

12-Oct-18

REGISTRY

No. 051952
Kamloops Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CHIEF RON IGNACE and CHIEF SHANE GOTTFRIEDSON, on
their own behalf and on behalf of all other members of the
Stk'emlupsemc te Secwepemc of the SECWEPEMC NATION

PLAINTIFFS

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE
OF BRITISH COLUMBIA, KGHM AJAX MINING INC., and
THE ATTORNEY GENERAL OF CANADA

DEFENDANTS

RESPONSE TO AMENDED APPLICATION

Application Response of: Her Majesty the Queen in right of the Province of British Columbia (the "Province").

THIS IS A RESPONSE TO the Amended Notice of Application of the Plaintiffs, Chief Ron Ignace and Chief Shane Gottfriedson, on their own behalf and on behalf of all other members of the Stk'emlupsemc te Secwepemc of the Secwepemc Nation (the "Plaintiffs") filed September 19, 2018 (the "Amended Notice of Application").

Part 1: ORDERS CONSENTED TO

Nil

Part 2: ORDERS OPPOSED

The Province opposes the granting of all the orders set out in paragraphs 1-4 of Part 1 of the Amended Notice of Application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

Not applicable

Part 4: FACTUAL BASIS

A. Overview

1. The Plaintiffs seek an order establishing a deposition protocol for the taking of multiple depositions in this action. The Plaintiffs are also seeking specific orders for the depositions of Christine Simon and Delores Jules.
2. The Province takes the position that a deposition protocol is unnecessary as the Province will reasonably consent to the depositions of such witnesses as appropriate pursuant to Rule 7-8(3) of the *Supreme Court Civil Rules* (the “Rules”), and for the tendering of such evidence at trial as provided for by Rules 12-5(40) to (44).
3. In addition, the Province says that the deposition protocol proposed by the Plaintiffs would be inappropriate in view of the disputed issues regarding document production and will-say statements, the use of translators, the use of witness panels, and considering the jurisprudence regarding the receipt of oral history evidence within the framework adopted by Canadian courts.
4. While common terms may be adopted for the taking of deposition evidence from elders from the Stk’emlupsemc te Secwepemc of the Secwepemc Nation (“SSN”), court orders (anticipated to be by consent) should be filed for each deponent. Given the variety of circumstances and issues that may arise concerning individual deponents (including issues such as the use of witness panels or issues related to the use of translators), an individual order for each deponent is appropriate, with particular procedures and protocols to be based on the specific facts of each deponent supplementary to the framework provided under the *Rules*.
5. In response to the Plaintiffs’ Amended Notice of Application seeking orders to depose two elders, Christine Simon and Delores Jules, the Province proposes the taking of deposition evidence from those elders on the terms set out in the draft Orders attached as Appendix “A” and Appendix “B” of this Application Response.

B. The Litigation

6. The application arises in the context of the Plaintiffs’ claim for a declaration of Aboriginal title (including to watersheds and/or airsheds) for a portion of the Secwepemc Nation's traditional territory on behalf of SSN. The Plaintiffs also seek declarations of

various Aboriginal rights within the claim area. The Plaintiffs seek a declaration that the provincial *Mines Act*, R.S.B.C. 1996, c. 293 infringes the Secwepemc Nation's Aboriginal title and rights.

C. Plaintiffs' proposed Deposition Protocol

7. On March 28, 2017, Plaintiffs' counsel wrote to the parties canvassing availability for the taking of depositions of SSN members who are experiencing failing health or advanced age.¹

8. On May 26, 2017, Plaintiffs' counsel wrote to the parties advising that the Plaintiffs wished to depose approximately 25 elders. In order to accommodate this, Plaintiffs' counsel sought the consent of the Defendants to establish a deposition protocol.² Counsel for each of the Defendants generally supported the taking of deposition evidence in individual circumstances but were not in agreement with the terms proposed by the Plaintiffs' proposed deposition protocols.³ A further exchange between the parties occurred in response a further proposal for a deposition protocol exchanged by Plaintiffs' and Defendants' counsel on July 11, 2017.⁴

9. The Province supports the taking of deposition evidence from elders who are in ill-health or who otherwise may be unavailable to testify at trial for reasons set out in Rule 7-8(3)(c). The Province has indicated it is willing to consider individual deponents on a case-by-case basis, pursuant to the grounds set out in Rule 7-8(3).⁵

10. The Province has been involved in the taking of deposition evidence from Indigenous elders on numerous litigation files dating back to 2002, including in the following files:

- i. *William et al v. British Columbia et al*, in the Victoria Registry of the Supreme Court of British Columbia, file number 90 0913 (the "Tsilhqot'in Action");

