRANT: I should show it to you.
THE COURT: Sorry. Oh, there.
MR. GRANT: Right there. This is the enlargement of the Kisgagas Canyon here.
THE COURT: Yes. All right. Thank you.
MR. GRANT:
Q Now, does Djogaslee hold any sites on the Skeena River upstream of the present location of Kispiox Village?
A Yes.
Q And can you tell his lordship where that is approximately and the name of that site?
A It's called Gwinats'al, that fishing site.
Q Just a moment. I'll just for the reporter -- G-w-i-n-a-t-s-'-a-l. Go ahead.
A Gwinats'al. And it's above the Salmon River, across from Kispiox.
Q So it's on the side of the Skeena on the -- opposite to Kispiox --
A Yes.
Q -- but further upstream?
A Yes.
Q Okay.
A It's on the right-hand side going up river.
Q In the enlargement of Skeena and Kispiox River fishing

sites -- well, do you know of persons who have fishing sites nearby that?
A Yes.
Q Who -- what other site would that be near?
A Well, there's -- Haaxw's site is above mine.
Q Okay.
A And there's some below. I don't know who the owners are.
Q Okay. Is there one directly across that you know of?
A Oh, yeah, there's fishing sites, but I don't know who --
Q Okay. Fine.
A -- the chiefs are.
Q You see there's a site with a dot here, Gwinats'al-Ts'ogoshle, and here's the Kispiox and Skeena junctions, and it's the Salmon River there, and it's a ways further upstream of the Salmon River?
A Um hum.
Q Is that the site that you're referring to?
A Yes. I was thinking about -- there's a creek here. That's Pinenut Creek. That's what I was talking about, above Pinenut Creek.
Q Oh, it's above Pinenut Creek?
A Yes, past Salmon River.
MR. GRANT: It's located here, my lord.
THE COURT: Yes.
MR. GRANT:
Q Now, what I'd like you to do is to turn to tab 2, which is for convenience only, my lord. It's an enlargement of the 4-Mile Canyon sites, and -- from Exhibit 358-22. It's no different than that. There's no additions or deletions. It's a bit enlarged. Now, do you know who owns fishing sites in the 4-Mile Canyon?
A On the right-hand side of the river going up I know of fishing holes there that belongs to Nika teen and Woosimlaxha.
MS. SIGURDSON: Excuse me. This witness is getting away from his own fishing sites. Could he give his source of knowledge?
MR. GRANT:
Q Woosimlaxha and Nika teen. W-o-o-s-i-m-l-a-x-h-a. Nika teen, N-i-k-a t-e-e-n.
Mr. Wilson, how were you -- who taught you about the Gitksan sites in 4-Mile Canyon, and how do you know them?
A We also fished there.

Q Yes.
A And ever since I was a little boy, we travel up and down that river on the trail on the bank, riverbank. And whenever we go by there when we go visit Glen Vowell, that's in the early days of the '30s and early '40s, and our parents always point out. There's a trail right along the bank, riverbank, around the canyon, and they point out to us. And I also know I also fished with these people, helped them. That's what we do. We help one another in the early days. And that's how we know. And Nika teen is close to me. He sits on my same table in the feast hall, and we talk. Woosimlaxha, I know them. The Woosimlaxha before, the one now. I know all these chiefs, and that's how I know their fishing holes.
Q Have these fishing sites been referred to or described in feasts at which you've been at?
A Whenever there's a high chief died, yes.
Q Okay.
A And that's when they -- if you see names on some of the fishing site, maybe two or three names, there's a reason for that. Sometimes a different clan would marry in, a Frog Clan or Wolf. This person could use that --
Q Okay.
A -- providing he has permission from the chief that owns the site.
Q I had meant to ask you earlier in what clan are you, Djogaslee?
A Frog.
Q And what clan is Nika teen?
A Frog.
Q What clan is Lutkutsiiwus?
A Lutkutsiiwus is Frog too.
MR. GRANT: L-u-u-t-k-u-t-s-i-i-w-u-s. Can you -- if you started just upstream -- at the beginning of the canyon just upstream of where the bridge is on that side that's closest to Hazelton, can you tell his lordship what -- who owns the fishing sites going downstream towards Hazelton through the 4-Mile Canyon?
THE COURT: Mr. Grant, does he have to orally present them all? They're right on the map right in front of him. He's just going to read them out to us, isn't he? Can't he just confirm that --
MR. GRANT:
Q Well, I -- yes, I can do it. You have reviewed this map that shows these sites, that is, this enlargement

