

Kwakwaka'wakw Laws and Perspectives Regarding Property

LUCY BELL*

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* My original work for this paper was my thesis, of the same title, toward an M.A. in Indigenous Governance at the University of Victoria. A significant amount of the original work has been deleted for the purposes of fitting it into journal length; I have indicated in footnotes where large portions or sections have been deleted.

I am indebted to my interview participants for their time and patience, gilakasla to Harry Bell, Lily Bell, Ann Brochie, Patricia Dawson-Hunt, Richard Dawson, Edith George, Richard George, Colleen Hemphill, Corrine Hunt, Rachel Hunt, Mabel Knox, Peter Knox, Lucy Smith, Paddy Walkus and Dorothy Wasden.

My interview participants have read a draft of this paper and their comments and suggestions have been included for this publication.

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The Kwakwaka'wakw people, like all Indigenous peoples in Canada, have been dispossessed of their lands. Land is but one form of property. Now Indigenous knowledge and other property are being commodified and appropriated. In response to this problem, I describe customs from Kwakwaka'wakw p'asa (potlatch) that can be used to protect Kwakwaka'wakw property. These customs were followed in my research and writing, which includes a metaphor of Chilkat weaving as my research and writing methodology. I share with my readers knowledge and some Kwa'kwala words shared with me in interviews I conducted. Based on these interviews, I suggest some principles from p'asa to be considered in making proposals for contemporary laws for the protection of Kwakwaka'wakw property.

I RESEARCH AND METHODOLOGY

Introduction

Gilakas'la, nugwa'am Kwenkwalaogwa; gayutłan lax Mimkwamlis (Mamalilikulla), gayutłan lax Tsaxis (Kwakiutl), gayutłan lax Wakeman Sound (Ha'xwamis), and I grew up on the Tsulquate Indian Reserve amongst the Nakwaxda'xw and the Gwa'Sala.¹ U'man ał umptu Six'walas; yo'am tlekum sano abumpe Pułas [Greetings, my name is Kwenkwalaogwa; I am from Village Island (geographic location) / Mamalilikulla (the people); I am from Fort Rupert / Kwakiutl; I am from Wakeman Sound / Ha'xwamis. Six'walas (Johnson R. Bell) was my father; Pułas (Diane Hunt) is my mother].²

1. Note: The spellings I use for Kwa'kwala words are in some cases a Kwa'kwala alphabet as used by the U'Mista Cultural Centre, the International Phonetic Alphabet as used by Martine J. Reid and Daisy Sewid-Smith in *Paddling to Where I Stand*, and my own renderings for words I have learned such as "Kwenkwalaogwa." I have no linguistic background and have written the words/phrases as I hear them. My spelling is, however, influenced by the U'Mista spelling because this is what I learned in elementary school.

As an example of the different spellings for Kwa'kwala, consider the word I use for potlatch, "pasa'p," is the U'Mista spelling; "p'asa" is the International Phonetic Alphabet used by Sewid-Smith; and I have used "ba'sap" in earlier work. Herein I have decided to use the IPA spelling because it is the closest rendering to what I hear when my elders say the word; the "p" at the end of the other terms is silent or a subtle meeting of the lips and not an actual "p".

2. The thesis format of this paper included a glossary of Kwa'kwala words and a relationship diagram here for ease of reference; these have been deleted due to length restrictions.

My father's parents were Udzistales of the Mamalilikulla (Henry Bell) and Wadzidalaga of the Qomoyoiy (Eliza Lucy Walas); my mother's parents were Roy Hunt of the Qomoyoiy and Christine Wilson of the Ha'xwamis. My father was adopted by his great grandparents; his adoption was legal under both our *p'asa* customs and British Columbia law, and because of this official adoption, I know my great-great grandparents as my grandparents. My father's biological mother is Wodzas of the Mamalilikulla (Edith George, née Charlie). Due to relocation and amalgamation of many of our nations, my grandparents (Henry and Eliza), my parents, my siblings and I are all registered under the *Indian Act* with the Gwa'Sala-'Nakwaxda'xw Nation.

The problem that this paper addresses is the fact that Indigenous knowledge and other forms of property are being commodified and expropriated by non-Indigenous people. This paper focuses specifically on Kwakwaka'wakw knowledge and property; the following two experiences provide an illustration of this issue.

In the summer of 2004, I was walking across the University of Victoria campus. Under a totem pole stood a group of people getting a lesson on local Indigenous culture. I observed furiously from a distance. The man conducting the lesson violated a number of Indigenous laws.

First, the person who was the focus of the group was not from any of the local communities. Second, the culture to which he referred was not local; it was actually from the north end of Vancouver Island where I come from. Third and fourth, the dance and song that he described and subsequently performed were shown out of context and by somebody not authorized to do so. I admit I did not approach and ask who allowed this man to "teach" tourists about our people or the dance he was sharing, or which local people he sought permission from in order to perform this dance on their traditional territory, but considering the number of relationships needed for that permission to actually have been given, I doubt that it was sought or that these people understood or appreciated the Indigenous laws that they were violating.

A further inspiration for my paper came from hearing my cousin Corrine share her perspective as an artist, especially as an artist who had to seek recourse in Canadian law for problems that arose in the dissolution of her partnership with a non-Kwakwaka'wakw, non-Indigenous business partner. Corrine shared some of her own experience:³

3. Note: Quotations from interviews and other sources are reproduced verbatim so as to allow readers to engage fully with what a source has to say; three dots indicates a pause in an answer, not an omission in producing the quotation. The cutting of quotations in readings that I did in preparation for writing my thesis led me to the conclusion that when one cuts portions of quotations, even on the basis that they are objectively not relevant, often the cut portion is relevant in some way that the author and editor had not considered.

I think there's a confusion about what the designs are and what the culture is, and whether the culture is a pre-contact culture that is not living versus people who are convening to a dance, to sing and to have the crests. [...]

Anyway, so, no, there seems to be a confusion about that. So people don't respect the culture as a living culture and understand why we have the designs we have, and even why we use them. So other people seem to feel free to be able to use the, the, whatever, you know, in commercial art especially. And in galleries where there are non-Native people just replicating designs and not having any sense of what the meaning is or where their place in the potlatch and in the ceremonies that we use.

So, and I know from personal experience, that it's, that as far as design goes, it's a very fuzzy area for lawyers to say, "They have the rights to the _____," you know, the eagle, or the sisiutl with the sun design. You'd have a difficult time saying to somebody, "You can't use that design."

Or, in the case with my business partner, ex-business partner, non-Native. Am, to say that, you know, she felt that the motif designs were mine but that the furniture that we designed together was hers. And some of those designs were in the shape of the copper, the ovoid, the bentwood box. And her lawyers felt that those pieces could be replicated by anybody. And so, I didn't feel that way. Eventually, she's not making any of these things. She had to agree to not do that. But it took some negotiating on the part of my lawyer and her lawyer to get that done.

I asked Corrine about the terms of her business partnership agreement and how helpful they were, if they were helpful at all. Her answer:

Well, our business contract was really not well done. It was a terrible contract actually. We had it set out in the partnership agreement that we would mediate any kind of dissolutionment of the partnership, and she wasn't interested in doing that. She went straight to a lawyer, and the lawyer contacted me, and she decided that those designs were hers, the actual furniture shapes and designs. And some of them were.

But we did, for example, a Chilkat, a bed in a Chilkat design out of the headboard. She wanted to be able to use that. And the whole concept and design were done by me because Anislaga. And we'd done a Chilkat design table, and it was in a Vancouver magazine, and a man was reading it and he was familiar with Anislaga.

So he called us and commissioned a piece from that design. So the headboard was made like a Chilkat blanket, and she thought she had the right to use that, not the motif but the shape.

And I think in the end, in the end, she had to agree to it. But she really fought not to for quite a while. She had two lawyers engaged. And, in fact, my lawyer

said that if she wanted to, she could change it by 20 per cent; that's the standard for designs.

If you see a chair made by somebody, you can change it by 20 per cent and then it's yours.

But I think that for her, in the end, she knew that if she did it, there would be some serious implications for her as a designer and for the pieces she sold. So she wouldn't do it, which was pressure in a different kind of way.

One of the ways of effecting "a different kind of [pressure]" that Corrine speaks of would be to educate the galleries that sell the art, the lawyers who represent Kwakwaka'wakw artists, and the Canadian public. Such an education would include the importance of the *nawalogwatse*⁴ that are protected, the laws that protect them, and how and why they are intertwined. This idea of education fits the purposes of this paper in that educating the public is one process by which Kwakwaka'wakw property can be given its due respect.

The scene on the University of Victoria campus and Corrine's story set the stage for my paper and are examples of how Kwakwaka'wakw property and property laws are misunderstood or ignored by non-Kwakwaka'wakw people. By drawing on these two experiences, my knowledge and my family's knowledge, I aim to illustrate how one can fill a gap in the void of knowledge regarding Kwakwaka'wakw property. In weaving this picture, I have relied on my knowledge as shaped by my family, and I have followed our laws as I researched, wrote and edited this paper.

The purpose of this paper is to propose a theoretical yet functional contemporary governance system, based on Kwakwaka'wakw laws, for the protection of the Kwakwaka'wakw people's property. It is theoretical in the sense that it is one solution based on my knowledge, experience, and on what I was able to learn by conducting interviews. It is not, however, based on broader experiences and knowledge of, for example, my family as one unit, but, rather, on a fraction of that unit. Yet, at the same time, my suggestions are functional because they rely on principles and elements that have worked for our people. I will focus my inquiry for such a contemporary governance system on Kwakwaka'wakw customs as seen in *p'asa* (potlatch) both in my grandparents' time and in our day.