¹ Affidavit #1 of Leslie G. Schwartz, filed on June 26, 2018, at para 2, Exh "A" at 1 [Schwartz #1]

² Schwartz #1, at para. 2, Exh "A" at 1

³ Schwartz #1, at para 3, Exh "B" at 3-6; Schwartz #1, at para 4, Exh "C" at 7-11; Schwartz #1, at para 5, Exh "D" at 12-15

⁴ Schwartz #1, at para 5, Exh "E" at 16-23; Schwartz #1, at para 6, Exh "F" at 24-25; Schwartz #1, at para 7, Exh "G" at 26-29; Schwartz #1, at para 8, Exh "H" at 30-33

⁵ Schwartz #1, at para 4, Exh "C" at 7-11; Schwartz #1, at para 8, Exh "G" at 26-29; Schwartz #1, at para 12, Exh "K" at 48-57; Schwartz #1, at para 24, Exh "W" at 96

- ii. *The Council of the Haida Nation v. British Columbia*, in the Vancouver Registry of the Supreme Court of British Columbia, file number L020662 (the “Haida Action”);
- iii. *Sechelt Indian Band v. Her Majesty the Queen in Right of Canada and Her Majesty the Queen in Right of the Province of British Columbia*, in the Vancouver Registry of the Supreme Court of British Columbia, file number A980252 (the “Sechelt Action”); and
- iv. *Cowichan Tribes v. Canada (Attorney General)*, in the Vancouver Registry of the Supreme Court of British Columbia, file number 14 1027 (the “Cowichan Tribes Action”).⁶

11. In the Haida Action, depositions have been most extensive. The Province and Canada agreed to the taking of deposition evidence of up to 10 elders as a term of an Abeyance Agreement signed in 2009 and further agreed to consider additional depositions on a case-by-case basis. To date, 15 Haida elders have been deposed by consent (between 2009-2013) pursuant to an agreed form of Consent Order.⁷ Similar Consent Orders have been utilized for the taking of deposition evidence of five elders in the Sechelt Action and for one elder in the Cowichan Tribes Action.⁸

12. On May 31, 2018, Plaintiffs’ counsel wrote to the parties canvassing availability for the taking of four depositions.⁹ Specifically, the Plaintiffs sought to depose the following Secwepemc elders: Christine Simon, Delores Jules, Cecilia Peters, and Martha Simpson.

13. All Defendants have consented to the depositions of the four proposed deponents and two depositions have been scheduled: Christine Simon, scheduled to proceed from October 29 to November 2, 2018; and Dolores Jules, scheduled to proceed from November 26 to 30, 2018. However, there remain outstanding areas of disagreement among the parties regarding the appropriate terms for the taking of such evidence including: the timing and scope of production for delivery of relevant documents and will say statements, the appropriate role of translators/interpreters, extra-jurisdiction depositions, and the deposition of elders in a panel format.

⁶ Affidavit #1 of John Hajecek, sworn on October 12, 2018, at paras. 4-13 [Hajecek #1]

⁷ Hajecek #1, at paras. 4-7

⁸ Hajecek #1, at paras. 8-11

⁹ Schwartz #1, at para 22, Exh “U” at 93-94

14. On July 11, 2018, the Plaintiffs filed a Notice of Application seeking an order establishing a deposition protocol.¹⁰ On September 18, 2018, counsel for the Plaintiffs sent an Amended Notice of Application to Defendants' counsel and, in addition to the order they sought in their July 11 Notice of Application, seek further individualized provisions for the deposition of Christine Simon, (whose deposition is proposed to be conducted with the aid of an interpreter), and the deposition of Delores Jules (whose deposition the Plaintiffs propose to depose conduct in a panel format).¹¹

15. Subsequently, Plaintiffs' counsel has responded to inquiries from the Defendants, KGHM Ajax Mining Inc. ("KGHM"), and the Attorney General of Canada ("Canada")¹² concerning their proposed procedures for the aid of an interpreter and the deposition of Delores Jules in a panel format.

Part 5: LEGAL BASIS

A. Depositions generally

16. The Province agrees with the Plaintiffs that Rule 7-8 and Rule 12-5 set out the relevant framework for the court's consideration as to the manner in which deposition evidence may be taken and used at trial.

