1 May 24, 1988
2 Vancouver, B.C.
3
4 (OTHER MATTERS SPOKEN TO)
5
6 THE REGISTRAR: Calling Delgamuukw versus Her Majesty the Queen
7 at bar, My Lord.
8 THE COURT: Mr. Rush?
9 MR. RUSH: Yes, My Lord. Before my learned friend begins his
10 cross-examination, I'd like to advise the court that
11 the next witness which the plaintiffs intended to call
12 was David Blackwater and we so advised our friends.
13 The plaintiffs have made a decision not to call David
14 Blackwater, he will not be called, and therefore the
15 next witness will be a Mr. Glen Williams, that's
16 W-i-l-l-i-a-m-s. Now, Mr. Williams and Mr. Grant are
17 both in Kitwanga and Hazelton respectively and because
18 of commitments of Mr. Williams he cannot be available,
19 that is, commitments in respect of his band, he cannot
20 be available until the 31st which is a week Tuesday.
21 And I expect that the cross-examination of Mr. Muldoe
22 will go until Wednesday or possibly Thursday of this
23 week. Your Lordship has indicated that you will be
24 sitting a half day on Friday and that being so, if
25 there is any hiatus between the conclusion of Mr.
26 Muldoe's cross-examination and redirect and the
27 commencement of Mr. Williams' evidence, the plaintiffs
28 are suggesting that Your Lordship begin a review of
29 one of the commission tapes, that is, one that we had
30 suggested that Your Lordship review, either in its
31 entirety or a good portion of it, and we're suggesting
32 that you do that at the conclusion of Mr. Muldoe's
33 evidence and that Mr. Williams will begin on the 31st
34 of May.
35 I'm advised by Mr. Mackenzie, who has been dealing
36 with some of the technical aspects of the ordering of
37 the video tapes, that it may be difficult to obtain a
38 copy of the tape or at least a copy has not been
39 ordered at the moment and there may be some logistical
40 problem in proceeding with the ordering of a tape, but
41 I think we can clear those away and I hope to be able
42 to advise you within a few days as to the availability
43 of that tape and Your Lordship could view that.
44 THE COURT: All right.
45 MR. RUSH: We don't want -- we regret that this has had to occur
46 in this manner, but we do wish that the time be used
47 profitably by viewing the tape and that seemed to be a

place to do it.
THE COURT: You're suggesting that probably Monday we would do that?
MR. RUSH: I would think so. Yes.
THE COURT: Well, that's generally satisfactory. I will do whatever is most convenient to all the parties. If possible I would prefer not to sit on Friday, but if it means completing a witness I would like to start at nine and adjourn not later than 11:30, if that's possible.
MR. RUSH: Well, that's certainly convenient with me. Judging from what my friends have advised me, it may well be that they have concluded Mr. Muldoe on Thursday.
THE COURT: Well, if that's convenient I would prefer not to sit Friday, but I will sit in the morning if necessary to finish a witness.
MR. RUSH: Yes.
THE COURT: All right. Before you go on, I've been giving much weighty consideration to these matters and can counsel tell me how they think, or with instructions of course, how is this often used word properly pronounced, is it Gitksan or Gitksan?
MR. RUSH: Gitksan.
THE COURT: Some people says Gitksan and other people say Gitksan.
MR. RUSH: Yes, I know, and that's not the pronunciation.
THE COURT: And some say Wet'suwet'en and others say Wet'suwet'en.
MR. RUSH: It's Wet'suwet'en.
THE COURT: That's not what Mr. Joseph said. He kept calling it Wet'suwet'en.
MR. RUSH: Well, I have some privilege as counsel here, My Lord.
THE COURT: All right. You say it's Wet'suwet'en.
MR. RUSH: Wet'suwet'en, although I must say that I -- if Mr. Joseph says Wet'suwet'en, I would defer to him.
THE COURT: Well, it's not the most important part of the case, but it's a matter that intrigued me. All right. Thank you.
MR. RUSH: One other matter before my friend starts is that I have -- I hope to be able to advise my learned friends tomorrow, but conceivably no later than Wednesday -- Wednesday is the following day tomorrow, about the view, My Lord. We have put together what we think is a reasonable proposal and we just need to clear some of the bugs out of it and hopefully we'll get that together for my friends.
THE COURT: All right. Mr. Mackenzie, are you ready to proceed?

THE REGISTRAR: I caution the witness and the interpreter both you're still under oath.
MR. MACKENZIE: Just on those two points, My Lord, as Your Lordship will recall that the question of the role commission tapes are to play in these proceedings is still open. Your Lordship received argument from all the three parties on that, and my recollection is Your Lordship has not ruled on that question of whether all the entire tapes will be viewed or whether a selection that is recommended by counsel will be viewed, and that question's still open, My Lord, so I just raise that as a slight caveat to my friend's suggestion. Perhaps that could be decided later if Your Lordship wishes further submissions or if Your Lordship wishes to rule, then we could have that cleared.
THE COURT: Well, I'll be glad to hear counsel whenever they think it's useful to do so. At the moment I think you're right that it was left somewhat unsettled. I think that I said, and I still believe, that I would like to see a half an hour at least of each witness for the purpose of demeanour I guess is as good a word as any, and then Mr. Rush suggested that he thought I should see the full evidence of at least one and I would be disposed to do that. And I would be glad to have submissions from other counsel as to what else they think I should look at. And I'm in the unfortunate position in this regard of being I think in counsel's hands. I wish I weren't.
MR. MACKENZIE: Well, thank you, My Lord, I'll say nothing further on that, but if we have further submissions on that we'll be able to make them later in the week.
THE COURT: Okay.
MR. MACKENZIE: And with respect to the view that Mr. Rush mentioned, Your Lordship did ask specifically on Thursday that counsel advise Your Lordship of the positions today, this morning, of the other parties, that is, as to whether we were to have a view or not or what the general positions were apart from the plan.
THE COURT: Yes.
MR. MACKENZIE: Now, I have some comments to make on that, My Lord, in the most general way of course because we have not yet received the detailed proposals. The matter was first raised on February 12, My Lord, and that was in the context of the plaintiffs submitting to Your Lordship that the court return to Smithers for a period of time and Mr. Goldie responded at that time

1 with respect to the view that there's some practical
2 difficulties and Mr. Macaulay of course also responded
3 that there were some difficulties, and Your Lordship
4 indicated two views, that is, two opinions on view,
5 with the preferred view being that the judge merely
6 looks at the locus in quo for the purpose of assisting
7 Your Lordship to understand the evidence. And on
8 Thursday, this past Thursday, My Lord, Your Lordship
9 said is it possible to decide whether we're going to
10 have a view or not.
11 Well, My Lord, in summary, our position is that
12 it's difficult to respond to that until we get a
13 detailed proposal from my friends. The practical
14 difficulties may in fact militate against a view being
15 possible. For example, there was a suggestion by Mr.
16 Rush last week that possibly counsel might not be in
17 attendance. Well, My Lord, my firm instructions are
18 that this defendant opposes strongly any proposal that
19 any of the parties assist -- attend on a view with
20 Your Lordship without the presence -- counsel being
21 present. But Mr. Rush may have more on that in his
22 detailed proposal. Without having a detailed
23 proposal, My Lord --
24 THE COURT: Mr. Mackenzie, without having a detailed proposal is
25 there any point in discussing it further?
26 MR. MACKENZIE: That's the point I was just going to come to.
27 THE COURT: You're going to have to revisit all these things
28 when you view Mr. Rush's proposal.
29 MR. MACKENZIE: Your Lordship has anticipated my point and that
30 is without the detailed proposal with only the most
31 general suggestions, it's difficult to respond as Your
32 Lordship requested on Thursday, and so, My Lord, I
33 request Your Lordship's indulgence to take the time to
34 review Mr. Rush's detailed proposal before making
35 further submissions.
36 THE COURT: Well, Mr. Rush is going to have a detailed proposal
37 either tomorrow or Thursday as I understand.
38 MR. RUSH: I'll try and speed it up. I do recall what my friend
39 says that I'd said we'd try and get it today and I
40 just haven't been able to completely pass the proposal
41 around to the people who will be affected so I'll try
42 to do it as soon as I can.
43 THE COURT: All right. Thank you. Are you ready to proceed
44 with cross-examination, Mr. Mackenzie?
45 MR. MACKENZIE: Yes, My Lord.
46 THE COURT: Just on that point, so as to not impede or use up
47 cross-examination time, would it be convenient when

you're both ready to discuss the view that we convene at 9:30 some day for that purpose?
MR. RUSH: That's satisfactory.
MR. MACKENZIE: Yes, that's satisfactory, My Lord.
THE COURT: Thank you. I'll leave it to counsel to decide when we should do that.
MR. MACKENZIE: Now, My Lord, there's one matter for clarification from Friday's transcript which is Volume 101, page -- the last page, 6400, My Lord, line 6. Mr. Muldoe was referring to the northern boundary of Delgamuukw's territory and that -- the reporter recorded Lax didaxit, L-a-x d-i-d-a-x-i-t. I think, My Lord, that should be L-i-p, new word, d-i, new word, d-a-a-t.
THE COURT: Spell it again, please? L-i-p.
MR. MACKENZIE: L-i-p d-i d-a-a-t. Lip di daat. That was the northern territory, northern boundary of Delgamuukw's territory. And then on line 8 there the reporter recorded Dennis Hill, and that should be Tenas, T-e-n-a-s, Hill.
THE COURT: I don't know how the reporter could have made such a mistake.
MR. MACKENZIE: If my friend has a problem with that perhaps I could just confirm that. Mr. Rush, are you happy with that?
MR. RUSH: Well, no, I'm not. You have that as -- oh, I'm sorry, Lip di daat, yes. Yes, that's right. I'm sorry, I misheard you.
THE COURT: Tenas would be T-e-n-i-s?
MR. MACKENZIE: T-e-n-a-s.
THE COURT: That's not how you spell it.
MR. MACKENZIE: Oh, I see. That's right. Yes.
MR. RUSH: It's on the map, My Lord. It's T-e-n-a-s Hill.
MR. MACKENZIE: His Lordship was referring to another tennis.
THE COURT: Where is Tenas Hill? We'd both like to know where it is.
MR. MACKENZIE: My Lord, it will be -- it's right in the northeastern part of the Delgamuukw territory which just goes north of the village of Kispiox, and if Your Lordship will look at the northeast you'll see Tenas, T-e-n-a-s, Hill at lot 2591.
THE COURT: Yes, I see. Thank you.
MR. MACKENZIE: And referring to Exhibit 486 when I indicated that to His Lordship.
THE COURT: Yes. Thank you.
MR. MACKENZIE: And one other matter, My Lord, at Volume 100 -- correction, Volume 101, Friday, page 6394. Your

1 Lordship will recall Mr. Rush's concern about part of
2 the document which was marked as Exhibit 509 and I now
3 have that. I now have the page that Mr. Rush was
4 referring to and perhaps I'll give that to Mr. Rush
5 and the registrar at the break and submit that the
6 document be marked as an exhibit proper after that.
7 THE COURT: Thank you.
8 MR. MACKENZIE: Now, I'd ask that the map at tab 26 be placed in
9 front of the witness.
10 THE COURT: That map is the last tab in the book, Mr. Mackenzie?
11 MR. MACKENZIE: Yes, My Lord. I'll be referring to this in some
12 detail today again.
13 THE REGISTRAR: That's Exhibit 498, My Lord.
14 THE COURT: Thank you.
15
16 CROSS-EXAMINATION BY MR. MACKENZIE:
17 Q Now, Mr. Muldoe, on Friday, or Thursday and Friday,
18 you were speaking about the Kispiox Reserve and one of
19 the items we were discussing was your territory, your
20 house's territory, at the Salmon, S-a-l-m-o-n, River,
21 also known as Shegunia, S-h-e-g-u-n-i-a, River. Do
22 you recall that? You recall we were talking about
23 your territory at Shegunia?
24 A Yes.
25 MR. MACKENZIE: Yes. Now, I'm handing you a marker and I'd ask
26 you to put on Exhibit 498 just in the most general way
27 the location of your territory at Shegunia; can you do
28 that?
29 THE COURT: When you say his territory, you mean the territory
30 of Gitludahl?
31 MR. MACKENZIE: Yes, My Lord.
32 THE COURT: Yes. Thank you.
33 THE WITNESS: You mean the territory or the fishing site?
34 MR. MACKENZIE:
35 Q The territory.
36 A The territory.
37 Q Yes.
38 A Well, actually the territory along here is -- it's
39 Gitludahl and Woosimlaxha there. They are very close
40 together and there's -- up there somewhere is where
41 it's berry patch.
42 MR. MACKENZIE: Okay. Just hang on. Sorry, Mr. Muldoe, I'm
43 sorry, you mentioned a name?
44 MR. RUSH: Woosimlaxha.
45 MR. MACKENZIE:
46 Q Woosimlaxha?
47 A Woosimlaxha.