here of Exhibit 358-22, with me, and with respect to the first three sites, that is, Anyuusxw, A-n-y-u-u-s-x-w --
A That's above the bridge.
Q Yes.
A That's Woosimlaxha's.
Q Okay. And Gwintkas'ha, G-w-i-n-t-k-a-s-'-h-a, and Sagimlaxsiipit, S-a-g-i-m-l-a-x-s-i-i-p-i-t?
A That belongs to Nika teen.
Q Do both those sites belong to Nika teen?
A Yes.
Q Now, what I'd like to stop there is that on this map it shows Nika teen and Woosimlaxha. Do you know if Woosimlaxha has a site there or why --
A Sagimlaxsiipit, that belongs to Nika teen. And the reason why Woosimlaxha is on there is there's a man named James Green, and he's from Woosimlaxha's house, and he asked permission to use that hole, and the Nika teen before Jimmy Woods, the late John Smith, he let him -- he let James use that hole because it was James Green's sister, I think, that John Smith married, and that's why Nika teen let Woosimlaxha's member in that hole.
Q Okay.
A But before -- James got older and older and older, and then he was going to move to Houston one year, and he went and seen Nika teen's nephew, which is Arthur Sampson.
Q Who's now deceased?
A He's now deceased too.
Q Yes.
A But he told this person that -- we call wak when you walk up to a person. And if he's a male and I'm a male, and I call him wak.
Q W-a-k?
A Yeah. And he said: "Wak, I'm going to return this fishing hole to you. I'm no longer using it, so I'm reverting it back to the Frog Clan." And the person that -- Arthur Sampson, he talked to me about it, and he told me what happened because there wasn't any feast the time that this person was moving out, James Green.
Q Okay.
A And that's why he went up to Kispiox -- Glen Vowell just to tell this person that he's leaving.
Q Was it later referred to in a feast as to what happened?

A I never did hear, but I think it was.
Q Art Sampson -- just -- I've only put tab 3 and 4 in for reference. Exhibit 853 is tab 3 and tab 4. Arthur Sampson that's being referred to, is that the late husband of Eva Sampson?
A Eva Sampson, yes.
MR. GRANT: And he's at page 5 A of the neighbouring genealogy, just for your reference, my lord, and James Green is at page 6 of the -- of the Gutginuxw genealogy.
THE COURT: Are these genealogies already in?
MR. GRANT: They're already in, my lord.
THE COURT: Oh, yes.
MR. GRANT: They're Exhibit 853, and they were the Gitksan genealogies that have already been entered.
THE COURT: Nika teen doesn't seem to be numbered.
MR. GRANT: Well, yeah, I see that on my copy I hadn't numbered that number individually. It is -- it is Exhibit 853, which is a binder of all the genealogies, and I can't recall the --
THE COURT: Oh, yes. Thank you.
MR. GRANT:
Q And the James Green that you were referring to, was he the husband of Maggie Jackson?
A Maggie Jackson, yes.
Q And the brother of Mary Green, who married Arthur Mowatt?
A Yes, yes.
MR. GRANT: I say that, my lord, because there are other James Greens referred to on that genealogy.
THE COURT: All right.
MR. GRANT:
Q So as far as you understand, that Sagimlaxsiipit fishing site now belongs to Nika teen and there is no question of Woosimlaxha?
A There's no question about that.
Q S-a-g-i-m-l-a-x-s-i-i-p-i-t. Now, the next site down shown there is U'Kobaluu?
A U'Kobaluu.
Q And who -- and that's got those two names, Nika teen and Woosimlaxha, as well. It's U-'-K-o-b-a-l-u-u. Now, whose site is that?
A It's Nika teen's site.
Q And do you know why Woosimlaxha would be listed there?
A I think it's the same thing.
Q Okay. So Woosimlaxha should be taken off of those two fishing sites?
A Yeah. Yes.

