

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

**ROGER WILLIAM, on his own behalf  
and on behalf of all other members of the Xeni Gwet'in First Nations Government  
and on behalf of all other members of the Tsilhqot'in Nation**

PLAINTIFF

AND:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF  
BRITISH COLUMBIA, THE REGIONAL MANAGER OF THE  
CARIBOO FOREST REGION and  
THE ATTORNEY GENERAL OF CANADA**

DEFENDANTS

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**ARGUMENT OF THE PLAINTIFF**

**APPENDIX 4:  
TSILHQOT'IN WARS**

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**WOODWARD &  
COMPANY**

Barristers and Solicitors  
844 Courtney Street, 2nd Floor  
Victoria, BC V8W 1C4  
Solicitors for the Plaintiff

**ATTORNEY GENERAL  
OF BRITISH COLUMBIA**

Civil Litigation Section  
3<sup>RD</sup> Floor, 1405 Douglas Street  
Victoria, BC V8W 9J5  
Solicitor for the Defendants, Her  
Majesty the Queen in the Right of  
the Province of British Columbia  
and the Manager of the Cariboo  
Forest Region

**DEPARTMENT OF  
JUSTICE, CANADA**

Aboriginal Law Section  
900 – 840 Howe Street  
Vancouver, B.C. V6Z 2S9  
Solicitor for the Defendant,  
The Attorney General of Canada

**ROSENBERG &  
ROSENBERG**

Barristers & Solicitors  
671D Market Hill Road  
Vancouver, BC V5Z 4B5  
Solicitors for the Plaintiff

**BORDEN LADNER  
GERVAIS LLP**

Barristers & Solicitors  
1200 Waterfront Centre, 200  
Burrard Street  
Vancouver, BC V7X 1T2  
Solicitor for the Defendants, Her  
Majesty the Queen  
in the Right of the Province of  
British Columbia and  
the Manager of the Cariboo Forest  
Region



**Exhibit 43**  
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## **Appendix 4: Tsilhqot'in Wars**

1. The Tsilhqot'in defended their land against unlawful incursions. By repeatedly defending their territory, by violence where necessary, the Tsilhqot'in have demonstrated that they could exclude outsiders when they chose to do so. The following examples of Tsilhqot'in defence of territory extend from the period before first contact to the latter part of the 19<sup>th</sup> century.

- A. The War at Bull Canyon
- B. Response to Carrier Trespass
- C. The War at Chinlac
- D. The War at Churn Creek (Chinilgwan)
- E. The War at Potato Mountain (Tsimol Ch'ed)
- F. The War at Bald Mountain (Nen Nalmelh)
- G. The War at Salmon River
- H. The War with Fraser River Secwepemc
- I. The War with the Qaju over Hunters
- J. Warning to Carriers Trapping in Tsilhqot'in Territory
- K. The Tsilhqot'in-Talkotin War
- L. The War at Graveyard Valley
- M. The War leading to Klatassin taking a second wife
- N. The War at Beece Creek
- O. The Chilcotin War

2. Except for the last two, which have been discussed in the main argument, the following is a summary of the evidence about these wars.

## A. WAR AT BULL CANYON

3. There was a war between the Tsilhqot'in and the Shuswap at Bull Canyon (also known as Battle Mountain). According to both Tsilhqot'in witnesses and historical documents, this battle took place prior to contact.<sup>1</sup>

4. A raiding party of Shuswap entered Tsilhqot'in territory<sup>2</sup> and camped on the top of a cliff at Bull Canyon.<sup>3</sup> A Tsilhqot'in runner/lookout was checking the land for deni gha natšighembax (invaders) when he saw a light on a cliff at Tšiysi (Bull Canyon).<sup>4</sup> He heard the Shuswap say they were going to attack the Tsilhqot'in,<sup>5</sup> and went to warn the Tsilhqot'ins.<sup>6</sup>

5. The Tsilhqot'in den jutalhtax (warriors) gathered up<sup>7</sup> from many Tsilhqot'in communities.<sup>8</sup> The Tsilhqot'in warriors went to Bull Canyon where they surrounded the

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<sup>1</sup> Dawson, writing in 1875, records that this event as occurring "long ago, three generations at least" thus establishing this conflict occurred prior to contact. **Exhibit 156-1875/08/24.001**, Dawson's Journals 1875-8 at 2036713; **Transcript**, April 6, 2005, Gilbert Solomon Direct-Exam, at 00002, 38-41. Other oral history evidence which serves to date the war at Bull Canyon includes; the War took place at a time when the people still lived in underground houses. **Transcript**, December 6, 2004, Norman George Setah Direct-Exam, at 00005, 6. The War at Bull Canyon took place before the time of Patrick Alphonse's great-grandmother Tudud; **Exhibit 0437**, Affidavit #1 of Patrick Alphonse, April 15, 2005, at para. 29.

<sup>2</sup> **Exhibit 0437**, Affidavit #1 of Patrick Alphonse, April 15, 2005, at para. 29. Shuswap are not permitted in the area of Bull Canyon, **Transcript**, December 6, 2004, Norman George Setah Direct-Exam, at 00004, 27-28.

<sup>3</sup> **Transcript**, December 6, 2004, Norman George Setah Direct-Exam, at 00004, 13-21. **Exhibit 0174**, Affidavit #2 of Mabel William, at para. 28. **Transcript**, July 10 2002, Deposition of Martin Quilt Direct-Exam, at 00136, 4. **Transcript**, April 6, 2005, Gilbert Solomon Direct-Exam, at 00001, 40 -00002, 2.

<sup>4</sup> **Exhibit 0432**, Affidavit #2 of Elizabeth Jeff, at para 47. **Exhibit 0174**, Affidavit #2 of Mabel William, at para. 28. **Transcript**, July 10 2002, Deposition of Martin Quilt Direct-Exam, at 00136, 5. **Transcript**, April 20, 2005, Chief Ervin Charleyboy Direct-Exam, at 00020, 22-25. **Transcript**, April 6, 2005, Gilbert Solomon Direct-Exam, at 00001, 40-46.

<sup>5</sup> **Transcript**, December 6, 2004, Norman George Setah Direct-Exam, at 00004, 16-17. **Transcript**, July 10 2002, Deposition of Martin Quilt Direct-Exam, at 133, 17 and 136, 13-24. **Exhibit 0437**, Affidavit #1 of Patrick Alphonse, April 15, 2005, at para. 28(a) **Transcript**, April 6, 2005, Gilbert Solomon Direct-Exam, at 00002, 2-5.

<sup>6</sup> **Exhibit 0432**, Affidavit #2 of Elizabeth Jeff, at para 47. **Transcript**, December 6, 2004, Norman George Setah Direct-Exam, at 00004, 15-16. **Exhibit 0174**, Affidavit #2 of Mabel William, at para. 28. **Transcript**, July 10 2002, Deposition of Martin Quilt Direct-Exam, at 136, 19. **Transcript**, April 20, 2005, Chief Ervin Charleyboy Direct-Exam, at 00020, 32. **Exhibit 0437**, Affidavit #1 of Patrick Alphonse, April 15, 2005, at para. 28(a).