1 Q That's Victor Mowatt, isn't it? That's number 83 on
2 the plaintiffs' list.
3 Now, I'm going to ask you whether you said -- you
4 referred to the Shegunia River, can I mark that as a
5 southern boundary of your Gitludahl territory?
6 A It's along -- along this on the south side.
7 Q Like this?
8 A Yes.
9 Q Is that fair to say?
10 A Yeah, and also Woosimlaxha, he owns that part too.
11 Q Fine.
12 A Then the berry patch up here somewhere.
13 Q Fine. The berry patch is up here?
14 A Somewhere around there.
15 Q Fine. I'm going to mark a circle up near Collins
16 Lake, north of Collins Lake; is that fair to say?
17 A I'm not too sure where that, but it's up here
18 somewhere. It's this place up -- they call it Lax
19 Ansa Maja.
20 MR. MACKENZIE: Okay. We're going to have to get a spelling
21 for that. We have a spelling for that territory or
22 part of that territory coming now, My Lord.
23 THE TRANSLATOR: It's L-a-x, underlined, A-n-s-a M-a-j-a, that's
24 a space in between there.
25 THE COURT: Ansa?
26 THE TRANSLATOR: L-a-x, underlined, space A-n-s-a, space.
27 THE COURT: Yes.
28 THE TRANSLATOR: M-a-j-a.
29 THE COURT: Thank you. And what is that the name of the --
30 THE TRANSLATOR: Lax Ansa Maja. It's --
31 THE COURT: It's the name of the territory along the Shegunia
32 River?
33 MR. MACKENZIE:
34 Q That's the name of a berry ground, yes, just northeast
35 of Collins Lake? Yes?
36 A It might be quite a ways above Collins Lake. This
37 Collins Lake is just newly named that.
38 Q Yes. We're referring --
39 A Just because by the person that named that George
40 Collins logged in there, that's why we get this name.
41 They call that lake Dam Xsi Gwin Ya'a.
42 MR. MACKENZIE: Yes.
43 THE COURT: The territory along the Shegunia River, all I've got
44 now is a line along the river. Can you more
45 accurately or specifically define it, please?
46 MR. MACKENZIE: Yes, My Lord. I'm just trying to -- I'm just
47 waiting for the spelling and then I want to get that

1 information. All the while we've been looking at
2 Exhibit 498 during this discussion, and -- now, Mr.
3 Muldoe, I've drawn a line along the Shegunia River
4 just across from Kispiox and Exhibit 498. Now --
5 MR. RUSH: Just before we go on, are we going to get the
6 spelling of Dam Xsi Gwin Ya'a?
7 THE TRANSLATOR: It's D-a-m, space, X-s-i, space, G-w-i-n,
8 space, Y-a-', stop, a.
9 MR. MACKENZIE:
10 Q Yes. That's the Gitksan name for the lake shown on
11 Exhibit 498 as Collins Lake.
12 Now, Mr. Muldoe, His Lordship requested, and what
13 I wanted you to help us with, was to tell us how far
14 north from Shegunia River this Gitludahl territory
15 extends, and I wonder --
16 A On the north side it belongs to Gutginuxw.
17 Q Now, could you please tell me -- just a second, I'll
18 get that name. That's number 14 on the plaintiffs'
19 list. Please tell me how far north Gitludahl's
20 territory goes? Could you put the northern
21 boundary --
22 A It's all on the south side of Shegunia, and on the
23 north side it's belong to Gutginuxw and Geel.
24 Q And Geel is number 8 on the plaintiffs' list. So
25 Shegunia is the north boundary of that territory for
26 Gitludahl?
27 A It's on the north side of the Shegunia. It's --
28 that's Geel and --
29 Q Okay. You're --
30 A And --
31 Q Geel and Gutginuxw; correct?
32 A Gutginuxw, yes, and --
33 MR. MACKENZIE: Number 14 on the plaintiffs' list, and Geel is
34 number 8 on the plaintiffs' list.
35 THE COURT: The north side belongs to who?
36 MR. MACKENZIE: The north side, as I understand it, belongs to
37 Gutginuxw; is that correct?
38 THE COURT: Also 14?
39 MR. MACKENZIE:
40 Q Yes, 14 on the plaintiffs' list, number 9 on my list.
41 So Gitludahl is south of Xsi Gwin Ya'a?
42 A South.
43 Q I'm going to put a square -- I'm going to follow along
44 the Kispiox River and I'm going to follow the
45 boundaries of the Kispiox Reserve here and put a
46 number 1 there. Can you tell me, is that Gitludahl's
47 territory -- part of Gitludahl's territory?

1 A It's just a small part here is -- belongs to
2 Gitludahl. It doesn't come all the way down, but it's
3 further down there. It's all up this way, then from
4 another berry patch here, and this all belongs to
5 Woosimlaxha.
6 MR. MACKENZIE: Okay. Woosimlaxha.
7 MR. RUSH: The witness pointed to the right or to the east of
8 the square drawn by Mr. Mackenzie and below the line
9 that marks the Shegunia River over to approximately
10 where the words Babine are written on that, so that --
11 THE COURT: Well, is the witness saying that the Shegunia
12 property of Gitludahl extends over as far as where
13 Babine appears on this map, as far east as the word
14 Babine?
15 THE WITNESS: It's Gitludahl comes up part here and then
16 join -- well, exactly is joined here with -- with
17 Woosimlaxha and it runs right up to Nine Mile
18 Mountain.
19 MR. MACKENZIE:
20 Q Okay. Nine Mile Mountain is over on the far east side
21 of Exhibit 498?
22 A It takes in all this part here.
23 Q Okay. I think it's --
24 A Woosimlaxha's territory.
25 Q Okay. What we want to find out is Gitludahl's
26 territory.
27 A Well, I just showed you where is Gitludahl's
28 territory.
29 Q Well, let's -- maybe we could just rephrase the
30 question.
31 This area that I have marked in orange with a
32 number one, is that part of Gitludahl's territory?
33 A No.
34 Q Are you sure about that?
35 A No.
36 THE COURT: It's not?
37 MR. MACKENZIE:
38 Q I'm putting it to you that this area that I've marked
39 number 1 is part of Gitludahl's territory; do you
40 agree or not?
41 A No.
42 Q You say it's not?
43 A No.
44 Q You're sure about that?
45 A Yes.
46 Q Okay. Mr. Muldoe, on that map behind you, trial
47 Exhibit 5, Gitludahl's territory is shown as extending

1 north of Shegunia River. Now, can you tell me, is
2 Gitludahl north or south of Shegunia River?
3 A It's on the south side.
4 Q Yes. And now you've just pointed to the -- and it
5 goes to the Kispiox River; correct?
6 A Yes, it goes to the Skeena.
7 Q It goes to the Skeena River. Yes. And that includes
8 the area that I've just marked doesn't it?
9 A It doesn't include all the way down there.
10 Q It includes part of that area doesn't it?
11 A Might be a little part of it, but not all of it.
12 Q But you agree it's part of it? Yes? You agree it's
13 part of that area I've marked with number 1?
14 A Actually -- actually the -- in the former days --
15 Q Could you please answer my question whether
16 Gitludahl's territory includes part of this I've
17 marked as number 1?
18 A Well, it's --
19 Q Yes or no?
20 A It's been hold by Gitludahl all along there.
21 THE COURT: Well, we can assume the territory at least includes
22 the south bank of the river from the Skeena eastwards
23 some distance can we?
24 MR. MACKENZIE: The territory would include at least the
25 southern bank of the river from Skeena eastward;
26 correct?
27 THE COURT: And then how far east and how far south?
28 A It's about one mile from -- from the Xsi Gwin Ya'a,
29 over one mile.
30 THE COURT: Along the south bank?
31 A Yes, and then it goes in with Woosimlaxha's territory.
32 THE COURT: All right. And how far south of the Shegunia River
33 does Gitludahl's Salmon River territory extend,
34 please?
35 THE INTERPRETER: That's what he was saying. It's about a --
36 he thinks it's over a mile from the Xsi Gwin Ya'a
37 River and then it goes up. He doesn't --
38 THE COURT: Let's start again, please. Can you ask the witness
39 how far along the south bank of the Shegunia River
40 does this Gitludahl territory extend on the south
41 bank?
42 A It is over a mile from Shegunia River and then it goes
43 about five miles, up about five miles.
44 THE COURT: Along the river?
45 A Yeah. Yes.
46 THE COURT: Five miles along the south bank of the river?
47 A Uh-huh.

THE COURT: And extending southward a distance of about one mile?
A Yes.
THE COURT: Thank you.
A And there's a -- it goes to Nine Mile, which is Woosimlaxha's territory.
THE COURT: The river goes to Nine Mile?
A No, the boundary gets -- it goes for about five miles along the river and then it gets to Woosimlaxha's territory and then it goes to Nine Mile and then it goes back towards the Skeena and that berry patch belongs to Gitludahl.
MR. MACKENZIE:
Q Okay. Now, Mrs. Sampson, could you ask Mr. Muldoe does part of Gitludahl's territory lie within the Kispiox Indian Reserve?
A In the ancient times Gitludahl was the one that settled at the Kispiox site today. This is in the ancient times him and Ye'el discovered this place and made a settlement there and the people started coming and settling there.
Q Does part of Gitludahl's Salmon River territory lie within the Kispiox Indian Reserve?
A His territory goes as far as to the Skeena River, but on the reserve there is fishing sites there.
Q So Mr. Muldoe will you agree with me that part of your Salmon River territory lies within the Kispiox Indian Reserve?
A There's some at Xsi Gwin Ya'a and there's some at Lax gu gawsuxw and then the west side of the Skeena.
THE COURT: The west side of the Skeena?
THE INTERPRETER: Uh-huh.
MR. MACKENZIE: Now, Mr. Muldoe is now talking about fishing sites isn't he?
THE INTERPRETER: Uh-huh.
THE COURT: Oh, all right.
MR. MACKENZIE: Could we please talk about the hunting territory at Salmon River and get an answer to that question?
MR. RUSH: Well, My Lord, I think an answer was given. The answer presupposes that the place on the map is known to Mr. Muldoe as being part of the Kispiox Reserve and my friend has -- I think that should be established first, but what Mr. Muldoe has indicated is given a geographic description to where the boundary goes which apparently coincides with the area that has been identified on the map.
THE COURT: I think there is that difficulty, if the witness

1 doesn't accept where the Indian reserve is, we're
2 obviously at cross purposes.
3 MR. MACKENZIE:
4 Q Yes, I agree, My Lord, and that's a good point.
5 Mr. Muldoe, are you aware that the Kispiox Indian
6 Reserve extends over onto the east bank of the Skeena
7 River near Salmon River?
8 A No.
9 Q No. Have you been to your Salmon River territory
10 recently?
11 A I hunt along there for moose or something like that.
12 Q Have you been there in 1988? Have you been to that
13 territory in 1988?
14 A There's a road going through there going up just going
15 by there.
16 Q Have you been to your Salmon River territory in 1988?
17 A Well, that's what I said. I never go on there because
18 Alvin Weget is supposed to be in there.
19 Q Alvin Weget. A-l-v-i-n, Weget, W-e-g-e-t. So you
20 never go to that territory?
21 A No, I don't go in there. That's -- it's up to Alvin
22 to go up there. I got other territory to go.
23 Q Now, as the head chief of the house you keep in touch
24 with what's happening on your territories?
25 A Yes.
26 Q Yes. So you know the major resource developments on
27 your territories?
28 A Well, the only development that they do in there they
29 log that right off, and they start going right up
30 towards this territory up here. All the loggings all
31 along here right up to there, and then from there up.
32 Q Yes. Mr. Muldoe is referring to areas to the east of
33 the Kispiox Reserve and near and north of the Shegunia
34 River.
35 Now, I want to ask you, are you aware that the
36 Kispiox Band is -- has committed that part of the
37 reserve to the wood lot licence for management? Do
38 you know that?
39 A No, I don't know too much what's going on there, but I
40 know they're -- they log the area, that's when they
41 have to log that area so I know that they get some
42 money to build a community centre.
43 Q Oh, I see. You referred to that before?
44 A Yes.
45 Q And the Kispiox Band logged the area to get money for
46 the community centre?
47 A Yes.

1 Q Oh, yes. And now the Kispiox Band is replanting trees
2 in that area, isn't it?
3 A I heard about that, but I don't know anything about
4 what they been doing in there.
5 Q Okay.
6 A Because anything what's going on in the band office
7 then I don't know too much about it.
8 Q Okay. Did the Kispiox Band come to you as Gitludahl?
9 A Not very often.
10 Q Did they come to you to ask you whether they could
11 commit that territory on the reserve to the wood lot
12 licence?
13 A Well, all the chiefs get together and they all agree
14 that they have to cut the logs because no other way
15 they going to get enough money to build that. They
16 have a meeting on that and they all agree that they
17 have to cut the logs to have enough money to build the
18 community centre.
19 Q And they --
20 A And when they start the tree planting I don't know how
21 they start, and it's up to them. They never discussed
22 this with us people.
23 Q They cleaned the area right off?
24 A No. They not all right off, they just cut some of it.
25 Q And now they're replanting?
26 A I hear about they replanting, but I never was over
27 there what they doing.
28 MR. MACKENZIE: And I've handed to Your Lordship a volume
29 entitled "Extracts from Ministry of Forests and Lands
30 general file, wood lot licence number 131", and I'm
31 referring the witness to page 227. The pages are
32 included in that volume in numerical order and the
33 page numbers are at the lower right-hand corner.
34 THE COURT: And what number are you referring to?
35 MR. MACKENZIE: 227.
36 THE COURT: Thank you.
37 MR. MACKENZIE:
38 Q Now, I'm showing to you a letter dated April 8, 1985,
39 from George Muldoe and Mr. Reedy. George Muldoe is
40 your son?
41 A Yes.
42 Q And that's George's signature there on this letter of
43 April 8th, 1985?
44 Do you think he heard what I said?
45 A Yes, that's George's writing.
46 MR. MACKENZIE: My Lord, I submit that document and its
47 enclosures as the next exhibit.

THE COURT: All right.
MR. RUSH: What does the next exhibit contain?
MR. MACKENZIE: The enclosures, as I'm instructed, go right to the end of that volume to page 50. This is the management and working plan number 1 for wood lot licence number 131.
THE COURT: And what about the map at the back?
MR. MACKENZIE: I'm instructed that's part of the -- that's part of the package, My Lord. If Your Lordship will see that map is development plan 1985 to 1989, and I understand that's part of the package that -- management and working plans for those years.
THE COURT: All right. Any difficulty with that, Mr. Rush?
MR. RUSH: Well, the only matter that caused me some -- a moment to review was the letter that is appearing at 239 which doesn't seem to fit with the table of contents which describes appendices A, double A, through to F, so I don't know where the letter fits in with that. It seems to be out of place.
THE COURT: It certainly wouldn't be part of the enclosure because the letter itself is dated April 8th.
MR. RUSH: No, it couldn't be.
MR. MACKENZIE: No, My Lord, that may have been misfiled. I think we should exclude that from the enclosures. It doesn't seem to fit there as far as we can see. If Your Lordship will look at that letter on page 239 it appears to have been received by the Kispiox Band Council on July 15.
THE COURT: Yes.
MR. MACKENZIE: And it may have come into the file in another letter from the band council.
THE COURT: Shall we exclude it?
MR. MACKENZIE: Yes, My Lord.
THE REGISTRAR: Just the letter?
MR. MACKENZIE: Yes.
THE COURT: Give that back to Mr. Mackenzie please? All right. The next exhibit number then.
THE REGISTRAR: 512.