17. Rule 12-5(40) allowing deposition evidence at trial, is an exception to the basic rule that witnesses should testify before the court.¹³

18. Allowing deposition evidence is an exception to the rule that a witness must testify in open court and *may* serve to promote "the just, speedy and inexpensive determination" of the proceedings on its merits.¹⁴

19. Rule 7-8(1) provides that, by consent of the parties or by order of the court, a person may be deposed and Rule 7-8(3) sets out the factors to be applied to determine when it may be appropriate for a particular witness to give deposition evidence. Failing consent of the

¹⁰ Notice of Application of the Plaintiffs, filed July 11, 2018

¹¹ Hajecek #1, at para. 14, Exh "D" at 21-23; Hajecek #1, at para. 19, Exhs "J" and "K" at 35-38

¹² Hajecek #1, at para. 17, Exh "G" at 28-29; Hajecek #1, at para. 29, Exhs "I" and "K" at 33 and 37

¹³ Rule 12-5(27) states that "subject to any enactment and these *Supreme Court Civil Rules*, (a) a witness at a trial of an action must testify in open court, and (b) unless the parties otherwise agree, the witness must testify orally."; *Byer v. Mills*, 2011 BCSC 158 at Appendix "A" paragraph (c)

¹⁴ Rule 1-3(1)

parties to the proposed deponents' suitability and the manner of their deposition, the *Rules* require that the Plaintiffs obtain a court order for each proposed deponent.

20. Courts in the past have observed the difficulties faced by a judge in receiving trial evidence by way of deposition.¹⁵ Moreover, the taking of deposition evidence from Indigenous elders so far in advance of the trial of this action presents particular challenges that are not accommodated in the Plaintiffs' proposed deposition protocol.

21. The Province says that the taking of deposition evidence from Indigenous elders in advance of trial should endeavour to meet the required thresholds for the receipt of oral history as described by the Supreme Court of Canada and the British Columbia courts, most particularly in *Mitchell v. M.N.R.*, SCR 911 ("*Mitchell*"), and in *William et al. v. British Columbia*, 2004 BCSC 148, and reflect more generally the approach of the courts to aboriginal claims. In *Mitchell*, the court emphasized that while the rules of evidence must be adapted to accommodate oral history evidence, the admissibility and weight of oral history evidence must be determined on a case-by-case basis.¹⁶

22. The Province says that the taking of deposition evidence should reflect the framework for the receipt of oral history evidence, and to the greatest extent possible lay the foundation for its admissibility and reliability. The Province submits that the framework for the taking of deposition evidence should be that provided for by the *Rules*, and that exceptions to this framework should be considered on an individual basis.

23. While the Supreme Court of Canada has recognized that the public interest in the resolution of Indigenous claims calls for a measure of flexibility not always present in ordinary commercial litigation, this flexibility can be achieved within the ordinary rules of practice. Further:

"Aboriginal rights litigation is of great importance to non-Aboriginal communities as well as to Aboriginal communities, and to the economic well-being of both. The existence and scope of Aboriginal rights protects as they are under s.35(1) of the *Constitution Act, 1982*, must be determined after a full hearing that is fair to all the stakeholders."¹⁷

¹⁵ *Byer v. Mills*, 2011 BCSC 158 at Appendix "A" paragraph (f)

¹⁶ *Mitchell*, at para. 31; *Delgamuukw v. British Columbia*, [1997] 3 SCR 1010 at para. 87

¹⁷ *Lax Kw'alaams Indian Band v. Canada (Attorney General)*, [2011] 3 SCR 535 at para. 12

24. The Plaintiffs submit that the proceeding will become unduly complicated and prolonged by preliminary objections and applications for each deponent in the absence of a court order broadly sanctioning deposition evidence and specifying the procedures to be followed. This does not reflect the Province's prior experience, however, having participated in the taking of deposition evidence from numerous elders in other extant aboriginal title and rights litigation since 2002. All of these depositions have proceeded on consent from the Province with no applications to court required concerning proposed deponents, nor as to the conduct of those depositions as provided under the *Rules*.¹⁸

25. The Province proposes the terms set out in the draft Orders attached as Appendices "A" and "B" to this Application Response, which are designed to deal specifically with the issues raised by the Plaintiffs' in relation to the particular deponent and their individual circumstances.

26. The Province says that the remaining issues that the Plaintiffs seek to have this court rule upon are hypothetical and do not arise in connection with the Plaintiffs' presently proposed deponents. Given this, such issues are inappropriate for determination at this time as they lack any concrete facts to guide the court's discretion.

27. The outstanding issues for the Province in relation to the Plaintiffs' proposed Deposition Order are:

- i. Procedural Requirements/Notice Will Says, and Disclosure of relevant documents
- ii. Role of Interpreters
- iii. Deposition in Panel Format

(i) *Procedural Requirements/Notice Will Says, and Disclosure of relevant documents*

28. When a witness gives evidence at trial, it typically occurs after document discovery and the exchange of documents is largely complete, and after the parties have had an opportunity to consider whether sufficient disclosure has been made. This allows the cross-examining party sufficient opportunity to prepare for cross-examination of the witness.