Q The next site that's down on that side of the river is called Gwinwilaat, G-w-i-n-w-i-l-a-a-t. Do you know of that fishing site?
A Gwinwilaat, yes.
Q And who owns that fishing site?
A Nika teen.
Q And on that there's a name Antgulilibiksxw. You know Antgulilibiksxw?
A Yes, I know her.
Q Mary Johnson. And she's in the Fireweed Clan?
A Yes.
Q And Nika teen. Do you know why there would be some question with those persons drafting the map of Antgulilibiksxw fishing there?
A I think the reason why she put her name on there is on account of Donald Mowatt, the late Donald Mowatt. Donald Mowatt married into Nika teen members, and I think that's the reason why they let him use that fishing site. And Antgulilibiksxw is some relation to Donald Mowatt, and she must have figured that it belonged to him. That's why she has her name on there. But since then I was in at one feast just not too long ago, and it was a Fireweed feast.
Q Where?
A At Kispiox. And I was at the feast witnessing, and so was Nika teen, and that's when this lady stood up and called Nika teen, and she apologized in that feast so -- and returned it back. She was going to withdraw her name from that fishing site. I didn't know it was on here.
Q That's the --
A That's --
Q And when you say that lady, who are you referring to?
A Mary Johnson.
Q Okay.
A Antgulilibiksxw.
Q And when she referred to that fishing site, what site was she referring to?
A Gwinwilaat.
MR. GRANT: Okay.
THE COURT: How do you spell that?
MR. GRANT: G-w-i-n-w-i-l-a-a-t. It's the one on the map. I'd ask then that on that copy, the enlargement, in any event, that you -- to cross off Woosimlaxha --
THE COURT: Yes.
MR. GRANT:
Q -- on those two places where Woosimlaxha's referred

to, and Antgulilibiksxw, and to do the same on the Exhibit 358-22.

Now, just to give you some room here -- I'll just be one or two -- just very quickly, my lord. On the right bank -- I'm sorry. On the -- when we're looking downstream on the right bank of the 4-Mile Canyon as shown on Exhibit 358-22, there are a number of sites, starting with one called Axgoodim hawal under Lutkutsiiwus, which is in the bay above the 4-Mile bridge. That's spelt A-x-g-o-o-d-i-m, one word, h-a-w-a-l, second word. Lutkutsiiwus, L-u-t-k-u-t-s-i-i-w-u-s. Starting from there and going downstream as far as the site known as Awalp, A-w-a-l-p, also of Lutkutsiiwus. Have you reviewed this map and these fishing sites? Have you looked -- have you reviewed those sites and the locations of them with me before giving evidence?

A I know where the sites are.

Q You know where those sites are?

A Yes.

Q And is the depiction of the location of those sites correct?

A Yes.

Q And is the chiefs that own those sites as depicted there correct?

A Yes.

Q Okay.

A But I didn't know the name of the sites, but I know the chiefs that owns them.

Q Okay. So you could not recall all of the names of those sites as listed there?

A No.

Q But you do know those chiefs own those sites?

A I seen them fish there, yes.

Q Okay. And you know they are the owners from the descriptions of the sites?

A Yes.

Q Okay. Now, just for your reference, my lord, with reference to that, and it's of course -- tab 5 is an extract from the evidence of page 434 and page 435, the evidence of Mary McKenzie in which she refers to the Lutkutsiiwus sites from 4-Mile Canyon going downstream, and I'd just like to ask you one question on this. You see below -- just below the lowest site of Lutkutsiiwus that's on this enlargement, Awalp, there's a creek there. Do you know the name of that creek?

A Cedar Creek on the map, and we call it Xsingwawooms.
Q Xsi?
A Xsingwawooms.
Q X-s-i-n-g-w-a --
A I don't know how to spell it.
Q -- w-o-o-m-s. That's as I recall, my lord.
And was there a smokehouse near that creek?
A Yes.
Q And whose smokehouse was that?
A Lutkutsiiwus'.
MR. GRANT: Okay. I'd ask then, my lord, that the others, for convenience, be re-marked as part of this Exhibit number 1078, tabs 2 through 5. They all are parts of other exhibits or in one case part of a transcript, but for convenience for your lordship.
THE COURT: Yes. Thank you.

(EXHIBIT 1078-2 - TAB 2, 4-MILE CANYON SITES)
(EXHIBIT 1078-3 - TAB 3, GUTGINUXW GENEALOGY)
(EXHIBIT 1078-4 - TAB 4, NIKAT'EEN GENEALOGY)
(EXHIBIT 1078-5 - TAB 5, EXCERPT FROM TRANSCRIPT DATED MAY 20, 1987)

MR. GRANT: Thank you. Mr. Wilson, if you could answer my friend's questions.
THE COURT: Mr. Macaulay.