The principles that my weaving relies upon are illustrated in my reaction to the two examples I have given. You will come to know these principles as you read this paper. Songs and dances are owned and performed by a certain family and by certain members within the family that owns them. The owner

4. *Nawalogwatse* means "treasure" and includes songs, dances, coppers, boxes of treasures, regalia, names, crests, knowledge, stories and other types of property that are related to these.

may give permission to a non-family member or a family member to perform a song or dance. The owner determines the proper time and place to perform songs and dances either by the owner's family or by giving permission to another to do so. A person may only bear a crest or regalia that belong to that person's family; "family" includes extended family and family through marriage. A person may create or learn to create Kwakwaka'wakw art if they are a Kwakwaka'wakw person or have been adopted into, or perhaps married into, a Kwakwaka'wakw family.

If any of the rights under these principles come under dispute, then the proper mode for resolution of that dispute is through Kwakwaka'wakw traditions, which usually take place in our *gukdzi* (big house). There are ceremonies that Kwakwaka'wakw people have to acknowledge and resolve disputes. A key principle in these traditions is that our *ninogad* (knowledgeable people) be called upon to use their knowledge in determining the rightful outcome. Our *ninogad* are the proper people to resolve disputes because they are educated in Kwakwaka'wakw ways. It is therefore also one of my conclusions that education of our own people and of non-Kwakwaka'wakw people in our ways is important to preserving Kwakwaka'wakw property and property laws.

The property on which I focus is our *nawalogwatse/gigitsu* (treasure). This includes songs, dances, coppers, boxes of treasures, regalia, names, crests, knowledge, stories and other types of property that are related to these.⁵ Other types of property include *gukdzi* (our big house), village sites, and canoes; these are mentioned only briefly in section three of this paper. The reason that they are included there is that I originally intended to limit my discussion to "intangible property"⁶ or "personal property,"⁷ but, while conducting my research, I was quickly reminded of the interconnectedness of all property within our culture.

In the remainder of this section, I will describe my methodology for researching and writing this paper. My approach follows the principles that I have briefly identified. In the second section of this paper I describe Kwakwaka'wakw property, using Kwa'kwala terms that I learned during my interviews. I draw on my family as an example as much as possible to explain different types of property and how they are owned and handed down in Kwakwaka'wakw families. I then discuss some problems that have arisen with respect to use and ownership of Kwakwaka'wakw property. The third and final section weaves together the examples of property and of the

5. See pages 135-146, below, for a description of these types of property and examples of their ownership.

6. That is, "property that lacks a physical existence." *Black's Law Dictionary*, 7th ed., s.v. "property, intangible property".

7. That is, "any movable or intangible thing that is subject to ownership and not classified as real property." *Black's Law Dictionary*, 7th ed., s.v. "property, personal property".

ownership of Kwakwaka'wakw property with the principles that I identified above, and I explain how these principles are, or could be, applied today.

Research Design

In this section, I explain the boundaries of my paper and demonstrate my authority for undertaking this project. Specifically, my ancestor guide and table of Kwakwaka'wakw families confirm my authority as an insider. Along with being an insider, I am also an outsider in that I am not fluent in the Kwa'kwala language, I have been living outside of my community, and I have been educated in the Canadian school system. I recognize these limits and confront them in two ways. First, I have learned and shared Kwa'kwala terms and phrases that helped me to picture how to present my paper. Second, my interview participants and the subjects of the biographies that I use are my family members, which allows me to connect with my authority as an insider. Finally, my table of interviewees introduces the reader to the sources for the paper, along with the biographies I consulted, and illustrates that the scope of this paper is fairly narrow. That is, I do not suggest a governance system for property that would be recognizable or acceptable to every community of Indigenous people across Canada. Rather, the governance system illustrated here is a direct reflection of my particular sources, and is intended to serve to protect Kwakwaka'wakw property.

In *p'asa*, through rank, dances performed, songs shared, speeches made, food consumed and the gifts that are distributed, it is evident that we have reciprocal relationships of respect and responsibility to ourselves, to our families, to our nation, and to all Kwakwaka'wakw people. Each of these relationships includes interconnectedness to all beings and nature. Therefore, it is necessary to know who you are and where you come from.

With the importance of understanding rank in the Kwakwaka'wakw property system, I have formulated the following table based on my understanding of our nation. It illustrates who the current Kwakwaka'wakw families are, what nations they are from, and what nations each family originates from, which in few cases is the nation with which they are currently registered under the *Indian Act*. Each nation is entitled to various forms of property that will be discussed later, and each family within those individual nations is also entitled to other forms or types of property.

Nation & Place Name (ranking order)	Current Affiliation	Families (alphabetical order)
Walas Kwakiutl Tsaxis (Fort Rupert)	Kwakiutl	Knox
Qumoyoiy [Kwixa]		Hunt, Walas, Wilson, Whannock
Qwemkutes		

Nation & Place Name (ranking order)	Current Affiliation	Families (alphabetical order)
Gwitella [Kwixamut]		
Mamalikala' Mimkwamalis (Village Island)	Mamalilikulla- Qwe'Qwa'Sot'Em	Beans, Bell , Charlie, Dawson, Mountain, Puglas
Qwe'Qwa'Sot'Enox		Sewid
'Namgis Xwalkw (Nimpkish)	Namgis	Alfred, Cook, Cranmer, Dick, Knox, Rufus, Wadhams
Lawitsis Kalugwis (Turnour Island)	Tlowitsis Tribe	Smith, Speck, Matilpi
A'wa'etlala Dzawadi (Knights Inlet)	Da'naxda'xw / Awaetlala	Duncan, Glendale, Harris, Louie, Moon, Peters
Da'naxada'xw Tsadzis'nuk'wame' (New Vancouver)		
Ma'amtigila Itsikan (Estekin)		Matilpi , Wadhams
Musgamagw	Tsawataineuk	
Dzawada'enux Gwa'yi (Kingcome Inlet)		Dawson, Dick, Joseph, Lagis, Nelson, Wamiss, Willie
Ah'Kwaw'Mish (Wakeman Sound)		Wilson
Kwikwasut'inux Gwa'yasdams (Gilford Island)	Kwicksutaineuk/ Ah'Kwaw'Mish	Martin, Scow
Gwawa'enux Hegam's (Hopetown)	Gwawaenuk	Joseph, Williams
'Nakwaxda'xw Ba'as (Blunden Harbour)	Gwa'Sala- 'Nakwaxda'xw	Charlie, George, Henderson, Jacobson, Paul, Seaweed
Gwa'sala Takus (Smith Inlet)		Johnny, Walkus
Gusgimukw Xwatis (Quatsino)	Quatsino	Johnny, Nelson Wallace
Gwatsinux Oyagamla (Winter Harbour)		
Tlatlasikwala Xwamdasbe (Hope Island)	Tlatlasikwala	Humchitt, Ohmid, Wallace
Weka'yi Tsakawa'lutan (Cape Mudge)	WeiWaiKai	Assu, Billie, Chikite, Dick, Naknakin, Price, Wilson
Wiwekam Tla'mataxw (Campbell River)	WeiWaiKum	Henderson, Quocksister, Roberts
Comox K'ómoks (Comox)	K'ómoks	Frank, Hardy, Everson

Table 1: Kwakwaka'wakw Nation Names, Places and Family Affiliations⁸

8. U'Mista Cultural Society, online: "The Kwakwaka'wakw Tribes" <<http://www.umista.ca/kwakwakaw/tribes.php>>; Robert Galois, *Kwakwaka'wakw Settlements, 1775-1920: A Geographical Analysis and Gazetteer* (Vancouver: University of British Columbia Press, 1994). Edited with the help of interview participants, including Harry Bell, Richard George, Colleen Hemphill & Mabel Knox. The bolded family names are the families from which I descend.

My project is about who I am and where I come from in that I will be sharing Kwakwaka'wakw laws through our *p'asa* from the perspective I have learned through my family's perspectives. The Kwakwaka'wakw perspective is mine as a Kwakwaka'wakw person, and the laws are those that I have come to know. I have shared illustrations from my community, where possible, to explain concepts. I have looked to my family for assistance and advice. I will share names and stories from my own experiences that illustrate the importance of my people's relationship to the land, the animals, and to nature.

Language is another essential part of who we are as Kwakwaka'wakw people, of our identity, of our culture and of our traditions. Kwakwaka'wakw, after all, refers to Kwa'kwala-speaking people. Therefore, to better understand Kwakwaka'wakw property, one needs to have a basic understanding of certain Kwa'kwala terms. My uncle Robert Joseph's (Uncle Bobby Jo) thoughts on the topic were shared at a language conference hosted by the First Peoples Cultural Foundation in 1996. His words were later shared in a story in the *Awa'k'wis*, a local Indigenous-run paper of the Kwakwaka'wakw, which has ceased publication; his words speak to the importance of our language and our laws:

Our languages are our source of power. Only our language can tell our history in a proper way; only language can tell of your destiny. [...]

Through language we learn our histories, the important original creation stories when the Creator marked our territories and gave us a language unlike any language in the world! Who had the right to take our language away? No one! [...]

Our language described the Creator, kinship, territories, our Indigenous law and everything in a way that has no comparison. [...]

White man has a different worldview, a different god, a different language, a different law and different values. First they took your god away; second, your land; third, your children; fourth, your language; and, fifth, they took your laws away. When you have no god, you have no spirit; when you have no land, you have no culture; when you have no children, you have no purpose; when you have no language, you have no soul and when you have no law, you are beaten down.

So you see, language is not a stand-alone function; it is a force that binds us. The Creator gave us a language for our own. Language equals power and power equals strength. If you can't speak your language, you can't practice culture. If you don't have a language, you are not a people. All power and

authority flows from our language. We must learn our language if we want to heal as a people. Language is our salvation.⁹

I agree with my uncle to an extent. Language loss is devastating. However, I feel that despite my inability to speak Kwa'kwala that I have learned our ways through other means. I agree that those means in no way match what I would have learned if I were a fluent speaker of Kwa'kwala.¹⁰ That is, I admit I am not fluent in Kwa'kwala, but I confront that lack of fluency by discussing Kwa'kwala terms. Therefore, where possible I have used Kwa'kwala terms that best explain what I am trying to say.