¹⁸ Hajecek #1, at paras. 6-7, 9, 11, and 13

29. The Plaintiffs' draft Order provides for will-say statements to be provided only 10 days in advance of the deposition, and for relevant records to be produced and exchanged by the parties 14 days in advance of the deposition. This is insufficient time for the parties to raise and address any issues regarding additional disclosure. Further, the Plaintiffs' draft order does not set out the materials for disclosure, and the Plaintiffs have stated they do not agree with the scope of document disclosure sought by the Province.¹⁹ Specifically, the Plaintiffs have stated that they are not in a position to waive confidentiality over the deponents' prior Traditional Use Studies or ethnographic, cultural heritage or other interviews given during their lifetime.²⁰

30. The Province's draft Consent Order for each deponent provides that "will-say statements" for each deponent, and any documents or other records relevant to their anticipated evidence, will be provided by the Plaintiffs to the Defendants no less than 60 days in advance of the deposition unless otherwise agreed by counsel. This will put the Defendants in a similar position to where they otherwise would be if the deponent was giving evidence at trial. Further, it will accommodate any additional demands for disclosure and reduce the likelihood that a deposition would need to be adjourned.

(ii) Role of Interpreters

31. While the current form of Order proposed by the Plaintiffs for the deposition of Christine Simon provides for an interpreter to participate within circumscribed terms, their Amended Notice of Application posits a broader scope of participation by an interpreter.²¹ This position is compounded by the affidavit of the proposed interpreter (Mr. Darcy Deneault) who states, among other things, that:

- para. 16 "*Secwepemc oral histories cannot 'stand alone', removed from the way they are told in the Secwepemc language*",
- para. 18 "*More than merely giving "facts" of "events" the stories operate on multiple levels. The stories' moral and social messages require careful explanation, and the messages may vary with context, with the storyteller and with the audience.*"
- para. 26 "*...it is my job to not only decipher the language, but also to assist the listener in understanding the story from the elder's perspective. In carrying out*

¹⁹ Swartz #1, at para. 6, Exh E, at 18

²⁰ Swartz #1, at para. 25, Exh X, at 99

²¹ Amended Notice of Application, Filed September 19, 2018, Draft Order at para. 10

*this duty, I may ask questions to invite elders to clarify words and to explain meanings, contexts, and connections within the language.”*²²

32. Similarly, the Plaintiffs are seeking to have Delores Jules’ evidence translated (if required) by members of the panel. As Jeanette Jules states in her affidavit:

*- para. 26 “Slexéyem’ and stspstekwll are in Secwépemctsín, the Secwépemc language. During the proposed panel deposition, Colleen Seymour and I will assist Elder Delores Jules and Elder Loretta Seymour, should they require such assistance, in translating and/or word spelling for our mothers who prefer to testify with people they trust to translate Secwépemctsín stories into English.”*²³

33. The Province’s proposed form of order has incorporated terms to ensure the impartiality of the interpreters and to ensure that the court will receive the evidence of the deponent, not the evidence of the interpreter.²⁴

(iii) Deposition in Panel Format

34. The Plaintiffs seek an order from this court to adduce evidence from an elder, Delores Jules, as part of a panel consisting of Ms. Jules’ adult daughter Jeanette Jules, another elder Loretta Seymour, and Ms. Seymour’s adult daughter Colleen Seymour. The Plaintiffs says that adducing their oral history evidence in this manner is in accordance with SSN’s custom for truth telling and the transmission of oral history and knowledge.²⁵ SSN refers to the Federal Court’s Aboriginal Bar Liaison Committee’s Practice Guidelines for Aboriginal Law Proceedings (April 2016) (the “Guidelines for Aboriginal Law Proceedings”). They are also relying on the Court’s inherent jurisdiction and discretion to order a procedure that would be congruent with the law of evidence related to the reception of oral tradition evidence.

35. The Plaintiffs have sought and obtained the consent of the Defendants for the deposition of Dolores Jules. The Plaintiffs’ proposed procedures for the questioning of the deponent Delores Jules would not necessarily elicit evidence from the deponent.²⁶ Three out of four proposed panel members, Loretta Seymour, Colleen Seymour or Jeanette Jules, do

²² Affidavit #1 of Darcy Curtis Deneault, filed on October 5, 2018, at paras. 16, 18, and 26

²³ Affidavit #1 of Jeanette Jules, filed on October 5, 2018, at para. 22 [Jules #1]; see also Hajecek #1, at para. 19, Exh “K” at 37

²⁴ Application Response of the Province, Appendix “A” at para. 4, Appendix B at para. 7, and Schedule “A” at para. 3 and “Speller’s Affirmation or Oath” and “Interpreter’s Affirmation or Oath”

²⁵ Jules #1, at paras. 17-20

²⁶ Hajecek #1, at para. 17, Exh “G” at 28-29; Hajecek #1, at para. 19, Exh “K” at 37

not satisfy the tests set out in the *Rules* for deposition prior to trial, nor have the Plaintiffs sought consent from the Defendants, or this court, for them to give evidence by deposition.