CROSS-EXAMINATION BY MR. MACAULAY:
Q When you were young, you lived at Pinenut Creek, did you?
A My mother lived there.
Q Did you?
A No, not me.
Q You never lived there?
A No.
Q And does anybody live there now?
A No, no.
Q Is there a smokehouse there now?
A No, it collapsed, and nobody rebuilt it.
Q That was your smoke -- your family's smokehouse, was it?
A Yes, my great grandmother.
MR. MACAULAY: Okay. Do you know of the -- of a system of dispute settlement that was put in place at Kispiox by the Kispiox Band Council to deal with disputes over fishing sites?
MR. GRANT: When?

MR. MACAULAY:
Q In 1983.
A I didn't hear of that.
Q You hadn't heard that Russell Stevens was to head a group composed of 12 or 15 chiefs and elders to arbitrate disputes?
A No, I never did hear that.
Q Is there a dispute resolution committee at Gitanmaax?
A No.
Q Now, you mentioned William Wale. He was your great uncle, was he?
A No, he's my uncle.
Q Your uncle?
A He's Djogaslee before me.
Q He had the name?
A Yes.

MR. MACAULAY: He was the head chief before you. Now, I'm going to show you a document. My lord, this is our document 11385.

MR. GRANT: My lord, I'd like to -- unless this has to do with fishing sites, I want to advise your lordship that Mr. Wilson was cross-examined on August 31st, 1988, by both Miss Koenigsberg on behalf of the federal Crown and Mr. Mackenzie on behalf of the province on his affidavit. But as your lordship had ruled, his cross-examination could cover any and all areas, not just the territories. This now -- my friend at this stage is introducing documents that have absolutely nothing to do, from my observations, with fishing at all, and these kinds of documents were tendered and put to other witnesses.

MR. MACAULAY: How can my friend say that? He doesn't know why I'm using it.

THE COURT: Well, I think we should deal with the problem anyway. I have always avoided any suggestion, Mr. Grant, that witnesses are not subject to cross-examination generally when they go in the box. There is a limit when it comes to re-examination and rebuttal evidence, but other than that I've always taken the view, unlike the American practice that's usually gone on, that cross-examination is at large every time a witness enters the box, and I did not limit cross-examination on affidavits for that very reason, and I don't think I have precluded applying the same rule at this time, have I?

MR. GRANT: Well --

THE COURT: Perhaps you think by inference I have.

1 MR. GRANT: Well, maybe we haven't crossed that bridge yet
2 because with respect to the witness that you heard,
3 for example, yesterday and other witnesses my friends
4 have taken the opportunity and -- where witnesses have
5 been cross-examined, of course, they did canvass on
6 all areas, as your lordship directed, and I concede.
7 I'm not suggesting that. But the point of this is
8 that this witness is now being cross -- he -- all of
9 those issues were there in August. These documents
10 were presumably --
11 THE COURT: No, I don't think I need to hear you further, Mr.
12 Grant. I'm not going to limit cross-examination. I
13 have always taken the view that there has to be a risk
14 when you call a witness, and the risk is you open him
15 up to cross-examination, and I wouldn't want to depart
16 from that salutory rule. You may proceed, Mr.
17 Macaulay.
18 MR. MACAULAY:
19 Q Now, you've been looking at that document, Mr. Wilson,
20 and you see that it's a statutory declaration. It was
21 sworn in 1943, when you were quite young. I'm sorry,
22 it was sworn in 1946. And it appears to be the
23 declaration of Charles Patsey and William Wale of
24 Hazelton. Do you recognize those names?
25 A I know Charles Patsey, yes, and Charles Clifford, and
26 William Wale. I know them.
27 Q Yes, it has to do with -- apparently has to do with
28 the election of Charles Clifford Sr.
29 A Um hum.
30 Q Did you know Charles Clifford?
31 A Yes.
32 Q Is he dead now?
33 A Yes, long dead.
34 Q And how about Charles Patsey?
35 A Same.
36 Q He's dead?
37 A Yes.
38 Q Now, at the bottom there's signatures. Do you
39 recognize those signatures, Patsey and Wale?
40 A I recognize William Wale's.
41 Q You do?
42 A Yes.
43 Q Okay. My lord, I'm not going to ask that that be
44 marked. I just wanted to get the witness to identify
45 that. Now, I'm going to show you another -- not for
46 moment anyhow -- document. This is dated -- it's our
47 document number 1245, my lord, dated October 29th,