<sup>7</sup> **Exhibit 0432**, Affidavit #2 of Elizabeth Jeff, at para 47. **Exhibit 0174**, Affidavit #2 of Mabel William, at para. 28. **Transcript**, April 20, 2005, Chief Ervin Charleyboy Direct-Exam, at 00020, 33. **Transcript**, April 6, 2005, Gilbert Solomon Direct-Exam, at 00002, 7-11.

deni gha natšighembax (invaders).<sup>9</sup> At dawn, the Tsilhqot'in deni jutalhtax (warriors) killed the invaders.<sup>10</sup> Only one of the deni gha natšighembax (invaders) did not get killed.<sup>11</sup> He was a deyen (medicine person),<sup>12</sup> and stuck his cane in the cliff when he jumped off,<sup>13</sup> safely landing on the other side of the Tsilhqox (Chilco River).<sup>14</sup> The deyen went back to his homeland to tell his story,<sup>15</sup> then he died.<sup>16</sup> The Tsilhqot'in allowed someone to survive the battle so that he could go back and tell his people what happened.<sup>17</sup> The War at Bull Canyon was fought in order to protect the land from the strangers who were not allowed in that area.<sup>18</sup>

6. The accounts of the Battle of Bull Canyon given by Tsilhqot'in witnesses are corroborated in large part by documentary evidence. In 1875, Dawson recorded a story in which another First Nation came and was camped on the top of a bluff and “a Chelacotan Siwash passing saw a fire on the bluff, & went & told the others, who sent a man up, who while the bad indians were asleep found out how many there were. Then

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<sup>8</sup> **Transcript**, December 6, 2004, Norman George Setah Direct-Exam, at 00004, 20 and 00005, 5- 00007, 30; 00012, 26-38. According to Mr. Setah, warriors from Nen Nalmelh Gwech'ax Gwet'in including their Chief was Tl'ech'ed Dalqal were involved, as were the Ts'iqi Ch'osh Gwech'ax Gwet'in whose Chief was Datsan (Raven). In addition the Gwezish Be?aba were involved, as was Chief Tisel (Golden Eagle) and Chief Nisdzul Lhek'el (White Owl) from Riske Creek.

<sup>9</sup> **Exhibit 0432**, Affidavit #2 of Elizabeth Jeff, at para 47. **Transcript**, December 6, 2004, Norman George Setah Direct-Exam, at 00004, 26. **Exhibit 0174**, Affidavit #2 of Mabel William, at para. 28. **Exhibit 0437**, Affidavit #1 of Patrick Alphonse, April 15, 2005, at para. 28(a). **Transcript**, April 6, 2005, Gilbert Solomon Direct-Exam, at 00002, 7-15.

<sup>10</sup> **Exhibit 0432**, Affidavit #2 of Elizabeth Jeff, at para 47. **Transcript**, December 6, 2004, Norman George Setah Direct-Exam, at 00004, 25. **Exhibit 0174**, Affidavit #2 of Mabel William, at para. 28. **Transcript**, April 20, 2005, Chief Ervin Charleyboy Direct-Exam, at 00020, 33 to34. **Transcript**, July 10 2002, Deposition of Martin Quilt Direct-Exam, at 136 20-21.

<sup>11</sup> **Exhibit 0432**, Affidavit #2 of Elizabeth Jeff, at para 47. **Exhibit 0174**, Affidavit #2 of Mabel William, at para. 28.

<sup>12</sup> **Exhibit 0432**, Affidavit #2 of Elizabeth Jeff, at para 47.

<sup>13</sup> **Exhibit 0432**, Affidavit #2 of Elizabeth Jeff, at para 47. **Transcript**, December 6, 2004, Norman George Setah Direct-Exam, at 00004, 28-32. **Exhibit 0174**, Affidavit #2 of Mabel William, at para. 28.

**Transcript**, July 10 2002, Deposition of Martin Quilt Direct-Exam, at 132, l. 24. **Exhibit 0437**, Affidavit #1 of Patrick Alphonse, April 15, 2005, at para. 28(a). **Transcript**, April 6, 2005, Gilbert Solomon Direct-Exam, at 00002, 17-24.

<sup>14</sup> **Exhibit 0432**, Affidavit #2 of Elizabeth Jeff, at para 47. **Transcript**, December 6, 2004, Norman George Setah Direct-Exam, at 00004, 32-34. **Transcript**, April 20, 2005, Chief Ervin Charleyboy Direct-Exam, at 00020, 36. **Exhibit 0437**, Affidavit #1 of Patrick Alphonse, April 15, 2005, at para. 28(a). **Transcript**, April 6, 2005, Gilbert Solomon Direct-Exam, at 00002, 17-24.

<sup>15</sup> **Exhibit 0432**, Affidavit #2 of Elizabeth Jeff, at para 47.

<sup>16</sup> **Exhibit 0432**, Affidavit #2 of Elizabeth Jeff, at para 47.

<sup>17</sup> **Transcript**, December 6, 2004, Norman George Setah Direct-Exam, at 00004, 42-43.

<sup>18</sup> **Exhibit 0437**, Affidavit #1 of Patrick Alphonse, April 15, 2005, at para. 29. **Transcript**, December 6, 2004, Norman George Setah Direct-Exam, at 00007, 22-28.

the other indians surrounded the bluff, & while they sent a clootchman to walk along in the valley below, thus attracting the attention of the Marauders; Came up behind them & made a sudden onslaught, killing them all, except one Indian, supposed to be the medicine man who flew away in the air from the edge of the bluff<sup>19</sup>

7. The evidence relating to the War at Bull Canyon establishes that the Tsilhqot'in monitored the borders of their territory for illegal incursion by non-Tsilhqot'in; including the system of lookouts, whose job was to monitor the area, and having noticed the invaders, report back to the Tsilhqot'in community. The Tsilhqot'in reaction to news of the invaders was to mobilize warriors from several communities against the invaders. Due to the serious nature of the threat, the penalty exacted on the invaders was death without a warning being first issued. In accordance with Tsilhqot'in laws/custom, two of the enemy were allowed to return home to convey to others in their home community the fact that the Tsilhqot'in are able and willing to defend their territory from illegal incursion.

## **B. RESPONSE TO CARRIER TRESPASS**

8. There is evidence of another battle at Bull Canyon in the period prior to contact. Before there were horses or mules, at the time when the Tsilhqot'ins were on foot, moccasin tracks were seen around Tish Gulhdzin.<sup>20</sup> The people followed them all the way to Bull Canyon, and found two lost Carriers<sup>21</sup> who were killed because they were trespassing.<sup>22</sup> This example of Tsilhqot'in defence of territory can be confidently dated to pre-contact based on the fact that it was prior to the arrival of horses which were acquired by the Tsilhqot'in prior to Simon Fraser's visit in 1808.<sup>23</sup>

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<sup>19</sup> **Exhibit 156-1875/08/24.001**, Dawson's Journals 1875-8 at 2036713

<sup>20</sup> **Transcript**, June 2, 2005, Thomas Billyboy Direct-Exam, at 00026, 31-43.

<sup>21</sup> **Transcript**, June 2, 2005, Thomas Billyboy Direct-Exam, at 00026, 31-43.

<sup>22</sup> **Transcript**, June 2, 2005, Thomas Billyboy Direct-Exam, at 00026, 31-43.