36. The Plaintiffs' proposed procedures also fail to clarify what aspects of the deponent's evidence (oral tradition evidence, oral history evidence or other evidence) are to be adduced in a panel format. According to Jeanette Jules' affidavit, Secwépemc oral narratives consist of two genres: *slexéyem'* (oral histories) and *stsptekwll* (oral traditions).²⁷ However, from Jeanette Jules' affidavit it appears that while group story telling is used for the *stsptekwll* (oral traditions), there is no evidence that group story telling is used for *slexéyem'* (oral histories)²⁸. The evidence of Jeanette Jules also suggests that while Secwépemc traditional stories may be told in a group setting, there is no evidence to suggest that a panel is required or that the evidence of multiple panel members is required to transmit the *stsptekwll*.²⁹

37. The Province submits that an order allowing Dolores Jules to provide deposition evidence be allowed, on terms which provide that only Delores Jules' *viva voce* evidence be received by deposition, and that other panel members will not be examined or cross-examined, nor will they provide evidence in response to questions directed to Delores Jules by counsel.

²⁷ Jules #1, at para. 14

²⁸ Jules #1, at para. 18

²⁹ Jules #1, at para. 17

Part 6: MATERIAL TO BE RELIED ON

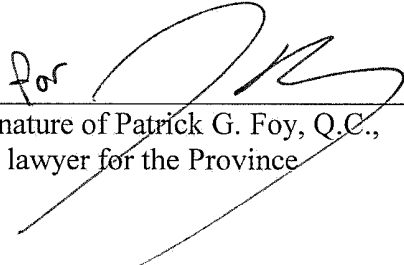
1. Affidavit #1 of John Hajecek, sworn on October 12, 2018;
2. Affidavit #1 of Leslie G. Schwartz, filed on June 26, 2018;
3. Affidavit #1 of Darcy Curtis Deneault, filed on October 5, 2018;
4. Affidavit #1 of Jeanette Jules, filed on October 5, 2018;
5. Appendices "A" and "B" (Attached);
6. The pleadings and proceedings herein; and
7. Such further and other materials as counsel may advise and this Honourable Court may allow.

Date: 12/October/2018

The Province estimates that this application will take one day.

☒ [X] The Province has filed in this proceeding a document that contains the Province's address for service.

☐ [] The Province has not filed in this proceeding a document that contains the Province's address for service. The province's ADDRESS FOR SERVICE is:



Signature of Patrick G. Foy, Q.C.,
[X] lawyer for the Province

APPENDIX "A"

No. 051952
Kamloops Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA**BETWEEN:**

CHIEF RON IGNACE and CHIEF SHANE GOTTFRIEDSON, on
their own behalf and on behalf of all other members of the
Stk'emlupsemc te Secwepemc of the SECWPEMC NATION

PLAINTIFFS**AND:**

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE
OF BRITISH COLUMBIA, KGHM AJAX MINING INC., and
THE ATTORNEY GENERAL OF CANADA

DEFENDANTS**ORDER MADE AFTER AN APPLICATION**

BEFORE A JUDGE OF THE COURT)
)
) _____/OCT/20018

ON THE APPLICATION of the Plaintiffs, Chief Ron Ignace and Chief Shane Gottfriedson, on their own behalf and on behalf of all other members of the Stk'emlupsemc te Secwepemc of the Secwepemc Nation (the "Applicants"), coming on for hearing at Vancouver, British Columbia, on this day _____, AND ON HEARING Sarah D. Hansen, counsel for the Applicants, Patrick G. Foy, Q.C., counsel for Her Majesty The Queen in Right of the Province of British Columbia, Keith B. Bergner, counsel for KGHM Ajax Mining Inc., and Susan Dawson, counsel for The Attorney General of Canada;

THIS COURT ORDERS that:

1. The evidence of the witness, Christine Simon, will be taken by deposition pursuant to Rule 7-8 ("Deposition Evidence") at the John Jules Professional Building at 1030 Trans-Canada Highway, Savona, British Columbia, at such dates and times as agreed by counsel.