1968. It's in the matter of the estate of Peter John Wale. Did you know Peter John Wale?
A Yes, he's one of my uncles.
Q And this document appears to be signed by Stanley Wale. Do you know him?
A Yes.
Q Did you know him?
A Yes.
Q Was he a relative of yours too?
A Well, second cousin. He's my uncle's boy.
Q And then William Wale?
A And William Wale.
Q And you recognize that signature, do you?
A Yes.
MR. MACAULAY: Okay. If you put that aside, witness, I'm not asking it be marked.
Now, my lord, I'm going to show the witness a will of James White.
MR. GRANT: My lord, I'm concerned. My friend is tendering now these documents from these estate files. As you may recall, this was dealt with a long time ago and referred to. I just wonder what -- and my friends withdrew or moved back from the utilization of wills --
MR. MACAULAY: We did not.
MR. GRANT: -- generally.
MR. MACAULAY: We did not.
THE COURT: I don't recall --
MR. GRANT: These come from the confidential files.
THE COURT: -- precisely. I think Mr. Macaulay merely discontinued pursuing the witness back up in Smithers, as I recall, but I'm not at the moment mindful of any general abandonment of any particular field of battle.
MR. GRANT: No, I -- I certainly didn't mean to suggest that. I think as you phrased it is right. Mr. Macaulay withdrew or -- pursuing the area.
THE COURT: Discontinued cross-examination on a subject.
MR. GRANT: And these, of course, come out of the personal files that are not available to the descendants of these people. They are not probated wills. They are confidential files of the Department of Indian Affairs. And we took issue then, and at that time Mr. Macaulay did not pursue it as I --
MR. MACAULAY: I'd like the reference in the transcript of that, my lord. I do not recall backing off using a will ever.
MR. GRANT: He did not pursue it.

THE COURT: Didn't pursue a particular will. It had something to do with a farm in Kispiox, as I recall.
MR. GRANT: Yes, it was an estate file. And we raised objection at that time to these -- their disclosure.
MR. MACAULAY: Perhaps I should sit down and hear the objection because I don't understand it.
THE COURT: Well, I think the objection is one that's based more in disappointed outrage.
MR. GRANT: Well, there's that element, and the other element is that my friend -- he's already tendered two documents that he says he is not putting in as exhibits now. I just wonder --
MR. MACAULAY: I don't have to explain why I put documents to a witness, my lord. My friend's wasting time here. It's frivolous.
MR. GRANT: I wonder what is the relevance of this last document.
THE COURT: I don't know. I've never seen the document before, and we haven't heard any examination on it yet. No, I think we should hear what develops. Counsel don't have to show their hand in the first instance. It has to become apparent at some time, but I don't think counsel can be required to outline his circuitous route he may be pursuing in his cross-examination. You can proceed Mr. Macaulay.
MR. MACAULAY:
Q Have you seen that document before, witness?
A No, I have not. This is the first time I've seen this.
Q James White. Was James White a relative of yours?
A No.
Q He was not related to you at all?
A No.
Q He was at one time Gyetm galdoo?
A Yes.
Q Now, there's a reference to -- in the bequests to, amongst other people, to his daughter Kathleen. I take it she's not a relative of yours either?
A No.
Q But the witness, William Wale, at the bottom is your uncle?
A Yes.
Q And that's his signature?
A Yes.
Q Now, you see there that James White, Gyetm galdoo --
A The signature of William Wale here, it's -- it doesn't look right to me.