In addition to my language barrier, I came across other perceived walls as I worked on this paper. Such a feeling arose as I read a passage in *Decolonizing Methodologies*¹¹ by Linda Tuhiwai Smith that discusses the issue of researchers as outsiders versus researchers as insiders. I find myself in a grey area, much as Tuhiwai Smith did in her research. I am an insider as a family and community member, but I am also an outsider as a university student conducting research.¹² I am from Kwakwaka'wakw territory and grew up in Kwakwaka'wakw territory, but I have been away at school for so long now that there are many people who do not know me.

This makes me wonder: Who has the better vantage point from which to research—the insider or the outsider? An outsider brings objectivity, so academia would have us believe. But that so-called objectivity comes with a history, with boundaries and with prejudices. The history, boundaries and prejudices create and phrase the research questions and methodology. This is dangerous. It leaves the heart of the Kwakwaka'wakw at the outer shell. Even if the researcher makes an effort to access the core of Kwakwaka'wakw laws, the prejudices attached to their “objectivity” can still stand in their way.¹³

In recognition of myself as an outsider and from a desire to connect with my authority as an insider, I rely on my family to help me address the issue. My belief is that the solutions to these property and knowledge concerns are to be found in Kwakwaka'wakw customs. To convey this as best I could, I sought the help of some of my community members—my family. While I think that the answers lie within our community, I also know that the views vary from family to family and, therefore, the perspective I share comes from my family that I have had the most contact with thus far: Bell, Hunt

9. Colleen Hemphill, “Language Crucial for Survival of First Nations” *Awa'kwis* “A Place to Sit and Talk.” (15 October-15 November 1996) 7.

10. Some of the additional words do appear in my original thesis.

11. (New York: Zed Books, 1999); see passage on page 92.

12. *Ibid.* at 137-140 and 196-199.

13. For example, see Ronald P. Rohner & Evelyn C. Rohner, *The Kwakiutl Indians of British Columbia* (New York: Holt, Rinehart and Winston, 1970) whose published words, from my reading of them, held on to prejudices they came into our community with.

and Wilson. I only hope that my suggestions can be the basis for wider discussion, both within and outside of my communities.

I also chose to rely on biographies of Kwakwaka'wakw individuals despite the obvious problems with biographies because I am familiar with the culture from which they spoke to the biographer.¹⁴ These people include Charles Nowell, Agnes Alfred, Harry Assu and James Sewid.¹⁵ I have family ties to James Sewid and Agnes Alfred, and have relied more heavily on their biographies for that reason. Each of these biographies offers insight into *p'asa* and the laws of *p'asa* through the personal experiences of these individuals and their families. At the same time, some of these accounts conflict with my family's histories. This backdrop allows me to explain what property has come under multiple claims of ownership. I can then explain from my understanding, and with my interview participants' teachings, how the question of ownership would be resolved. Finally, I can pull principles from my understanding, which help to resolve disputes about property, not only within our own Kwakwaka'wakw communities but also as against the outside world.

My *ha'se* (breath of life) comes from more than just my immediate family; people's lives are influenced by more people than those who gave them life. It is by paying attention to your surroundings that you *tlikilala* (remember to carry yourself with care in everything that you do); only by giving credence to others do you actually *tlikilala*. In the form of a table, I will summarize who my interview participants are, how I am related each of them, and how some of them are related to one another. To help follow the table, I will share the ancestor guide I used in the pre-pendices to my Master of Arts thesis (see Figure 1).

The people that I consulted are also descendants of particular branches of my ancestor tree. The following figure and table explain how I am related to the people that I consulted, which includes both my interview participants and the subjects of the biographies.

14. An obvious drawback to the use of biographies is that they are crafted from the perspective of the author and not necessarily reflective of the subject's personality or experiences.

15. See Clellan S. Ford, *Smoke from Their Fires: The Life of a Kwakiutl Chief* (USA: Yale University Press, 1941); Martine Reid, ed., *Paddling to Where I Stand: Agnes Alfred, QwiQwaSutinuxw Noblewoman*, trans. by Daisy Sewid-Smith (Vancouver: University of British Columbia Press, 2004); Harry Assu & Joy Inglis, *Assu of Cape Mudge: Recollections of a Coastal Indian Chief* (Vancouver: University of British Columbia Press, 1989); James Spradley, *Guests Never Leave Hungry: The Autobiography of James Sewid, a Kwakiutl Indian* (New Haven and London: Yale University Press, 1969).

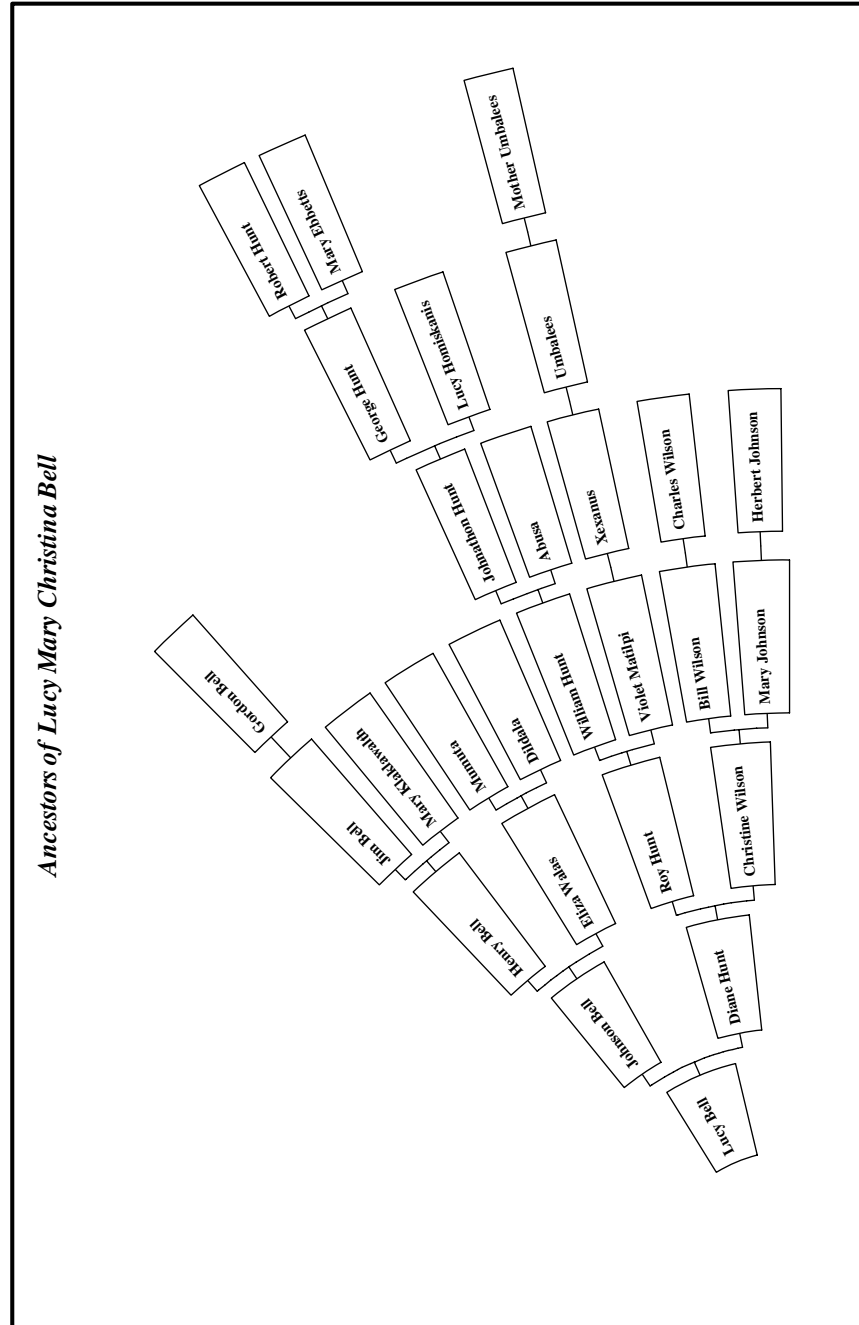


Figure 1: Guide to ancestors of the author

Name	Relationship to Author and Other Participants
Peter Knox	Uncle / third cousin once removed (Hunt family line)
Mabel Knox	Wife of Pete Knox (Hunt family line) AND first cousin of Harry Bell
Dorothy Wasden	Third cousin once removed AND sister of Pete Knox (Hunt family line)
Harry Bell	Uncle / first cousin (by adoption); first cousin twice removed (biologically) (Bell family line)
Lily Bell	Cousin / first cousin once removed (by adoption); second cousin once removed (biologically) (Bell family line) AND daughter of Harry Bell
Ann Brotchie	Third cousin three times removed (Great-grandmother Violet Matilpi's family)
Lucy Smith	Third cousin three times removed (Great-grandmother Violet Matilpi's family) AND sister of Ann Brotchie
Colleen Hemphill	Fourth cousin twice removed (Great-grandmother Violet Matilpi's family) AND daughter of Lucy Smith
Paddy Walkus	Elected Chief of Gwa'Sala-'Nakwaxda'xw Band
Patricia Dawson-Hunt	Aunt (her mother, Ethel Dawson, née Wilson, and my grandmother, Christine Hunt, née Wilson, were sisters); her father's (James Dawson) grandfather (Tom Dawson) and my grandfather (Henry Bell) were first cousins who referred to each other as brothers / first cousin once removed (Wilson family line) AND third cousin (by adoption); third cousin twice removed (biologically) (Bell family line) AND wife of first cousin twice removed (Hunt family line)
Edith George	Grandmother / first cousin (by adoption) (Bell family line); grandmother (biologically) AND first cousin of Harry Bell
Richard (Rick) George	Uncle / first cousin once removed (by adoption); uncle (biologically) AND son of Edith George
Richard (Dick) Dawson	Uncle / second cousin once removed (by adoption); second cousin three times removed (biologically) AND second cousin once removed of Harry Bell and Edith George AND great-uncle of Patricia Dawson-Hunt
Corrine Hunt	Cousin / first cousin twice removed (Hunt family line) AND second cousin once removed of Pete Knox and Dorothy Wasden (Hunt family line)
James Sewid	Uncle / first cousin once removed (by adoption); first cousin three times removed (biologically) (Bell Family line) AND first cousin once removed of Harry Bell

Table 2: Sources consulted and their relationship to the author.

