Vancouver B.C,
May 11, 1988.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

THE REGISTRAR: Calling Delgamuukw and Her Majesty the Queen.

SOLOMON MARSDEN, resumed:
ALICE SAMPSON, Interpreter, resumed:

THE REGISTRAR: I caution both the witness and the interpreter you are still under oath.
MR. GRANT: Yes, my lord. Before Mr. Macaulay proceeds, there is just one point I wanted to make out of yesterday's examination and I refer to page 899 when Exhibit 24A --
THE COURT: Page?
MR. GRANT: -- came in. Page 899 of Volume 14. This is with respect to that Exhibit 24, the trapline map.
THE COURT: Oh, yes, all right.
MR. GRANT: And there was an argument at that point about admissibility, and your lordship said at line 12 regarding this map:

> "Well, the note I made of her evidence -- "

This was the evidence of Mary Johnson,

> " -- was that I agreed that the large map, Exhibit 24A, correctly shows the area of trapline 06302021. That's as far as it goes at the moment and that's rebuttable. There's nothing conclusive about it."

And then you comment:

> "It seems to me we're wasting a great deal of time on matters over which there should be no dispute at all. But I hope we don't have that sort of-- "

And then Mr. Goldie interjected. All I am saying is that that was my understanding as well, that 24A was only put in for the identification made at that time. I just wanted to --
THE COURT: Yes. All right.
MR. GRANT: So that is why I had forgotten and thought it was an exhibit for identification and in fact it had been --

THE COURT: Yes. It was in for the limited purpose you mentioned.
MR. GRANT: Yes.
THE COURT: All right. Thank you. Mr. Macaulay. Perhaps we should recognize the occasion that today is our first anniversary of the trial. Mr. Macaulay.

CROSS-EXAMINATION BY MR. MACAULAY:
Q You were a commercial fisherman on the coast for many years?
A Yes.
Q And you started fishing when you were about 14 years old?
A 14 years old.
Q Did you go with your father --
A What's that?
Q -- to the coast the first time you went?
A Yes, I went with my father when I first started.
Q And your father had been to the coast many years before you first went with him?
A Yes, he has been fishing for awhile.
Q And were you using sailing skiffs when you first started fishing on the coast?
A No.
Q You had outboard motors at that time when you first started when you were 14?
A Sailboat.
Q Sailboat. When you went to the coast with your father, did your mother go to the coast also?
A Yes, she did go with him and they did work in the cannery.
Q And you had brothers or sisters, did you? Brothers and sisters?
A Yes.
Q And when they were young, did they go to the coast with your mother and father and yourself?
A Yes, we all went with our parents.
Q And when you went to the coast, did you take the railroad from Gitwangak?
A Yes, we used the train.
Q When you were young, when you were 14 years old there was no road from Gitwangak to the coast, was there?
A No.
Q The road was built during the war, the Second World War, the road to the coast?
MR. GRANT: From?
MR. MACAULAY:

1 Q From Kitwanga?
2 A Yes.
3 Q And during the war the Japanese fishermen were removed
4 from THE fishing on the coast?
5 MR. GRANT: My lord, I just wonder what the relevance of this
6 question is to this litigation. I am not -- I am not
7 talking about the scope of the area, but the question
8 of Japanese fishermen and their removal seems further
9 afield than we have yet gone in this case.
10 MR. MACAULAY: We have already gone, my lord, with another
11 witness.
12 THE COURT: We did?
13 MR. GRANT: I probably didn't have the pleasure of being
14 present.
15 THE COURT: I had the pleasure of being here but I have
16 forgotten.
17 MR. GRANT: I don't know if there has been an objection raised.
18 I stand on the objection now if there has been no
19 ruling on it.
20 MR. MACAULAY: It had an effect on the number and scope the
21 Indian fishery on the coast.
22 THE COURT: All right. Well, I don't think it's of any
23 relevance for -- in its narrowest terms, but if you
24 are satisfied that it's leading to something that will
25 be relevant, you made proceed.
26 MR. MACAULAY: Thank you, my lord. I will repeat the question.
27 THE COURT: All right.
28 MR. MACAULAY:
29 Q During the war before the 1942 season, fishing season,
30 the Japanese fishermen who had been on the coast were
31 no longer there?
32 A The Japanese were against the Canadians, so this is
33 the reason why they did this.
34 Q And one of the results was that more Gitksan were
35 needed to fish on the coast?
36 A Yes.
37 Q There were many families from Gitwancool who fished on
38 the coast during the 1940s?
39 A Yes.
40 Q And the season usually was from June till August?
41 MR. GRANT: On the coast?
42 MR. MACAULAY:
43 Q Yes. The coast.
44 A Yes.
45 Q Before -- just before you stopped fishing in 1976, did
46 you have your own boat?
47 A Yes, I bought my own boat and I became sick and this

is why I quit. This was in 1976.
Q When you had your own boat, did you have a crew on the boat or did you fish by your yourself on the coast?
A I fished by myself.
Q Did you ever miss a fishing season on the coast between the age of 14 and the year 1976?
A No. No, I never missed a year.
Q After you were married, did your wife come with you to the coast when you went to fish on the coast?
A Yes. She always did come with me and we lived at a lot of places; Cassiar, Porcher Island and Carlyle.
Q Did your wife -- when you were out fishing, did your wife ever work at the cannery, one of the canneries?
A Yes. She worked in the cannery.
Q How old were you when you started cutting cedar poles?
A I don't know how old I was, but I know it was in 1950. 1950.
Q Yes. And when you started cutting cedar poles, where were you cutting them?
A We started at Kitwancool Lake and we started here. It is my own territory.
Q How many years after 1950 did you cut cedar poles?
A I started in 1950 and I finished in 1969.
Q And during all those years, did you always cut poles around the Kitwancool Lake?
A Yes.
THE COURT: I am sorry, Mr. Macaulay, I may have not have heard you correctly. Did the witness say that he was cutting poles at Kitwancool Lake?
MR. MACAULAY: On his own territory in Kitwancool Lake.
THE COURT: Yes. And was your question now Kitwancool or Gitsegukla?
MR. MACAULAY: Kitwancool.
THE COURT: Kitwancool. Thank you.
MR. MACAULAY: I wouldn't try to play a trick like that on the witness.
THE COURT: You played a trick on me, Mr. Macaulay. The answer was that he always cut poles around Kitwancool Lake.
MR. MACAULAY: Kitwancool Lake.
THE COURT: Yes. Thank you.
MR. GRANT: On his territory on Kitwancool Lake.
MR. MACAULAY: On his territory.
Q Was there a -- did you cut poles in the same season every year or did it vary depending on the year?
A I worked for Bell Pole and I -- that is how long I worked and I never -- I quit for any length of time were for a year.

Q Well, you didn't cut poles during the commercial fishing season?
A We usually do our logging in the wintertime, because we don't have any bigger equipment to use to haul the poles. We usually use horses. And I usually quit for the length of time I'm down the coast working.
Q Did you work for Hanson's?
A It was -- this was before I got the contract for myself and I worked for Hanson and others.
Q Well, then you worked for Hanson and others for awhile and then you became an independent contractor?
A Yes.
Q When you were an independent contractor, did you have men working for you?
A Yes. A lot of people worked for me and they -- the people change every year and I don't exactly remember who all they were.
Q But you had a payroll?
A Yes.
Q And you had to deduct income tax from the pay that you gave your employees?
A The deduction of income tax was done by Hanson and Bell Pole Company and I was -- the only thing I deducted was from the payroll was their grocery supplies.
Q Did you operate a store at Kitwancool?
A Because of my hard work this is why we had the store.
Q And did you and your wife operate the store your yourselves?
A Yes.
Q Is that store still in operation?
A No.
Q Did you sell it to somebody else?
A We closed it down because we didn't have any workers.
Q Do members of the Kitwancool band work at the Gitwanga mill today?
A Yes, they work.
Q And can you tell us about how many members of the Kitwancool band work at the Gitwanga mill or Gitwangak?
A Not very much. There is about five people and I don't know the length of time they are working there.
Q Do you know Richard Benson?
A Yes, I know him.
Q Richard Benson spent his childhood at or near Gitwancool?
A They lived in Kitwanga.