Q Well, let's look at the other documents.
A This is his true signature on this one here.
Q You're showing me --
A And this one is different.
Q Yes.
A Different handwriting.
Q Different handwriting?
A It looks that way to me.
Q Well, the first -- all right. We'll come to another document then and that's -- anyhow, you don't know -- do you know who Maria and Kathleen White were?
A Kathleen White, that's William Wale's wife. Kathleen Wale, Mrs. Kathleen Wale.
Q It was your uncle's wife?
A Yes, Kathleen.
Q And Kathleen was the daughter of James White?
A That's right, yes.
Q And he -- James White appears to have bequeathed his fishing station on the Bulkley River directly above the mouth of Mission Creek to his two daughters? That's what it says?
A That's -- that's Gyetm galdoo's fishing site, yes.
Q Mission Creek is another name on the map?
A That's Gwinxsigiibiltxw.
Q Does it have another English name on the map?
A No, not that I know of.
Q Station Creek?
A No. Gwinxsigiibiltxw.
MR. GRANT: Just a second. G-w-i-n-x-s-i-g-i-i-b-i-l-t-x-w.
THE WITNESS: That's Mission Creek.
MR. MACAULAY:
Q And is that on the left bank of the Bulkley, that is, as you --
A Go down river.
Q -- go down river?
A Yes.
Q Now, I ask you to look at -- I'm going to show the witness now, my lord, because of this comment about the signature, a document entitled "Application for Appointment of Administrator and Approval of Will." It's our document number 3793. These are not stapled together. They're just clipped together, my lord. But I'm drawing the witness's attention to the third page of that document, and that third page includes an affidavit of a witness, William Wale, and there's a signature there. Do you recognize that signature?
A Yes.

Q That's your uncle, William Wale's signature?
A Yes.
Q And he says there that he knew James White of Hazelton and that he was personally present on August 31st, 1937, when a last will and testament of James White was executed. That's what he says --
A Um hum.
Q -- doesn't he?
But he never told you about that?
A No, no.

MR. MACAULAY: Could that be marked? Could the two be marked as the next exhibit, my lord?

MR. GRANT: My lord, I'd like them to be marked as exhibits for ID because this -- we have never had these applications for appointment of administrator and approval of will marked, and I'd like to be able to just consider the position we take, but I don't think we should spend the time on it right now.

THE COURT: What's the exhibit number?

THE REGISTRAR: 1079.

THE COURT: All right. Well, the four-page application will be -- or is it five pages -- five pages, will be marked 1079 for identification.

(EXHIBIT 1079 FOR ID - APPLICATION FOR APPOINTMENT OF ADMINISTRATOR - JAMES WHITE)

MR. MACAULAY: On what grounds would it be marked for identification, my lord?

THE COURT: Well, your friend has asked for some time to look into it. It will be marked if he doesn't raise it again.

MR. MACAULAY: Yes, my lord. Now perhaps now my friend will understand why the earlier two documents were shown to the witness, the ones that weren't marked.

MR. GRANT: No, I don't.

MR. MACAULAY:

Q Do you know Johnny Wilson of Gitanmaax?
A Johnny Wilson?
Q Yes.
A Yes.
Q What house -- is he a member of the Frog Clan?
A Yes.
Q And what house does he belong to?
A He has an Indian chief's name. He's the chief. He has a house -- his own house.
Q What house is that?

A It's -- I forgot. Skiik'm something.
Q He doesn't belong to the House of Nika teen?
A No, no.
Q Does he have a fishing site in 4-Mile Canyon?
A No.
Q Does he fish there?
A Yes, he fishes there.
Q And whose site does he use?
A Well, he figured it was his brother's site, Moses Wilson, but Moses Wilson was actually using Nika teen's fishing site on the same reason that Donald Mowatt. There was a reason why they fished there. And when Moses died, he's supposed to let it go, but Johnny keep on using it, and he's fishing in Nika teen's. He's setting his net right at --
Q Nika teen's site?
A Yeah, and Gwinwilaat.
Q And has he got Nika teen's permission?
A I don't think so.
Q Well, your great aunt Sophia Mowatt has told you that he hasn't got Nika teen's permission, hasn't she?
A Not my aunt, no. It's Ellen Johnson -- Ellen Woods told me.
Q And --
A That's Nika teen's mother.
Q Nika teen's mother?
A Yeah.
Q And how many years has Johnny Wilson been fishing there?
A Oh, few years now. Over 10 years I think he's been using that. And I believe they told him to leave at one time, and -- I don't know -- he didn't.
Q In 4-Mile Canyon are there fishing sites that you used to use that are no longer used?
A That I used to use?
Q Yes.
A Not up in 4-Mile.
Q Not at 4-Mile?
A No.
Q Are there fishing sites in the Hagwilget Canyon that you used to use that you no longer use?
A We still use them, but not as much.
Q Do you use the same fishing techniques as you used to use?
A No, I use nets now.
Q You don't do any gaffing now?
A No. Ever since that rock was blown out, we don't gaff