<sup>23</sup> **Exhibit 0443**, Expert Report of John Dewhirst, at 59, n. 32.

## C. WAR AT CHINLAC

9. The earliest dated example of Tsilhqot'in defence of territory occurred at the Carrier village of Chinlac in 1745. Father Morice describes an attack by Chilcotin against the village;

For some time previous to 1745, the report had been current amongst his people and their friends of other localities that the Chilcotins intended to avenge on him the death of one of their notables, and, agreeable to anticipations, a very large band of those Southern Dénés did come in due time, and in one morning practically annihilated the whole population then present at Chinlac. A few only owed their life to their temporary absence or to a speedy flight.<sup>24</sup>

10. In his account, Morice clearly notes that the Carrier had been expecting such a response from the Tsilhqot'in and "agreeable to anticipations, a very large band did come".<sup>25</sup> Morice's description of this anticipation establishes that prior to 1745, there was already a pattern of Tsilhqot'in action in defence of their territory such that such action came to be expected of them.

## D. WAR AT CHURN CREEK (CHINILGWAN)

11. There was a battle between the Tsilhqot'in and the Shuswap at Chinilgwan or Churn Creek, before white men came into Tsilhqot'in territory.<sup>26</sup> In this battle, many Shuswap people perished.<sup>27</sup> Churn Creek is located outside the Claim Area, to the east of Taseko Lake, on the border between Tsilhqot'in and Fraser River Shuswap territory as

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<sup>24</sup> **Exhibit 0167**, Tab 4, Dr Hudson Source Material, Morice, *The History of the Northern Interior of British Columbia* at 15. Father Morice later recounts that "The Carrier still remember how one of their camps was attacked and all its inhabitants massacred in one night by the Chilcotin". According to Dr. Marshall, this is a reference to 1745 Chinlac. **Exhibit 156-1883/09/05.001**, Letter Father Morice to Tatin, September 5, 1883; *Transcript*, June 13, 2006, Daniel Marshall Cross Exam, at 00043, 36-39.

<sup>25</sup> **Exhibit 0167**, Tab 4, Dr Hudson Source Material, Morice, *The History of the Northern Interior of British Columbia* at 15

<sup>26</sup> **Transcript**, April 5, 2005, Gilbert Solomon Direct-Exam, at 00060, 10-00061, 28.

<sup>27</sup> **Transcript**, April 5, 2005, Gilbert Solomon Direct-Exam, at 00060, 10-00061, 28.



depicted on Dr. Brealey's Tsilhqot'in Boundaries map.<sup>28</sup> As such, it would have represented an important Tsilhqot'in defensive location.

## **E. THE WAR AT POTATO MOUNTAIN (T̂İLMOL CH'ED)**

12. Numerous Tsilhqot'in witnesses<sup>29</sup> provided accounts of a conflict at Potato Mountain (T̂İlmol Ch'ed),<sup>30</sup> sparked by an incursion of Qaju (Homalco) invaders in the time of the ?Esggidam people.<sup>31</sup>

13. A group of Tsilhqot'in girls were harvesting potatoes on T̂İmol Ch'ed.<sup>32</sup> At night, the girls slept in a row<sup>33</sup>, except for a teenage boy who was sleeping further up the hill outside of camp.<sup>34</sup> A raiding party came up from the Coast<sup>35</sup> and put a log across

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<sup>28</sup> **Exhibit 0241**, Map 1, Chilcotin Boundaries

<sup>29</sup> **Exhibit 0355**, Affidavit # 1 of Joseph William, at para. 45; **Exhibit 0174**, Affidavit #2 of Mabel William, at para. 32; **Exhibit 0158**, Affidavit #2 of Francis Sammy William, at para. 60 **Transcript**, April 5, 2005, Gilbert Solomon Direct-Exam, at 00056, 26-00060, 2; **Transcript**, January 20, 2005, David Setah Direct-Exam, at 00046, 22-00047, 37; **Transcript**, September 25, 2003, Chief Roger William Direct-Exam, at 00045, 40-00046, 6; **Transcript**, September 11, 2003, Chief Roger William Direct-Exam, at 00022, 6-31. **Transcript**, November 24, 2003, Francis Setah Direct-Exam, at 00021, 20-00029, 22; **Transcript**, March 24, 2004, Minnie Charleyboy Direct-Exam, at 00018, 5-00025, 3. **Transcript**, July 10 2002, Martin Quilt Deposition Direct-Exam, at 00150, 17.

<sup>30</sup> **Exhibit 0486**, Place-name List, #19; **Exhibit 0006**, Base Map.

<sup>31</sup> **Transcript**, September 11, 2003, Chief Roger William Direct-Exam, at 00022, 38.

<sup>32</sup> **Exhibit 0174**, Affidavit #2 of Mabel William, at para 32. **Exhibit 0158**, Affidavit #2 of Francis Sammy William, at para 60. **Transcript**, November 24, 2003, Francis Setah Direct-Exam, at 00022, 33-36. **Transcript**, March 24, 2004, Minnie Charleyboy Examination in Chief, at 00018, 7-8 and 00021, 5. **Transcript**, September 25, 2003, Chief Roger William Direct-Exam, at 00045, 40-43; **Transcript**, April 5, 2005, Gilbert Solomon Direct-Exam, at 00056, 30-36.

<sup>33</sup> **Exhibit 0174**, Affidavit #2 of Mabel William, at para 32. **Exhibit 0158**, Affidavit #2 of Francis Sammy William, at para 60. **Exhibit 0355**, Affidavit #1 of Joseph William, December 17, 2004, at para. 45(b). **Transcript**, April 5, 2005, Gilbert Solomon Direct-Exam, at 00057, 5-9.

<sup>34</sup> **Exhibit 0174**, Affidavit #2 of Mabel William, at para 32. **Exhibit 0158**, Affidavit #2 of Francis Sammy William, at para 60. **Transcript**, July 10 2002, Martin Quilt Deposition Direct-Exam, at 150, 20-23; **Transcript**, November 24, 2003, Francis Setah Direct-Exam, at 00023, 9-11. **Transcript**, January 20, 2005, David Setah Direct-Exam, at 00046, 40-42. **Exhibit 0355**, Affidavit # 1 of Joseph William, at para. 45(a). **Transcript**, April 5, 2005, Gilbert Solomon Direct-Exam, at 00056, 41-47.