1 Q Was Richard Benson's father's a chief at Gitwancool?
2 A They made their home in -- yes, he was a chief. They
3 made their home in Gitwangak and this is where they
4 lived.
5 Q But he was a -- was Richard Benson's father a head
6 chief of a house at Gitwancool?
7 A This has been a long time and I am not quite clear on
8 that.
9 Q Now, Richard Benson has given evidence that he stopped
10 trapping after the 1951 season because of the fur
11 prices at that time. Did you stop trapping after the
12 1951 season?
13 A Yes, that's about the time. We all see that the fur
14 market was really going down and most of us trappers
15 did this.
16 Q When you were a commercial fisherman did you fish
17 mostly in area four? Yes, I fished in area four for a
18 number of years and then I got a gas boat and I fished
19 at five, six, seven, area five, six, seven, and then
20 in 1955 I came and I fished over here.
21 THE COURT: I am sorry, the end of that answer --
22 MR. MACAULAY: Over here.
23 A Here.
24 THE COURT: Did you say when?
25 A 1955.
26 MR. MACAULAY: 1955.
27 THE COURT: In 1955 fished over --
28 MR. MACAULAY: Over here. I'll ask the witness.
29 THE COURT: All right. Thank you.
30 MR. MACAULAY:
31 Q When you say "over here," you mean near Vancouver in
32 the Fraser River?
33 A Yes.
34 Q A commercial fisherman has to have the ability to read
35 marine charts?
36 A This is what they say today, recently. But in the
37 olden days we didn't do that. We don't have to do
38 that.
39 Q Did you learn from your father the areas of the
40 coastline that you needed to know in order to fish
41 commercially?
42 A Yes, that was the main reason why they took me along
43 with them when I was a young boy and they -- he showed
44 me everything and this is why I know how it was.
45 Q Are there any members of the Kitwancool band who go
46 fishing commercially today?
47 A Yes, there must be about six commercial fishermen in

the Village of Kitwancool that fish today.
Q The members of the Gitwancool houses who moved to Kincolith years ago, are they still Gitksan?
A Did you say are they counted as house members or --?
Q Yes.
A Or are --
THE COURT: The question was are they still Gitksan.
MR. MACAULAY:
Q Are they still Gitksan?
A No. If they have been transferred to another village, if they have left the village behind and not returned, then they are not. But if they -- every time there is a Feast or anything going on at the village and they come back and then they are counted as Gitksan.
Q When people left Gitwancool to go to Kincolith, was that when you were very young?
A I was quite young when this happened. I was just told about it and I never seen this.
Q Now, the people who went to Kincolith, did that include some women?
A This is -- what happened, this is what I was told that the whole family would leave. They never left one brother or sister behind, but the whole family left the village and there must have been about a hundred of them at that time.
Q Now, the small children of mothers who came from Gitwancool houses who never -- have never returned to Gitwancool and have died in Nishga country, have they lost their membership in Gitwancool houses?
A It is very clear what you are trying to ask me or show me and it is very clear to me what happened here. When there is a death in the village, they moved into. This is where the -- where the work is done. They bury their dead in that village where they moved to.
Q Well, what I'm trying to find out, Mr. Marsden, is if the grandchildren of those people must be alive today whose mothers were Gitksan and whose grandmothers were Gitksan. Are those grandchildren today who live in Nishga country, are they Gitksan?
A In the beginning when the people left Kitwancool they left for a reason and they never thought about the house members or their houses. They just took off and left. And today what happens, the younger generation wanted to find out where they are from and so they find out and they know where they are from. And at times you would meet up with some of them and they would tell you -- they tell you who they are and who

1 their mother was.
2 Q And those young people, if they come back to a Feast
3 at Gitwancool held by a house in Gitwancool, do they
4 become members of that house if their mothers and
5 their grandmothers were members of that house?
6 A Yes, there is -- they have always been people talking
7 to these people that have moved away because they know
8 that they are still members of that -- of the house,
9 and they have always tried to talk to these people
10 that have moved and asking them to move back to their
11 village. Because when they are talking about the land
12 claims, they want all the Kitwancool Indians that have
13 lived there and stand together for the land claims.
14 And if they -- we know which houses they belong to and
15 if they come, then they are in that house.
16 Q But if they don't come back, they are not in that
17 house?
18 A We could not say that they do not belong in this
19 house. It is always their house and we are always
20 expecting them to come back.
21 Q What is the present population of the Gitwancool?
22 A It's about four or 500.
23 Q There are four or 500 people living in the village?
24 A Yes. Yes. That's how many in the village.
25 Q Now, you mentioned earlier in your evidence the long
26 house. Every wilp had a long house, didn't it?
27 A Yes.
28 Q And I am showing the witness, my lord, the exhibit, if
29 I could see the original Exhibit 448. And what I will
30 be doing, my lord, is opening the cover up to show him
31 the full photograph. I am showing you Exhibit 448.
32 You have seen this yesterday and the day before. And
33 there is a photograph showing Gitwancool as it used to
34 be?
35 A Yes.
36 Q And you remember Gitwancool when it looked like that?
37 A Yes. I was just a little boy when I seen this.
38 Q And there are many poles there?
39 A Yes.
40 Q The photograph also shows the houses -- two of the
41 houses built over the places where chiefs were
42 cremated?
43 A Yes.
44 Q And even today there are some old houses of that kind
45 showing --
46 MR. GRANT: Grave house.
47 MR. MACAULAY: Well, my friend suggests the name grave house.

In fact as I understand it, my lord, it was the house over the place where the chief was cremated and the witness agreed with that.

MR. GRANT: No. I was just trying to grapple with the word.

MR. MACAULAY:

Q Even today there are the remains of some of those houses at Gitwancool?

A This is not used. This here is not used as a graveyard today.

Q No. But even today if you go to Gitwancool, you see some of the remains of the old houses that were placed over the cremation spot?

A I don't know if there is any left of those houses there. They are all gone.

Q The poles were raised by head chiefs after they took their name?

A Yes.

Q And each chief had his own pole, each head chief had his own?

A Yes. The poles that are in front of the houses of the chiefs are theirs.

THE INTERPRETER: Like he's pointed out these two here.

MR. MACAULAY:

Q You are pointing to two poles.

MR. GRANT: Second and third from the right. Left on the front cover of Exhibit 448.

MR. MACAULAY:

Q Are those poles of your house?

A Uh-huh. Yeah. This is the way it is. This is Xamlaxyeltxw's house and this is Gwashlam's.

MR. MACAULAY: Just a minute, Madam Interpreter. There is a centre division of that photograph. It happens to be the spine of the book.

THE COURT: Yes.

MR. MACAULAY: And the interpreter and the witness before her of course shows on the right-hand side of the spine a house and then on the left-hand side, immediate left-hand side of the spine a house in connection with that answer.

MR. GRANT: And the house on the right-hand side was Xamlaxyeltxw's and the house on the left-hand side of the spine was Gwashlam's.

MR. MACAULAY:

Q Gwashlam?

A And these were the two chiefs of the village, the head of the Frog Clan and the head of the Wolf Clan. On your right-hand side this is Xamlaxyeltxw's house.