there no more.
Q But you use the same site?
A Yes.
Q Sites.
A Yes, with a net. If the -- like I said before, it all depends on the river. When the river's high, then there's always a place to set net.
Q Now, I'm showing the witness, my lord -- your lordship will recall that early in the trial a petition regarding fishing sites was marked as Exhibit 26 and certain schedules to that petition were marked, including schedule D. I'm showing the witness another schedule now, schedule F. I'll ask -- I'm going to ask the witness if he has seen this before. Do you recognize that schedule to the -- a petition presented by the Gitksan Carrier Tribal Council, as it was then called, regarding the Hagwilget fishing grounds?
A I seen Tsitsk there.
Q I beg your pardon?
A Tsitsk. That's Hagwilget.
Q Yes.
A Gitksan call it Tsitsk.
MR. GRANT: T-s-i-t-s-k.
MR. MACAULAY:
Q Do you recognize this document, which bears your name? You see there fishing sites numbered on the map?
A Oh.
Q And then over on the right-hand side there's the site number and the clan, the owner, and then the English name of the owner.
A Site numbers. That's on the left, hey.
Q Well, yes, the numbers you'll find in the diagram on the left-hand side, that's right.
A Yes.
Q But first, in fairness, I should ask if you've ever seen this before?
A No, I haven't. This is the first time I seen this.
Q Did you know that there was a petition made in about -- in or about March of 1983 concerning fishing sites on reserves?
A Petition?
Q Yes, a petition including petitioners such as yourself.
A That's within the reserve.
Q Yes.
A I know.
Q Do you remember that there was -- the Tribal Council

1 authorized the issuing of a petition regarding fishing
2 sites on the reserves in 1983?
3 A Um hum, yes.
4 Q And did you know -- well, you were a member of the
5 Gitanmaax council at that time, weren't you?
6 A Yes.
7 Q What was your office in 1983 on the council?
8 A What do you mean what was my --
9 Q Were you the chief councillor?
10 A Oh, no, just a councillor.
11 Q You were a councillor?
12 A Yeah.
13 Q And you were also the head chief of your house,
14 Djogaslee --
15 A That's right.
16 Q -- in 1983?
17 A Yes.
18 Q Did you know that as part -- attached to the petition
19 were several schedules, maps like this showing fishing
20 sites? Did you know that?
21 A I didn't see them, no.
22 Q You never saw them?
23 A No.
24 Q Now, according to this map, the sites we see -- the
25 sites that are claimed on your behalf are numbers 601,
26 604, 605, 606, 607, and 608, and that is the ones in
27 the Hagwilget Canyon, and you can see on this map
28 where those numbers are?
29 A Um hum.
30 Q 601, 604. Does that map show accurately all the
31 Djogaslee fishing sites?
32 A Yes. Yeah, it shows on there.
33 Q So there aren't any missing?
34 A No.
35 MR. GRANT: I think the witness should have a chance to look at
36 that and even compare it with the other.
37 MR. MACAULAY: Sure.
38 MR. GRANT: He hasn't seen this at all before. Can he compare
39 it with Exhibit 1078, tab 1?
40 MR. MACAULAY:
41 Q I think he probably should.
42 A That 603 on there has got Gyetm galdoo, which is not
43 right. 605, that's right there. That's not right.
44 MR. MACAULAY: Well, that shows two sites below -- no, above the
45 bridge, doesn't it?
46 MR. GRANT: On which bank? The right bank you're referring to?
47 MR. MACAULAY:

Q Well, they're all on the --
A Right bank.
Q -- right bank.
A Going down river.
Q Yeah. You have no sites -- Djogaslee has no sites on the other bank, has it?
A No.
Q So we're talking about the same thing. And this map says that there are 601 and 604, and you do have two -- you've just given evidence that you have two above the bridge?
A Well, the important ones. I mentioned that there's quite a few sites in between these important fishing holes we have.
Q But the map that you put in evidence today or that your council did, this map, shows these sites a way above the bridge, doesn't it?
A It's not too far.
Q Not too far?
A No.
Q And then there are two right under the bridge?
A Yes.
Q On both maps?
A Um hum.
Q And then according to this schedule F there's only one more, and that's way down just near the bend, 606 -- I'm sorry -- 608?
A 608.
MR. MACAULAY: But today you've told his lordship that you have a whole lot of sites at the bend?
MR. GRANT: Two sites.
THE WITNESS: No, at the bend, no. Below the bridge.
MR. MACAULAY: I see four.
MR. GRANT: There's only two of Djogaslee's.
MR. MACAULAY: Oh, there are two.
THE COURT: Well, there are three shown on the --
MR. MACAULAY: Three.
THE COURT: -- map produced today in chief below the bridge, are there not?
MR. GRANT: But one of those -- that's what I'm worried about. My friend may be counting dots and not looking at the names. Two of those are Djogaslee's and one is Gutginuxw's, my lord, and if my friend's saying there's more sites there, then of course he's quite correct, but I thought he was asking the witness that there's many sites of his at that corner, and I think he misunderstood that.