Methodology

My sister (cousin) Rachel Hunt is the inspiration for my methodology. I have asked for and received her permission to share a recent learning experience of hers. Rachel learned how to Chilkat weave under the instruction of Willie White. Rachel's finished product was a small bag; the design that formed the outside front of her bag is a spiritual Chilkat rendering of a human profile (see Illustrations 1, 2 and 3). Rachel worked on a loom to which a leather strand was attached; from that leather strand hung twenty-eight natural colour strands of yarn, in seven groups of four. It was between and through these strands that she wove.

The weavers had our grandmother Anislaga (my great-great-great grandmother Mary Ebbets of Tlingit ancestry) in the room with them as a reminder that only good energy is allowed in the weaving environment. At the end of each day, the work has to be covered so that it will not be exposed to anything during the weaver's absence. If you speak ill of your art, it will react in kind. For example, if you are in a bad mood and not focusing, it may become impossible for you to get past a certain point in your weaving. If you are too tense as you work, it will show in your piece, but if you remember to maintain good energy, that energy will be evident in your product. I held an aunt's piece after its completion and the warmth and loving energy she put into it could be felt in the weaving.



Illustration 1: Rachel's project in progress, day 9 [Photo: Lucy Bell].

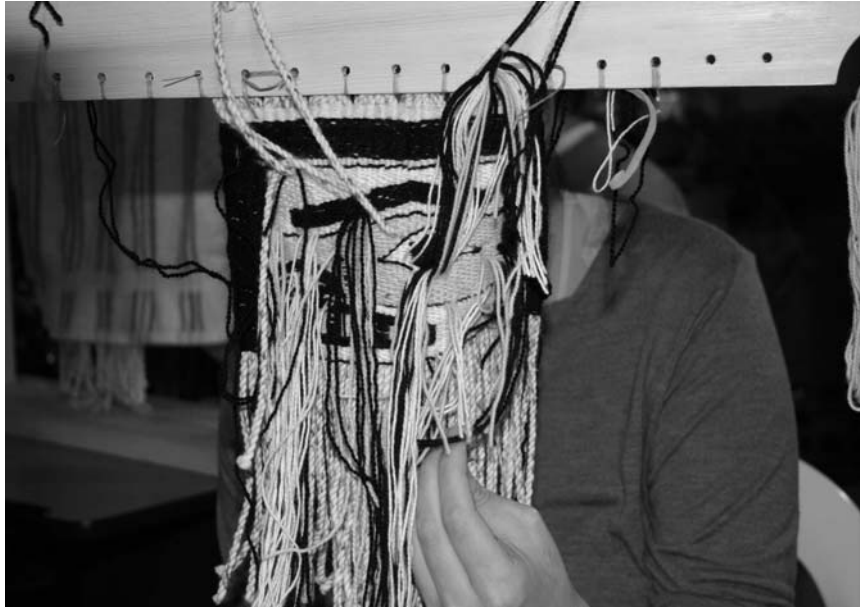


Illustration 2: Back view of Rachel's project, day 12 [Photo: Lucy Bell].



Illustration 3: Rachel's weaving is finished, but still on the loom [Photo: Lucy Bell].

In my weaving project, I am considering the different types of narratives used for my thesis to represent the different colours in my weaving. These narratives are those found in my interviews, in biographies and other written sources used, and in my own life experiences. My loom, leather strand and twenty-eight strands through which I have woven are my research questions that I set out to answer. While I have worked with three types of narratives, each type is complex and required the use of many strands of that colour. I too have had to remember when to bring strands in, how many to work with at a time, and to allow my work to speak to me and help me to complete it.

There are Kwa'kwala words and concepts that have guided me in ensuring that healthy energy is at the heart of my thesis, just as my sister Rachel had to do as she wove. The major overlying guide that I have used is called *ha'se* (breath). My uncle Richard George explained to me some time ago that *ha'se* is the breath of life that we receive from our ancestors; in Rachel's learning experience, the focus was on our great-great-great grandmother Anislaga (Mary Ebbets). This breath of life reaches up through the generations, but, for my focus, I have tried to look at the families of my grandparents as a starting point; it will become evident that a close focus such as this is not possible because references to my grandparents inevitably reach farther back through the generations. I used *ha'se* to guide me to potential interviewees and then asked those people for suggestions as to who I might consult in addition to them.

Keeping in mind ancestors and future generations, it is also important to remember to carry yourself with care in everything that you do. This is *tlikilala*; I believe it is emphasized in families of high rank and especially of the eldest children in those families.¹⁶ You have to remember to *tlikilala* in order that the head of your family will not have to host a *digita* to wipe away any shame caused by somebody to you, or that you inflict.¹⁷ Jimmy Sewid and Axuw (Agnes Alfred) refer to this in their biographies, this need to be careful or else you'll be in trouble because your dad will have to *digita* for you.¹⁸

As I sat and thought about the concepts that would guide my methodology, which are found in Chilkat weaving, *ha'se* and *tlikilala*, I couldn't help but think about reading cases, such as *Delgamuukw*,¹⁹ that rely upon the telling of sacred traditions to an ungrateful audience that didn't appreciate their depth and importance. I think about how Justice McEachern was told sacred stories about the Wetsuwit'en and the Gitksan; these stories were shared by important and knowledgeable people from among the

16. Interview of Edith George & Richard George (31 January 2005) Port Hardy.

17. *Digita* is later described below at 137-138.

18. James P. Spradley, *supra* note 15 at 23, 48, 65; Reid, *supra* note 15 at 93-96.

19. See *Delgamuukw v. British Columbia* (1991), 79 D.L.R. (4th) 185, [1991] 3 W.W.R. 97 (B.C.S.C.), varied 104 D.L.R. (4th) 470 (B.C.C.A.), online: QL (B.C.J.) [*Delgamuukw*].

Wetsuwit'en and the Gitksan. The judge was carried through the ages and told of how the land and the people were important to one another. Then I think about how, with the symbolic stroke of a pen, he dismissed the importance of those stories.²⁰

This line of thought led me to ask myself whether it was appropriate to write my thesis and to centre it on my family's traditions. The concepts, rules, protocols, laws and what they protect are sacred, and the people who hold that knowledge know it for a reason and carry it with care. I have also had to work through my place in that larger picture. Was I, even as a Kwakwaka'wakw woman, just another outsider looking for knowledge that I was not entitled to know? Assuming I could come to know it, was I entitled to share it? Here I will explain how these issues were resolved for me, especially since the very topic I was researching had to do with protecting Kwakwaka'wakw *nawalogwatse* (treasured property)²¹ from outside encroachment.

Through my informal interviews with people in my home communities, I came to learn words such as *noxsola* and *ninogad*.²² *Noxsola* refers to a person of high rank, who, because of that rank, holds knowledge. *Ninogad* are people who hold sacred knowledge and who have a leadership role to play in our communities because they have acquired so much knowledge that they are considered to be wise. The fact that my *ninogad* were willing to talk with me assured me that I am not doing wrong. They were not only willing interviewees, but also excited about the work that I am undertaking in this thesis and adamant about its importance for our people, our families. As my reader, you are now equipped with different colours and numerous strands of those colours to understand my weaving project.

II KWAKWAKA'WAKW GIGITSU

Everything to this point has prepared me to share with you what my interviewees were willing and able to share with me. The information I am able to share at the moment is valuable to my interviewees and to me. It demonstrates and describes the importance of those laws to our people. I will

20. *Delgamuukw*, *ibid.*, McEachern C.J.; see also Antonia Mills, *Eagle Down Is Our Law: Witsuwit'en Law, Feasts, and Land Claims* (Vancouver: University of British Columbia Press, 1997).

21. Interview of Paddy Walkus (26 January 2005) Gwa'Sala-'Nakwaxda'xw Band Office; Interview of Richard Dawson (1 February 2005) Port Hardy.

22. Interview of Peter Knox, Mabel Knox & Dorothy Wasden (20 January 2005) Fort Rupert; Interview of Harry Bell & Lily Bell (22 January 2005) Port Hardy; Interview of Ann Brotchie, Lucy Smith & Colleen Hemphill (25 January 2005); Interview of Paddy Walkus (26 January 2005) Gwa'Sala-'Nakwaxda'xw Band Office; Interview of Richard Dawson (1 February 2005) Port Hardy.

share those laws by sharing and intertwining what my interviewees had to share with me.

I will continue by sharing a brief listing and description of what sorts of property our people may come to own and how ownership is or may be acquired. I will give a brief discussion of how our art became regarded as art. This will round out this part and prepare me to share how the information can inform a process for the protection and preservation of our property without relying on Canadian laws.