1 This is Wutaxhayetsxw's house.
2 Q That's next to -- ?
3 A To Xamlaxyeltxw's house. And next to Wutaxhayetsxw's,
4 next to Wutaxhayetsxw is Gaakhl's house and that's the
5 Frog Clan.
6 MR. GRANT: That's all the houses on the front cover, my lord.
7 MR. MACAULAY:
8 Q Three houses, my lord.
9 A And on the other side is Gwashlam of the Wolf Clan.
10 There is Gwashlam and next to Gwashlam there is Malii
11 and next to Malii, Haits'imsxw's.
12 MR. GRANT: And those are going from the centre of the spine to
13 the left.
14 THE COURT: On the back of the book.
15 MR. GRANT: Which are the three houses on the back of the book.
16 MR. MACAULAY: Yes.
17 Q Each chief had his own design for a pole. In other
18 words, if a chief, when he took his name, he didn't
19 just copy the pole of the man he succeeded. He had
20 his own design, is that right?
21 A It is the exact copy of the former chief. It is not
22 the decision of the new chief just to put any old
23 thing on the pole. It is the exact copy of the former
24 chief's pole.
25 Q But doesn't each chief put at the bottom of the pole
26 the badge or emblem of his father's side?
27 A Yes. When a new chief is going to raise a pole, he
28 puts his father's Ayuks at the bottom of the pole.
29 But when after this chief dies and a new pole is
30 raised and a new chief is chosen, then they take the
31 bottom off and then -- when they raise this pole they
32 would put another one, that's the Ayuks of that
33 person's father.
34 Q Your predecessor was Mr. Albert Douse in your house?
35 A Yes.
36 Q And on his pole the crest or Ayuks of his father who
37 was carved?
38 A There is the law. You can use this, this law and
39 not -- if you want to you could do this and I
40 didn't -- I didn't put -- I didn't do this when I
41 raised the pole. This pole was erected by Albert
42 Douse and in one here that is standing, he moved it
43 here.
44 MR. GRANT: Just for the record, which one are you pointing to?
45 A This.
46 MR. GRANT: That's the second one from the left on the front
47 cover of Exhibit 448.

MR. MACAULAY:
Q And is your pole exactly the same as that?
A There are two poles there. Albert Douse erected the pole that is known as Ha' niilaahl gaak and I raised the pole that is known as Gyedim gan alaa.
Q Are they both exactly the same, those two poles?
A No.
MR. GRANT: Can I get the second name of the second pole from Miss Howard?
A This -- that pole of which is known as Ha' niilaahl gaak is the pole that was raised in Gitangasx when Sindihl came over for Gitangasx. That other pole is known as Gyedim gan alaa. It is the pole where there are people sitting around, where there is a smoke hole on top. They are sitting around the fire. This is the one that's known as Gyedim gan alaa.
MR. GRANT: Can I get that spelling.
THE TRANSLATOR: G-y-e-d-i-m space g-a-n space a-l-a-a.
THE COURT: A-l-a-a?
A A-a.
MR. MACAULAY:
Q There are many more poles at Gitwancool than there are at Gitsegukla today?
A I am not too sure if there is more in Kitwancool than Gitsegukla.
Q There are more poles in Kitwancool than at Gitwangak?
A Yes. It seems that way.
Q There are head chiefs at Gitwangak who have never raised a pole?
A Maybe Stanley has explained this what had happened that the religion entered the Village of Gitwanga and the religious people lived -- they separated from the Indians that did not believe. And this is what happened and this is -- maybe this is one of the reasons why there is not that many poles standing in Gitwangak.
Q There are many chiefs alive today in Gitsegukla who have never raised poles?
A Yes.
Q The chief's name is first called out when he raises his pole?
A Yes. Guxsan put a pole up.
Q And Hanamuxw is now raising the pole?
A Yes, she will.
Q Hanamuxw's predecessor was Jeffery Johnson?
A Yes.
Q You knew him?

A Yes, I know him.
Q That he was the head chief of a Gitsegukla house?
A Yes. He was one of the chiefs in Gitsegukla and Guxsan is the first and then Gwis gyen and then Hanamuxw.
Q But Hanamuxw is a separate house for the others?
A Yes.
Q And Jeffery Johnson lived at Gitanmaax?
A Jeffery was always living in his own village, Gitsegukla. It's just when he married, this is when he moved to Gitanmaax.
Q There are other head chiefs alive today who live outside their own village?
A Yes, this happens and they live in their father's village. Take me, for instance. My children live in my village, but they actually belong to Guxsan's house. They belong in Guxsan's house which is in Gitsegukla and this is what happens.
Q The long house was where the head chief and his family lived in the old days?
A Yes. They always did have a long house and they had names for it and the name of our long house is Tsim an luu sgeexs which was Sindihl's house before.
Q And in the same long house lived sub-chiefs of the house to the left and to the right?
A I want to tell you an adaawk while concerning the long houses what happened. It will only take about five minutes. In the beginning of time when a man becomes a chief what the law he has to follow is that he sleeps the back centre of the long house and what he does is he takes a name and he's responsible for the house members and we don't write anything down. We don't write -- there was no writing done in those days. So what happens is as soon as the chief wakes up early in the morning, he gets up and he starts telling the history to the people from the beginning of time and then he starts telling the adaawk, what adaawk they had in that house and then he tells his other house members what to do and how they should do it. And this was the law of the Gitksan people. It gets passed on from generation to generation. And the hard work of the chiefs in the ancient times was to pass the adaawk and the history from generation to generation and their hard work reached us. This is why we know our adaawk and our history. Because this is what the chief did back then passing from generation to generation. I was quite young when I

seen these long houses. But I don't remember hearing anybody talking, because I was too young then. But I seen these houses. This is all I can say for the long houses.

Q The long house, the old long house had no windows, just a door in front?

A No.

THE COURT: Could we get the spelling of that long house, please, Mr. Macaulay. There was a long house had a long name.

MR. MACAULAY: I think Mrs. Howard got that.

THE TRANSLATOR: Tsim an luu sgeexs. T-s-i-m --

THE COURT: T-s-i-m.

THE TRANSLATOR: Space a-n space l-u-u space s-g underline.

THE COURT: S-g.

THE TRANSLATOR: E-e-x.

THE COURT: X. What does that name mean, please?

THE TRANSLATOR: Tsim an luu sgeex.

THE COURT: Yes.

THE TRANSLATOR: That's where the water runs through the house.

THE COURT: Oh, I see.

MR. GRANT: He explained it at the beginning of his direct evidence, my lord. It's the same name.

THE COURT: Yes. All right. Thank you.

A I forgot to mention what the long houses are really called. It is called Wil luu ski yuuhlxamtxw, which means where the -- where the history of the people are.

MR. MACAULAY:

Q And normally all the house members, the members of the wilp lived in that house?

A Yes.

Q And when a house put on a Feast it was held in the house?

A Yes, this is what they used for the Feast.

THE COURT: I am sorry, Mr. Macaulay, but there was another name given for the long house which I don't think we have, please.

THE TRANSLATOR: Wil luu ski yuuhlxamtxw, W-i-l space l-u-u space s-k-i space y-u-u-h-l-x.

THE COURT: H.

THE TRANSLATOR: L.

THE COURT: H-l-x.

THE TRANSLATOR: Underlined a-m-t-x-w.

THE COURT: Thank you.

MR. MACAULAY: And the witness gave the meaning of that also.

THE COURT: Yes. Where the history of the people are.