(EXHIBIT 512: Document entitled "Extracts from Ministry of Forests and Lands, general file, wood lot licence 131"

MR. MACKENZIE: Including the map at the back.
And, My Lord, at page 230 in the introduction there's a brief reference in the second paragraph to schedule A, "Lands". That is the private land

1 contribution and it describes in schedule A lands
2 under this wood lot licence and attached at page 248
3 is a map showing the schedule A lands referred to in
4 the wood lot licence.
5 THE COURT: Yes.
6 MR. MACKENZIE: And those schedule A lands are within the
7 Kispiox Reserve bordering the Skeena River on the east
8 bank of the Skeena River north and south of Shegunia
9 River.
10 THE COURT: Yes.
11 MR. MACKENZIE:
12 Q And our prolonged discussion earlier this morning
13 related to some of those lands, My Lord.
14 Now, on Thursday, Mr. Muldoe, you told us that
15 Fritz Harris -- Fritz Harris had a piece of land down
16 across from Glen Vowell; do you recall that?
17 A Yes.
18 MR. MACKENZIE: Now --
19 THE COURT: I'm sorry, who had that?
20 MR. MACKENZIE: Fritz Harris, My Lord.
21 THE COURT: Oh, yes, thank you.
22 MR. MACKENZIE:
23 Q And Fritz Harris was Luus or Delgamuukw?
24 A He's in the family of Delgamuukw. I don't remember --
25 don't remember what name he was using during that
26 time. It's -- I was just a kid that time.
27 Q He was one of the informants in your affidavit?
28 A Uh-huh.
29 Q Yes?
30 A It's -- actually Fritz Harris belongs to Delgamuukw's
31 family, but I don't know which name he was using at
32 that time.
33 Q Tab 17 of the Volume 1, the black volume, we have a
34 crown grant, a crown grant issued to Fritz Harris on
35 January 31, 1910, and it's for lot 696. Now, that's
36 Fritz Harris' property on the Skeena River that I'm
37 mentioning and writing in number "2" beside it; is
38 that correct?
39 A Somewhere. I don't even know the lot number.
40 MR. MACKENZIE: No. Okay. Lot 696 is on the east bank of the
41 Skeena River just south of Kispiox Indian Reserve as
42 shown on Exhibit 498, and I've circled that and marked
43 it with a "2".
44 Now, I submit this Fritz Harris crown grant as the
45 next exhibit for identification pending the receipt of
46 a certified copy of that crown grant.
47 THE COURT: I'm sorry, I've lost it again, 696?

MR. MACKENZIE: Yes, My Lord.
THE COURT: Where is it?
MR. MACKENZIE: It's right here.
THE COURT: Oh, it's on the east bank.
MR. MACKENZIE: Yes.
THE COURT: Sorry.
MR. MACKENZIE: On the east bank.
THE COURT: All right. Any problem with that, Mr. Rush?
MR. RUSH: No.
THE REGISTRAR: 513 for identification.
THE COURT: All right. That will be Exhibit 513.
THE REGISTRAR: 513 for identification, My Lord.
THE COURT: Yes. All right.

(EXHIBIT 513 FOR IDENTIFICATION: Fritz Harris' crown grant, Tab 17, Volume 1)

MR. MACKENZIE:
Q And that lot 696 is down in whose territory?
A That's on Kliiyemlaxhaa's territory.
Q You say lot 696 is on Kliiyemlaxhaa's territory?
A Uh-huh. Not Kliiyemlaxhaa.
Q That's number 35.
A I made a mistake. Woosimlaxha.
Q Now, Kliiyemlaxhaa is 35 on the plaintiffs' list and Woosimlaxha is 83 on the plaintiffs' list.
And Woosimlaxha is now your son-in-law Victor Mowatt?
A Yes.
Q And Victor Mowatt is in the fireweed clan; correct?
A Who is?
Q Woosimlaxha?
A Yes.
Q Fireweed clan?
A Yes.
Q Fritz Harris is frog clan?
A Frog clan. Frog, eagle, same thing anyway.
Q Frog eagle?
A Yes, frog and eagle, they're about the same anyway.
Q Now, you're speaking about the eagles that came to Kispiox?
A Yes.
Q From Kitwanga?
A They have their own crest too.
Q And those eagles became frogs -- or sorry, I'll rephrase that question. Those members of the eagle clan become members of the frog clan?

A No. Well, they have their crest. Well, some is a frog and some is the eagle. Well, on Delgamuukw's pole they have an eagle as well, so they're frog -- they call it just a little different, but yet when there's a feast they work together.
Q Are there any members of the eagle clan in Kispiox?
A Delgamuukw's family and a lot of other people. I just can't recall all them.
Q They consider themselves to be members of the eagle clan?
A Well, anyone in Delgamuukw's family they eagle.
Q And they're also frog?
A Yes.
MR. MACKENZIE: Yes.
THE COURT: Can we take the morning adjournment, Mr. Mackenzie?
MR. MACKENZIE: Thank you, My Lord.
THE COURT: All right. Thank you.
THE REGISTRAR: Order in court. Court will recess.

(PROCEEDINGS ADJOURNED AT 11:15)

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 RESUMED PURSUANT TO ADJOURNMENT)

THE COURT: Mr. Mackenzie.

CROSS-EXAMINATION BY MR. MACKENZIE, Continued:

Q We were just talking about Fritz Harris' grant and that was marked as an exhibit, 513. Fritz Harris was your father-in-law, correct?

A Yes.

Q Just before I go on to the next point, just one other point that I wanted to refer your lordship to in the Exhibit 512 which is the Woodlock licence 131 Band Council Management and Working Plan. It's at page 232. I just want to refer your lordship to the second paragraph on page 232 which reads:

> "Clear cut logging to Interior Close Utilization Standards will be conducted with conventional ground skidding methods. If warrented, selective logging could be used for beetle control. No steep slope logging is planned during the term of this Plan."

One further -- one final piece of property I wanted to ask you about, and that's a piece of property that your brother-in-law, Stephen Morrison, purchased and it appears at tab 15, tab 15 of Volume 1. At tab 15 there is a Crown grant to Stephen Morrison dated February 28 or I beg your pardon, February 22, 1928. And it refers to lot fractional northeast quarter of lot 2541. The second page at tab 15 is a photograph -- I am sorry, it's a copy of a plan of that section and your property was at lot 2540, the southeast quarter, wasn't it?

A Yes.

Q So you are the next lot up from this one, aren't you?

A Yes.

Q Yes. Now, do you recall Steve owning this property that I'm pointing to at tab 15?

A Yes.

Q Yes. And that appears on Exhibit 498?

A 2541 it is.

Q Yes. 2541 is just west of the Agwidin Indian reserve on the west bank of the Kispiox River. Does your lordship have that reference?

THE COURT: Yes.

MR. MACKENZIE:

Q And I'm going to circle that on Exhibit 498 and put a

1 number three there. Now, Stephen Morrison chief's
2 name was Wii elaast, wasn't it?
3 A That's just lately.
4 Q Oh, yes. Wii elaast is number 72 on the plaintiffs'
5 list. Steve Morrison was in the Wolf Clan?
6 A Yes.
7 Q Yes.
8 THE COURT: I am sorry, his number?
9 MR. MACKENZIE: Wii elast is number 72 on the plaintiffs' list,
10 my lord.
11 THE COURT: Yes. Thank you.
12 MR. MACKENZIE: Steve Morrison was Wolf Clan.
13 Q And this was in Ma'uus' territory, correct? This
14 property is in Ma'uus territory?
15 A Yes.
16 Q And Ma'uus is number 48 on the plaintiffs' list. The
17 spellings is M-a-'-u-u-s.
18 THE INTERPRETER: Ma'uus.
19 MR. MACKENZIE: Ma'uus is the correct pronunciation thanks to
20 Mrs. Sampson.
21 Q And Ma'uus is Frog Clan, correct?
22 A Yes.
23 Q Yes. And now, Ma'uus is Jeff Harris Jr., correct?
24 A Yes.
25 MR. MACKENZIE: My lord, I submit this document tab 15 as the
26 next exhibit for identification. Well, pending
27 receipt of certified copy.
28 THE COURT: Any problem with that, Mr. Rush?
29 MR. RUSH: None.
30 THE COURT: Thank you.
31 THE REGISTRAR: Crown grant.
32 MR. MACKENZIE: Yes.
33 THE COURT: Crown grant and the plan.
34 MR. MACKENZIE: Yes.
35 THE REGISTRAR: Exhibit 514 for identification.
36
37 (EXHIBIT 514 FOR IDENTIFICATION: Crown grant and plan
38 to Stephen Morrison dated February 22, 1928)
39
40 THE INTERPRETER: Ma'uus was Stephen's father.
41 MR. MACKENZIE:
42 Q Now, I believe you testified in evidence that you live
43 on the Kispiox reserve?
44 A Yes.
45 Q You have a house there?
46 A Yes.
47 Q And when he was alive, Stephen Morrison lived on the

1 Kispiox reserve?
2 A Yes.
3 Q And Ken Muldoe, does he live on the reserve?
4 A Yes.
5 Q Yes. And George Muldoe lives on the reserve?
6 A Yes.
7 Q And did Fritz Harris live on the reserve when he was
8 alive?
9 A Yes. He lived when he was pretty well -- pretty well
10 aged.
11 Q Pretty well aged?
12 A Yes. He was pretty old.
13 Q He lived there for a long time?
14 A Yes. All his life.
15 Q Now, I take it that you didn't have to -- you didn't
16 purchase your home on the reserve, did you?
17 A Pardon?
18 Q You didn't purchase your home on the reserve, did you?
19 A No.
20 Q No. And did you pay any income tax last year?
21 A No.
22 Q No. Can you tell me, Mr. Muldoe, when was the last
23 year that you paid income tax, federal income tax?
24 A I can't recall. It's quite a few years back.
25 Q When did you stop working in the commercial fishery?
26 A I haven't stopped yet. I am still working.
27 Q You are still working in the fishery?
28 A Yes.
29 Q And you are still trapping?
30 A Still trapping.
31 Q When you were working with your mill, did you pay
32 income tax then?
33 A I think we did pay income tax then during that time.
34 Q Your employees, though, did not pay income tax, did
35 they?
36 A No.
37 Q That is, the employees from the Kispiox reserve didn't
38 have to pay federal income tax, did they?
39 A Well, I believe if you are working outside the reserve
40 you will be paying the income tax. But I don't know
41 if they ever take any income tax during those years.
42 Q So let me -- correct me if I'm wrong, but now we
43 have -- you own the property 2540 outside the reserve?
44 A Yes.
45 Q You have a house on the reserve?
46 A Yes.
47 Q And you claim the territories described in your

1 affidavit of Gitludahl?
2 A Uh-huh.
3 Q As well as Sammon River?
4 A Yes.
5 Q Does Gitludahl claim to abolish the Indian reserve?
6 MR. RUSH: What was the question?
7 MR. MACKENZIE: Rephrase the question.
8 Q Does Gitludahl oppose the existence of the Indian
9 reserve?
10 THE COURT: I am sorry, Mr. Mackenzie, but I think I would like
11 to know what reserve you're talking about.
12 MR. MACKENZIE:
13 Q I am speaking about Kispiox Indian reserve --
14 A Yes.
15 Q -- No. 1.
16 A They don't mention it.
17 Q Does Gitludahl claim ownership of the Sammon River
18 territory?
19 A Yes.
20 Q Does Gitludahl claim ownership of the Sammon River
21 territory inside the Kispiox reserve No. 1?
22 A Well, it's just we will hear -- the ownership when he
23 first discovered the place, it was just a village, the
24 hiding place. And also Ye'el, too.
25 MR. RUSH: Y-e-'-e-l.
26 MR. MACKENZIE:
27 Q Now, you told me on Friday Delgamuukw claims ownership
28 of Kispiox village, correct?
29 A But -- well, it's all the rest of the other people get
30 into that and they take the territory from there,
31 Delgamuukw by the name of Wa'a right up to behind
32 Love's Mountain, they call Lip di daat and Sax ge'en.
33 Q Okay. Just hang on, please. You spoke about Wa'a.
34 We have to get a spelling for that.
35 MR. RUSH: I think it's W-a-'-a.
36 MR. MACKENZIE:
37 Q And then you spoke about Love's Mountain, L-o-v-' --
38 L-o-v-e-'-s, and that's Tenas -- that's Tenas
39 Mountain, isn't it, T-e-n-a-s?
40 A Other people they call Love's Mountain.
41 Q And then you spoke about Lip di daat. I am sorry, Lip
42 di daat?
43 A Lip di daat.
44 MR. MACKENZIE: Let's stop right there so we have all those
45 spellings.
46 THE COURT: I think we have got them, haven't we?
47 MR. MACKENZIE: Yes, we should have that, because I raised that