Kwakwaka'wakw Property and Ownership Explained

Before explaining ownership of Kwakwaka'wakw property, it would be helpful to understand a few Kwa'kwala terms. *Nunamgola* is a term used to refer to tribes or nations coming together to be one.²³ Chiefs use this term as a greeting when our people have come together to witness a *p'asa*. Differences are put aside to come together. My uncle Pete shared that he has his speaker ask people to leave if they bear any hostility toward him at that particular time. He said this is done to keep feelings properly respectful of the spiritual space of the *gukdzi* (big house where *p'asa* are hosted).²⁴

Nawalogwatse is a term commonly used to refer to all of a person's property: the land, the songs, dances, names, coppers, *etc.*²⁵ *Awinak'ola* also connotes property and refers to the land, the sea, the islands and the resources of each of those.²⁶ *Gigitsu* is another term meaning treasures, but which my uncle Richard Dawson told me refers specifically to the songs that one owns.²⁷ *Tlugway* refers to a supernatural gift or treasure including special abilities/powers, a house, songs, crests, dances and the paraphernalia that corresponds to that gift (usually a dance).²⁸ *Mayaxa* denotes the value of something; however, it means "precious" and that the thing in question demands respect.²⁹ This diversity in words connoting property should make two things evident. First, property covers a wide range of things, both tangible and intangible. Second, not only is it diverse, but the various types of property are inseparable; you cannot arbitrarily separate the land from its

23. Interview of Peter Knox, Mabel Knox & Dorothy Wasden (20 January 2005) Fort Rupert.

24. *Ibid.*

25. Interview of Richard Dawson (1 February 2005) Port Hardy.

26. Interview of Peter Knox, Mabel Knox & Dorothy Wasden (20 January 2005) Fort Rupert.

27. Interview of Paddy Walkus (26 January 2005) Gwa'Sala-'Nakwaxda'xw Band Office; Interview of Richard Dawson (1 February 2005) Port Hardy.

28. See Reid, *supra* note 15 at 7.

29. Interview of Paddy Walkus (26 January 2005) Gwa'Sala-'Nakwaxda'xw Band Office; Interview of Edith George & Richard George (31 January 2005) Port Hardy; Interview of Richard Dawson (1 February 2005) Port Hardy.

resources or from the stories or songs and corresponding dances that arise from them.

P'asa is what our people did to celebrate different stages of life. They are more commonly known as "potlatches," which in the Chinook jargon of the west coast means "to give away." This ceremony was used to celebrate birth, coming of age, marriage, initiation to one of the secret societies, or to mourn the death of an important person.³⁰ Each of these uses of *p'asa* has its own term in Kwa'kwala, but for my purposes, I will refer to all as *p'asa*.³¹

Tlakwa is a copper and it symbolizes the wealth of its owner.³² A copper bears a name and has a crest engraved in its face that relates to that name. At a *p'asa*, the hosting chief will display the copper that he is using for that ceremony, and the value of all gifts distributed and monies paid out at that *p'asa* are added to the value of the displayed *tlakwa*. Because they are a symbol of a chief's wealth, they are powerful objects.³³ If a chief is upset with another chief or a member of another chief's family, one way of announcing the upset is for the chief to cut a piece of his *tlakwa* and present it to that chief, or destroy an entire *tlakwa* by throwing it into the sea. The problem that instigated the cutting or destruction is explained at the time this is done. The chief receiving the cut piece of *tlakwa* then has to reciprocate, by cutting or throwing away one of his own *tlakwa* of more value, or by hosting a *p'asa*; such retaliation continues until one party gives up, thereby restoring peace.³⁴

My uncle Dick talked about disputes and mishaps and how coppers were used:

Well, if the title was given to you, you don't see it too much today, but there, when there was a mishap, breaking of copper was traditional, you know, to right the wrong. It was something that was used.

And if there was a dispute, cutting of a copper, then that chief would have to reciprocate, you know, respond to the challenge of the chief who cut his copper. So there was a lot of different little things that got included in.

Digita is a ceremony used when a chief has need of wiping away some shame or embarrassment caused to or by himself or a member of his family; it brings a sense of renewal to all people involved. This is a ceremony whose content varies from one family to another, as does *p'asa* in terms of the dances shown. But depending on the teachings of each family, a *digita* could

30. See Reid, *supra* note 15 at 122-128.

31. Interview of Ann Brotchie, Lucy Smith & Colleen Hemphill (25 January 2005) Gwa'Sala-'Nakwaxda'xw Reserve.

32. Interview of Harry Bell & Lily Bell (22 January 2005) Port Hardy.

33. See Reid, *supra* note 15 at 123-125.

34. Interview of Ann Brotchie, Lucy Smith & Colleen Hemphill (25 January 2005) Gwa'Sala-'Nakwaxda'xw Reserve; see also Reid, *ibid.*

be strictly a feast, a feast with the sharing of a celebratory dance owned by the hosting chief, a feast and multiple shared dances, or a ceremony conducted within a *p'asa* after acquiring the host's permission. My family's practice has varied, but the tendency is to have a feast without dances. Such a ceremony consists of naming the shame or embarrassment and talking it out via speeches by attendees. Resolution is met, and guests are given money in payment for witnessing the wiping away. Once the *digita* is done, the shame or embarrassment that was its cause is never talked about again because it has been wiped away and happy feelings are restored.³⁵

Tseka is the first part of a *p'asa*, as practiced today, and is recognizable by the fact that a woman enters centred within a large cedar bark ring, many feet in circumference, held at four places by chiefs. One of these chiefs cuts the cedar bark and it is distributed as headpieces to the guests.³⁶ To my understanding, the cedar bark headpieces symbolize that the people are in the cedar bark ceremony in which acknowledging our ancestors and those that have passed on is included. The dances and masks shown during this portion of a *p'asa* are shown in a very serious manner.³⁷

There is a second portion to *p'asa* that is used today. This is known as *tlasala* or the peace dance, which in earlier times was never performed in the same part of the ceremony as the *tseka*.³⁸ Dancers file out and line up to dance in front of the singers. They are clothed in button or Chilkat weaved blankets, according to whether the family has the right to use the Chilkat blanket, and a headdress topped with eagle down feathers that will fall as the dancers move. Attendants accompany the dancers, help those wearing heavy masks, and will mimic one of the dancers until that dancer leaves through the main entrance. This exiting dancer then "dies" and his spirit returns in the form of a dance. My understanding is that the eagle down that spreads through the *gukdzi* is symbolic of the peace the host and his guests have come to feel through the *tseka* ceremony either with the death they are mourning or the person that has been initiated into a society.

There are rules regarding *p'asa* that should also be explained before I go into describing property. They address how a *p'asa* is brought together, what

35. Interview of Harry Bell & Lily Bell (22 January 2005) Port Hardy; Interview of Ann Brotchie, Lucy Smith & Colleen Hemphill (25 January 2005) Gwa'Sala-'Nakwaxda'xw Reserve; Interview of Richard Dawson (1 February 2005) Port Hardy; upon reading draft five of my thesis, my uncle Rick clarified that the wiping away of shame was to restore happy feelings, and later, upon reading an edit for publication, he added that it brings the feeling of renewal.

36. Interview of Paddy Walkus (26 January 2005) Gwa'Sala-'Nakwaxda'xw Band Office; Interview of Patricia Dawson-Hunt (27 January 2005) Gwa'Sala-'Nakwaxda'xw Band Office.

37. *Ibid.* and editing comment of Colleen Hemphill.

38. Interview of Paddy Walkus (26 January 2005) Gwa'Sala-'Nakwaxda'xw Band Office; Interview of Patricia Dawson-Hunt (27 January 2005) Gwa'Sala-'Nakwaxda'xw Band Office; regarding it not being performed at same ceremony as the *tseka*, see Reid, *supra* note 15 at 132-135.

can happen at a *p'asa* and what functions can or cannot be done at the same time. For example, if you are mourning the loss of a family member and conducting a marriage, these two different types of celebration cannot be done on the same day during the same function.³⁹ Only the chief can call the people together for a *p'asa* and in my grandfather's time, he did so by visiting the different villages to invite hereditary chiefs.⁴⁰ When he did this, the chiefs at these villages would gather items together for the inviting chief to give away at his *p'asa*, thereby helping him host the important ceremony.⁴¹

A family who wants to host a *p'asa* approaches the head of their family to ask him to call everybody together and plan a *p'asa*. They cannot call the family together to host a *p'asa* without the head of their family.⁴² Our family was told by my grandfather Henry Bell that whenever we had a *p'asa*, we had to include our entire family, including my grandfather's nieces and nephews, and their families.⁴³ I understand this to mean that if you call together a *p'asa* without the head of your family, you are not properly respecting or honouring your ancestors, or thereby the laws regarding *p'asa*.

Types of Property

The different types of property that exist were succinctly described by Uncle Dick. In listening to him, I was reminded that we do not make a division between real property and personal property, or tangible and intangible property.⁴⁴ He first talked about property that comes with a chieftainship title, which includes *gukdzi* (houses) and village sites, but also includes means for transportation, *tlakwa*, dance regalia, songs, stories, dances, talking sticks; other things included are names, crests, "box of treasures," and the rights and histories intertwined with each of these different items. All of these types of property can be owned by a chief, but they are not solely owned by the chief; the family owns these things together, and the chief is responsible for both the family and the property. It is the means by which each piece is acquired and who else may or may not own them that vary. It is the chief's discretion as to whether rights to use any of these items are to be passed along in a dowry or to his first-born son. Some of them may also be exchanged, gifted or sold to other chiefs.

39. Interview of Ann Brotchie, Lucy Smith & Colleen Hemphill (25 January 2005) Gwa'Sala-'Nakwaxda'xw Reserve.

40. My aunt Pat shared with me the fact that this is what her father did when he hosted his *p'asa*, in interview of Patricia Dawson-Hunt (27 January 2005) Gwa'Sala-'Nakwaxda'xw Band Office.

41. *Ibid.*

42. *Ibid.*; Interview of Richard Dawson (1 February 2005) Port Hardy.

43. Interview of Edith George & Richard George (31 January 2005) Port Hardy.

44. Interview of Richard Dawson (1 February 2005) Port Hardy.

Having listed some different items that come to be owned, I will now share how they come to be owned. I will draw on what my interview participants were able to share with me about my grandfather Henry Bell. For some of these types of property, I will share what my grandfather came to own, how he came to own them, and how he chose to transfer that ownership. Where I cannot draw directly from my grandfather's life, I will give examples from elsewhere.