MR. MACAULAY: Right.
Q Now, when the salmon started running the chiefs organized the building of a barricade or fence on the river, is that right?
A Yes.
Q And did both clans, that is the Frog Clan and the Wolf Clan, work together on those fences?
A Yes. It's practically the whole village uses this catching the fish known as T'in and they would have fish traps attached to this and when they have enough fish they would open the fence.
Q The gate?
A The gate. And they would -- when one house has enough then another house would start on this.
Q And there were two main fishing sites near the village, one near Moonlit Creek and the other just at the entrance to the lake?
A Yes. The one at Moonlight Creek belonged to Wiixa and the one up the lake belonged to Xamlaxyeltxw. And there was one that the village was using near Kitwancool.
Q Yes. And the fishing was done under the direct supervision of the head chiefs?
A Yes, that's the way it is.
Q And the head chiefs worked together so that each house in turn would have a chance at catching the fish they needed for the winter?
A Yes.
Q And the fish were cured or dried in the smokehouses near the fishing sites?
A Yes.
Q And each house had a smokehouse, did it, its own smokehouse?
A Yes.
Q And no nets were used in the river because it's too shallow for nets?
A No. They didn't use the nets.
THE COURT: What river are we talking about here, Mr. Macaulay?
MR. MACAULAY: It's the Gitwanga River, my lord. Moonlit Creek branches off and then of course it flows into the lake that's sometimes called Kitwancool and other maps it's called Gitwanga Lake.
THE COURT: Is it Moonlit or Moonlight Creek?
MR. MACAULAY: Well, Moonlit is on the map I last saw, but some of them call it Moon Creek and the witness has referred to Moonlight Creek, but I don't think there is much doubt that there is a Y in the river there.

THE COURT: Not Moonlight Bay.
MR. MACAULAY: Not Moonlight Bay.
THE COURT: Should we adjourn, Mr. Macaulay.
MR. MACAULAY: Yes. I don't know if I should apologize for being a little longer, but this witness knows a great deal about the matters he's been giving evidence on and I am very reluctant -- in fact, I shouldn't interrupt him.
THE COURT: We all have to be somewhere every second of our life, Mr. Macaulay. We might as well be here. Should we adjourn until 2 o'clock.
MR. GRANT: I just wonder if my friend has any sense of finishing.
MR. MACAULAY: I hope that in a half an hour I should be finished, my lord.
THE COURT: Thank you.

(PROCEEDINGS ADJOURNED PURSUANT TO LUNCHEON 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.

Laara Yardley,
Official Reporter,
United Reporting Service Ltd.

(PROCEEDINGS RESUMED AT 2:00)

THE REGISTRAR: Order in court.
THE COURT: Mr. Macaulay.
MR. MACAULAY:

Q Chief Marsden, when trapping was done when you were a boy did you go out in family units, that is a father and mother and children and other relatives?

A There was always people going out on the territories, but sometimes the whole family would go out on the territories.

Q Well, did you go out with your father and mother and your brothers and sisters to the territories all together?

A Yes. We did this.

Q And were you -- was it in your time, that is when you were young, that groundhog skins were used to distribute at the feasts to the guests?

A No. It wasn't in my time, and I didn't see this.

Q When you were a boy was -- were furs used for clothing for members of the house?

A No.

Q And were furs in your time, when you were young, were furs still being traded for goods instead of being sold to it -- for cash?

A When I was a young boy at that time, and when the -- what they told me was when they first traded with the white people with their furs they -- for a mug, a tin mug, they would trade that for a lynx, and for one lynx they would give them a coffee mug, and today in our language we call that hlabil weex is the name of that mug. That's what we call it today, because hlabil weex means "against the lynx".

Q But when you were trapping yourself did you do trading like that for trade goods, or did you always sell your furs for cash?

A Before my time this was trade for goods, but in my lifetime when I started trading it was traded for money, because there was people that were from -- that were there to buy it. What happened, when the first white man came here they started trading with our furs. If a person, an Indian person wanted a gun they would hold the gun up and they would pile the furs until it reached to the top of the gun, and this was when they gave them the gun for the furs that were piled up, and this was from the Hudson Bay Company.

Q Did the head chiefs go out to the hunting grounds with their families and relatives?

1 A Yes. This is what happens.
2 Q And every hunting ground had a pole that represented
3 it, or the other way around, every pole had a hunting
4 ground associated with it?
5 MR. GRANT: Just before the witness answers, my Lord, that -- I
6 would like my friend to frame it one way or the other,
7 because one may be true and the other may be false,
8 I'm not exactly sure how the witness -- every pole may
9 have a hunting ground but every hunting ground may not
10 have hunting ground -- a pole.
11 MR. MACAULAY: I don't know how that would work. We'll take it
12 one at a time.
13 THE COURT: Thank you.
14 MR. MACAULAY:
15 Q Does every pole have a hunting ground attached to it?
16 A Yes. The pole represents the -- the power and
17 ownership of the territory. The totems -- totem poles
18 that you see standing have these, and they're not just
19 standing there for nothing.
20 Q Now, you mentioned in your evidence earlier that you
21 at least on one occasion caught a -- or found there
22 was a trespasser on your hunting grounds and that you
23 took his traps; do you remember that evidence?
24 A Yes. It's the -- it's our law, the Gitksan law,
25 that's why I did it.
26 Q And was the trespasser a Gitksan or a non-Indian or a
27 Nishga?
28 A The Gitksan person could not go onto any other
29 territory except his own, and it's the same -- and
30 it's the same with the white people, we won't let them
31 go on our territory.
32 Q But in this case the man whose traps you took, was
33 that a Gitksan or a white man or a Nishga?
34 A He's one of the people from Kitwancool.
35 Q Now, there used to be 10 or 12 long houses at
36 Kitwancool when you were young?
37 A Yes.
38 Q And in -- when the Kitwancool went to war they were
39 led by the head chiefs, were they?
40 A The people of Kitwancool were taken by surprise.
41 Their village was taken by surprise and they did not
42 know that the -- these people were going to come and
43 slaughter them.
44 Q Now, when the Kitwancool then went -- pursued the
45 Ts'its'aawit, didn't they?
46 A Yes. There was this young man, that man that was
47 going to marry a young girl from Kitwancool, and he

1 went back to Gitsegukla to pick up his belongings, and
2 he was coming back and he found the young girl that he
3 was going to marry, he found her dead on the ice.
4 Q But when the Kitwancool and their allies recovered
5 from this slaughter, they pursued the Ts'its'aawit,
6 they went after them. The young man went and told the
7 people of Gitsegukla what had happened, and in turn
8 they brought them together and they were going to be
9 paid, which is known as Ghle t'sek ga', to help the
10 Kitwancool people to fight the Ts'its'aawit.
11 Q When the Kitwancool people fought the Ts'its'aawit
12 they were led by their chiefs?
13 A Not only the Miin Simoogit, but the stronger people,
14 the braves, which they round up to go to war.
15 Q Now, after that war with the Ts'its'aawit the
16 Kitwancool then stayed in their own territories and
17 finished and hunted and trapped?
18 A Yes.
19 Q And they did not go into Tsimxsan lands or into Nishga
20 territories?
21 A No.
22 Q There was a -- there were a series of trails leading
23 from the village to places like Kispiox?
24 A Yes, there is.
25 Q And trading was done along those trails between
26 villages?
27 A Yes.
28 Q Did the Kitwancool go to the Nass River to take
29 oolichan fish?
30 A Yes. I just about reached this when they were still
31 getting the -- when they were still trading. I
32 remembered my grandfather going over to -- down
33 towards the Nass and making some -- drying some
34 oolichans, which is known as wilosim'as.
35 Q And people from Kitwancool went in March or April
36 every year to the Nass to get oolichans?
37 A Only the people that could make it down there, that
38 could walk down there, and it's the same with the
39 people from Kispiox and the Wet'suwet'en people, they
40 did the same thing too, they walked to the Nass to get
41 some -- to trade.
42 Q And those people came back with boxes full of oolichan
43 grease?
44 A Yes. This was the only thing that was used for the
45 container for the oolichan grease, was the bent box,
46 which is -- which was known as Galenk.
47 Q And oolichans and oolichan grease were an important