in the beginning. Lip di daat is -- I think your lordship has that. I raised that at the beginning.
THE COURT: Yes. Yes, I have it.
MR. MACKENZIE:
Q Now, do you know Roy Wilson?
A Yes.
Q And do you know that he has a trapline? You know he has a trapline?
A What Roy Wilson are you talking about?
Q The Roy Wilson at --
A Roy Wilson Sr. and Roy Wilson Jr., which one?
Q At Kispiox.
A Yes.
Q Do either one of them have a trapline?
A Ma'uus used to -- they used to have that trapline from right across from the village.
Q Yes.
A That's a Sr.
Q Sr. Yes. And does he still have that to your knowledge?
A I don't know if he still having that. Not because either one of them goes up there.
Q They don't go up there any more?
A Yeah. One of his son usually goes up there.
Q And that trapline is where the Kispiox band is now logging, isn't it?
A Yeah, I think so, yeah.
Q And we referred to that generally on Friday as being just west of the Kispiox Indian reserve boundaries on Exhibit 498. Do you know if Roy Wilson has complained to the band council about the logging on his trapline?
MR. RUSH: Doesn't that call for hearsay response, my lord?
THE COURT: It might. I suppose the fact that he made a complaint, the validity of which might not be proven, would be evidence if the witness heard it made directly.
MR. RUSH: If he was present when he made the complaint.
THE COURT: Yes.
MR. RUSH: Shouldn't that be the question: Were you present at a time when -- ?
THE COURT: I think Mr. Mackenzie agrees with you on that. Or has he made a complaint to you, that is to the witness?
MR. MACKENZIE:
Q Do you know anything about a complaint by Roy Wilson?
A No.
Q No. And I am speaking about the logging on his

trapline.
A No.
Q No, you don't know anything about that. You haven't heard any discussion in the village about that?
A No.
Q No. But you are very familiar with the logging, the clear cut logging in Gitludahl's territory, aren't you, at Twin Lake?
A Twin Lake, yes.
Q Yes. And you are very familiar with the logging all the way up to the Sweet In River, aren't you?
A Yes.
Q That's almost what would you say, 50 miles from Kispiox?
A It's up pretty close to 60 mile up. Right past, right up Nangeese River.
Q Up to the Nangeese River. But you don't know too much about the logging in the territory next to your property, do you?
A No.
Q Do you know that the band council has to have a timber mark to move the timber from the logging area?
A I believe they -- all the timber sale, they got to have a timber mark.
Q And from your experience you know that you get that timber mark from the Provincial Government, don't you?
A Yes.
MR. MACKENZIE: If your lordship could keep Exhibit 498 handy. I have handed up to your lordship a volume of photographs.
THE COURT: Yes.
MR. MACKENZIE: Madam Registrar, would you be so kind as to place that volume in front of the witness. Thank you.
Q Now, tab one in that photograph, that's the United Church on the Kispiox reserve?
A Pardon?
Q That's United Church on the Kispiox reserve?
A Yes. That's the United Church.
Q And is that Sidina Mountain in the background, Sidina Mountain across the river?
A Yes. That's also part of that berry picking right in the edge of that snow cap.
Q Now, if your lordship has Exhibit 498, your lordship will see Sidina Mountain to the east of the Kispiox River and your lordship will then --
A That's the one they call Lax Ansa Maja right in the slope there.

1 Q Oh, yes. We will get that spelling. Mr. Muldoe, I
2 think, is saying that the berry ground you are
3 referring to is on the slope of the mountain.
4 THE COURT: North or south of Nine Mile Mountain?
5 MR. MACKENZIE: I beg your pardon, my lord?
6 THE COURT: North or south of Nine Mile?
7 MR. MACKENZIE: It's north of Nine Mile, my lord, right up at
8 the northeast mountain on the map, Exhibit 498.
9 THE COURT: Yes.
10 MR. MACKENZIE: I will be referring to that again. Now, Mr.
11 Rush has pointed out Mr. Muldoe referred to as berry
12 ground by its name again.
13 THE COURT: Yes.
14 MR. MACKENZIE: He's referred to it earlier. Did your lordship
15 wish a spelling for that?
16 THE COURT: Oh, yes, we should have it.
17 MR. MACKENZIE: Again. Yes.
18 THE COURT: Please. Or do we have it already? If we have it,
19 that's fine.
20 MR. MACKENZIE: We had it earlier when we were discussing Sammon
21 River.
22 THE COURT: Well, all right, let's have it again for the
23 reporter and save her having to track it down.
24 THE TRANSLATOR: L-a-x underlined space A-n-s-a space M-a-j-a.
25 THE COURT: Thank you.
26 MR. MACKENZIE:
27 Q And tab 2 is the Pentecostal Church on the Kispiox
28 reserve?
29 A Yes.
30 Q And tab three in the background is the school on the
31 Kispiox reserve?
32 A Yes.
33 Q And in the foreground is a new house being built on
34 the reserve?
35 A Yes, I believe this has been newly built, I think.
36 Q Whose house is that?
37 A One of the Wright. The lady they used to have a house
38 there before, but that burnt down and they just
39 rebuilt that this year or last year. It's not moved
40 in yet.
41 Q And on the west side of the highway, the other side of
42 the highway there is several new houses, aren't there?
43 A Yes.
44 Q Yes. There is a new subdivision over there, isn't
45 there?
46 A It's about almost a mile from that building there.
47 MR. MACKENZIE: Yes. Referring to tab three. And looking at

1 Exhibit 498, my lord, you'll see the highway where we
2 are referring to going through the centre of the
3 Kispiox reserve.
4 THE COURT: Yes.
5 MR. MACKENZIE:
6 Q Now, who attends that school that's shown in tab
7 three?
8 A I didn't get you.
9 Q Who attends the school, which students?
10 A Mostly -- mostly native people, some white from the
11 valley.
12 Q Some white children from up in the valley come to this
13 school also?
14 A Yes.
15 Q Yes. And they come down by school bus?
16 A Yes.
17 Q Yes. And that school bus is driven by one of the
18 members of the reserve?
19 A No.
20 Q No. Tab four, that's another picture of the school,
21 isn't it?
22 A Yes.
23 Q And in the background is Sidina Mountain, correct?
24 A Yes.
25 MR. MACKENZIE: Does your lordship have that?
26 THE COURT: Yes.
27 MR. MACKENZIE: Tab four.
28 Q And there is logging going on in Sidina Mountain?
29 A This is -- this is Nine Mile Mountain.
30 Q You are saying that the mountain in the background in
31 tab four is Nine Mile Mountain?
32 A Nine Mile Mountain, that one.
33 Q You're sure about that?
34 A Yes.
35 Q That's on the other side of the Skeena River, isn't
36 it?
37 A Yes.
38 Q And --
39 A That's on the west side of the Skeena River going
40 right up towards the Nine Mile Mountain.
41 Q And there is logging going on in that mountain?
42 A Yes.
43 THE COURT: He means the east side of the Skeena, doesn't he?
44 MR. MACKENZIE:
45 Q You mean the east side of the Skeena River?
46 A East side. It's southeast.
47 Q Well, my instructions are that that photograph -- that

1 photograph is looking northeast, but -- and to Sidina
2 mountain, but you think that's Nine Mile Mountain?
3 A Yes.
4 Q Well, just in the -- to the left of Sidina Mountain or
5 Nine Mile Mountain, as you say, there is a peak
6 showing over the skyline. Can you say which peak that
7 would be?
8 A I wouldn't know -- I wouldn't know that peak. It's
9 too far off.
10 Q Is that Gisgagas peak?
11 A It's towards the Babine somewhere.
12 THE COURT: You're looking at tab four?
13 MR. MACKENZIE: Yes, my lord.
14 THE COURT: Where is the peak?
15 MR. MACKENZIE: The peak is on the left-hand side of the picture
16 just on the skyline just down from the mountain, my
17 lord. Just peeking over there.
18 THE COURT: Oh, extreme right. Just peeking over. You are
19 talking about the --
20 MR. MACKENZIE: I would like to rephrase that, my lord, but --
21 THE COURT: The very extreme left-hand side of the photograph.
22 MR. MACKENZIE: Yes, my lord.
23 THE COURT: All right.
24 Q And in the background on this photograph tab four, you
25 can see some of the other houses on the reserve, can't
26 you?
27 A Yes.
28 Q Yes. I am going to tab five. Now, this is -- this
29 picture is -- appears to be of the lower Kispiox
30 recreation site, B.C. Forest Service. And I'm
31 instructed it's across the highway from the
32 Sportsman's Lodge. Have you seen that recreation
33 site?
34 A I don't remember where this is.
35 Q I am instructed that river there in the background is
36 the Kispiox River. Does that help you to place that
37 site?
38 A Well, I wouldn't -- that could be Kispiox River, but I
39 wouldn't know just exactly where that is.
40 Q Do you know where the Sportsman's Lodge is?
41 A I know where the Sportsman's Lodge is.
42 Q And the Sportsman's Lodge is where compared to Seven
43 Mile Bridge?
44 A It's --
45 Q 17 Mile Bridge, I beg your pardon.
46 A It's about a mile from Ankya Ge'en.
47 Q Yes. That's the Gitksan name for 17 Mile Bridge,

1 isn't it?
2 A Yes.
3 MR. RUSH: I think the spelling is A-n-k-e G-e-'-e-n. A-n-k-a.
4 THE REGISTRAR: 1425.
5 THE COURT: 1425. Thank you.
6 MR. MACKENZIE: Thank you, Madam Registrar.
7 Q So the Sportsman's Lodge is just north of 17 Mile
8 Bridge?
9 A Yes.
10 MR. MACKENZIE: Your lordship will have marked, I think, 17 Mile
11 Bridge on Exhibit 498.
12 THE COURT: Yes.
13 MR. MACKENZIE: And I'm instructed, my lord, that this site at
14 tab five appears actually at the confluence of lots
15 296, 297, 295 and 294 just south of the bridge and
16 there is a building shown across the river from where
17 that confluence is or across the highway from where
18 that confluence is.
19 THE COURT: Thank you.
20 MR. MACKENZIE:
21 Q Can you be more specific. The Sportsman's Lodge is
22 south of the 17 Mile Bridge, isn't it?
23 A Yes.
24 Q Yes.
25 A Right next to the rodeo ground there.
26 Q Yes. It's about a mile south of the bridge, isn't it?
27 A Yes.
28 Q Does your lordship have that reference on Exhibit 498?
29 THE COURT: Yes.
30 MR. MACKENZIE:
31 Q Yes. Now, Mr. Muldoe, I'm -- you know about Mitten
32 Lake, don't you?
33 A Yes.
34 Q Do you know that there is a recreation site similar to
35 this in tab five at Mitten Lake?
36 A Yes. That's on -- it's on the northwest side of
37 Mitten Lake.
38 MR. MACKENZIE: Yes. And Mitten Lake, my lord, appeared in the
39 plaintiffs' Exhibit 486 in the Delgamuukw territory.
40 THE COURT: Yes.
41 MR. MACKENZIE: Territory L in Mr. Muldoe's affidavit.
42 Q Now, do you know Sammon, S-a-m-m-o-n, Lake? Sammon
43 Lake, do you know that?
44 A Sammon Lake?
45 Q It's shown as in Kliiyem Lax haa's territory near An
46 Giihla on Exhibit 486. Don't worry about that.
47 A No.

1 Q You don't recall that name?
2 A No. I never know that place.
3 Q Hodder Lake, H-o-d-d-e-r, is up near Nangeese River.
4 Do you know that lake?
5 A Hodder Lake?
6 Q Yes.
7 A Yes.
8 Q And do you know that there is a recreation site there
9 as well?
10 A Well, they use it as a camping site, but there is no
11 recreation site. They have a recreation site at the
12 mouth of the Xsu wii Din.
13 Q At the mouth of the Sweet In River?
14 A Yes.
15 Q Yes. Fine. Well, let's go on to the next, tab six,
16 in the photograph book. That's a picture of the
17 Sportsman's Lodge, isn't it?
18 A Yes.
19 Q And there are a lot of sports fishermen that come to
20 the Kispiox valley?
21 A Yes.
22 Q And they come for steelhead fishing?
23 A They all come up there for steelhead fishing whenever
24 the season is open, I guess.
25 Q And you said that's near the rodeo site, the
26 Sportsman's Lodge is near the rodeo site?
27 A Yeah. It's pretty close. Just a couple hundred yards
28 from the rodeo site.
29 Q And the rodeo is in the first weekend each June every
30 year?
31 A Something like that. I just don't remember.
32 Q And people come from all over the valley to attend the
33 rodeo?
34 A From Williams Lake; some from Calgary; some from all
35 over the place.
36 Q Indians and white people?
37 A Indians and white people.
38 Q Yes.
39 A Some came from all the way from Stewart. Different
40 place. Rupert.
41 Q Yes. Going to tab seven, this is a photograph of the
42 Kispiox steelhead camp. Now, I am instructed that's
43 on the west side of the Kispiox River just north of
44 the 17 Mile Bridge. Do you know where that is?
45 A Yes.
46 Q Yes. There are several resorts along that road,
47 aren't there?

A Yes.
Q The next one at tab eight is the Kispiox steelhead camp, another site. And are you familiar with that one?
A I don't know the steelhead camp. That's part of that one there.
Q It was part of the one at tab seven. Yes.
A Part of seven.
Q That's the Kispiox River we are looking at in picture number eight?
A Yes.
Q Yes. And going to tab nine, the next photograph. This is a photograph of the Kispiox River resort and campground. That's further up the road west of the Kispiox River. Do you know that one?
A I just can't recall just where it is actually.
Q Okay. Now, if we are on the west side of the Kispiox River, are we in Gwiiyeehl's territory? No. We would be in Kliiyem Lax haa's territory just north of 17 Mile Bridge, correct?
A It might be there. But I haven't been through there lately.
Q Yes.
A That could have been put up. And I believe I didn't see it.
Q Well, I guess my point was that the various resort camps are in Kliiyem Lax haa's territory?
A Yes.
Q And the Sportsman's Lodge is in Kliiyem Lax haa's territory?
A I think they are in Wa'a's territory.
Q It's Delgamuukw territory, correct?
A Yes.
Q And finally the final -- was that Stikyoodin, Roche de Boule, in the background?
A Yes.
MR. RUSH: What photograph is that, please?
MR. MACKENZIE: Tab ten.
THE COURT: Ten. Oh, yes.
MR. MACKENZIE:
Q I am instructed this is just outside of Hazelton near Two Mile?
A Two Mile.
Q Do you think that's at Two Mile?
A Yes.
Q That's a view looking southeast to Stikyooden, isn't it?