Gukdzi and talking sticks are owned by chiefs, and they share them as they see fit. Ownership of *gukdzi* is not something that could be bought, nor could you buy ownership of a talking stick because that is something that bears the crests of your family.⁴⁵ My grandfather Henry Bell owned two *gukdzi* that he received when his chieftainship was passed on to him. One of those was called *Litlil*, and my family could not remember the name for the other house. *Litlil* means wide, denoting big space.

A talking stick is particular to a chief and contains the crests of the lineage of his chieftainship, which in turn have the stories of how each crest came to be and how that particular chief came to possess it.⁴⁶ Therefore, a talking stick is an item that can only belong to a chief; it cannot be bought by anybody, although the making of it may be commissioned. For example, my uncle Richard Dawson's talking stick contains at the top, *tsimasaxyu*; second, a wolf that is the crest of the Musgamukw people; third, the whale that is a crest that belongs to our family (Bell); and, at the bottom, the *sisiutl* (double-headed sea serpent), which is another crest owned by our family, but which is also a widely-owned crest.⁴⁷

My uncle Jimmy Sewid (my grandfather's nephew) describes a talking stick gifted to him by our uncle Tom Dawson (my grandfather's first cousin), using our uncle's words, in his autobiography:

This talking stick represents your crests on your mother's side and your father's side. I want you to take this talking stick and use it whenever you think you can.

The first crest at the bottom is Tsunuqua who was a giantess. This is the crest of the Temltemlels clan from your mother's side. Temltemlels was the first man of that clan and he had the supernatural power to turn into the Tsunuqua. The second crest is Tselkamai which means "owner of the cedar bark dances." He was also a great man with many supernatural powers. The next one is the double-headed serpent Sisiutl, and I have put it on this talking stick because it represents the strength of the Kwakiutl people. The next one is the Cedar Man. In the early days when the people heard the flood was coming, he went inside of a big hollow cedar log and after the flood he came out. The next one is

45. Interview of Richard Dawson (1 February 2005) Port Hardy.

46. *Ibid.*; see Reid, *supra* note 15 at 38, 42.

47. Interview of Richard Dawson, *ibid.*

Yakatnalas which means "The Whale" and comes to you from your father's side. The next one is Qolus and that is the same as Odzistales which means "he is so big that he can hardly move around." You have that name through your grandfather Aul Sewid.

[Jimmy Sewid responds in his own voice] I thank you from the bottom of my heart because this will give me more strength in what I am doing.⁴⁸

This excerpt demonstrates how important a talking stick is to a chief and how he is supposed to use it. As any other paraphernalia of *p'asa*, a talking stick is something used in the *gukdzi* in conducting business, and only a *p'asa* chief has that right. Therefore only a *p'asa* chief has need of a talking stick. The excerpt also shows that other chiefs who see chiefly qualities in somebody who has the right, but has not exercised that right, can take it upon themselves to give the other a push and incentive to step up.

Village sites are owned by a chief and can be shared by him with whomever he sees fit, which is usually family.⁴⁹ My uncle Dick explained that each nation had rights to sites near or at the sites of other nations, which gave them access to resources not available at their main site(s).⁵⁰ My uncles (Harry Bell, Richard Dawson and Pete Knox) all said that these sites were actually quite openly shared; no permission was necessarily required before somebody could use it for its intended purpose(s). What was required was that you give respect to the site and its resources, only use what was needed, and make sure to leave some for others that would come afterwards.⁵¹

The Mamalilikulla people had such sites at Lizard Point on Malcolm Island and Lulu Island Pass on the north end of Hanson Island where they wintered. Lizard Point had many food resources to offer, including clam beds, halibut and fruit trees, with access to the sun to dry these foods. These sites bear marks that show that they have been inhabited by Indigenous peoples of the area. For example, at Lizard Point there is a rock with a carving on it, which is perhaps a copper.⁵² Other sites that the Mamalilikulla people have claim to include sites at Gilford Island, Turnour Island, Beaver Harbour, Bond Sound, Knight Inlet, Cormorant Island, Harbledown Island, Thompson Sound, Crease Island, Swanson Island, Compton Island and Cracroft Island; details of the claims made and where to find further details can be found in Galois' *Kwakwaka'wakw Settlements*.⁵³

48. Spradley, *supra* note 15 at 215; see 214-218 for a full story of why he was given a talking stick and how he set out to use it shortly after having received it.

49. Interview of Richard Dawson (1 February 2005) Port Hardy.

50. *Ibid.*

51. Interview of Peter Knox, Mabel Knox & Dorothy Wasden (20 January 2005) Fort Rupert.

52. Interview of Richard Dawson (1 February 2005) Port Hardy.

53. *Supra* note 8 at 154-168; see the Gazetteer portion for reference to sites owned by other Kwakwaka'wakw Nations.

Tlakwa is also a piece of property that can only be owned by chiefs but can be transferred in a dowry. They can be bought. However, because they can only be owned by chiefs, only a person with a chieftainship title may purchase and own *tlakwa*.⁵⁴

My grandfather owned many *tlakwa* and without access to his journal that records this, my family could not remember the names of all of them. However, the most valuable is one that he owned with his brother (cousin) Tom Dawson; its name is *lubitila*, which describes the fact that when you give a *p'asa*, you give everything in your house or you empty your house.⁵⁵ *Lubitila* is referred to in Appendix D of *Paddling to Where I Stand*. There, it is recorded that my grandfather chose to give *lubitila* in a dowry to Lorne Smith, who married his grandniece Daisy Sewid-Smith.⁵⁶ The story of *lubitila* is difficult to pin down, but I understand, as my grandfather is recorded as saying in Appendix D, that he owned it with his cousin Tom Dawson, but that he never did give it away. Despite how the dowry transaction is recorded in *Paddling to Where I Stand*, I believe that because there was co-ownership of the *tlakwa*, my grandfather could not, and therefore did not, outright give *lubitila* in the dowry to Lorne Smith. After my grandfather's death, *lubitila* disappeared but made an appearance at somebody else's *p'asa* where the host family claimed it as their own. Unfortunately, until my family hosts its own *p'asa* or records their understanding of the truth of *lubitila*, the other stories, recordings and claims made in *p'asa* will be the only truth known.

The reason for this reluctance may be a common understanding that our family was told by my grandfather that he had hosted enough *p'asa*, and therefore that our family did not need to host any more. However, this contradicts his statement that if we do host a *p'asa*, we have to include our entire family. Another reason for this reluctance might be the costly nature of doing so. Yet, when you consider that the responsibility does not fall on the head of the family alone, but on the entire family, this concern should also be alleviated.

Canoes, as means of transportation, are items that can be owned by anybody. As such, they can be bought and sold by anybody, handed over in a dowry, given as gifts at a *p'asa* or transferred at time of chieftainship transfer. There were different types of canoes in earlier times, such as ceremonial, work, travelling and war canoes;⁵⁷ Axuw says there were two types, the regular *x^wak^wan'a* and the war canoes, called *mənğa*.⁵⁸

54. Interview of Richard Dawson (1 February 2005) Port Hardy.

55. Interview of Harry Bell & Lily Bell (22 January 2005) Port Hardy.

56. Reid, *supra* note 15 at 207-226, especially see 215-217, 223.

57. Interview of Richard Dawson (1 February 2005) Port Hardy.

58. Reid, *supra* note 15 at 90.

Gumgumdum (songs)⁵⁹ are owned by a chief. They could be bought, transferred in a dowry, or handed down in title transfer.⁶⁰ Songs used to be commissioned for creation. The song would reflect the experiences of the person commissioning the song. My aunt Mabel Knox explained it by saying that songs are the dances, and the story told in the song is reflected in the dance.⁶¹ This tradition was lost for some time while there were no song composers. However, William Wasden Jr. has guided song composition. He does so by consulting the person a song is for, the person's friends and knowledgeable elders. One such song was composed for my uncle James Walkus,⁶² and another was composed more recently for Ethel Alfred, an elder who passed away.

Dances are performed for people to witness. They demonstrate a spiritual connection to stories enacted in the dances. Those stories are owned by families descending from the person whose story is told, whether that is an animal's or a person's experiences. Dances could be handed over in a dowry. They are owned by a family and could not be bought.⁶³ Dances are kept in a family's box of treasures. This box in itself is another type of property; while the family owns it, the chief is its guardian and it cannot be opened to be demonstrated without the chief being present or without the chief's approval.⁶⁴ Each box of treasures has its own name and contains all of the dances and the required regalia and paraphernalia for its performance.

My grandfather Henry Bell's box of treasures contains almost all types of dances possible and only lacks the animal kingdom.⁶⁵ Our family performed the dances contained in this box at the memorial *p'asa* held to complete the mourning process for my grandfather in 1987. The program included *hama'ca* / wildman (performed by Johnson R. Bell, Hilikamegalis); *hiligaxste* / woman who tames the hama'ca (Roberta Quocksister Latimer, Hiyalikila); woman *hama'ca* / wildwoman (Joye Walkus, K^wənwatəlagid^zəm); *nutcistəlat* / fire dance or man who is always trying to touch the fire (Johnson E. Bell, T'et'isnəq^wala); *həmsħəmsd̥as* (Edith George, Təyunəq^wala); *q'uminəwağas* (Verdeen Bell, Gəlgəlduk^wila); *gəlalətid* (Maggie Bell, Məlidi); *m'am'aq'a* / person who causes or heals death (Julie Smith, Nəwalak^wid̥'i); *həwinəlat* (John Powell, Winidi); *lalutəlat* (Eliza Speck, Luṭəyalis); *n'əla* / swan dance (Samantha Bell,

59. Interview of Peter Knox, Mabel Knox & Dorothy Wasden (20 January 2005) Fort Rupert.

60. Interview of Richard Dawson (1 February 2005) Port Hardy.

61. Interview of Ann Brotchie, Lucy Smith & Colleen Hemphill (25 January 2005) Gwa'Sala-'Nakwaxda'xw Reserve; Interview of Pete Knox, Mabel Knox & Dorothy Wasden (20 January 2005) Fort Rupert.