1 part of the diet of the Kitwancool people?
2 A Yes. It was important.
3 Q Now, today there is nobody who lives in a long house
4 at Kitwancool?
5 A No. Nobody uses it now.
6 Q When you married, you and your wife lived in a single
7 family home?
8 A Yes.
9 Q And the feasts are held at a community hall?
10 A Yes.
11 Q Nobody walks to the Nass to take oolichans or bring
12 back oolichan grease?
13 A Today the Nishga people come over to our villages and
14 sell the oolichans or the grease and they sell it here
15 and we give them how much, whatever they want.
16 Q The Nishga drive over to Kitwancool?
17 A Yes.
18 Q And they sell the oolichans or oolichan grease for
19 cash?
20 A Yes.
21 MR. MACAULAY: There are no fences or barricades on the river at
22 the fishing spots anymore?
23 MR. GRANT: Kitwanga River?
24 MR. MACAULAY:
25 Q The Kitwanga River?
26 A What are you talking about?
27 Q Well, you gave evidence this morning that there used
28 to be barricades or fences built across the river at
29 the time the salmon started running, and that each
30 house -- each wilp would take its turn taking fish as
31 they went through the gate. I'm asking you if
32 that's -- if -- how long it has been since there has
33 been a fence or barricade in the river?
34 THE WITNESS: Well, not today.
35 Q Not today? There hasn't been the barricade or fence
36 for 50 years?
37 THE WITNESS: I think so, yeah.
38 MR. MACAULAY: Now, hunting -- I'm not talking about trapping
39 now, but hunting in the -- outside the Indian reserves
40 in the Kitwancool area, hunting is open to everyone
41 with a hunting licence?
42 MR. GRANT: Just a moment. My Lord, I think that's a question
43 of law, isn't it. It's a question of -- well, first
44 of all I think it's wrong, I think the -- because the
45 question of wildlife, I think that's something for
46 argument and for law. The Wildlife Act says what it
47 says. If that's --

1 THE COURT: That's a legal matter, it certainly is, but as a
2 factual matter it's a matter that can be examined
3 on -- the witness may have some knowledge from what
4 he's seen and perceives and observes on the territory.
5 I think it's reasonable.
6 MR. MACAULAY: I'm not asking the witness about the provisions
7 of the Act, my Lord.
8 THE COURT: No.
9 MR. MACAULAY:
10 Q I don't think he understood it that way. But I'll
11 rephrase the question. White people and people who
12 are not -- Indian people who are not Gitksan hunt game
13 during the hunting season, deer and that kind of game,
14 in the Kitwancool area outside the reserves?
15 A When the permits apply to our people it is not right,
16 because it's not -- it's not our law, it is law of the
17 white people to sell -- the government sell the
18 permits to anyone in order to show to the game warden
19 when he is there.
20 Q You see hunters with their guns hunting deer in the
21 Kitwancool area during hunting season?
22 A What the white people there that have -- that do have
23 permits, hunting permits, what they do is they would
24 just kill the animal and they would just take the
25 horns and they would leave the rest lying around.
26 Q You have seen that?
27 A Yes. I've seen it.
28 Q And that's on Kitwancool territory?
29 A Yes.
30 Q The children between the ages of about 6 and 16 from
31 Kitwancool, they go to school?
32 A Yes.
33 Q And they go to school from about September until the
34 end of May or beginning of June?
35 A Yes.
36 Q And they go to school at -- some of them go to school
37 at Gitwangax?
38 A Yes.
39 Q And is there a school at Kitwancool?
40 A Yes. The higher grades go to either Gitwangax or
41 Hazelton.
42 Q There is no cremation ceremony for head chiefs now?
43 A No.
44 Q And people from Kitwancool, that is members of
45 Kitwancool houses, travel all over British Columbia
46 for -- today?
47 A Yes.

Q And some work in sawmills?
A Yes.
Q And some have jobs maintaining highways?
A Yes.
Q And some are school teachers?
A Yes.
Q And others are health workers?
A Yes.
Q And some still cut poles and do other kinds of logging?
A Yes. Logging, they're logging.
Q And there are some who work on the railway?
A Not anymore.
Q They used to, used to work on the railway?
A Yes.
Q Now, before the white man came, the house and its head chief and other chiefs were self-sufficient in that they were able to get their own food on the territory and distribute it?
A Yes.
Q And the only time in the old days that members of a Kitwancool house went outside the territory for food was when they went to the Nass at the oolichan season?
A Yes.
Q And the common people relied on the chiefs of their houses for their survival?
A It's correct in a sense, but it -- the young who are strong are the people that help out and help the chief for looking after the house members.
Q But the young strong people are the ones the chiefs used in order to get a good supply of food in for the house for the winter?
A Yes.
Q And those young people obeyed their chiefs?
A Yes.
Q And the chiefs always or almost always came from the noble families, family or families in the house?
A Yes.
Q And it was a great misfortune if a woman of a noble family married a person with no name?
A Yes.
Q And if anybody -- any member of the house was foolish enough to marry someone from his own clan, he could be put to death?
A Yes. It's the law, it's our law.
Q And if anyone was foolish enough to trespass on another house's territory, the members of that house

1 could put him to death?
2 A Yes, by law.
3 Q And all the laws and the system that you have
4 described in the last few days were intended to
5 preserve that system from disintegration and from
6 harm?
7 A Yes. We follow all our laws, but the ones that
8 concern killing is the ones that has altered because
9 of the interference with the white man's law. This
10 has altered, and this is what happened today.
11 MR. MACAULAY: Thank you, chief, those are my questions.
12 THE COURT: Thank you. Mr. Grant.
13 MR. GRANT: Thank you, my Lord. In answer to this last series
14 of questions by Mr. Macaulay, he asked you about a
15 large number of the laws and you summarized some of
16 them, and your last answer was that "We follow all our
17 laws". Are the Gitksan laws that you have described
18 still alive or functioning today?
19 MR. MACAULAY: My Lord, with the greatest respect, this witness
20 was called to give evidence about Gitksan laws, and my
21 cross-examination was designed to deal with those
22 Gitksan laws. I don't think that this is a proper
23 subject and a subject at all for re-examination. The
24 witness has given days of evidence about Gitksan law
25 and how it's affected today and the extent to which it
26 is affected and the extent to which it may not be in
27 effect today and what the reasons are.
28 THE COURT: Miss Sigurdson, do you have any submissions?
29 MS. SIGURDSON: No, my Lord.
30 THE COURT: Mr. Grant, what is open to you for re-examination?
31 MR. GRANT: Well, my friend stopped at a certain point, and he
32 explained -- the witness just explained about the laws
33 concerning killing. My friend listed a whole bunch of
34 laws and stated at the end "You agree that all the
35 laws are here to prevent disintegration of the system,
36 and my question arises out of that. Are these laws
37 alive today.
38 THE COURT: Isn't that the burden of his evidence in chief?
39 MR. GRANT: Well, yes. I won't -- I mean my submission is that
40 it does arise out of these last series of questions.
41 THE COURT: Well, I'm sure it does, but it also duplicates
42 almost precisely his evidence in chief. He told you
43 in chief all the laws that you asked him about, and it
44 seems to me that either there's nothing new in this or
45 you would be splitting your case. I don't think
46 you're splitting your case, I don't think there's
47 anything new in it.