<sup>35</sup> **Exhibit 0158**, Affidavit #2 of Francis Sammy William, at para 60. **Transcript**, March 24, 2004, Minnie Charleyboy Examination in Chief, at 00019, 15-16. **Transcript**, January 20, 2005, David Setah Direct-Exam, at 00046, 37. **Transcript**, November 24, 2003, Francis Setah Direct-Exam, at 00032, 1. 39-42. **Transcript**, July 10 2002, Martin Quilt Deposition Direct-Exam, at 150, 1. 17; **Exhibit 0355**, Affidavit # 1 of Joseph William, at para. 45(b). **Transcript**, April 5, 2005, Gilbert Solomon Direct-Exam, at 00057, 10-11.

the necks of the sleeping girls, smashed their heads and killed them.<sup>36</sup> The boy woke up to the screams<sup>37</sup>, and went to alert Tsilhqot'in men.<sup>38</sup>

14. The Tsilhqot'in warriors gathered together and pursued the Qaju invaders.<sup>39</sup> A Tsilhqot'in medicine man (*deyen*) sent his power after the invaders and put them to sleep,<sup>40</sup> allowing the warriors to catch up to the invaders at a point where there are cliffs that are difficult to get around.<sup>41</sup> The Tsilhqot'in warriors surrounded the invaders and killed them<sup>42</sup>, except for one or two who were spared so that they would go home and tell

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<sup>36</sup> **Exhibit 0174**, Affidavit #2 of Mabel William, at para 32. **Exhibit 0158**, Affidavit #2 of Francis Sammy William, at para 60. **Transcript**, July 10 2002, Martin Quilt Deposition Direct-Exam, at 150, 12. **Transcript**, March 24, 2004, Minnie Charleyboy Examination in Chief, at 00018, 23-24. **Exhibit 0355**, Affidavit #1 of Joseph William, December 17, 2004, at para. 45(b). **Transcript**, September 25, 2003, Chief Roger William Direct-Exam, at 00045, 45-46. **Transcript**, April 5, 2005, Gilbert Solomon Direct-Exam, at 00057, 11-17.

<sup>37</sup> **Exhibit 0174**, Affidavit #2 of Mabel William, at para. 32. **Transcript**, July 10 2002, Martin Quilt Deposition Direct-Exam, at 150, 25. **Transcript**, November 24, 2003, Francis Setah Direct-Exam, at 00023, 16. **Transcript**, March 24, 2004, Minnie Charleyboy Examination in Chief, at 00018, 22-23.

<sup>38</sup> **Exhibit 0174**, Affidavit #2 of Mabel William, at para 32. **Exhibit 0158**, Affidavit #2 of Francis Sammy William, at para 60. **Transcript**, July 10 2002, Martin Quilt Deposition Direct-Exam, at 150, 17. **Transcript**, March 24, 2004, Minnie Charleyboy Examination in Chief, at 00018, 40-43. **Transcript**, November 24, 2003, Francis Setah Direct-Exam, at 00021 44-46 and 00023, 30-34. **Transcript**, January 20, 2005, David Setah Direct-Exam, at 00046, 42-47. **Exhibit 0355**, Affidavit # 1 of Joseph William, at para. 45(c); **Transcript**, September 11, 2003, Chief Roger William Direct-Exam, at 00022, 12-14. **Transcript**, April 5, 2005, Gilbert Solomon Direct-Exam, at 00057, 30-32.

<sup>39</sup> **Exhibit 0174**, Affidavit #2 of Mabel William, at para 32. **Transcript**, July 10 2002, Martin Quilt Deposition Direct-Exam, at 150, l. 17. **Transcript**, April 5, 2005, Gilbert Solomon Direct-Exam, at 00057, 37-41.

<sup>40</sup> **Exhibit 0174**, Affidavit #2 of Mabel William, at para 32. **Exhibit 0158**, Affidavit #2 of Francis Sammy William, at para 60. **Transcript**, November 24, 2003, Francis Setah Direct-Exam, at 00024, 37-39. **Transcript**, September 11, 2003, Chief Roger William Direct-Exam, at 00022, 20-22. **Transcript**, March 24, 2004, Minnie Charleyboy Examination in Chief, at 00019, l. 20-23; **Transcript**, January 20, 2005, David Setah Direct-Exam, at 00047, 5-11; **Exhibit 0355**, Affidavit # 1 of Joseph William, at para. 45(d). **Transcript**, April 5, 2005, Gilbert Solomon Direct-Exam, at 00058, 13-47.

<sup>41</sup> **Exhibit 0174**, Affidavit #2 of Mabel William, at para 32. **Exhibit 0158**, Affidavit #2 of Francis Sammy William, at para 60. **Transcript**, July 10 2002, Martin Quilt Deposition Direct-Exam, at 151. **Exhibit 0355**, Affidavit # 1 of Joseph William, at para. 45(d). **Transcript**, September 11, 2003, Chief Roger William Direct-Exam, at 00022, 22-24. **Transcript**, November 24, 2003, Francis Setah Direct-Exam, at 00022, 7-8; 00025, 29-34. **Transcript**, January 20, 2005, David Setah Direct-Exam, at 00047, 17-24.

<sup>42</sup> **Exhibit 0174**, Affidavit #2 of Mabel William, at para. 32. **Exhibit 0158**, Affidavit #2 of Francis Sammy William, at para. 60. **Transcript**, July 10 2002, Martin Quilt Deposition Direct-Exam, at 152, 21-25. **Transcript**, November 24, 2003, Francis Setah Direct-Exam, at 00022, 17-18. **Transcript**, March 24, 2004, Minnie Charleyboy Examination in Chief, at 00019, 30. **Transcript**, January 20, 2005, David Setah Direct-Exam, at 00047, 24-29. **Transcript**, September 11, 2003, Chief Roger William Direct-Exam, at 00022, 24. **Exhibit 0355**, Affidavit #1 of Joseph William, December 17, 2004, at para. 45(e).

their story.<sup>43</sup> The escapees told their people that the Tsilhqot'in were dangerous and should not be made war against.<sup>44</sup>

15. The accounts of the battle of Potato Mountain illustrate the Tsilhqot'in strategy with respect to fighting for protection of people and territory,<sup>45</sup> and permitting one or two enemies to escape to tell their people about the dangers of making war on the Tsilhqot'in and thus discourage further encroachment.<sup>46</sup> This strategy stretches back to the time of the ?Esggidam people.<sup>47</sup>

## F. WAR AT BALD MOUNTAIN (NEN NALMELH)

16. At the foot of Nen Nalmelh (Bald Mountain), near the mouth of Big Creek,<sup>48</sup> a pre-sovereignty<sup>49</sup> Shuswap incursion into Tsilhqot'in territory was met with resistance, illustrating another example of a pattern of Tsilhqot'in defence of territory.

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<sup>43</sup> **Transcript**, July 10 2002, Martin Quilt Deposition Direct-Exam, at 00161, 10-14 and 00153, 5. **Transcript**, January 20, 2005, David Setah Direct-Exam, at 00047, 30-44; **Exhibit 0174**, Affidavit #2 of Mabel William, at para. 32. **Exhibit 0158**, Affidavit #2 of Francis Sammy William, at para. 60. **Transcript**, July 10 2002, Martin Quilt Deposition Direct-Exam, **Transcript**, November 24, 2003, Francis Setah Direct-Exam, at 00022, 21-23. **Transcript**, March 24, 2004, Minnie Charleyboy Examination in Chief, at 00019, 31-33. **Exhibit 0355**, Affidavit #1 of Joseph William, December 17, 2004, at para. 45(e). **Transcript**, September 11, 2003, Chief Roger William Direct-Exam, at 00022, 25. **Transcript**, April 5, 2005, Gilbert Solomon Direct-Exam, at 00059, 7-16.