A Stikyooden.
Q Stikyooden. I think we have heard that. Mrs. Kenny spoke of it.
THE TRANSLATOR: Number 790.
MR. MACKENZIE:
Q Now, did you take your family down to the carnival when it came a couple of weeks ago?
A I think the wife did. But I wasn't -- didn't go to that place.
Q You have driven -- you drove by and saw the carnival there?
A Yeah.
MR. MACKENZIE: Well, my lord, I think the witness has identified most -- all of those photographs except the one at tab five. He couldn't really recall that recreation site. And tab nine which was the second resort.
THE COURT: Yes.
MR. MACKENZIE: So, my lord, I submit all those as exhibits, subject to those two.
THE COURT: All right.
THE REGISTRAR: One exhibit?
THE COURT: The next exhibit number then is what, please?
THE REGISTRAR: 515.
THE COURT: All right. So --
MR. MACKENZIE: So that would be tabs one, two, three.
THE COURT: Two will be 516.
MR. MACKENZIE: Yes.
THE COURT: Three, 517. Four --
MR. MACKENZIE: My lord, does your lordship wish to have them all marked under one number, exhibit number?
THE COURT: Well, I'm really not enthused about it either way. We have got to do one of them. I don't really mind which way you want to do it. If you want to take the two at the word mark and mark the book as 515, if that would be all right.
MR. MACKENZIE: If that's satisfactory to your lordship.
THE COURT: All right. And delete five and nine. The book itself will be 515 and we will take out tabs five, the lovely picture that it is, and nine, was it?
THE REGISTRAR: Yes, my lord.

(EXHIBIT 515: Book of Photographs, except tabs 5 and 9)

THE COURT: Thank you. You can give this back to Mr. Mackenzie, please. 515.

MR. MACKENZIE:
Q I have one more photograph to show you, Mr. Muldoe. In your testimony you said that you speak for Waiget, W-a-i-g-e-t. Is that correct?
A Yes.
Q And that's Elsie Morrison?
A Yes.
Q And before you became Gitludahl, you were Wii seeks, correct?
A Yes.
Q And that a member of the house of Wiigyet, W-i-i-g-y-e-t, correct?
A Yes.
Q Did you ever go to Gisgagas?
A Not -- not too often.
Q Did you see any of the poles at Gisgagas?
A No. I don't recall seeing any poles at Gisgagas. I was up there in '31 or '32, I think, but I didn't see any poles there.
Q Oh, well, I have a picture here that I think was taken in the 1920's. Mr. Barbeau has it in his book and it was tab 17 in James Morrison's photograph book. Did you ever see that pole?
A No.
Q I'm not finding too many people who have seen it.
A If that is in Gisgagas I don't see it.
Q Did you hear the story about that pole?
A I don't think so.
Q Did you hear the adaawk about that pole?
A I don't think they have a -- the former Wii seeks, I don't think he ever tell me about it.
Q That was your grandfather, William Jackson?
A Yeah.
Q Well, I understand it's a Waiget, W-a-i-g-e-t, pole. Did the previous Waiget, W-a-i-g-e-t, Simon Morrison --
A Simon Morrison, yes.
Q -- ever tell you about that pole?
A No.
Q Waiget, W-a-i-g-e-t, has always been close to the house of Wiigyet, hasn't it?
A Yes.
Q But you haven't heard any stories about the crests on that pole?
A He never -- he doesn't -- he -- he doesn't talk to me very much about anything.
Q Oh.

1 A That's the reason why he didn't like me to take Wii
2 seeks.
3 Q Simon Morrison?
4 A Yeah.
5 Q He was concerned about your taking the name Wii seeks?
6 A Pardon?
7 Q Simon was concerned about your taking the name Wii
8 seeks?
9 A Yes.
10 Q Yes. Can you tell me what he was concerned about?
11 A I believe he figure he was the older man and he is the
12 older man and he wants to have that name. But the way
13 the people look at it, if the person is getting down
14 to my age, well, you can't expect an olderly person to
15 take those kinds of names, because they wouldn't last
16 too long. Might be just within a few years and will
17 be gone. So the reason why they have to choose
18 somebody and whenever they choose anyone, they choose
19 from the family, the one takes the name. So I believe
20 Simon was about -- he must be over 60 when he died.
21 Q That was James Morrison's father?
22 A Yes. I just don't remember what year he died.
23 Q Wii seeks is a higher name than Waiget? W-a-i --
24 A Yes.
25 Q Just want to make sure the reporter gets the spelling
26 of all these different names. And so the practice --
27 the chiefs in the family decided to give the name Wii
28 seeks to a young, strong man like you?
29 A Yes.
30 Q Who decided that?
31 A Well, they always decided -- they have a meeting what
32 they call a family meeting. Then besides they might
33 have one or two Frog Clan and the Eagle Clan and --
34 and those two are witness.
35 Q Now, you said -- I am sorry, you said the Frog Clan
36 and the Eagle Clan were there as witnesses?
37 A Yes.
38 Q And who else?
39 A Then the rest of the family of Wiigyet, Wii seeks and
40 all them. And they decided which one, who is to take
41 the name. And if everything goes fine, well, one of
42 the Wolf chief will have to get up and speak out what
43 he knows and the other the same way, too.
44 Q And at that time did Simon express his concern?
45 A Never said nothing.
46 Q You just knew that he was upset?
47 A Yeah.

1 Q Yes. Now, you took the name Wii seeks in the 1940s,
2 didn't you?
3 A Somewhere around there.
4 MR. MACKENZIE: Yes. Now, my lord, I am going to move into a
5 new subject, but I have some general questions on this
6 subject before I get into the next document book.
7 THE COURT: All right.
8 MR. MACKENZIE: So if your lordship would keep Exhibit 498 out,
9 the map.
10 THE COURT: Yes. All right.
11 MR. MACKENZIE: And I just have --
12 THE COURT: This photograph of the Waiget pole, is it an exhibit
13 anywhere?
14 MR. MACKENZIE: No, my lord. I am having difficulty that anyone
15 seems to have seen it.
16 THE COURT: Mr. Morrison didn't identify it?
17 MR. MACKENZIE: No, not at all.
18 THE COURT: All right. So it's not marked then.
19 MR. MACKENZIE: No.
20 THE COURT: All right. Thank you.
21 MR. RUSH: That, I think, should be taken out of the book, if it
22 isn't marked.
23 THE COURT: Yes. It should be taken out of the book.
24 MR. MACKENZIE: Yes, I agree, my lord.
25 THE COURT: And put back in when somebody identifies it.
26 Q Now, Mr. Muldoe, I'd like to speak about something
27 new. In your testimony you mentioned that you had a
28 sawmill north of Kispiox?
29 A Yes.
30 Q Right? And you started in 1942?
31 A Somewhere around there.
32 Q And you said that you had a couple of timber limits up
33 there north of Kispiox?
34 A Yes.
35 Q You said that you had a little timber sale, mostly
36 cedar poles, correct?
37 A Cedar poles and saw logs.
38 MR. RUSH: What page reference do you have?
39 MR. MACKENZIE: I am just referring to Volume 97, page 6150,
40 line 45. But I think the witness has agreed with that
41 and I don't --
42 Q And you also had another limit at 19 Mile?
43 A Yes.
44 Q Now, looking at Exhibit 498, 19 Mile would be north of
45 17 mile, wouldn't it?
46 A Northwest.
47 Q Northwest?

A No. Northeast.
Q Northeast?
A Yeah.
Q Is that up in Wii elaast territory?
A It's on Kliiyem Lax haa's territory.
Q I will get those. Wii elaast is 72 and Kliiyem Lax haa's is 35 on the plaintiffs' list. Well, the road to 17 Mile leaves the main highway about two miles north of the 17 Mile Bridge, doesn't it?
A Yes.
MR. MACKENZIE: Does your lordship have that road going off to the east, northeast?
THE COURT: Yes.
MR. MACKENZIE: Yes.
Q Is that why they call it 19 Mile?
A Yes.
Q Yes.
THE COURT: Could I be reminded, please, the westerly branch of that road goes as far as where?
MR. MACKENZIE: Well, my lord, I can ask the witness, but that appears on Exhibit 486. The plaintiffs' Exhibit 486, it appears to proceed some distance up the Kispiox River north of McCulley Creek. I am going to ask the witness about that, my lord.
THE COURT: Yes.
MR. MACKENZIE:
Q Now, referring to Exhibit 498, Mr. Muldoe, we were speaking about the road that goes west of 17 Mile Bridge past the fishing resorts. How far northwest does that go, do you know?
A That one that goes up on west side of Kispiox River?
Q Yes.
A That's all -- that's directed right through the Mitten Lake and connects out to the Mitten Lake and goes right to Kitwanga valley.
Q Right over to the Kitwanga valley?
A Yeah. They connect just about Mitten Lake. Just after you cross about three kilometre after you left Kispiox River, then there is another road coming there.
Q All right. Now, the road that -- the road that goes on the east side goes all the way up there, too, doesn't it?
A Yeah.
Q How far did that road go on the east side, east and north?
A That's pretty near pretty close to Geel's territory.

What's the name of that place? Stevens Lake. Almost come right across from there.

Q Stevens Lake is in territory -- oh, in Mr. Muldoe's affidavit.

THE COURT: In the territory of Geel?

A Comes right up to there somewhere.

MR. MACKENZIE: It's the northwest Geel territory. So, my lord, that is the answer to the question where those two roads go.

THE COURT: All right. Thank you. Shall we adjourn until 2 o'clock?

MR. MACKENZIE: Yes, my lord. Thank you, Mr. Muldoe.

(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 RECONVENED AT 2:00)

THE REGISTRAR: Order in court. Calling Delgamuukw versus Her Majesty the Queen at bar, My Lord.
THE COURT: Thank you. Mackenzie?
MR. MACKENZIE:
Q Before the afternoon recess we had -- we were talking about your timber limits?
A Oh, yeah.
Q And you remember you spoke about a timber limit at 19 Mile?
A Yes.
Q And you had one also across the river from Kispiox?
A Yes.
Q That is on the west side of Kispiox River?
A Yes, on the west side. Yes.
Q You had a mill up at 19 Mile?
A Yes.
Q You had a mill on the west side of Kispiox River?
A Yes.
Q And your mill across on the west bank of Kispiox River was in Ma'uus' territory?
A Yes.
Q Number 48 on the plaintiffs' list. And you did not seek his permission to cut the trees for that timber limit?
A No.
Q No. At that time it was the government that put out the sales for the timber?
A Yes, the government put up the sales on it.
Q And speaking about your timber limit north of Kispiox, this morning you said that was in Kliiyemlaxhaa's territory?
A Yes.
Q You did not seek permission from Kliiyemlaxhaa to cut timber in those days did you?
A No.
Q No. Kliiyemlaxhaa is number 35 on the plaintiffs' list.
The only thing you had to do was to go to the forest service and apply when you needed timber?
A Yes.
Q Yes. It was all controlled by the government in those days?
A Yeah.
Q The provincial government?
A Pardon?
Q The provincial government?
A Provincial government, yeah.

Q Did you also cut trees in the territory of Wii Elaast?
A No.
MR. MACKENZIE: Number 72 on the plaintiffs' list.
THE COURT: Did the witness say no?
MR. MACKENZIE: That's correct, My Lord.
THE COURT: Thank you.
MR. MACKENZIE:
Q Did you cut trees on the territory of Luutkudziiwus, number 44 on the plaintiffs' list?
A Luutkudziiwus is down Hazelton?
Q Yes.
A No, I don't go that far.
THE COURT: The number again, please?
MR. MACKENZIE: Number 44 on the plaintiffs' list.
THE COURT: And the answer was no?
MR. MACKENZIE:
Q Yes, that's correct, My Lord.
Do you remember cutting trees down by Burdick, B-u-r-d-i-c-k, Creek?
A Where at?
Q Do you remember cutting trees down by Burdick Creek?
A Burdick Creek. Is that down below Hazelton?
Q Yes, down below Hazelton?
A I got a timber sale there, but I never did work on that. I just returned it to the forestry because no road into it.
Q Oh, yes. You -- sorry, go ahead?
A They call it Stoney Creek.
Q Yes.
A They -- that's why I kind of mixed up on that.
Q Yes. You relied on the government roads to get to your timber limits?
A Yes.
Q But later on in your career you also built roads yourself didn't you?
A Well, I built a road myself when I have to go into the timber where the timber is. That's all on my own expense.
Q Did you also cut trees in the territory of Delgamuukw?
A Yes.
Q Yes.
A I cut tree on the Delgamuukw's territory just for cord wood only and just providing work for the people that lived in the Kispiox because they have nothing else to do so they have to do something, so they have to get little work to have some of the people to cut cord wood and from there on I haul them out.