1 MR. GRANT: Well, there is something new in it. That is the
2 last question by my friend, Mr. Macaulay. He said
3 "Were all the laws kept to prevent the
4 disintegration". Maybe if I rephrase the question I
5 can raise it, I mean that was not raised on direct.
6 THE COURT: But the rules relating to re-examination surely are
7 broader than that, Mr. Grant. They're not designed to
8 permit those kinds of nice distinctions, surely. If
9 you've touched on the subject matter in chief, doesn't
10 that preclude re-examination?
11 MR. GRANT: I have the tenor of your thought, my Lord. I'm not
12 going to press on the point.
13 THE COURT: I'm partly in a defensive mode anyway, Mr. Grant.
14 It seems to me if there was ever a case where there
15 should not be re-examination is when the subject
16 matter -- the re-examination was the burden of the
17 evidence in chief.
18 MR. GRANT: You were asked by Mr. Goldie about understanding
19 English and speaking English when you were on the bus
20 in Prince Rupert, when you drove a bus. Have you been
21 able to understand the exchanges between the lawyers
22 and the judge in English that have occurred while
23 you've given evidence where they were not translated?
24 THE COURT: I don't know how he can answer that question, Mr.
25 Grant.
26 MR. GRANT: Well, I think if he understood them in English --
27 THE COURT: What if he didn't understand them, how could he
28 answer your question?
29 MR. GRANT: Well, he can say he didn't understand them.
30 THE COURT: I see, okay.
31 MR. GRANT: This is raised now because there seemed to be some
32 invitation about his understanding of the language and
33 the use of translation.
34 THE COURT: Does it really matter, given his evidence almost
35 entirely through interpreters?
36 MR. GRANT: Well, I'm concerned
37 THE COURT: If he had even a perfect understanding of English
38 would it really matter? His evidence is what he has
39 given, the very few questions he answered in English,
40 which weren't more than three or four, and his
41 evidence is through the interpreter, that's his
42 evidence, and it doesn't really matter at this point
43 whether he has a perfect or less than perfect or
44 totally imperfect understanding of English.
45 MR. GRANT: I'd feel a lot more confident if this wasn't raised
46 in the very beginning of cross-examination and I
47 anticipated that my friends might well raise that

1 there's some credibility or some weight.
2 THE COURT: I am -- I don't think I am allowed to take that into
3 account in determining the credibility. I used to
4 think it was a factor, but I think the law now is
5 clear that people are entitled to give their evidence
6 in the language in which they're comfortable, and as
7 that's a right that they have and no inference can be
8 drawn. I have no doubt that the witness understands a
9 lot of what is said, whether he understands it
10 perfectly is a matter of no consequence. Anyone who
11 lives in this country picks up a smattering so they
12 can understand what is being said, but that doesn't
13 preclude them from giving the evidence in their own
14 language. As I say, I don't think it matters now at
15 this point, even if this witness had a perfect
16 knowledge of the language.
17 MR. GRANT: I just want to establish that that of course is not
18 the case.
19 THE COURT: I'm sure it's not perfect.
20 MR. GRANT: And --
21 MR. MACAULAY: I am assuming, my Lord, that since the counsel
22 provided an interpreter that the witness' command of
23 English is not perfect enough to give the evidence the
24 way he wants to give it in English.
25 THE COURT: That's what we have upon the -- reference upon which
26 we have to base our inferences.
27 MR. GRANT: Yes. I can assure the --
28 THE COURT: I can assure you I'm not proposing -- as presently
29 advised I'm sure not going to change my mind about any
30 adverse inferences against Mr. Marsden based upon his
31 understanding or lack of understanding of the English
32 language. I think it's a neutral factor at this
33 point.
34
35 RE-EXAMINATION BY MR. GRANT:
36 Q You were asked by Mr. Goldie about at the time that
37 you were given the chief's name Xamlaxyeltxw that
38 there were some Gitsegukla and Gitwangax chiefs who
39 did not agree that you should take the name. You
40 answered that Kitwancool chiefs said you should
41 take -- agreed that you should take that name. Which
42 Kitwancool chief or chiefs approved your taking of
43 that name?
44 A When my Uncle Albert Douse died I was working down the
45 coast, I was fishing, and I got a message from my --
46 from Sindihl. He wanted me to come down and to get
47 that name. We did go back to -- we returned back to

Kitwancool and we had a feast, and I received the name, and we -- I am of the Frog clan, and our Niidil was the Wolf clan, and once the Niidil speaks everything is recognized, and after the Niidil speak there was nothing to be said about the name that was given to me.

MR. GRANT: Do you have a number for Niidil?

THE TRANSLATOR: 353.

MR. GRANT: 353, my Lord.

THE COURT: Thank you.

MR. GRANT:

Q And who is your Niidil that you're referring to?

A Gwashlam and the rest of the Wolf clan.

Q And Gwashlam and the Wolf clan agree that you take the name?

A Yes.

MR. GRANT: I'm going to refer to tab 5 of the provincial defendant's document book at page 17. I don't -- the exhibit doesn't have to be given to Madam Interpreter, I will just make reference to one quote on page 17 of -- this is the notes of Mr. Sterritt of the Canyon City meeting, Chief Xamlaxyeltxw, and he makes reference to yourself speaking, and the bottom right hand column of page 17 it says a statement is attributed to you, which I believe Mr. Goldie put to you:

> "I want to tell you the law of the chiefs of our forefathers."

Why were you the one to tell the law of the chiefs of the forefathers at that meeting?

THE INTERPRETER: What was that statement, Peter, please?

MR. GRANT:

Q The statement made was:

> "I want to tell you the laws of the chiefs of our forefathers."

A This law which we're referring to is the law that says this is our law, the Gitksan law. It says when a person has left his house he will not take any possessions, the Ayuks, the Nax nok, or the hunting grounds.

THE COURT: Mr. Grant, it's obvious now that the witness has not understood your question, and I'll -- he's now telling you what he said on that occasion. Your question was

1 why were you the one to tell them what the law was.
2 MR. GRANT:
3 Q Yes.
4 A The only thing he could take was the name that he has.
5 Q Okay. Why were you -- of all of the Gitksan chiefs
6 that were there, why were you the one who told the law
7 at this meeting?
8 A Because there was young people present there and they
9 might not realize about this law that I -- that --
10 they don't know the law as much as I do. I know the
11 laws of our people, and I -- they chose me because
12 they knew I knew the laws of the Gitksan people, and I
13 was to talk to these young people that were present.
14 THE COURT: I will have to take the adjournment, Mr. Grant,
15 please.
16 MR. GRANT: Okay.
17
18 (PROCEEDINGS ADJOURNED AT 3:00)
19
20 I hereby certify the foregoing to be
21 a true and accurate transcript of the
22 proceedings herein transcribed to the
23 best of my skill and ability
24
25
26
27
28 Graham D. Parker
29 Official Reporter
30 United Reporting Service Ltd.
31
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47 (PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

1
2 THE COURT: Mr. Grant.
3 MR. GRANT: Thank you, my lord.
4
5 RE-EXAMINATION BY MR. GRANT, Continued:
6 Q Chief Xamlaxyeltxw, I'd like to refer you to Exhibit
7 448, which was put in by the Provincial defendant.
8 The Histories, Territories and Laws of the Kitwancool.
9 Have you ever read that book?
10 A I didn't go to school and I couldn't read all that
11 much. I could make out the words, but I couldn't make
12 out some of the words that I see.
13 Q Mr. Goldie asked you or referred to part of it where
14 it states on page five of Exhibit 448 that the
15 manuscript -- this was -- typewritten manuscript was
16 prepared in a typewritten form and submitted to the
17 Kitwancool for their approval. Did you read or did
18 anyone read to you the manuscript of this book before
19 it was published?
20 A No.
21 Q You were asked by Mr. Goldie if -- you referred to the
22 fact that there were only two clans in Kitwancool.
23 The Ganada, or the Frog Clan, and the Lax Gibuu, or
24 Wolf Clan. And you were asked about the other
25 villages, whether there were other clans in the
26 other -- how many -- whether there were only two clans
27 in other villages. How many clans are there in
28 Kitsegukla?
29 A The clans in Kitwancool are the Frog and the Wolf
30 Clan. And the clans in --
31 THE COURT: I'm sorry.
32 MR. GRANT: Kitwancool.
33 THE COURT: Wasn't the question Kitsegukla?
34 A And the clans in Kitsegukla are the Frog and the
35 Fireweed.
36 MR. GRANT:
37 Q What clans are in Kispiox?
38 A I'm not sure.
39 Q Mr. Goldie asked you about the role of the president
40 and you said that the president is the spokesperson
41 and the person, quote, "to protect the laws." What do
42 you mean when you say the president? I'm referring
43 here to Peter Williams, the present president. But
44 the office of president. What do you mean when you
45 say the president is to protect these laws?
46 A Peter is just a representative for our people and he
47 does the decisions of the chief. He's not there to