<sup>44</sup> **Exhibit 0174**, Affidavit #2 of Mabel William, at para. 32. **Exhibit 0158**, Affidavit #2 of Francis Sammy William, at para. 60. **Transcript**, January 20, 2005, David Setah Direct-Exam, at 00047, 38-40. **Transcript**, September 11, 2003, Chief Roger William Direct-Exam, at 00022, 28-29. **Transcript**, April 5, 2005, Gilbert Solomon Direct-Exam, at 00059, 7-21.

<sup>45</sup> The Tsilhqot'in oral history describe how the invaders had come onto Tsilhqot'in land to make war, and take away the land. (**Exhibit 0158**, Affidavit #2 of Francis Sammy William, at para 60. **Exhibit 0174**, Affidavit #2 of Mabel William, at para 32.. **Transcript**, July 10 2002, Martin Quilt Deposition Direct-Exam, at 150, 17 **Transcript**, November 24, 2003, Francis Setah Direct-Exam, at 00032, 39-42. **Transcript**, March 24, 2004, Minnie Charleyboy Examination in Chief, at 00024, 28-29.)

<sup>46</sup> **Exhibit 0174**, Affidavit #2 of Mabel William, at para. 32. **Exhibit 0158**, Affidavit #2 of Francis Sammy William, at para. 60. **Transcript**, January 20, 2005, David Setah Direct-Exam, at 00047, 38 to40. **Transcript**, September 11, 2003, Chief Roger William Direct-Exam, at 00022, 28-29. **Transcript**, April 5, 2005, Gilbert Solomon Direct-Exam, at 00059, 7-21.

<sup>47</sup> **Transcript**, September 11, 2003, Chief Roger William Direct-Exam, at 00022, 38.

<sup>48</sup> **Transcript**, December 1, 2004, Norman George Setah Direct-Exam, at 00037, 22-00040, 7. According to Norman George Setah Nen Nalmelh was marked near the mouth of Big Creek at placename #260. **Exhibit 0485DIG**, #260 and **Exhibit 0486**, Placename List, #260.

<sup>49</sup> The Battle of Nen Nalmelh can be dated prior to sovereignty. According to Mr. Setah, the war at Nen Nalmelh was during the time Tsilhqot'in ancestors were living in underground houses and using animal hides as clothing. **Transcript**, December 1, 2004, Norman George Setah Direct-Exam, at 00004, 14-27; and **Transcript**, December 6, 2004, Norman George Setah Direct-Exam, at 00001, 30- 00002, 4; 00003, 1-20. In addition, the absence of mention of this war in the Chilcotin Post Journal, despite the proximity of

17. Nen Nalmelh is a mountain near the junction of Big Creek and the Chilcotin River.<sup>50</sup> Nen Nalmelh was used as a Tsilhqot'in lookout and housed a village of Tsilhqot'in underground houses.<sup>51</sup> The war at Nen Nalmelh resulted from an incursion by Shuswap people into Tsilhqot'in territory.<sup>52</sup> Shuswap people came from the east, passed the underground houses at ?Elhixidlin (the junction of the Chilcotin and Fraser Rivers), and continued west.<sup>53</sup> These Shuswap came for the purpose of killing the Tsilhqot'in and taking their land.<sup>54</sup> Many Tsilhqot'in waited for these Shuswap at the foot of Nen Nalmelh<sup>55</sup>. The Shuswap were all killed, except for two, who were let go so that they could go back and tell their people what happened.<sup>56</sup>

18. Several Tsilhqot'in informants, including his grandfather Alec Jack, repeatedly taught Norman George Setah, as a child, about the war between the Tsilhqot'in and Shuswap at the foot of Nen Nalmelh.<sup>57</sup> The war at Nen Nalmelh was taught to Mr. Setah's informants, including his grandfather Alec Jack, by their grandfathers.<sup>58</sup> As an adult, while working for a local rancher, Mr. Setah personally observed several bones ploughed up at the foot of Nen Nalmelh that still had remnants of hide clothing on

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the fort to Nen Nalmelh, is evidence that it took place before the fort was established, thereby placing this war prior to the 1830's. Finally, according to Mr. Setah, his grandfather Alec and K'ish used to tell Mr. Setah these stories, and had been taught to them by their grandparents. Baptismal records indicate that Alec Jack was born in 1897. **Transcript**, December 6, 2004, Norman George Setah Direct-Exam, at 00002, 16-19; **Exhibit 0156-1902/00/00.001**, Oblates of Mary Immaculate (OMI) 1182-1902) at record 3647.

<sup>50</sup> **Transcript**, December 1, 2004, Norman George Setah Direct-Exam, at 00037, 22, -00040, 7.

According to Norman George Setah Nen Nalmelh was marked near the mouth of Big Creek at placename #260. **Exhibit 0485DIG**, #260 and **Exhibit 0486**, Placename List, #260.

<sup>51</sup> **Transcript**, December 1, 2004, Norman George Setah Direct-Exam, at 00037, 22-00039, 40.

<sup>52</sup> **Transcript**, December 1, 2004, Norman George Setah Direct-Exam, at 00037, 22-00042, 36.

<sup>53</sup> **Transcript**, December 1, 2004, Norman George Setah Direct-Exam, at 00041, 21-42.

<sup>54</sup> **Transcript**, December 6, 2004, Norman George Setah Direct-Exam, at 00002, 35-36; 00008, 19-30.

<sup>55</sup> **Transcript**, December 1, 2004, Norman George Setah Direct-Exam, at 00041, 34-42.

<sup>56</sup> **Transcript**, December 1, 2004, Norman George Setah Direct-Exam, at 00040, 25-00042, 15;

**Transcript**, December 6, 2004, Norman George Setah, Direct-Exam, at 00001, 27-00003, 47; 00008, 19-30.

<sup>57</sup> **Transcript**, October 20, 2004, Norman George Setah Direct-Exam, at 00009, 6-45; **Transcript**, December 1, 2004, Norman George Setah Cross, 00040, 23-00042, 36; **Transcript**, December 6, 2004, Norman George Setah Cross, at 00002, 5-00003, 47.

<sup>58</sup> **Transcript**, December 6, 2004, Norman George Setah Cross, at 00003, 1-10.

them.<sup>59</sup> Still alive at the time, his grandfather Alec Jack concluded that the ploughed up bones were the remains of the Shuswap warriors killed by Tsilhqot'in in the battle.<sup>60</sup>

19. Dr. Brealey mapped the boundaries of Tsilhqot'in territory according to the anthropological, ethnographic and documentary record on Map 1.<sup>61</sup> If Teit was right, in 1909 that the area around the Big Creek watershed represents the boundaries of Tsilhqot'in territory<sup>62</sup>, it is not surprising that a Tsilhqot'in lookout, village and battle with the intruding Shuswap took place in the vicinity of Big Creek at Nen Nalmelh.