1 Q And at that time there were about 20 mills around the
2 valley weren't there?
3 A Yeah, 20 or 25 mills, quite a few, and they all have
4 some different people working in there.
5 Q The logging industry has always been important there
6 hasn't it?
7 A Yeah, always important there because no other work to
8 do, and pole cutting.
9 Q Let me ask you some more general questions about your
10 timber sale activities. In those days you were
11 primarily involved in cutting cedar poles?
12 A Yeah.
13 Q And you cut also saw logs?
14 A Well, in some places we just cut cedar poles, but
15 other place we cut just cedar poles and saw log as
16 well.
17 Q And when you cut the cedar poles, you'd take the good
18 cedar trees out and leave the other trees on the land?
19 A Well, they go by the size of a cedar pole. You don't
20 take everything. You don't cut everything. You just
21 got to take the one that's big enough to make the
22 poles and any other timber we don't bother cutting
23 them down.
24 Q Just take the good cedar poles?
25 A Just the cedar poles.
26 Q And then when you were taking saw logs you were
27 cutting out spruce and pine?
28 A Well, when we first started the mill we only cut
29 spruce, we don't cut pine and we don't cut saws or
30 anything like that except some of the cedar that's
31 been cut off from the cedar poles then we cut.
32 Q And you leave the hardwood, the birch and aspen, you
33 leave that on the site?
34 A Yes.
35 Q Yes.
36 A Anything like birch, aspen, hemlock, and the other,
37 pine, thing like that, we don't bother with it.
38 THE COURT: When you say leave it on the site, you mean uncut,
39 standing?
40 MR. MACKENZIE: Yes.
41 THE COURT: Yes.
42 MR. MACKENZIE:
43 Q Yes. You leave it uncut?
44 A Yes.
45 Q One of your contracts, I'll direct you to it, required
46 you to cut everything, all the timber over eight
47 inches. That means that you cut everything on the

1 site over eight inches in diameter?
2 A That's only the jack pine they do that.
3 Q Yes?
4 A But nothing else.
5 MR. MACKENZIE: Yes. And they wanted you to cut everything
6 over ten feet as well; correct?
7 MR. RUSH: He said the jack pine.
8 THE WITNESS: Not -- not that far. Anything from eight inch
9 and bigger, but they might want to cut the smaller
10 logs, but we don't cut the four inch into cord wood
11 because there's nothing in it.
12 MR. MACKENZIE:
13 Q Yeah, you just leave it uncut?
14 A Leave it uncut.
15 Q And Mr. Rush -- as Mr. Rush said you were speaking
16 about jack pine?
17 A Jack pine only.
18 Q And that was for saw logs?
19 A That was just for cord woods.
20 Q Cord wood. Yes. Did you leave those sites ready for
21 reforestation?
22 A Well, we just leave everything just what the forestry
23 instruct us what to cut, that's the only thing what we
24 cut, and we don't cut anything beyond that.
25 MR. MACKENZIE: Now, My Lord, referring to Volume 3, the yellow
26 book, we have some admissions on these timber sale
27 contracts, and just looking at the table of contents,
28 My Lord, to summarize the admissions, tabs 1 to 15, as
29 I understand it, have been admitted by the plaintiffs,
30 the authenticity I take it, and tabs 18, 19 and 20 on
31 to 26.
32 THE COURT: 18 to 26?
33 MR. MACKENZIE: 18 to 26 except for 21, I'm sorry. So My Lord
34 just to say that again, tabs 18, 19 and 20, and then
35 22 to 26 inclusive.
36 MR. RUSH: Are you going to go through these one by one?
37 MR. MACKENZIE: Would you like me to do that?
38 MR. RUSH: Just so that when I admit it I can compare the two,
39 otherwise I'll do it now.
40 I'm just mumbling about the fact that --
41 THE COURT: Yes, I heard you.
42 MR. MACKENZIE: I'm going to refer in the briefest fashion to
43 these.
44 THE COURT: Yes.
45 MR. MACKENZIE: Just to get the location, and Mr. Rush wants to
46 just check his list of admissions.
47 THE COURT: Yes.

MR. MACKENZIE:
Q Thank you, My Lord.
Could we -- Madam Registrar, could we put the yellow booklet before the witness.
Now, Mr. Muldoe, I have some copies of timber sale contracts, and the first one at tab 1 is dated December 29, 1942, and that's in lot 2531 and 396 and those are just northeast of the Agwidin Indian Reserve, My Lord. And that's Delgamuukw territory isn't it?
A Yes.
MR. MACKENZIE: Does Your Lordship have those two?
THE COURT: I found 2531. Where's 396?
MR. MACKENZIE: Just immediately adjoining it.
THE COURT: Oh, yes. I see it. Thank you.
MR. MACKENZIE: My Lord, I'd submit that we mark them all at the end rather than as we go along.
THE COURT: All right.
MR. MACKENZIE: As Mr. Rush is checking it.
THE COURT: Thank you.
MR. MACKENZIE:
Q And this was a contract for cord wood wasn't it?
A Yes, this was cord wood.
Q This was one of your earliest contracts?
A Yes.
Q Probably the first do you think? Yes. And at that time you were using -- you signed with the name M-u-l-d-o-n?
A Yes. I wasn't the only one that have those cord wood logs, there's some other, Chris Harris, Johnson Williams, and all those other guys they have because you can't get anything unless you go through the forestry.
Q And who else besides Chris Harris?
A Chris Harris, they have their own cord wood too mostly for their own use.
Q And Johnson Williams?
A Yes.
Q What was his chief's name or do you know his house?
A I forgot -- I forgot his name. He's died quite a few years ago.
Q Chris Harris was Luus?
A Luus, yeah.
Q That's number 42.
A That was just before Chris Harris ever use Luus. I think he use another name before that.
Q Number 42 on the plaintiffs' list. He's in the wolf

1 clan?
2 A Yes.
3 Q And they had contracts with the government similar to
4 the ones that you had?
5 A Oh, yes.
6 MR. MACKENZIE: Yes. And the next contract is at tab 2.
7 THE COURT: Well, if there's no objection can we mark that now?
8 MR. MACKENZIE: Yes.
9 MR. RUSH: Yes, I agree. No objection to that.
10 THE COURT: All right. That will be exhibit --
11 THE REGISTRAR: 516.
12
13 (EXHIBIT 516: Tab 1, Timber Sale Contract dated
14 December 29, 1942, of Peter Muldoe)
15
16 THE COURT: All right. Tab 2?
17 MR. MACKENZIE: Tab 2 is a timber sale contract of March 6th,
18 1945, and this one you're dealing with cedar poles;
19 correct? This deals with cedar poles does it?
20 MR. RUSH: Just let him peruse it.
21 MR. MACKENZIE: I didn't think he heard what I said, that's why
22 I --
23 MR. RUSH: Yes, sorry.
24 THE WITNESS: Where this located at?
25 MR. MACKENZIE: I'm going to suggest that to you. It's lot 2542
26 which is just across on the west side of the Kispiox
27 River, and it's just west of the Kispiox Indian
28 Reserve limits just right next to 2542 A.
29 Does Your Lordship have that?
30 THE COURT: Yes, I do.
31 THE WITNESS: That's the one that located near Date Creek is
32 it?
33 MR. MACKENZIE:
34 Q Yes, that one is south of Date Creek.
35 A Yes.
36 Q That was Ma'uus' territory?
37 A Yes.
38 Q Number 48 on the plaintiffs' list. Do you recall that
39 one?
40 A Oh, yes.
41 Q And you were doing cedar poles there?
42 A Just the cedar poles. Just a small little area.
43 Q And for all these contracts the forestry officer would
44 inspect your logging activities?
45 A Yes.
46 MR. MACKENZIE: And sometimes in the later contracts he would
47 have concern and he would suspend the contract

wouldn't he? Yes?
MR. RUSH: Well, My Lord, is that a question? Framed in that way it's -- "would", is my friend asking did this happen to Mr. Muldoe and did it happen in relation to a specific contract? I think it should be something that's a little more specific.
MR. MACKENZIE:
Q I'll rephrase the question, My Lord. We were speaking about supervision by the forest service?
A Uh-huh.
Q The forest service officers would carry out logging inspections?
A Yes.
Q And if they weren't satisfied they would suspend the operations?
A Yeah, they'll do that. If you don't -- like same way they would limit you if you don't work on it. They'll let it go back. Whenever you're finished you just let them know and it no longer belongs to you.
Q If you didn't cut the wood then it would revert back?
A Yes.
Q Each year you also paid a rental on these --
A Yes.
MR. MACKENZIE: -- limits. Yes. At tab 3 is -- I'm sorry, My Lord, tab 2.
THE COURT: Exhibit 517.
THE REGISTRAR: 517.
MR. RUSH: No objection, My Lord.
THE COURT: Thank you.

(EXHIBIT 517: Tab 2, Timber Sale Contract dated March 6, 1945 of Peter Muldoe)

MR. MACKENZIE: Tab 3 is a timber sale contract dated March 12, 1946, and that's in lots 2531 and 396.
THE COURT: That's the same as on Exhibit 516?
MR. MACKENZIE: Yes, My Lord. Mark that one as the next exhibit, My Lord.
THE COURT: Yes.
THE REGISTRAR: 518.

(EXHIBIT 518: Tab 3, Timber Sale Contract dated March 12, 1946, of Peter Muldoe)

MR. MACKENZIE: At tab 4 is the timber sale contract April 12, 1949, that's also in lot 2531. Next exhibit, My Lord.
THE COURT: 519.

THE REGISTRAR: 519.

(EXHIBIT 519: Tab 4, Timber Sale Contract, dated April 12, 1949 of Peter Muldoe)

MR. MACKENZIE: Just look at 519, Your Lordship. We marked off lot 2531 --
THE COURT: Yes.
MR. MACKENZIE: -- just to the northeast of Agwidin Indian Reserve.
THE COURT: Yes.
MR. MACKENZIE:
Q This contract Exhibit 519 would keep you busy for about three years would it?
A Oh, it's quite a few years I guess. We had a lot of small little place for cord wood.
THE COURT: What was that?
MR. MACKENZIE: Exhibit 519, My Lord, at tab 4.
Tab 5 is a timber sale contract dated February 26th, 1951, lot 2544. Now, that's over at Date Creek on the west bank of the Kispiox River. Does Your Lordship have that reference?
THE COURT: I have it.
MR. MACKENZIE:
Q Now, that's Ma'uus' territory, isn't it?
A Yes, that's the one we just went through, already went through on the Date Creek.
Q No, this is the one on Date Creek now.
A Well, the one you asked me before is the one on the Date Creek also. This is the same one.
MR. MACKENZIE: No, I'm sorry it wasn't. It was on another lot.
MR. RUSH: Are you showing the witness the lot at the same time as you refer him to the lot number in the book?
MR. MACKENZIE: Yes, I'm checking them off.
MR. RUSH: Well, just so that he has the lot there, and if you're going to -- maybe show him the exhibit map.
THE COURT: He previously identified property he bought at lot 2540, but now we're talking about an adjoining property lot 2544 for which apparently a timber sale licence was issued February 26th, 1951. This is the first time lot 2544 has been mentioned in my recollection.
MR. MACKENZIE: Yes, My Lord. That's my point.
MR. RUSH: The discussion was around Date Creek, My Lord, and I think he ought to, if there's a question about the lot number, he should have the map in front of him.

THE COURT: Yes, he should.
MR. RUSH: That could be of assistance to him.
THE COURT: Yes.
MR. MACKENZIE:
Q Now, Mr. Muldoe, the exhibit we're looking at, or the document we're looking at, is at tab 5 and it's lot 2544 which is on the map of the Kispiox area, Exhibit 498. It seems to be quite close to Date Creek?
A Yes, I had a lot right close to Date Creek and comes towards my place and it ended up at my place. It's all joined together. I think we already went through that.
Q Well, perhaps I could just clear this up, My Lord. Exhibit 517 --
A It could be on the two different lots, but they're still in the same sale.
MR. MACKENZIE: I think the witness is referring to Exhibit 517 which was in lot 2542, the next lot down. Fine. Well, My Lord, can we proceed on --
THE COURT: Yes.
MR. MACKENZIE: -- and mark the tab 5 as the next exhibit?
THE COURT: 520.
THE REGISTRAR: 520.

(EXHIBIT 520: Tab 5, Timber Sale Contract dated February 26, 1951 of Peter Muldoe)

MR. MACKENZIE: At tab 6 there is a timber sale contract dated January 4, 1952, and that's in lot 2587. I'm just showing you 2587. 2587 is up just northeast about five lots of the 17 Mile Bridge in just north of Tenas Hill, My Lord.
THE COURT: Yes, I have it.
MR. MACKENZIE:
Q Yes. Now, that lot is in Kliiyemlaxhaa's territory isn't it?
A Yes.
MR. MACKENZIE: Next exhibit, My Lord.
THE COURT: 521.
THE REGISTRAR: 521.

(EXHIBIT 521: Tab 6, Timber Sale Contract dated January 4, 1952 of Peter Muldoe)

MR. MACKENZIE: My Lord, the next tab at tab 7 is an addendum to the timber sale contract at tab 6 and it's also been admitted. I submit that as the next exhibit.

THE COURT: All right. 522.
THE REGISTRAR: 522.

(EXHIBIT 522: Tab 7, Addendum to Timber Sale Contract, dated December 22, 1953 of Peter Muldoe)

MR. MACKENZIE: Tab 8, is a timber sale contract dated January 10, 1952, in lot 2538, and that is on the west bank of Kispiox River directly northeast of lot 2544 and just north-west of the Agwidin Indian Reserve.
Do you have that, My Lord?
THE COURT: No. Just one moment.
MR. MACKENZIE: Sorry, My Lord.
THE COURT: Is it lot -- no, I'm sorry. Where is the lot number?
MR. MACKENZIE: 2538, My Lord, and it's on the second sentence of the description of the timber sale contract, timber sale area, 2538, on the first page of the document at tab 8.
THE COURT: Looking at tab -- oh, you're looking at tab 8, sorry. Yes. All right. Thank you.
MR. MACKENZIE:
Q And that lot I'm pointing out to you on the map Exhibit 498 is just north of Date Creek. Can you agree that's in Ma'uus' territory?
A Pardon?
Q Is that in Ma'uus' territory?
A On Date Creek.
Q On Date Creek?
A Yes.
MR. MACKENZIE: Next exhibit, My Lord.
THE COURT: Exhibit 523.
THE REGISTRAR: 523.