1 protect the law. He follows the decisions of the
2 chief and he's there because of the correspondence
3 with the other people. That's why he's there.
4 Q When you say the correspondence with other people, who
5 do you mean?
6 A To the government people.
7 Q Now, you were asked about Fred Johnson and you were
8 asked if he came from Kitwancool. Was Fred Johnson's
9 mother in a house from Kitwancool or a house from
10 Gitwangak?
11 A Yes, from Gitwangak. They are from Gitwangak.
12 Q In explanation -- in an answer to a question by Mr.
13 Goldie you described that some Kitwancool have moved
14 to Kispiox and Gitwangak. Are those people from
15 Kitwancool houses who have moved from Kispiox and
16 Gitwangak or are they still members of those
17 Kitwancool houses?
18 A The Gitksan law could not change this -- they always
19 belong in the house where they came from.
20 Q I'd refer you to Exhibit 449 and in particular to the
21 map that's attached to that exhibit, and this, just so
22 you recall what this is, was a letter of 1986 with
23 attachments from Peter Williams. And it had a map
24 attached which was a map of the territory. The very
25 top -- and it's labeled Kitwancool Territory. At the
26 very top of this map is Bowser Lake. Then there is
27 this name called Gisa amaldit. Do you recognize that
28 name, if properly pronounced by Miss Sampson?
29 A I know the name, but I have never been there yet.
30 Q Do you know where that place is in relation to the
31 Kitwancool boundary?
32 A Ambrose Derrick always talk about this. This is
33 theirs towards near the Mezziadin, towards the
34 Mezziadin.
35 Q And is Ambrose Derrick of the Wolf Clan?
36 A Yes. They use this through Amnigwootxw.
37 Q Now, my question is -- just a moment. My question is
38 that Mr. Goldie asked you if the Kitwancool territory,
39 quote, comes up to the bottom end of Bowser Lake and
40 from looking at that map it appears that the
41 Kitwancool boundary is at the Bell-Irving River below
42 where Bowser Lake flows out. Do you know if -- can
43 you clarify whether that is correct, that the
44 Kitwancool boundary does not go all the way to Bowser
45 Lake?
46 A It does not go right to Bowser Lake. It goes close to
47 Bowser Lake, but it doesn't go right to -- it's on

1 that -- this -- the left side of that river.
2 Q And which river are you referring to? Do you know the
3 name of it?
4 A No.
5 Q You were asked questions by both Mr. Goldie and Mr.
6 Macaulay about the Ts'its'aawit wars at Mezziadin, and
7 Mr. Goldie asked you if at the time of those wars if
8 guns were used or I believe you explained that guns
9 were used. Was there only one war with the
10 Ts'its'aawit in Mezziadin or was there more than one
11 war with the Ts'its'aawit in Mezziadin?
12 MS. SIGURDSON: Excuse me. Perhaps my friend could put that in
13 the context the question. I believe Mr. Goldie set up
14 the time frame. It was the war referred to in the
15 adaawk. And if there is confusion about that - and I
16 say there isn't confusion - in the answer that needs
17 to be cleared up, unless Mr. Grant can point to some
18 confusion in that context I would object to the
19 question.
20 MR. GRANT: Well, with respect, my lord, I haven't got the
21 transcript reference, but there was a question about
22 the war with the Ts'its'aawit.
23 THE COURT: The question was simply was there more than one war.
24 MR. GRANT: That's right. The question asked was the war with
25 the Ts'its'aawit referred to in the adaawk, was that
26 after the white man came. And my question to the
27 witness, quite simply, does the adaawk tell about one
28 war or was there more than one war described in the
29 adaawk.
30 THE COURT: Why don't you just leave it as firstly was there
31 more than one war and then go on from there.
32 MR. GRANT: Thank you, my lord.
33 Q Was there more than one war with the Ts'its'aawit?
34 A I was told only of one war. One war. And this was
35 what I was told. Just with that one war between the
36 Ts'its'aawit people. But there are times when there
37 was people killing each other on the territories.
38 Q Will you -- I am referring now to the Canyon City
39 meeting and you were asked about what the Nishga said
40 and I believe your answer was this is what they call
41 them, adaawk, it is a common story, Txemsim among all
42 the people. What do you call the Tsimxsan story? Is
43 it an adaawk or is it something else in Gitksan?
44 THE INTERPRETER: I think he misunderstood my question, but he
45 said that that was just the common story that
46 everybody knew and they don't look at it as an adaawk.
47 They look at it as a common story known amongst all

1 the people.
2 MR. GRANT:
3 Q Is there a name in Gitksan for that type of story?
4 A It is called Ant dii malasxw. It is not an adaawk.
5 MR. GRANT: Do you have that word? It's on the list.
6 THE COURT: We got that from Miss Mckenzie.
7 MR. GRANT: Ant dii malasxw, I think we did actually.
8 THE COURT: Yes.
9 MR. GRANT:
10 Q You referred to Michael Bright at that meeting as
11 being from Gwashlam's house and then you said he
12 didn't return to Kitwancool to attend Feasts. If
13 Michael Bright came to Kitwancool to one of the
14 Feasts, for example, of Gwashlam's own Feast, under
15 Gitksan law could he be allowed to use Gwashlam's
16 territory?
17 A They left Kitwancool when I was just a little boy and
18 Michael has not returned to Kitwancool. But even
19 this -- this happened. He could -- even though this
20 happened, he could still go on Gwashlam's territory.
21 Q I'd refer to document 1845-64 which is part of tab 6,
22 my lord, of the blue document book and it was a letter
23 to which -- I don't believe it was put in as an
24 exhibit yet, but it was a letter to which Mr. Goldie
25 did refer.
26 THE COURT: What page is it at tab six?
27 MR. GRANT: 64.
28 THE COURT: Thank you.
29 MR. GRANT: It's 1845-64. It's a letter dated May 11, 1946 at
30 the bottom. Do you have it, my lord?
31 THE COURT: Yes.
32 MR. GRANT:
33 Q Mr. Goldie asked you about your father, Douglas
34 Marsden, writing to the game warden or communicating,
35 and this letter was between the Indian Affairs branch
36 and the game warden about who should be on a trapline.
37 And I just want to ask you about these names that are
38 referred to here. One of the things that is said here
39 is that Douglas Marsden stated that Fred and Rufus
40 Good - here it's a trapline, but it's referred to as a
41 trapline registration - should really be in the
42 following order. And I am going to give you these
43 names which Madam Interpreter may want in front of her
44 so she can remember them. Amos Williams, bracket
45 Head; Douglas Marsden; Fred Good; Rufus Good; Gordon
46 Johnson; Stirling Johnson and Robert Bright. Can you
47 tell his lordship why your father would want those --