62. Franka von Specht, "James Walkus Honoured" and "Bighouse Celebration Honours J. Walkus" *Awa'k'awis* "A Place to Sit and Talk" (15 May-15 June 1996) 1, 7.

63. Interview of Richard Dawson (1 February 2005) Port Hardy.

64. Interview of Patricia Dawson-Hunt (27 January 2005) Gwa'Sala-'Nakwaxda'xw Band Office.

65. Interview of Henry Bell & Lily Bell (22 January 2005) Port Hardy.

?a?adoŋ); *qosalat* (Lloyd Walkus, ?ik'awigilak^w); *madəm* (Diane Bell, G?axstalas & Lucy Bell, K^wən^walog^wa); *x^wix^wi* (John Henry George, Hiłəmas & Kerry Batsoulas, K^wa?elaskən); *gəla* / bear (Melvin Bell, Ti'əlawilila & Brian Walkus, Tlaliłəlas); *g^wawina* / raven (Richard George, Hixs?alisila); *d^wunuq^wa* (Norman Bell-Flanders, Dzunuq^wamalis); and *holikəlat* / head dancer in the *tlasala* (Harold Powell).⁶⁶

My aunts who were still with us at the time of the memorial met with family members to determine who would inherit the rights to perform certain dances. It is evident to me that they tried to follow my grandfather's teachings and included as many members of different branches of his family as possible. Now when our family has other *p'əsa*, each of these people are expected to perform these dances, and when they cannot, somebody will *mukstoy* (stand in for them), and an announcement to that effect is made.

The required regalia and paraphernalia include masks, rattles, whistles, cedar rings and button blankets. These used to be stored away in the box and held in a place for safekeeping. They were either destroyed or hidden away so that only the rightful owners used the contents. These, like dances, are physical symbols of a spiritual connection that transcends time; it reaches back in time to ancestors and forward to future generations. Today, each person carries his/her regalia or stores it with a central family member.

Names for people who do not hold chiefly titles used to be handed down through dowries, and chiefly titles were handed down through transfers of chieftainship title.⁶⁷ A title-holding chief has a *gigəxlēy* (a *p'əsa* name or nobility name), and has the responsibility of ensuring that all of the babies born to the family receive names at the different stages of their lives.⁶⁸ A chieftainship title is passed down through the male line to males,⁶⁹ and where this is not possible, the title can be handed to a female child or grandchild of that line,⁷⁰ or can be handed down to a female in a dowry for her future male children.⁷¹ The "heir" of a chieftainship is normally announced during the lifetime of the holder of it, and that person moulds the

66. Daisy Sewid-Smith & James Sewid, "Sewid Potlatch Program" (Campbell River, British Columbia, 4-5 June 1987).

67. Interview of Richard Dawson (1 February 2005) Port Hardy.

68. Interview of Peter Knox, Mabel Knox & Dorothy Wasden (20 January 2005) Fort Rupert; Interview of Harry Bell & Lily Bell (22 January 2005) Port Hardy; Interview of Ann Brothie, Lucy Smith & Colleen Hemphill (25 January 2005) Gwa'Sala-'Nakwaxda'xw Reserve; and see Reid, *supra* note 15 at 131.

69. Interview of Harry Bell & Lily Bell (22 January 2005) Port Hardy; Interview of Richard Dawson (1 February 2005) Port Hardy.

70. Interview of Ann Brothie, Lucy Smith & Colleen Hemphill (25 January 2005) Gwa'Sala-'Nakwaxda'xw Reserve.

71. Interview of Peter Knox, Mabel Knox & Dorothy Wasden (20 January 2005) Fort Rupert, regarding handed-down title in a dowry, the handing down to be given to the next male in the line is my own understanding.

future holder; unless a *p'asa* is given to indicate otherwise, it is understood that the eldest son of the current holder inherits that position.⁷²

A few members of my Bell family line hold chieftainships; I will state them starting from the eldest grandchild. My uncle Harry was given the chieftainship of our grandfather *Mumuta*, which is *Walas Gayuklas*; he holds others, but this one comes most readily to him.⁷³ My cousin Henry Walkus holds the name *Udzistales*, which belonged to our grandfather Henry Bell before him. My brother holds the name *Six'walas* (travelling from place to place), but has not demonstrated that yet and cannot until my father has been gone for four years, at which time he should host a *p'asa* to mourn our father and to solidify his ownership of that title.

Whether other names held by my family members are nobility or common names, I am not certain. My great-grandmother Margaret Charlie (née Bell) held the name *Məlidi* that was given to her by her grandparents *Mumuta* and *Dildala*, of which an interpretation could not be given.⁷⁴ My aunt Dora Speck held the names *Tlawigi*⁷⁵ and *K'esugwilakw*.⁷⁶ My aunt Janet Powell also held multiple names, one of those being *Tlatlagwol*, a name now held by her eldest grand-daughter Jennifer Smith. My aunt Doreen Walkus holds the names *Tl'axtləlidzəmğa* and *Wadzadiliga* (from her mother Eliza Walas Bell). My uncle Norman Bell carries the name *Nixilagilaxw*. Other family names were given above beside the names of people who hold various dances for our family.

Crests strongly symbolize an historic bond to spiritual beings; there are crests that belong to families and that belong to a nation. For instance, the Bell family uses the whale, and the Mamalilikulla hold the *sisiutl* and the sun.⁷⁷ Each of these crests has an origin story that is represented by a physical rendering of it. This is true for each family and for each nation represented in Table 1 above. Crests are used on the various carvings and clothing used by Kwakwaka'wakw people, such as button blankets, masks, *xwatum* (dance screen), totem poles/house posts, dance rattles and other dance regalia.

Stories are owned by a family and are associated with the various other items a chief, family or nation can own. They are the means by which a family backs up its claim(s) of ownership. They are, therefore, the means of making a claim, but are also an item owned. When a chief, family or nation is making a claim to something, they must be able to tell its story, how it

72. Interview of Richard Dawson (1 February 2005) Port Hardy.

73. Interview of Harry Bell & Lily Bell (22 January 2005) Port Hardy.

74. *Ibid.*; Interview of Edith George & Richard George (31 January 2005) Port Hardy.

75. Interview of Harry Bell & Lily Bell (22 January 2005) Port Hardy.

76. Reid, *supra* note 15 at 137.

77. Interview of Harry Bell & Lily Bell (22 January 2005) Port Hardy.

came to be, and its lineage or, in other words, from whom it was passed along in order to arrive at the person making the claim.

Knowing how ownership actually takes place in our society is pivotal to understanding Kwakwaka'wakw property. When asked whether the Canadian system could develop laws to help us to protect these things, my uncle Pete responded, "Absolutely not." He said this because outsiders do not understand who we are or where we come from. Therefore, they do not understand where these things come from, or how intertwined they are with our everyday life, and without that, they could not possibly know how to best utilize or protect such property.⁷⁸ *Mamatlas* are ignorant of our customs.

If somebody is wrongly claiming any of these items, especially *tlakwa*, *gukdzi*, and chieftainships, the family disputing the claim should respond. This should not be done in the *gukdzi* during the *p'asa* where the wrongful claim is being made. It should be done at a separate *p'asa* hosted for that purpose or at a *digita*.⁷⁹ A separate function is preferable because only happy feelings are supposed to be in the *gukdzi* during any function; there cannot be words or feelings of anger. In order to ensure that the *gukdzi* is respected, each opposing claimant would react by hosting its own *p'asa* or *digita*. This would continue until one of the claimants caved and thereby chose to recognize the claim of the other.

You now understand what the different types of property are, how they come to be owned, and how that ownership is demonstrated and solidified. This is the starting point for my weaving project. These are my loom, my leather strand and my foundation strands of yarn through which the rest of my weaving takes place; these were the answers to my initial research questions.

Floodgates Opened and Cannot be Closed

Having shared the different types of property and how they descend, I would add that some of my interviewees see the floodgates as having been opened by the sale of our *nawalogwatse* and by having widely-shared Kwakwaka'wakw art. My aunt Patricia told me how upset her father was whenever he would walk into an art gallery and see Kwakwaka'wakw property, such as a mask, displayed, which in his earlier days was considered sacred and would never have been displayed in such a way.⁸⁰ While the floodgates critique has merit, I think that there are other relevant considerations. For instance, how did our *nawalogwatse* come to be

78. Interview of Peter Knox, Mabel Knox & Dorothy Wasden (20 January 2005) Fort Rupert.

79. Interview of Ann Brothie, Lucy Smith & Colleen Hemphill (25 January 2005) Gwa'Sala-'Nakwaxda'xw Reserve.

80. Interview of Patricia Dawson-Hunt (27 January 2005) Gwa'Sala-'Nakwaxda'xw Band Office.

exploited as they are? Is it really exploitation? Could it be that simply having our people's works recognized as art is a good thing? What sort of restrictions, protection or prohibition would we be seeking?

For a history of the decline in use of Kwakwaka'wakw art and then its revival, there are several books available, including *The Storage Box of Tradition* by Ira Jacknis.⁸¹ For the majority of my interview participants, this ease of availability of our traditions means that there is now no hope of restricting their uses and further exploitation. It is far too easy to pick up a book and mimic the art for there to be any hope of halting it now.

It is my understanding that our crests and stories became popular when museum programs commissioned masks, totem poles, *gukdzi* or button blankets, either as single new pieces or as replicas of aging items. The main person given credit for such a renaissance is Mungo Martin who was taught by people such as Chief George Walkus.⁸² Therefore their work is quite similar. Paddy shared the following with me:

I'll use an example. I think it was about '78; I went to the provincial museum and everything, and I seen it identified as my grandfather's—an eight foot long beak mask. The cards were there and everything; it was Chief George Walkus. But, somebody went in and re-identified, and now it's Mungo Martin, and Mungo Martin worked with my grandfather; he worked under him. So his work is the same as my grandfather's. So they re-identified it as his instead of my grandfather's. We don't know how that happened, but we're trying to find out how that came about. They deny that there were any changes, but a worker that we had that was looking for it did see that it was re-identified. So there are some changes like that, but we're aware of it, and we're trying to straighten it.⁸³

Through these museum programs wherein new items were replicated or created, the art became more widely practiced by Kwakwaka'wakw peoples, so much so that many people claim lineage to Mungo while ignoring that the other elements of their ancestry are also important.