2. A “will-say statement” for the deponent Christine Simon, and any documents or other records relevant to her anticipated evidence (“Relevant Records”), will be provided by the Plaintiffs to Defendants’ counsel no less than 60 days in advance of the deposition unless otherwise agreed by counsel. Relevant records shall include:

- a. Any TUS materials (interview tapes, transcripts, maps) in the possession of the plaintiffs, or a waiver of any confidentiality agreement restricting counsel’s access of TUS materials held by the defendants or third parties;
- b. Any ethnographic materials (apart from materials gathered or prepared exclusively for an expert’s report in this litigation) in the plaintiffs’ possession or control, or waiver/consent if needed for counsel to access materials in private or conditioned collections;
- c. Any band council or other band governance materials which record the deponent’s appearance or statements in relation to issues potentially relevant to the litigation; and
- d. Any testimony or affidavits given by the deponent in other legal or administrative proceedings raising aboriginal rights or title issues.

3. The Defendants shall produce any Relevant Records within their possession to the Plaintiffs, no less than 14 days in advance of the deposition unless otherwise agreed by counsel.

4. The deposition evidence shall be given in English, unless the witness requires an interpreter. To the extent that an interpreter may be necessary for all or portions of a deposition, such interpreter shall faithfully and accurately reproduce the speaker's message in the closest natural equivalent of the listener's language, primarily in terms of meaning and secondarily in terms of style, without embellishment, omission, explanation, or expression of opinion.

5. The deposition shall be conducted by videotape with a court reporter present and presented at trial as videotape with transcript in accordance with Rule 7-8(16). Plaintiffs’ counsel shall maintain custody of the original videotape, transcript and exhibits;

6. The video and transcript of the deposition evidence may be led as evidence at trial by any party and if such evidence is led, the deposition evidence must be given in full, unless the parties agree otherwise or the court otherwise orders in accordance with Rule 12-5(45).
7. The rules of evidence and courtroom procedure shall apply to the deposition evidence.
8. Objections made during the deposition evidence shall be recorded by the official court reporter and the validity of the objection may be decided by the Court, by application to any party, pursuant to Rule 7-8(15).
9. The Deposition Evidence will be conducted in accordance with the attached set of instructions set forth on Schedule "A" to this Order.
10. Each counsel of record is entitled to copies of the recorded and transcribed Deposition Evidence, including video, transcripts, and exhibits, in paper and digital format at their own expense.
11. Costs for attendance of a videographer and court reporter for the taking the deposition evidence are to be shared equally by the Parties or as otherwise ordered by this court.
12. This Order may be signed in counterparts.

Schedule “A”

Deposition Evidence Instructions:

As per the covering Order, Deposition Evidence will be conducted in the following manner:

1. The video camera should be focused in a way to give a direct frontal close-up of the witness's face.
2. The examining party will examine the witness, who will be subject to cross-examination and re-examination.
3. If a witness is being examined in a language other than English or French, interpretation should be provided by a person with experience as a legal interpreter, and in the case of examination in the Secwépemc language, by a person with experience as an interpreter;
4. All books, papers and documents entered in evidence shall be marked as Exhibits. The Exhibits shall be received, marked and be in the custody of the court reporter, who shall otherwise perform the functions of a court clerk.
5. The following are forms of affirmations/oaths referred to In the Order and in the present instructions:

Witness' Affirmation or Oath

Do you solemnly promise, affirm and declare that the evidence that you will give in this proceeding shall be the truth, the whole truth and nothing but the truth?

[Or]

Do you swear that the evidence that you will give in this proceeding shall be the truth, the whole truth and nothing but the truth, so help you God?

Video Equipment Operator's Affirmation or Oath

Do you solemnly promise, affirm and declare that you shall truly and faithfully cause a complete and accurate sound recording to be made of the evidence of the witness or witnesses and of the proceeding at which such evidence is given, and that you shall truly and faithfully cause a complete and accurate video recording to be made of the giving of evidence by the witness or witnesses?

[Or]

Do you swear that you shall truly and faithfully cause a complete and accurate sound recording to be made of the evidence of the witness or witnesses and of the proceeding at which such evidence is given, and that you shall truly and faithfully cause a complete and accurate video recording to be made of the giving of evidence by the witness or witnesses, so help you God?

Court Reporter's Affirmation or Oath

Do you solemnly promise, affirm and declare that you shall truly and faithfully and without partiality to any party in this proceeding, take down, transcribe and engross the depositions of each and every witness produced before and examined by counsel, as far as you are directed and employed by counsel to take, write down, transcribe and engross the said depositions?

[Or]

Do you swear that you shall truly and faithfully and without partiality to any party in this proceeding, take down, transcribe and engross the depositions of each and every witness produced before and examined by counsel, as far as you are directed and employed by counsel to take, write down, transcribe and engross the said depositions, so help you God?