1 that to be the order of the people on the territory?
2 MS. SIGURDSON: Excuse me. My lord, I object. The only
3 question asked by Mr. Goldie was whether Douglas
4 Marsden had the power to change the names or add names
5 to the register. There is no further question on that
6 document.
7 MR. GRANT: It's part of the documents -- an enormous number of
8 these documents that came in as part of their
9 defendants' documents, my lord, and he is proposing to
10 tender these as exhibits. Some issue was made out of
11 the fact that the witness' father would have done
12 this. I want him to have an opportunity to explain
13 why that was done. And in fact I think it was even
14 imputed at some time that this may or may not follow
15 the matrilineal line and I would like to have the
16 opportunity to explain that.
17 THE COURT: I think there is considerable force in the
18 objection, but in as much as the document might become
19 an exhibit, I think I will allow you to ask the
20 question subject to the objection.
21 MR. GRANT: Thank you, my lord.
22 THE COURT: I do not think Mr. Goldie opened up the whole area
23 for re-examination, if as Miss Sigurdson says all he
24 asked was does Mr. Douglas Marsden have the power to
25 change the names on the registration. But --
26 MR. GRANT: But this is --
27 THE COURT: These documents may become exhibits. I am going to
28 allow you to ask the question subject to the
29 objection.
30 MR. GRANT: Thank you, my lord.
31 Q Madam Interpreter, can you follow the question now,
32 which is that I referred to the names on the first
33 column and I'm asking why your father would have
34 requested that the order of the people on the
35 territory which was registered under the name of Fred
36 and Rufus Good be in that order?
37 A Those are the members of a house and they are all in
38 one house.
39 Q In which house?
40 A Malii's house.
41 Q I would refer you to the names Ambrose Derrick; John
42 Derrick; Eli Grey; Sam Sampare; Fred Sampare; George
43 Sampare; Ambrose Sampare; Jimmy Morgan and Aldolphus
44 Morgan with a reference to the John Derrick trapline.
45 Can you say why your father recommended that those
46 people all be put in that order on that territory?
47 A That is the same Wil' na t'ahl in the house of

1 Luuxoon.
2 Q And finally there was a reference to Albert Douse,
3 your father's -- oh, I am sorry, your uncle's trapline
4 and it says there with reference to the names John R.
5 Derrick, Albert Douse --
6 THE COURT: Surely you don't need to read them all, Mr. Grant.
7 Can't you ask the question under some generalized
8 form? I have to adjourn at four o'clock, Mr. Grant.
9 MR. GRANT: I am almost through, my lord.
10 THE COURT: All right. Well, you read them all and the
11 interpreter reads them all again and really --
12 MR. GRANT:
13 Q Well, I will ask -- if you just listen to these names
14 and ask if these are in the same house: John R.
15 Derrick; Albert Douse; Soloman Good; Godfrey Fred
16 Good; Barney Good; Robert Good; Daniel James Good;
17 Ivan Good; Edgar Evan Good; Joseph S. Derrick and E.
18 Jonathan Derrick. Why would those people all be on
19 one trapline? And without saying the names again if
20 you could just ask him the question.
21 A They are the members of one house. That's the same
22 thing as the rest.
23 Q And which house?
24 A Xamlaxyelt's house.
25 Q You were asked by Mr. Goldie about hunting on the
26 territory and whether you hunted for meat to use in
27 the winter. Did you also bring meat back from the
28 territory to the village?
29 A That is most important part to us that we bring back
30 whatever we get from the territory; we don't waste it
31 and leave it behind.
32 Q I'd refer to Exhibit 461A and it's not necessary to
33 pull it out at this stage. And this was a letter that
34 was talking about Walter Douse, after the death of
35 Walter Douse that the blanket trapline was put in the
36 name of Abel Campbell, Gwashlam; Walter Derrick;
37 Solomon Marsden; and Robert Good. Can you explain why
38 the blanket trapline was put in the names of those
39 four people, that is Abel Campbell, Walter Derrick
40 Solomon Marsden, yourself, and Robert Good after the
41 death of Walter Douse?
42 A When the -- when our people first picked up the
43 registration, trapline registration, the chiefs picked
44 the caretakers of the territories and Walter Douse was
45 a caretaker and after he died I was chosen to be a
46 caretaker.
47 MR. GRANT: My reference, just for the record, should have been

1 to Exhibit 459, my lord, not 461A.
2 THE COURT: 459?
3 MR. GRANT: Yes.
4 THE COURT: Thank you.
5 MR. GRANT:
6 Q And as well as yourself and Robert Good, you have
7 already explained that you are. Is Walter Derrick,
8 was he a chief of the Wolf Clan?
9 A Yes.
10 Q Mr. Goldie referred you to some correspondence to the
11 game warden relating to Frank Benson. When that issue
12 arose about Frank Benson in around 1969, was that
13 raised in the Feast hall? When it was the issue about
14 Frank Benson going on your trapping ground without and
15 he should not have.
16 MS. SIGURDSON: Excuse me. Could my friend advise how that
17 arises out of cross-examination? The question was
18 directed did the parties go to see the game warden. I
19 don't think the Feast came into the question in any
20 way.
21 MR. GRANT: Well, these are exhibits, my lord, which refer to
22 this. For the first time it's raised on
23 cross-examination. I just am asking one question
24 which is was it raised in Feast hall as well. I mean
25 for --
26 THE COURT: But then you are going to ask what was said.
27 MR. GRANT: No, I am not going to ask what was said.
28 THE COURT: All right.
29 MR. GRANT: I just want to know if it was raised in the Feast
30 hall.
31 THE COURT: I am going to allow it.
32 A No.
33 MR. GRANT:
34 Q Did -- Mr. Macaulay this morning asked you about
35 whether you stopped trapping after 1951 because of fur
36 prices. Did you resume trapping on your territory?
37 MR. MACAULAY: My lord -- my lord, the witness in chief gave
38 evidence on that, when he resumed trapping --
39 THE COURT: That he --
40 MR. MACAULAY: -- at the very beginning.
41 MR. GRANT: Do you -- do you have a reference for that?
42 MR. MACAULAY: He said two or three years ago.
43 MR. GRANT: Yes. Yes. All right. I won't --.
44 Q You were asked by Mr. Macaulay and you described with
45 reference to the photograph on the front and back
46 cover of Exhibit 448 these poles and you indicated
47 that Albert Douse had raised a pole and you had raised

a pole. Is Albert Douse's pole, that is the pole he raised, still standing?
A Yes, it's still there.
Q You were asked about the long house and you described how chiefs -- in answer to Mr. Macaulay how the chiefs explained the adaawk in the long house. Were the laws taught in the long house in the same way as the adaawk?
A Yes.
Q You were asked -- okay. You were asked about the oolichans and the Nishgas now come to your village and sell oolichans, and there is a road from Kitwancool to the Nass you described. Is that road that's between the Kitwancool and the Nass, does that follow the same route as the old trails to the Nass?
A No. The grease trail is at a different place. It's not that same road that they use today before the automobile came.
MR. GRANT: Those are all my questions on redirect, my lord.
THE COURT: Thank you. Mr. Marsden, I only have one matter to ask you. When did you drive a bus in Prince Rupert?
A 1969.
THE COURT: And for how long?
A Three years.
THE COURT: And that was when the fishing season was -- between fishing seasons or had you retired by then?
A I was still fishing.
THE COURT: I see. All right. Thank you, Mr. Marsden, you're excused.

(WITNESS ASIDE)

THE COURT: Can counsel indicate whether it would be useful to keep these papers for the next witness or should they be put away?
MR. GRANT: I believe not. I don't believe that the Vernnon Smith documents are necessary, but possibly the Solomon Marsden may be.
THE COURT: All right. So we adjourn then until Monday morning next.
MR. GRANT: Yes, my lord.
THE COURT: Yes, all right. I wish you all a pleasant two days off. Thank you.

(PROCEEDINGS ADJOURNED UNTIL MONDAY, MAY 16, 1988 AT 10:00 A.M.)

1 I hereby certify the foregoing to be
2 a true and accurate transcript of the
3 proceedings herein to the best of my
4 skill and ability.
5
6
7
8 Laara Yardley,
9 Official Reporter,
10 United Reporting Service Ltd.
11
12
13
14
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