## G. WAR AT SALMON RIVER

20. One fall, Tsilhqot'in people were staying at Bendziny Biny (Puntzi Lake) fishing for nilhish (kokanee).<sup>63</sup> The Nechat'in (Carrier) came in the night.<sup>64</sup> There was an old Tsilhqot'in deyen (medicine person) who used her powers so that they could not kill her easily, and this allowed other Tsilhqot'ins to get away and hide.<sup>65</sup> The Nechat'in (Carrier) stole a woman who had one Nechat'in parent and one Tsilhqot'in parent.<sup>66</sup> Whenever other nations invaded Tsilhqot'in land, the Tsilhqot'in would do the same to them.<sup>67</sup> The Tsilhqot'in warriors went to Nechat'in (Carrier) and did the same to their people.<sup>68</sup> The Nechat'in (Carrier) were staying in shelters near a waterfall down the Dean River which the Nechat'in call the Salmon River.<sup>69</sup> Nalbanz, the leader of the

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<sup>59</sup> **Transcript**, October 20, 2004, Norman George Setah Direct-Exam, at 00009, 6-45; **Transcript**, December 1, 2004, Norman George Setah Cross, at 00040, 23-00042, 36; **Transcript**, December 6, 2004, Norman George Setah Cross, at 00002, 5-00003, 47.

<sup>60</sup> **Transcript**, October 20, 2004, Norman George Setah Direct-Exam, at 00009, 6-45; **Transcript**, December 1, 2004, Norman George Setah Cross, at 00040, 23-00042, 36; **Transcript**, December 6, 2004, Norman George Setah Cross, at 00002, 5-00003, 47.

<sup>61</sup> **Exhibit 0241**, Map 1, Chilcotin Boundaries.

<sup>62</sup> Dr. Brealey is confident that Big Creek (sometimes called "Deer Creek" constituted the pre-contact eastern boundary of Tsilhqot'in territory, noting that Big Creek "was the traditional boundary between the Tsilhqot'in and the Fraser River or Canyon Secwepemc before" the 1862 smallpox epidemic; he cites Teit and Farrand for this assertion.

<sup>63</sup> **Exhibit 0432**, Affidavit #2 of Elizabeth Jeff, November 13, 2004, at para. 48(a).

<sup>64</sup> **Exhibit 0432**, Affidavit #2 of Elizabeth Jeff, November 13, 2004, at para. 48(a).

<sup>65</sup> **Exhibit 0432**, Affidavit #2 of Elizabeth Jeff, November 13, 2004, at para. 48(b).

<sup>66</sup> **Exhibit 0432**, Affidavit #2 of Elizabeth Jeff, November 13, 2004, at para. 48(b).

<sup>67</sup> **Exhibit 0432**, Affidavit #2 of Elizabeth Jeff, November 13, 2004, at para. 48(c).

<sup>68</sup> **Exhibit 0432**, Affidavit #2 of Elizabeth Jeff, November 13, 2004, at para. 48(c).

<sup>69</sup> **Exhibit 0432**, Affidavit #2 of Elizabeth Jeff, November 13, 2004, at para. 48(d).

Nechat'in warriors was killed by a Tsilhqot'in warrior who speared him to death.<sup>70</sup> The Tsilhqot'in warriors wiped out the Carriers living at that place, including all the children who were not Tsilhqot'in.<sup>71</sup>

21. The account of the Tsilhqot'in war with the Nechat'in at the Salmon River is illustrative of the pattern of Tsilhqot'in territorial defensive action. In response to an incursion into Tsilhqot'in territory, Tsilhqot'in warriors responded in kind, and attacked a Nechat'in village. As with the War at Chinlac, the War at Salmon River served to create an expectation among neighbouring First Nations that incursions would result in a strong Tsilhqot'in military response, thus discouraging future incursion.

#### **H. THE WAR WITH FRASER RIVER SECWPEPMC**

22. Dr. Brealey has recorded evidence of a battle between the Tsilhqot'ins and the Fraser River Secwepemc near Battle Mountain in the 1810's or 1820's.<sup>72</sup> The Tsilhqot'in repelled the invading party, but only after substantial loss of life to both sides.<sup>73</sup>

#### **I. THE WAR WITH THE QAJU OVER HUNTERS**

23. The relationship between the Tsilhqot'in and the Qaju or Kwakiutl people<sup>74</sup> was marked by conflict. Hewlett reports that relations between the Tsilhqot'in and the Homathko "appear to have been mainly hostile".<sup>75</sup> Dr. Brealey, after examining the conflicts between the Tsilhqot'in and the Homalco/Klahoose concludes that "to the extent that conflict always has a territorial component, I am of the opinion that these vectors demonstrate that the boundaries of the various authorities I documented on Map 1 were

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<sup>70</sup> **Exhibit 0432**, Affidavit #2 of Elizabeth Jeff, November 13, 2004, at para. 48(e-f).

<sup>71</sup> **Exhibit 0432**, Affidavit #2 of Elizabeth Jeff, November 13, 2004, at para. 48(f and h).

<sup>72</sup> **Exhibit 0240**, Expert Report of Dr. Ken Brealey, June 26, 2004, at 21, fn 6.

<sup>73</sup> **Exhibit 0240**, Expert Report of Dr. Ken Brealey, June 26, 2004, at 18.

<sup>74</sup> *Transcript*, October 24, 2003, Chief Roger William Direct-Exam, 00048, 3-4.

<sup>75</sup> **Exhibit 0592**, Edward Hewlett, *The Chilcotin Uprising: A Study of Indian-White Relations in Nineteenth Century British Columbia*, (M.A. Thesis, University of British Columbia, 1964) at 15 (3000651)

recognized and defended.”<sup>76</sup> According to Governor Seymour, the Tsilhqot’in “had occasionally made war with the tribes near the sea, and always with success.”<sup>77</sup>

24. Elizabeth Jeff describes the Tsilhqot’in response to a Qaju ambush on Tsilhqot’in hunters downriver from Tatlayoko Lake. Tsilhqot’in hunters were hunting in the mountains quite far down the river coming from Talhiqox Biny (Tatlayoko Lake).<sup>78</sup> The hunters were ambushed by the Qaju, and one Tsilhqot’in was shot in the leg with a gun.<sup>79</sup> A runner was sent to the wife of the one who was shot.<sup>80</sup> The hunter who was shot died.<sup>81</sup> After that three warriors who were brothers headed down to Bute inlet with their guns to kill the Qaju who were involved.<sup>82</sup> The warriors were gone so long, their father thought they were killed.<sup>83</sup> Then one day, the warriors came home and told their father they killed them all and ate their food before coming home.<sup>84</sup>

25. The fact that a gun was used may help to date the event. It is not known precisely when Tsilhqot’in people first had guns, which they may have obtained from neighboring tribes, or from direct trade with the HBC, but the presence of a gun indicates that this event may correspond to a conflict recorded in the 1840’s in which the “Chilcotins killed a number of Homathko fisherman”.<sup>85</sup>

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<sup>76</sup> **Exhibit 0240**, Expert Report of Dr. Brealey, p. 20.

<sup>77</sup> **Exhibit 0156-1864/09/09.001**, Despatch No. 37 from Governor Seymour to Colonial Office Sept 9, 1864, at para. 4.

<sup>78</sup> **Exhibit 0432**, Affidavit #2 of Elizabeth Jeff, November 13, 2004, at para. 50(a).

<sup>79</sup> **Exhibit 0432**, Affidavit #2 of Elizabeth Jeff, November 13, 2004, at para. 50(a).

<sup>80</sup> **Exhibit 0432**, Affidavit #2 of Elizabeth Jeff, November 13, 2004, at para. 50(b).