Speller's Affirmation or Oath

Do you solemnly promise, affirm and declare that you shall truly and faithfully and without partiality to any party in this proceeding, and to the best of your ability, provide accurate spellings of the words of the Secwépemc language of the witness or witnesses taken under oath during the Deposition Evidence?

[Or]

Do you swear that you shall truly and faithfully and without partiality to any party in this proceeding and to the best of your ability, provide accurate spellings of the words of the Secwépemc language of the witness or witnesses taken under oath during the Deposition Evidence, so help you God?

Interpreter's Affirmation or Oath

Do you solemnly promise, affirm and declare that you shall truly and faithfully, and without partiality to any party in this proceeding, and to the best of your ability, interpret and translate any oath or affirmation that will be administered and all questions that may be asked of any witness and his or her answers, and also in like manner to interpret and translate the respective depositions taken and made to such questions out of the language of such witness or witnesses into the English language?

[Or]

Do you swear that you shall truly and faithfully, and without partiality to any party in this proceeding, and to the best of your ability, interpret and translate any oath or affirmation that will be administered and all questions that may be asked of any witness and his or her answers, and also in like manner to interpret and translate the respective depositions taken and made to such questions out of the language of such witness or witnesses into the English language, so help you God?

APPENDIX "B"

No. 051952
Kamloops Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA**BETWEEN:**

CHIEF RON IGNACE and CHIEF SHANE GOTTFRIEDSON, on
their own behalf and on behalf of all other members of the
Stk'emlupsemc te Secwepemc of the SECWEPENMC NATION

PLAINTIFFS**AND:**

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE
OF BRITISH COLUMBIA, KGHM AJAX MINING INC., and
THE ATTORNEY GENERAL OF CANADA

DEFENDANTS**ORDER MADE AFTER AN APPLICATION**

BEFORE A JUDGE OF THE COURT)
)
) _____/OCT/20018

ON THE APPLICATION of the Plaintiffs, Chief Ron Ignace and Chief Shane Gottfriedson, on their own behalf and on behalf of all other members of the Stk'emlupsemc te Secwepemc of the Secwepemc Nation (the "Applicants"), coming on for hearing at Vancouver, British Columbia, on this day _____ AND ON HEARING Sarah D. Hansen, counsel for the Applicants, Patrick G. Foy, Q.C., counsel for Her Majesty The Queen in Right of the Province of British Columbia, Keith B. Bergner, counsel for KGHM Ajax Mining Inc., and Susan Dawson, counsel for The Attorney General of Canada;

THIS COURT ORDERS that:

1. The evidence of the witness, Delores Jules, will be taken by deposition pursuant to Rule 7-8 ("Deposition Evidence") at the Stk'emlupsemc te Secwepemc Nation, Administration Building located at 334 Chief Alex Thomas Way, Kamloops British Columbia, at such dates and times as agreed by counsel.

2. Delores Jules may give her deposition evidence in a traditional manner in the presence of and accompanied by Loretta Seymour, Jeanette Jules, and Colleen Seymour.
3. For greater certainty, the deposition evidence received in this deposition
 - a. will be limited to the evidence of Delores Jules; and
 - b. all questions and responses either in direct examination or in cross-examination will be directed to and answered only by Delores Jules.
4. All determinations as to the admissibility and weight of the deposition evidence received from Delores Jules given in this manner are reserved to the trial judge.
5. A “will-say statement” for the deponent Delores Jules, and any documents or other records relevant to her anticipated evidence (“Relevant Records”), will be provided by the Plaintiffs to Defendants’ counsel no less than 60 days in advance of the deposition unless otherwise agreed by counsel. Relevant records shall include:
 - e. Any TUS materials (interview tapes, transcripts, maps) in the possession of the plaintiffs, or a waiver of any confidentiality agreement restricting counsel’s access of TUS materials held by the defendants or third parties;
 - f. Any ethnographic materials (apart from materials gathered or prepared exclusively for an expert’s report in this litigation) in the plaintiffs’ possession or control, or waiver/consent if needed for counsel to access materials in private or conditioned collections;
 - g. Any band council or other band governance materials which record the deponent’s appearance or statements in relation to issues potentially relevant to the litigation; and
 - h. Any testimony or affidavits given by the deponent in other legal or administrative proceedings raising aboriginal rights or title issues.
6. The Defendants shall produce any Relevant Records within their possession to the Plaintiffs, no less than 14 days in advance of the deposition unless otherwise agreed by counsel.