(EXHIBIT 523: Tab 8, Timber Sale Contract dated January 10, 1952 of Peter Muldoe)

MR. MACKENZIE: Did Your Lordship get that -- the reference to the location?
THE COURT: Just north of Date Creek.
MR. MACKENZIE: Yes, My Lord. It's just north of Date Creek directly northeast of Agwidin Indian Reserve, number 3, just --
THE COURT: Yes. Thank you.
MR. MACKENZIE: Tab 9, the next timber sale contract, is dated May 14, 1952, and that's again on lot 2531. I'm circling that.

THE COURT: That's lot 38 isn't it, 2538 isn't it?
MR. MACKENZIE: Sorry, My Lord, we're at tab 9.
THE COURT: Oh, I'm sorry. Yes. Yes.
MR. MACKENZIE: We've noted that before, My Lord. It's in the Delgamuukw territory just west of the Agwidin -- east of the Agwidin Indian Reserve.
THE COURT: Thank you.
MR. MACKENZIE: Next exhibit, My Lord.
THE COURT: 524.
THE REGISTRAR: 524.

(EXHIBIT 524: Tab 9, Timber Sale Contract dated May 14, 1952, of Peter Muldoe)

MR. MACKENZIE: Tab 10 is a timber sale contract dated May 19, 1954. It's in lot 2583 and I'm circling that on the map. That's in Kliiyemlaxhaa's territory north of Tenas Hill isn't it? It's right next to the last one we marked there, My Lord.
THE COURT: Exhibit 525.

(EXHIBIT 525: Tab 10, Timber Sale Contract dated May 19, 1954 of Peter Muldoe)

MR. MACKENZIE: Tab 11 is a timber sale contract dated July 18, 1955,
THE REGISTRAR: Number 10 is 525?
THE COURT: Yes.
MR. MACKENZIE:
Q Yes, please.
That's in lot 396 which is Delgamuukw's territory just --
A Cord wood.
MR. MACKENZIE: Yes, cord wood. Just northeast of the Agwidin Indian Reserve.
THE COURT: Exhibit 526.
THE REGISTRAR: 526.

(EXHIBIT 526: Tab 11, Timber Sale Contract, dated July 18, 1955, of Peter Muldoe)

MR. MACKENZIE: Tab 12.
THE COURT: That's the property now owned by Elsie Morrison is it not?
MR. MACKENZIE: My Lord, it's right beside Elsie Morrison's property. My Lord, that was -- Elsie Morrison was in the southern half of lot 2532.

THE COURT: All right. Yes.
MR. MACKENZIE: So it's quite close to that.
THE COURT: Yes. All right.
MR. MACKENZIE:
Q Tab 12, My Lord, this is a timber sale contract dated February 10, 1956, and it's at Burdick Creek. Mr. Muldoe explained in his evidence that it's down west of Hazelton.
This was the one that you signed the contract, but you didn't get around to the logging on this one?
A Yes. That's the one down below Hazelton is it?
Q Yes.
A Yes.
THE COURT: 527.
THE REGISTRAR: 527.

(EXHIBIT 527: Tab 12, Timber Sale Contract dated February 10, 1956 of Peter Muldoe)

MR. MACKENZIE: Tab 13 is an addendum to Exhibit 527 dated July 17, 1957. I submit that as the next exhibit, My Lord.
THE COURT: Exhibit 528.
THE REGISTRAR: 528.

(EXHIBIT 528: Tab 13, Timber Sale Contract dated July 17, 1957 of Peter Muldoe)

MR. MACKENZIE: And tab 14, going over to number 14, Mr. Muldoe, now we move into a new area. This is a timber sale contract dated February 24, 1956 for lot 3000, which is up at the top of the Exhibit 498 just one block over from the Skeena River on the east bank of the -- west bank of the Skeena River at this very top of that exhibit, My Lord. Did you get that reference?
THE COURT: Yes. That will be 529.
THE REGISTRAR: Exhibit 529.

(EXHIBIT 529: Tab 14, Timber Sale Contract dated February 24, 1956 of Peter Muldoe)

MR. MACKENZIE:
Q Now, Mr. Muldoe, this lot that I've just pointed out, lot 3000, is in Wii Elaast's territory, isn't it, up near 19 Mile?
A That's in the Kliiyemlaxhaa territory.
Q I see.
A Wii Elaast's territory is way down by the Skeena.

1 Q Yes.
2 A This doesn't go right down there. It's right around
3 there somewhere.
4 Q We're now referring to Exhibit 486, and lot 3000
5 appears to be within the Wii Elaast territory on that
6 Exhibit 486 about the middle of the Wii Elaast
7 territory?
8 A Unless it goes up. I think it goes up on the top part
9 of it.
10 MR. MACKENZIE: I see. And we're talking about the Wii Elaast
11 territory just north of Tenas Hill.
12 Does Your Lordship have that reference?
13 THE COURT: Yes.
14 MR. MACKENZIE:
15 Q And lot 3000 appears about halfway right in the middle
16 of that territory on Exhibit 486.
17 So did you think this was Kliiyemlaxhaa's
18 territory?
19 A Well, part of it on Kliiyemlaxhaa's and could be part
20 of it on Wii Elaast's too because it goes right down
21 the river.
22 MR. MACKENZIE: And the next is tab 15, My Lord. It's a timber
23 sale contract dated June 8, 1956, and it's on lot 2588
24 which is up in that same area north of Tenas Mountain.
25 THE COURT: All right. Exhibit 530.
26 THE REGISTRAR: Exhibit 530.
27
28 (EXHIBIT 530: Tab 15, Timber Sale Contract dated June
29 8, 1956, of Peter Muldoe)
30
31 MR. MACKENZIE:
32 Q Now, I've circled that lot 2588, Mr. Muldoe. When you
33 were logging there, whose territory were you logging
34 in? Did you hear my question?
35 A Yes. Can you come back on that again?
36 Q Yes. When you were logging up there in lot 2588 --
37 A Well, it could be the part of the sale.
38 Q -- whose territory were you logging in?
39 A Well, mostly on Kliiyemlaxhaa's and could -- part of
40 it could just go into Wii Elaast's on the opposite
41 side of it. And I wasn't the only one that logged
42 there. Harry Simpson was right next to me, right
43 next -- right down to Wii Elaast's territory, and
44 Virgil Bennett is just further up above me there where
45 he had his sawmill too. I wasn't the only one that's
46 taken out logs from that area. I don't think none of
47 them ever get permission for any of these people.

1 Q Was Harry Simpson from the Kispiox Band?
2 A He's a white man.
3 Q Oh, he's a white man?
4 A And also Virgil Bennett.
5 Q Yes. And they had a mill up there as well?
6 A Yeah, they had a mill up there. They had the mill up
7 there just about as long as I had mine up there, and
8 so was Virgil Bennett, either Virgil Bennett or Bill
9 Bennett, I just don't remember.
10 MR. MACKENZIE: Yes, and tab 16, My Lord, we have --
11 THE COURT: You want to mark 15 as Exhibit 530?
12 MR. MACKENZIE: Thank you, My Lord. Yes. Did Your Lordship see
13 that next reference to tab 16?
14 THE COURT: Yes.
15 MR. MACKENZIE: It's a mill site permit dated January 15, 1959,
16 and My Lord, that -- the permit refers to timber sale
17 licence 71072 which we have marked as Exhibit 530.
18 Now, that's a document that I think has been admitted.
19 MR. RUSH: No.
20 MR. MACKENZIE:
21 Q No it hasn't been admitted. Beg your pardon.
22 Mr. Muldoe, this is a mill site permit and it's
23 for -- it's relating to your territory or your logging
24 in lot 2588?
25 A 2588.
26 Q Yes?
27 A Is that on the same area?
28 Q Yes, it's up here near Wii Elaast and Kliiyemlaxhaa
29 you said. I'm referring to Exhibit 498. Is that the
30 permit that you received for your mill up here?
31 A I wasn't too far off the road from the main road.
32 It's no more than about three mile, and that's my last
33 mill site.
34 Q This is dated January 15, 1959?
35 A Uh-huh. That could be one of them. That's a permit
36 for a mill site.
37 Q Yes?
38 A Yes.
39 MR. MACKENZIE: Well, My Lord, I would submit that as the next
40 exhibit.
41 MR. RUSH: The witness says it could be one of them. I don't
42 think that identifies that document.
43 THE COURT: Well, it may be that it will be more fully proven
44 with some other evidence and it may be that it won't,
45 but at the moment as it's tied into a timber sale that
46 he says he had. He says he had a mill and he says
47 this could be one of them. I think it can be marked.

1 I'm not sure the evidence satisfies the plaintiffs'
2 burden, but I think it's some evidence and it can be
3 marked. Whether it's been proven or not is a matter
4 that you gentlemen may have something to say about in
5 argument, but I think it's been proven sufficiently
6 for the purpose of being marked as Exhibit 531, but
7 subject to the infirmities of the evidence.
8 MR. RUSH: Well, I don't -- I don't mean to be obstructionist
9 here, My Lord, I just think that the document is put
10 to him and his signature is not on the documents.
11 It's addressed to -- apparently to Mr. Muldoe.
12 THE COURT: Well, it's not the type of document that he would
13 sign anyway.
14 MR. RUSH: No, but --
15 THE COURT: And he says well, I had a mill. I was only three
16 miles off the road. This could be it.
17 MR. RUSH: The presumption behind it is that the document was
18 sent and the document was received.
19 THE COURT: Yes.
20 MR. RUSH: And that's the difficulty that I have --
21 THE COURT: Yes.
22 MR. RUSH: -- is that the witness cannot say that he has
23 received the document. He can't identify the document
24 beyond that it could be one. The fact that it makes
25 reference to a place where he had a timber sale
26 contract I think is neither here nor there.
27 THE COURT: It's where he said he had a mill.
28 MR. RUSH: It's -- all right, where he said he had a mill.
29 THE COURT: Yes.
30 MR. RUSH: It doesn't matter, it seems to me, whether that's the
31 case or not. The question is identification of a
32 document.
33 THE COURT: Yes. I think the identification of a document is
34 tenuous at best, but I think there's some evidence
35 that's sufficient that it be marked. I don't think
36 there's much magic in whether it's for identification
37 or actually marked. I think it's subject, as I said,
38 to the infirmities of the evidence. It may be that it
39 doesn't get him anywhere, but I just don't think it
40 matters at the moment that we have to resolve it at
41 this time. I think it may be marked.
42 THE REGISTRAR: Exhibit 531.
43 THE COURT: Yes.
44
45 (EXHIBIT 531: Tab 16, Mill Site Permit issued January
46 15, 1959)
47

MR. MACKENZIE:
Q Now, this appears to be a letter with your signature, tab 17. Your letter is dated -- or it appears to be your letter, dated May 19, 1960, and that letter reads:

"I wish to make a further extension on the above timber sale. As the condition of the weather and the ground was too soft to do the logging this spring and I have been clearing a bigger mill site area for this summer operation also, I am enclosing money order to cover FP tax."

Is that forest protection tax?
A Yes.
Q And was that a copy of the letter that you sent?
A I believe this is my signature anyway.
MR. MACKENZIE: And now, My Lord, this refers to a timber sale contract 71072, which is Exhibit 530 at -- which we've marked at tab 15.
THE COURT: ALL right. This letter may be Exhibit 532.
THE REGISTRAR: Exhibit 532.

(EXHIBIT 532: Tab 17, Letter from Peter Muldoe to District Forester dated May 19, 1960)

MR. MACKENZIE: Tab 18, My Lord, has been admitted and so I'll move onto there if Your Lordship has that reference.
THE COURT: Do you want it marked?
MR. MACKENZIE: Yes. We marked tab 17. Now I'd move to tab 18 and request that that be marked, My Lord.
THE COURT: All right. 533.
THE REGISTRAR: 533.

(EXHIBIT 533: Tab 18, Timber Sale Contract dated February 7, 1958, of Peter Muldoe)

MR. MACKENZIE: That timber sale licence is dated February 7, 1958 and it's on lot 2583 and we've already marked that on Kliiyemlaxhaa's territory.
THE COURT: Tab 19 is admitted is it not?
MR. MACKENZIE: Tab 19, yes, My Lord.
THE COURT: Exhibit 534.
THE REGISTRAR: 534.

(EXHIBIT 534: Tab 19, Addendum to Timber Sale Contract dated March 18, 1960 to Peter Muldoe)

MR. MACKENZIE: Tab 20 is also admitted, My Lord.
THE COURT: 535.
THE REGISTRAR: 535.

(EXHIBIT 535: Tab 20, Timber Sale Contract dated January 23, 1959 to Peter Muldoe)

MR. MACKENZIE: At tab 20, My Lord, there's a reference to a new site -- I beg your pardon it's reference to 2587 which is in the Delgamuukw territory. We've already marked that on the map. I'm sorry, I beg your pardon, 2587 is north of Tenas Hill so it's in Kliiyemlaxhaa's. And tab 21 is not admitted, My Lord.
THE COURT: All right.
MR. MACKENZIE:
Q This is a letter dated January 4, 1961, and it refers to timber sale contract X79258. That is the number of Exhibit 535 which we've just marked.
Now, Mr. Muldoe, is that your letter there?
A Yes.
MR. MACKENZIE: I think the witness answered yes, so I'd submit that as the next exhibit.
THE COURT: Yes. Exhibit 536.
THE REGISTRAR: 536.

(EXHIBIT 536: Letter from Peter Muldoe to District Forester dated January 4, 1961)

MR. MACKENZIE:
Q And in this letter you enclose the sum of $1,920 to cover the forest protection fee; is that correct?
A Uh-huh.
Q Yes. Did you pay that every year?
A No, I have to pay it every year.
Q And does that -- the forest service fights the fires up in this area?
A Pardon?
Q The forest service fights the fires in this area, forest fires?
A Well, there's no fire around that area. They fight the fires some other place.
Q Yes?
A There never was any fire in that area.
Q Well, there was a fire in Kispiox last week wasn't there?
A Just in the village there by the village.