<sup>81</sup> **Exhibit 0432**, Affidavit #2 of Elizabeth Jeff, November 13, 2004, at para. 50(b).

<sup>82</sup> **Exhibit 0432**, Affidavit #2 of Elizabeth Jeff, November 13, 2004, at para. 50(c).

<sup>83</sup> **Exhibit 0432**, Affidavit #2 of Elizabeth Jeff, November 13, 2004, at para. 50(c).

<sup>84</sup> **Exhibit 0432**, Affidavit #2 of Elizabeth Jeff, November 13, 2004, at para. 50(d).

<sup>85</sup> **Exhibit 0592**, Edward Hewlett, *The Chilcotin Uprising: A Study of Indian-White Relations in Nineteenth Century British Columbia*, (M.A. Thesis, University of British Columbia, 1964) 15 (3000651) See also “The Clayoosh and Euclata Indians claim just rights on the valley of the Himathco up to the head of the valley on Salmon ranch . . . . A deadly feud existed between the lower Indians and the Chilcoaten Indians who massacred 19 on the 1<sup>st</sup> June 20 years ago [June 1, 1844] at a spot about a mile above the ferry” (**Exhibit 156-1864/05/12.003** Daily Chronicle –“The Indian Massacre”; “Mr Waddington’s Deposition”, May 12, 1864) **Exhibit 156-1885/03/00.001**, Saunders, “Homatcho” at p. 114898-9)

## J. WARNING TO CARRIER TRAPPING IN TSILHQOT'IN TERRITORY

26. During the war days, after the sickness, there was a tribe to the north that were trapping in the Tsilhqot'in homeland without permission.<sup>86</sup> Messengers were sent out and this tribe was warned that if they did not leave, they would all be killed.<sup>87</sup> The tribe left.<sup>88</sup> In this way, the Tsilhqot'in homeland was protected.<sup>89</sup>

## K. THE TSILHQOT'IN –TALKOTIN WAR

27. Tsilhqot'in defence of territory figured prominently in an 1826 war between the Tsilhqot'in and Talkotin Carrier. Prior to this date, peaceful relations had existed between the Tsilhqot'in and the Talkotin.<sup>90</sup>

28. McGillivary records the triggering events of the war as follows:

**“In the Winter of 1826- four Young men of the Talkotins went to the Chikotin Country for the purpose of hunting- it is impossible to ascertain how the quarrel originated- but three of them were inhumanely butchered- and the fourth escaped dangerously wounded- who arrived at the Fort on the 19<sup>th</sup> March- conveying this unfortunate intelligence to his Countrymen.”**<sup>91</sup>

29. McGillivary also recorded the Talkotin reprisal: “Twenty-four Talkotins left Alexandria on April 19<sup>th</sup>, returning on June 20<sup>th</sup> with the scalps of 12 persons killed, and with 5 prisoners”.<sup>92</sup>

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<sup>86</sup> **Transcript**, June 2, 2005, Thomas Billyboy Direct-Exam, at 00024, 12-27.

<sup>87</sup> **Transcript**, June 2, 2005, Thomas Billyboy Direct-Exam, at 00024, 21-23.

<sup>88</sup> **Transcript**, June 2, 2005, Thomas Billyboy Direct-Exam, at 00024, 23.

<sup>89</sup> **Transcript**, June 2, 2005, Thomas Billyboy Direct-Exam, at 00024, 24.

<sup>90</sup> **Exhibit 0156-1827/00/00.001**, George Simpson to Governor and Committee of the Hudson's Bay Company, by Joseph McGillivary, 1 March 1829, at Appendix A, p. 213 (PLT- 001497) [“The Talkotins and Chilkotins were formerly on the most friendly footing, and when Salmon failed on their Lands which happens frequently- they come and fish in the Neighbourhood of Alexandria”].

<sup>91</sup> **Exhibit 0156-1827/00/00.001**, George Simpson to Governor and Committee of the Hudson's Bay Company, by Joseph McGillivary, 1 March 1829, at Appendix A, at 213 (PLT- 001497) (emphasis added).

<sup>92</sup> **Exhibit 0156-1827/00/00.001**, George Simpson to Governor and Committee of the Hudson's Bay Company, by Joseph McGillivary, 1 March 1829, at Appendix A, at 213 (PLT- 001497).



30. McGillivary proceeds to describe the killing of a Talkotin by Chilkotins, and “shortly after the above occurrence twenty seven Chilkotins displayed themselves on the opposite side [of the river]”. On September 24, a “formidable party” of 80 Chilkotins arrived at Fort Alexandria where the Talkotin were camped and a battle commenced.<sup>93</sup> During the battle between the Talkotins and Tsilhqot’in, the traders provided arms and ammunition to the Talkotins, compelling the Tsilhqot’in to retreat,<sup>94</sup> but not before they expressed their disdain for the Hudson’s Bay Company intervention: “...previous to their departure, they did not refrain from expressing their opinion of our proceedings- breathing vengeance- and threatening to cut off any Whites that might hereafter fall in their way.”<sup>95</sup>

31. Several experts in this case discussed the significance of this incident. Dr. Hudson concluded that, “[i]t appears that Talkotin incursions into Tsilhqot’in territory precipitated the conflicts in 1826. This I take to be an indication of the fact that the Tsilhqot’in took measures to protect their territory and its resources”.<sup>96</sup> Dr. Dinwoodie concurred in this opinion. In his view, the key points emerging from the incident are that “1) even when trespassers did not intend to take possession of Tsilhqot’in land and 2) even when the trespassers were familiar ... **the Tsilhqot’in did not permit trespassing without permission**”.<sup>97</sup>

32. The Tsilhqot’in show of force was immediately effective. The Talkotins moved close to Fort Alexandria and lived in constant fear of Tsilhqot’in attack. This fear prevented them from trapping westwards from the Fort, severely reducing their trade with

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<sup>93</sup> **Exhibit 0156-1827/00/00.001**, George Simpson to Governor and Committee of the Hudson’s Bay Company, by Joseph McGillivary, 1 March 1829, at Appendix A, at 213 (PLT- 001497). “Rumours were in circulation, and given out by the Atnahs, that a formidable party of Chilkotins were on the march – they did arrive on the morning of the 24<sup>th</sup> September to the number of 80 men.

<sup>94</sup> **Exhibit 0156-1827/00/00.001**, George Simpson to Governor and Committee of the Hudson’s Bay Company, by Joseph McGillivary, 1 March 1829, at Appendix A, at 214.

<sup>95</sup> **Exhibit 0156-1827/00/00.001**, George Simpson to Governor and Committee of the Hudson’s Bay Company, by Joseph McGillivary, 1 March 1829, at Appendix A, at 214.

<sup>96</sup> **Exhibit 0166**, Expert Report of Douglas Hudson, at 8.