MR. MACAULAY:
Q Well, how many sites have you got at the corner?
A There's only four below the bridge, below --
Q Two right by the bridge?
A Yes.
MR. MACAULAY: And two more.
THE COURT: Well, the map --
THE WITNESS: Like I say, there's more in between those.
THE COURT: Doesn't the map show four sites belonging to the witness below the bridge?
THE WITNESS: Yes.
THE COURT: And the map attached to the petition shows three?
MR. MACAULAY: Yes, my lord.
THE COURT: The petition shows the witness having three above the bridge, I think -- no, two above the bridge.
MR. MACAULAY: Two above the bridge.
THE COURT: And his earlier exhibit shows one above the bridge.
MR. GRANT: The exhibit F shows two above the bridge of the witness, my lord.
MR. MACAULAY: Two. That's a fair distance.
THE COURT: And Exhibit 1078-1 only shows one. Oh, no, it shows two. I'm sorry, there are two above.
MR. MACAULAY: Well, there's one way above in the bay.
MR. GRANT: Well --
THE COURT: We don't know how far above it is.
MR. GRANT: Well, we can see the scale, my lord. There is, unfortunately, no scale of the inset on schedule F, but the scale on the other -- as the witness has said, they're not that far above. You can see the scale on the enlargement is -- a hundred metres is one inch, I believe.
MR. MACAULAY:
Q At any rate, you didn't have any part in -- play any part in marking up this schedule F? You weren't asked to do that?
A No.
MR. MACAULAY: Well, I won't ask that that be marked then, my lord.
THE COURT: Is it in already?
MR. MACAULAY: No, it isn't. Schedule D is in.
THE COURT: And the petition is in?
MR. MACAULAY: And the petition is in, but F isn't. This witness says he was not --
THE COURT: If you're not putting it in, Mr. Macaulay, I'll give it back to you. Okay.
MR. MACAULAY: Thank you.
THE COURT: Do you want to start something fresh, Mr. Macaulay?

MR. MACAULAY: My lord, I'm going to start something else. My friend has some cross-examination as well, and unless we go till 5:30 or 6:00, we're not going to be finished.
THE COURT: Well, I can only sit until five o'clock tonight.
MR. GRANT: Could I use the extra moment to just raise something and advise my friend? I don't want --
THE COURT: Well, let me -- you're not finished, Mr. Macaulay?
MR. MACAULAY: No, I'm not finished.
THE COURT: All right. We'll continue your cross-examination tomorrow then. Thank you, Mr. Macaulay. Mr. Grant.
MR. GRANT: My lord, I say this -- I take responsibility for this myself, and it was entirely through inadvertence in how I organized that document.
THE COURT: I don't like the sound of this. Go ahead.
MR. GRANT: I wanted to say that there was -- and my friends got notice of all the fishing sites that Mr. Wilson would refer to. I had intended, fully intended to --
MR. MACAULAY: I'll look through the thousands of pages, my lord.
MR. GRANT: Well, you only got it last Friday, and it's one letter that lists those. I had fully intended to refer him and ask him about those sites between Hagwilget Canyon and the mouth of the Bulkley River as part of his direct evidence. There are very few of them, and it would be a question of two or three questions, and I would be asking tomorrow morning if -- I don't want to prejudice my friend's cross. If I could just reopen to ask those two or three questions. I just overlooked it.
THE COURT: I'm sure if it's a matter of counsel's inadvertence you can do that at the opening of the proceedings tomorrow morning.
MR. GRANT: Thank you, my lord.
THE COURT: Thank you. Ten o'clock, please.
THE REGISTRAR: Order in court. Court stands adjourned until ten o'clock tomorrow.

(PROCEEDINGS ADJOURNED AT 5:00 P.M.)

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

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Leanna Smith, Official Reporter

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