7. The deposition evidence shall be given in English, unless the witness requires an interpreter. To the extent that an interpreter may be necessary for all or portions of the deposition, such interpreter shall faithfully and accurately reproduce the speaker's message in the closest natural equivalent of the listener's language, primarily in terms of meaning and secondarily in terms of style, without embellishment, omission, explanation, or expression of opinion.
8. The deposition shall be conducted by videotape with a court reporter present and presented at trial as videotape with transcript in accordance with Rule 7-8(16). Plaintiffs' counsel shall maintain custody of the original videotape, transcript and exhibits;
9. The video and transcript of the deposition evidence may be led as evidence at trial by any party and if such evidence is led, the deposition evidence must be given in full, unless the parties agree otherwise or the court otherwise orders in accordance with Rule 12-5(45).
10. The rules of evidence and courtroom procedure shall apply to the deposition evidence.
11. Objections made during the deposition evidence shall be recorded by the official court reporter and the validity of the objection may be decided by the Court, by application to any party, pursuant to Rule 7-8(15).
12. The Deposition Evidence will be conducted in accordance with the attached set of instructions set forth on Schedule "A" to this Order.
13. Each counsel of record is entitled to copies of the recorded and transcribed Deposition Evidence, including video, transcripts, and exhibits, in paper and digital format at their own expense.
14. Costs for attendance of a videographer and court reporter for the taking the deposition evidence are to be shared equally by the Parties or as otherwise ordered by this court.
15. This Order may be signed in counterparts.

Schedule "A"

Deposition Evidence Instructions:

As per the covering Order, Deposition Evidence will be conducted in the following manner:

6. The video camera should be focused in a way to give a direct frontal close-up of the witness's face.
7. The examining party will examine the witness, who will be subject to cross-examination and re-examination.
8. If a witness is being examined in a language other than English or French, interpretation should be provided by a person with experience as a legal interpreter, and in the case of examination in the Secwépemc language, by a person with experience as an interpreter;
9. All books, papers and documents entered in evidence shall be marked as Exhibits. The Exhibits shall be received, marked and be in the custody of the court reporter, who shall otherwise perform the functions of a court clerk.
10. The following are forms of affirmations/oaths referred to In the Order and in the present instructions:

Witness' Affirmation or Oath

Do you solemnly promise, affirm and declare that the evidence that you will give in this proceeding shall be the truth, the whole truth and nothing but the truth?

[Or]

Do you swear that the evidence that you will give in this proceeding shall be the truth, the whole truth and nothing but the truth, so help you God?

Video Equipment Operator's Affirmation or Oath

Do you solemnly promise, affirm and declare that you shall truly and faithfully cause a complete and accurate sound recording to be made of the evidence of the witness or witnesses and of the proceeding at which such evidence is given, and that you shall truly and faithfully cause a complete and accurate video recording to be made of the giving of evidence by the witness or witnesses?

[Or]

Do you swear that you shall truly and faithfully cause a complete and accurate sound recording to be made of the evidence of the witness or witnesses and of the proceeding at which such evidence is given, and that you shall truly and faithfully cause a complete and accurate video recording to be made of the giving of evidence by the witness or witnesses, so help you God?

Court Reporter's Affirmation or Oath

Do you solemnly promise, affirm and declare that you shall truly and faithfully and without partiality to any party in this proceeding, take down, transcribe and engross the depositions of each and every witness produced before and examined by counsel, as far as you are directed and employed by counsel to take, write down, transcribe and engross the said depositions?

[Or]

Do you swear that you shall truly and faithfully and without partiality to any party in this proceeding, take down, transcribe and engross the depositions of each and every witness produced before and examined by counsel, as far as you are directed and employed by counsel to take, write down, transcribe and engross the said depositions, so help you God?

Speller's Affirmation or Oath

Do you solemnly promise, affirm and declare that you shall truly and faithfully and without partiality to any party in this proceeding, and to the best of your ability, provide accurate spellings of the words of the Secwépemc language of the witness or witnesses taken under oath during the Deposition Evidence?

[Or]

Do you swear that you shall truly and faithfully and without partiality to any party in this proceeding and to the best of your ability, provide accurate spellings of the words of the Secwépemc language of the witness or witnesses taken under oath during the Deposition Evidence, so help you God?

Interpreter's Affirmation or Oath

Do you solemnly promise, affirm and declare that you shall truly and faithfully, and without partiality to any party in this proceeding, and to the best of your ability, interpret and translate any oath or affirmation that will be administered and all questions that may be asked of any witness and his or her answers, and also in like manner to interpret and translate the respective depositions taken and made to such questions out of the language of such witness or witnesses into the English language?

[Or]

Do you swear that you shall truly and faithfully, and without partiality to any party in this proceeding, and to the best of your ability, interpret and translate any oath or affirmation that will be administered and all questions that may be asked of any witness and his or her answers, and also in like manner to interpret and translate the respective depositions taken and made to such questions out of the language of such witness or witnesses into the English language, so help you God?