<sup>97</sup> **Exhibit 0224**, Expert Report of David Dinwoodie at 37.

the Fort. Even the Shuswap associated with the Fort curtailed their usual trapping for food and trade and moved across the Fraser River for fear of a Tsilhqot'in attack.<sup>98</sup>

#### L. WAR IN GRAVEYARD VALLEY WITH LILLOOET

33. Norman George Setah describes a war between the Tsilhqot'in and the Lillooet near Graveyard Valley. Warriors came over from Lillooet,<sup>99</sup> and saw places where the Tsilhqot'in gathered sap from the trees and they followed these trails to where the Tsilhqot'in lived.<sup>100</sup> The Lillooets killed the children, women and elders at Dagish Benen<sup>101</sup> where many rivers meet Big Creek.<sup>102</sup> The Lillooets were saying they were going to kill the Tsilhqot'ins.<sup>103</sup> A 14 year old girl escaped and told the Tsilhqot'in people who were living in underground houses.<sup>104</sup> The people in the underground houses sent signal fires to Dzelh Nanelmel after they heard about the massacre.<sup>105</sup> Fast runners were sent out to different areas to gather the warriors,<sup>106</sup> who were gathered from many different Tsilhqot'in communities.<sup>107</sup>

34. The Tsilhqot'in warriors went to Deni Deztsan and surrounded the area where the Lillooet were camped.<sup>108</sup> The warriors used branches to sneak up on the Lillooet.<sup>109</sup> The

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<sup>98</sup> See: **Exhibit 0443**, Expert Report of John Dewhirst, August 8, 2005, at 9, at para 25.

<sup>99</sup> **Transcript**, December 6, 2004, Norman George Setah Direct-Exam, at 00018, 18. **Exhibit 0439**, Affidavit #1 Cecelia Quilt, May 6, 2005, at para. 52(b). **Exhibit 00439**, Affidavit # 1 of Cecelia Quilt, May 6, 2005, at para 52(b).

<sup>100</sup> **Transcript**, December 6, 2004, Norman George Setah Direct-Exam, at 00019, 13-18.

<sup>101</sup> **Transcript**, December 6, 2004, Norman George Setah Direct-Exam, at 00018, 36-38 and **Transcript**, December 7, 2004, Norman George Setah Cross Examination, at 00030, 9.

<sup>102</sup> **Transcript**, December 6, 2004, Norman George Setah Direct-Exam, at 00019, 19-25.

<sup>103</sup> **Transcript**, December 6, 2004, Norman George Setah Direct-Exam, at 00018, 19-21. Norman George uses the word Yaqwilhdax which is what the Lillooet people called Tsilhqot'in.

<sup>104</sup> **Transcript**, December 6, 2004, Norman George Setah Direct-Exam, at 00018, 39-41.

<sup>105</sup> **Transcript**, December 6, 2004, Norman George Setah Direct-Exam, at 00018, 41-43 and **Transcript**, December 7, 2004, Norman George Setah Cross Examination, at 00030, 25-27.

<sup>106</sup> **Transcript**, December 6, 2004, Norman George Setah Direct-Exam, at 00018, 43-45.

<sup>107</sup> Warriors were gathered up from Nemiah, Anaham, Tootsey, and Stone and from among Chief Raven's people and Golden Eagle's people. The Tsilhqot'in warriors who fought at Graveyard Valley included Sewel from Riske Creek, Sesel Yaz who was Ts'iqi Ch'osh Gwet'in, Saywalus, a Tsilhqot'in man from the place across from Ts'iqi Ch'osh. (**Transcript**, December 6, 2004, Norman George Setah Direct-Exam, at 00024, 35-46; see also 00021, 17-00022, 25. **Transcript**, October 6, 2005, Cecelia Quilt Cross Exam, at 00019, 13-14.)

<sup>108</sup> **Transcript**, December 6, 2004, Norman George Setah Direct-Exam, at 00019, 26-28. The English name for the area of Deni Deztsan is Graveyard. **Transcript**, December 6, 2004, Norman George Setah Direct-Exam, at 00019, 37.

warriors attacked the Lillooet.<sup>110</sup> Two Lillooet people were allowed to go home to tell their story.<sup>111</sup>

35. The Battle of Graveyard Valley took place within Tsilhqot'in territory,<sup>112</sup> and was undertaken to protect the land from the Lillooets.<sup>113</sup> The Battle of Graveyard Valley can be dated prior to the 1890's.<sup>114</sup> The war at Graveyard Valley serves as an important example of the Tsilhqot'in capacity to quickly communicate information between Tsilhqot'in communities and to gather a military force from those communities sufficient to repel the incursion. The War at Graveyard Valley also serves as an example of the Tsilhqot'in military practice of allowing one or two enemies go in order for them to communicate information regarding the Tsilhqot'in response to their home communities, thereby discouraging future incursions.

#### **M. THE WAR LEADING TO KLATASSIN TAKING A SECOND WIFE**

36. Ludlin Brown provides the following account of a war between the Chilcotin and another First Nation which led to Klatassin taking a second wife:

37. "Her history was this: she was the daughter of Shopaedz, head of a tribe lying north of Chilcoatendom. Shopaedz had given offence to his neighbours by poaching on their hunting-grounds and streams. So Klatassan had put on the black paint and thrown back the eagles' feathers, and gone on the war-trail. His people had defeated their

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<sup>109</sup> **Transcript**, December 6, 2004, Norman George Setah Direct-Exam, at 00019, 29-31.

<sup>110</sup> **Transcript**, December 6, 2004, Norman George Setah Direct-Exam, at 00019, 37. **Exhibit 0439**, Affidavit #1 Cecelia Quilt, May 6, 2005, at para. 52(b).

<sup>111</sup> **Transcript**, December 6, 2004, Norman George Setah Direct-Exam, at 00020, 9 to 10.

<sup>112</sup> **Transcript**, December 6, 2004, Norman George Setah Direct-Exam, at 00025, 8-36. According to Cecelia Quilt, Tsilhqot'in people have been using the land around Deni Dažtsan (Graveyard Valley) since the time of our ancestors. **Exhibit 0439**, Affidavit #1 of Cecelia Quilt, May 6, 2005, at para. 57.

<sup>113</sup> **Exhibit 0439**, Affidavit #1 Cecelia Quilt, May 6, 2005, at para. 53. *Transcript*, October 6, 2005, Cecelia Quilt Cross Examination, at 00019, 13-15. **Transcript**, July 10, 2002, Martin Quilt Deposition Direct-Exam, at 00114, 1. **Transcript**, December 6, 2004, Norman George Setah Direct-Exam, at 00024, 23-27. **Transcript**, October 6, 2005, Cecelia Quilt, at 00019, 17.

<sup>114</sup> According to Dr. Hudson, peace was made between the Tsilhqot'in and the Lillooet in the 1890's. **Exhibit 0166**, Expert Report of Dr. Hudson, at 29. The evidence of the Tsilhqot'in witnesses is that a peace treaty was made between the Tsilhqot'in and the Lillooet following the War at Graveyard Valley. (**Transcript**, July 10, 2002, Deposition of Martin Quilt, at 118, 14-119, 21).

enemies, and slain several of their warriors. The chief had escaped, but his camp and his household gods [sic] had fallen into the hands of the Chilcoatens. Among these, his daughter Toowaewoot, whom Klatsassan took to himself to wife; ...”<sup>115</sup>

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<sup>115</sup> **Exhibit 0156-1873/00/00.001**, “Klatsassan and Other Reminiscences of Missionary Life in British Columbia” London: Society for Promoting Christian Knowledge, 1873. Author: Rev. R.C. Lundlin Brown, at 80 (2036600)