Q Yes. And it was the forest service that came and put it out, right?
A Yeah, they did that.
MR. RUSH: It would have to be hearsay. He was here last week.
MR. MACKENZIE:
Q Well, two weeks ago, as I'm instructed, before your -- before you started testifying, right? It was two weeks ago wasn't it? Yes. There was smoke everywhere wasn't there? You were right there weren't you?
A Yes, I was down by the river.
Q So the forest service also fights the fires on the Indian reserves doesn't it?
A They'll do that if they want to protect the timber I guess.
MR. MACKENZIE: Yes.
THE COURT: Can we take the afternoon adjournment?
MR. MACKENZIE: Oh, yes, My Lord.
THE COURT: Thank you.
MR. MACKENZIE: Thank you, Mr. Muldoe.
THE REGISTRAR: Order in court. Court will recess.

(PROCEEDINGS ADJOURNED AT 3:00)

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

⊥h2 P. Muldoe (for Plaintiffs)
(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

THE COURT: Mr. Mackenzie.
MR. MACKENZIE: Thank you, my lord. Just to complete these timber sale contracts, my lord, tab 22 is admitted. Timber sale contract September 29, 1959.
THE REGISTRAR: Exhibit 537.
THE COURT: Yes. 537.

(EXHIBIT 537: Tab 22 - Timber Contract X82352 dated September 29, 1959 - P. Muldoe)

MR. MACKENZIE: And that's in lot 2583 in Kliiyem lax haa which we have already marked on the map. Exhibit -- tab 23 is also admitted, timber sale contract dated November 4, 1960.
THE REGISTRAR: Exhibit 538.

(EXHIBIT 538: Tab 23 - Timber Contract X83869 dated November 4, 1960 - P. Muldoe)

MR. MACKENZIE: And that's in lot 2588 which we have already marked in Wii elaast. Wii elaast is number 72 on the plaintiffs' list. And the evidence was that Mr. Muldoe testified that that was partly in Wii elaast's. Tab 24 is admitted, my lord. It's an addendum to --
THE COURT: All right. 538 -- 539, I am sorry.
MR. MACKENZIE: Exhibit to the addendum of 538.
THE REGISTRAR: 539.

(EXHIBIT 539: Tab 24 - Addendum to X83869 dated June 10, 1964 - P. Muldoe)

MR. MACKENZIE: Tab 25 is a -- is admitted, timber sale contract or timber sale licence dated August 25, 1961.
THE REGISTRAR: 540.
THE COURT: 540.

(EXHIBIT 540: Tab 25 - Timber licence A01516 dated August 25, 1961 - P. Muldoe)

MR. MACKENZIE: And the location as shown on Exhibit A which is attached is lot 3001 and we haven't marked that. That's up in the Wii elaast territory up in the northern part of this map, Exhibit 498.
THE COURT: Thank you.
MR. MACKENZIE: Right on the river.
CROSS-EXAMINATION BY MR. MACKENZIE Continued:
Q You see that, Mr. Muldoe? Is that Wii elaast's

1 territory?
2 A Yes.
3 Q Yes. And you have Wii elaast number 72 on the
4 plaintiffs' list. Exhibit 26 is the -- tab 26 is
5 admitted.
6 THE COURT: Exhibit 541.
7 THE REGISTRAR: 541.
8
9 (EXHIBIT 541: Tab 26 - Amendment to A01516 dated
10 October 15, 1969 - P. Muldoe)
11
12 MR. MACKENZIE: Tab 27 is a permit to erect and operate a mill
13 on timber sale X83869 and that is Exhibit 538 at tab
14 23.
15 THE COURT: I am sorry. Something has arisen, gentlemen. I am
16 going to have to adjourn at quarter to four. We will
17 get through as much as we can. Go ahead.
18 MR. MACKENZIE: What I am just pointing out, my lord, is that
19 this permit is tab 27 and it's -- it relates to the
20 timber sale licence which was on lot 2588. That's the
21 one we were discussing earlier up in -- up in north of
22 Tenas Hill.
23 THE COURT: Yes.
24 MR. MACKENZIE:
25 Q Now, Mr. Muldoe, is that permit to erect and operate a
26 timber sale up there one of the permits you received
27 to operate the mill up there?
28 A Where is that at?
29 Q Up here in --
30 A Up at 19 Mile?
31 Q Yeah. Up by 19 Mile, lot 2588.
32 A Yeah. They have only about three -- three mills
33 sitting in there, three place.
34 Q You had a mill at three places?
35 A Well, keep on moving to places, three places.
36 Q Are you able to say this is another one of the permits
37 you received?
38 A That might be the last one, the one further up.
39 Q This is 1961?
40 A Yes.
41 MR. MACKENZIE: About the last one, you think. Well, I submit
42 that as the next exhibit, my lord.
43 THE COURT: Yes. That will be admitted subject to the evidence.
44 THE REGISTRAR: 542.
45 MR. RUSH: The same problem with that.
46 THE COURT: Yes. Certainly.
47

(EXHIBIT 542: Tab 27 - Permit to operate, X83869, dated March 17, 1961)

MR. MACKENZIE:
Q Moving to tab 28, this is a permit to establish or operate a sawmill or other wood processing plant dated August 17, 1972.
MR. RUSH: '62.
MR. MACKENZIE: I beg your pardon.
Q August 17, 1962. This is the last permit that I have, Mr. Muldoe. Do you think this is the last one that you received?
A Yes, it this could be the last one here.
MR. MACKENZIE: My instructions from looking at the file, my lord, is this relates to timber sale X86641 which was amended and became timber sale A01516. That's Exhibit 540 at tab 25. So that's up in lot 3001 in the Wii elaast territory.
THE COURT: Yes. All right. This can be Exhibit 543 then.
THE REGISTRAR: 543.

(EXHIBIT 543: Tab 28 - Permit to operate, #86641 dated August 17, 1962)

MR. MACKENZIE: That's all I will deal with there, my lord.
THE COURT: You are not seeking to put in tab 29?
MR. MACKENZIE: No, my lord.
THE COURT: All right. Extract that one.
MR. MACKENZIE: Now, my lord, could your lordship kindly refrain from doing that until the end of the cross-examination?
THE COURT: Yes. All right.
MR. RUSH: Have you provided me with a copy of this before?
MR. MACKENZIE: Yes. Well, I don't think I have provided my friend with a copy of that, those extracts at tab 29, but they are listed on the list of documents.
MR. RUSH: The list number, please? The number of your --
MR. MACKENZIE: Well, I'll give that to my friend --
MR. RUSH: Very good.
MR. MACKENZIE: -- after the break, my lord. But I am instructed that those were listed when we received them a couple of weeks ago.
Q Now, Mr. Muldoe, I'd like to ask you some questions about hunting and trapping. In your evidence you spoke about moose hunting up on the Kispiox River, do you recall that?
A Yes.

Q And you said that you had been hunting moose in Gitludahl?
A Yes.
Q That's Twin Lake?
A Yes.
Q And you were hunting moose up in Gwiiyeehl?
A Yes.
Q Number 19 on the plaintiffs' list. And Gwiiyeehl is territory J., which is on Exhibit 486 as referred to in the -- in Mr. Muldoe's affidavit. You also said that you went in there during the seasons, the hunting seasons to hunt moose; do you recall saying that?
A Well, I hunt moose pret'near, just about pret'near all that area. It's all beginning from 1932 and right up-to-date. I don't go in there every year or every week or anything. Whenever I have a chance I go in. Not all the territory.
Q And when does the moose hunting season open?
A It used to open in about the first of September, but now it's later than that, I think. Somewhere in October before it's open now.
Q And now it opens about October 18, is that right?
A Something like that, yeah.
Q And it closes about November 15?
A 15 to 18. Pretty close to that.
Q And now in September, do you understand that they have a lottery system for hunting in September?
A Yes, I know that. They do that. That's what we disagree on this thing.
Q Yes.
A We don't want no permit or anything. When we want to hunt, we can go out and hunt.
Q Now, you have applied in the past for a permit to hunt in the winter, haven't you?
A Yes. I applied to -- just to see what they have to say. I went in last winter and applied for a permit. I say I want a permit from you. And a few years ago I went in with Frank and I applied for a permit. He said, "We haven't got any more." He said, "All the people that we give permit to is people that having the welfare." I say, "How about myself, I'm a senior citizen, I need one." He said, "You don't need no permit." He says, "The reserve is right across in Kispiox." He says, "Go over there and shoot all the moose you want." He said, "You don't need no permit."
Q Could we have the black volume there, please, referring to tab 19. Is that your signature at the

bottom of that letter, tab 19?
A Yes.
Q That's George's signature as the chief councillor?
A Yes.
MR. MACKENZIE: Next exhibit, my lord.
THE REGISTRAR: May I have a date?
MR. MACKENZIE: It's a letter to Mr. Frank Gillian dated December 18, 1979, relating to permit to take moose during the closed season for sustenance.
THE COURT: 544.
THE REGISTRAR: Thank you. 544.

(EXHIBIT 544: (A/G B.C.) Black Book, Tab 19 letter dated December 18, 1979 to F. Gillian re sustenance)

MR. MACKENZIE:
Q Now, Mr. Muldoe, you know Greg Hoyer, the conservation officer, don't you?
A Yes.
Q His office is in New Hazelton?
A Yes.
Q And February 1986 he came and took some leg-hold traps from your trapline, didn't he?
A Yes. He did go on our trapline and check over our trapline and he picked up -- we had a few of the leg-hold traps in there. And at the same time he didn't know who was trapping there, and when he come -- find out it was me and my wife was setting traps in there, he called me back and he said he gave my traps back.
Q He gave your traps back to you?
A He gave my traps back.
Q Now, this took place up around Cullon Creek, didn't it?
A It's -- well, the first time they -- I think it was -- I think it was Frank is the first time that took out some of our traps at Twin Lake.
Q That was Frank Gillian?
A Yes.
Q And he was the conservation officer?
A Yes.
Q Before Greg Hoyer?
A I think Frank was the only one. Then there is the one in there now.
Q Yes. That's what I mean, yes.
A Yes. He just came in after Frank.
Q Yes. Yes. And so you were up on the trapline with

1 Ken Muldoe, your son?
2 MR. RUSH: Which occasion are you talking about now?
3 MR. MACKENZIE:
4 Q I'm talking about February, 1986.
5 A '86.
6 THE COURT: The witness hasn't yet agreed that it was near
7 Cullon Creek. I think he was telling us about a
8 different incident near Twin Lakes.
9 MR. MACKENZIE:
10 Q Were you speaking about the Twin Lake trapline?
11 A I was up at towards Telegraph Trail in '86 with
12 Vincent Muldoe.
13 Q Yes. That's 1986?
14 A '86.
15 Q Vincent, your grandson?
16 A My grandson, yes.
17 Q And the registered trapline up there belongs to your
18 son Ken?
19 A Part of Ken and part of mine.
20 Q Your trapline is down at Twin Lake, isn't it?
21 A Well, the other territory of Wiigyet I have the right
22 to trap there, too. Ken is on the lower side.
23 Q Yes. You are talking about Joe Starr's old trapline?
24 A Yes.
25 Q And you trap on Joe Starr's line now, don't you?
26 A Yes.
27 Q And that's north of Ken's line?
28 A That's part of Ken's line. We also trap in part of
29 Ken's and part of -- part of Deadhorse.
30 Q Okay. We will look at this in more detail later. But
31 I just want to ask you about this occasion in March,
32 1986 you went in to visit Mr. Hoyer with Ralph
33 Michell, correct?
34 A Yes.
35 Q Yes. And Ralph Michell is Wii seeks?
36 A Yes.
37 Q And Mr. Hoyer explained to you why leg-hold traps were
38 illegal?
39 A Yes.
40 Q And so now you used a different kind of trap, the
41 conibear trap?
42 A Yes.
43 Q C-o-n-i-b-e-a-r, I think.
44 THE COURT: That's C or K?
45 MR. MACKENZIE: C, my lord.
46 Q Now, you are aware also that Mr. Hoyer checks vehicles
47 along the highway to see whether they have any moose

meat?
MR. RUSH: How can he know that?
THE COURT: Well, he might if he has been one of those who has been checked.
MR. RUSH: Well, he might know that he has been checked.
THE COURT: Yes.
MR. RUSH: But I doubt if he is standing out on the road watching Hoyer check things.
THE COURT: Well, I can hear of all sorts of imagines and there are various scenarios that one would permit an answer. For example, a roadblock and there is Mr. Hoyer checking a line of vehicles along the road, then he can answer the question. He has only been checked singlely, then I can't accept hearsay. Precision is not always to be too greatly admired?
A Once he caught up to us, made investigation while we are going out to check our traps, he looked around the pickup and I asked him, "What do you want?" All what he said is, "I got somebody else." He turned around and went back. He never asked if we shoot any moose or anything like that. He just wanted to make sure that who was trapping out on the territory.
MR. MACKENZIE:
Q Has he ever checked you for loaded rifles?
A Well, he checks on them, too, but never did find one on mine.
Q Do you see him quite often up in Kispiox area?
A Always meet him along the road.
Q He knows you quite well, because you meet on the road?
A Oh, yeah.
Q You see him stopping other vehicles to check them?
A I believe he do that, but I wasn't travelling enough to see him what is he doing every day.
THE COURT: I am sorry, I am going to have to adjourn, gentlemen. A matter that I have to deal with right way. Do you want to start 15 minutes early in the morning to make up this lost time?
MR. MACKENZIE: I am in your lordship's hands.
THE COURT: Well, if we are under time pressure I would be glad to. What do you think?
MR. RUSH: Perhaps my friend can give you an indication how he is making out.
THE COURT: We will start at 10 o'clock and if we find we need to make up the time we will sit 15 minutes later tomorrow afternoon.
(PROCEEDINGS ADJOURNED UNTIL MAY 25, 1988 AT 10:00 A.M.)

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

Laara Yardley, Official Reporter,
United Reporting Service Ltd.