When I look at where the artwork was revived, I am led to think about whether it was a true revival of tradition or merely exploitation of our people. It is not possible to come to a simple conclusion. Many people now make a living by producing masks, plaques, paddles, jewellery and totem poles for the world market. I would not deny them the opportunity to earn a living from a talent they have worked hard to learn and improve upon. But for some of our artists, it is difficult to make a living on this alone and

81. *The Storage Box of Tradition: Kwakiutl Art, Anthropologists, and Museums, 1881-1981* (Washington: Smithsonian Institution Press, 2002).

82. I learned of Mungo's training by Chief George Walkus in my interview of Paddy Walkus (26 January 2005) Gwa'Sala-'Nakwaxda'xw Band Office. For details about Mungo's work in revival of Kwakwaka'wakw art, see Jacknis, *ibid.* at 137-173.

83. Interview of Paddy Walkus, *ibid.*

galleries quickly exploit that difficulty by giving low payment while turning around and making a huge profit on the resale.

The right to produce and sell Kwakwaka'wakw art if one is not a Kwakwaka'wakw person is not straightforward, and there are varying strong opinions. I would agree with those who believe that only Kwakwaka'wakw people ought to be allowed to produce the artwork. With respect to non-Kwakwaka'wakw, there should be clear definitions set out by Kwakwaka'wakw people regarding requirements for a person to be allowed to produce Kwakwaka'wakw art. Art should be allowed to be used as a means of educating our people about the deeper meaning of the symbols.

This section has provided more strands of the colours that my interviewees and the biographical sources have provided to my overall project. The complexities and some of the abundance of opinions have been shared. Some of the weaving of these complex concepts has been done. We have a frame within which to work. We are now ready to complete the intertwining of colours and strands. In the final section, I have attempted to piece together these different colours and strands to provide principles upon which our laws and protocols respecting our *nawalogwatse* are based.

III SUGGESTIONS AND CONCLUSIONS

I can now finish weaving the strands together by pulling issues that can be drawn out from Corrine's story and the story I shared about the scene I came across at the University of Victoria. I would like to emphasize that this weaving—this intertwining of concepts of our culture and of our traditions—is my own opinion and rendition. There are multiple perspectives, not only within our Kwakwaka'wakw communities, but also within my own family. I have remained cognizant of my *ha'se* and my responsibilities and will do so in these remaining pages; I take full responsibility for the conclusions drawn. If in the decisions and conclusions that I have made I have misunderstood or misapplied anything, that is my responsibility and for it I apologize to my *ninogad* and ask for their patience as I strive to learn more.

How Could Our Traditional Laws Apply Today?

I would again like to emphasize that I am not looking to historical traditions here. What I am referring to is very much alive today and is how our living elders remember our laws; while they looked to people who have passed on for their knowledge, that knowledge is alive in them and changes have been tolerated over the years. Despite the attempt to wipe out our culture and traditions, or perhaps because of that attempt, our people have held on to

those teachings. I did not realize how much of these teachings I had actually learned over the years until I heard it being articulated to me in my interviews. Likewise, I would like to share what Paddy had to say about how his grandfather taught him and what he has observed:

And I've seen this a lot of times. Hey, with our people, they were able to, I mean, they just watched the young people, the activities and what they did. And then they'd share something pertinent to who they are, what they are. And when it comes down to, like, say, contemporary times, we can pull this together now; we can start.

I'm just really very amazed sometimes at the foresight our people had. They know one person won't be able to go with all this data and all this information together. So they do it with, say, a matriarch of the family, where the deal might be one can be a leader, or a patriarch, and be able to say, "This is your role; this is what you're going to do and how you're going to carry this over. You're going to cultivate this work of this chief, this leader, or this head of the household." And maybe a number of them were able to pull our people together that way. And we don't even know ourselves how they're doing it; they just do it because they know that they have the foresight. They just know that they have to teach these people in order to make something work. That's really interesting how they did this.

I'll go back to when I was probably five, six, years old. And I was amazed when I look back on it. I had a grandfather, George Walkus, that taught me a lot of subliminal teachings and I didn't even have a clue [until] thirty-four years old what subliminal was all about. But he knew at the time that he was teaching me. He'd have a pile of comic books; I don't know if this is any relation to this, but I wanted to touch into that a little bit of how they taught.

He'd have a pile of comic books in front of me and tell me stories and tell me legends, tell me my history. And I had to always acknowledge; I'd have to say "ah" or "um" each time he'd say. And I failed to do this; I was too into the comics and he'd give me a hook with his cane, a hook with his cane, and I'd have to acknowledge. So he was teaching me even though I was looking at the comics. He knew that I was picking up in the back of my mind something.

And he told me even then, "You're not going to need this until you're ..." and pointing to somebody about 50, one of our people that was about 50 years old, "You're not going to need it until you're that age." He said to me, "But you have to listen and you have to acknowledge." So, he did a lot of this kind of teaching.

So you may have experienced that with your elders somewhere along your life's line, you know; they do this. I just wanted to touch on that, you know, how much wisdom our forefathers had, how much foresight they had. They had

a vision of how much we're going to need to pull a lot of this together because they knew they weren't going to be here to do this.⁸⁴

This in itself demonstrates that the ways of the elders in Paddy's youth passed their ways on to Paddy's generation. They have now been adapted somewhat and my generation's teachers benefited from it and carry on in much the same fashion.

Principles from P'asa

P'asa is the forum for showing what your family's box of treasures contains; it is the forum for disputing claims of ownership, but, more importantly, it is a ceremony that demands respect. The dances, songs, regalia, paraphernalia, and other items shown during a *p'asa* command that same respect. Each of these aid in showing the crests and mythical beings to which a family has connection. Therefore, to my understanding, *p'asa* is the ceremony to which we need to look for laws that dictate how Kwakwaka'wakw property can and cannot be used.

I would like to discuss eight issues that I saw in sharing my observation and Corrine's experience in the first section. They are as follows: (1) Who has the right to perform a dance? (2) What are the customs around using songs? (3) Where is the proper place to share songs and dances? (4) Who can learn and teach Kwakwaka'wakw artwork? (5) Who can own Kwakwaka'wakw artwork? (6) What is the proper forum for resolution of ownership or other disputes? (7) Who has the capacity to resolve such disputes? (8) What role can education play and how?

Who Can Perform a Dance?

Only a family that owns certain dances has the right to perform those dances. Within families, there are people designated to perform the dances owned by the family. And when that person is unable to perform, somebody is appointed to *mukstoy* (stand in his/her place). The customs are pretty straightforward. Furthermore, there are dances such as the *hamatsa* and the *tlasala* that are not owned by many families. That makes it even easier to determine when somebody is going beyond his/her own or his/her family's reach. As individuals and as families, we should know whether or not we have the right to use a certain dance. As individual and collective nations, we should continue to hold one another to a high and strict standard, and

84. Interview of Paddy Walkus (26 January 2005) Gwa'Sala-'Nakwaxda'xw Band Office.

help to ensure that no individual or family *witsatla* (wrongly reaches into somebody else's box of treasures).

It was the *tlasala* that I witnessed being performed on the university grounds. I recognized the regalia and the dance. I can remember attending *p'asa* as a child and watching the men as they performed it. After the seriousness of the *tseka* ceremony on a previous day, it was fun to sit and watch as the attendants teased one of the dancers until he left, then sit there in angst wondering what masked dance that dancer's spirit was going to come back in. I grew up understanding that only men could perform this dance. It was not something that I could ever have expected to perform when I grew up. This has changed though, and I have performed the dance.

The importance of the dance was successfully conveyed to me even as a child. This is why it infuriated me to watch it performed for an audience as a spectacle. I was a part of a dance group that performed these dances for such audiences. There are dance groups that still do this today. When it is done with an educational element, both for the people in the dance group and the audiences for whom they perform, and the people performing the dances have rights in their family line to be doing so, then, in my opinion, the performance is acceptable. What is not acceptable is to see a non-Kwakwaka'wakw person at the centre of such a group. However, when dances are used in a way that breaches our traditions, elements mentioned later under issue number six (forum for disputes), *p'asa* would constitute efficient means of remedying the breach.⁸⁵

Customs Around Using Songs

I finally started to understand dances when I joined the Kwakiutl Dance Group where my aunt Gloria Roze taught us what the songs meant. When we did performances, she always introduced each dance by stating whose dance it was, whose song it was, how it had descended over time, and who she had sought permission from to use it for the Kwakiutl Dance Group. In a *p'asa*, when you use somebody else's song and dance from outside of your family, you demonstrate your respect and honour for that person by saying whose song it is and that you have previously asked for permission to use it at that particular time. We were taught this when, as Kwakiutl teens, we joined Gloria's dance group. Such respect and honour should always be bestowed.

Again, individuals and their families are responsible for knowing what they have the right to use, what they own and what is beyond their reach. Nations, individually and collectively, can help to ensure that the customs for use of songs are followed. Songs are an important element of dances; as

85. See the following section on pages 151-153, below.

Mabel said, "Songs are the dances."⁸⁶ Without the stories, there would be no song and without the song, there would be no dance.

Songs have their educational value for those Kwakwaka'wakw who don't speak Kwa'kwala, and to preserve these songs, it is important to record them. The U'Mista Cultural Centre has CDs available for purchase and each disc carries a copyright by U'Mista. Please forgive my digression and choice to refer to Western intellectual property law here. I understand that the copyright was likely used so as to protect the creation of the songs against the non-Kwakwaka'wakw world. But there are potential problems involved with the copyright. For example, as descendants of Henry Bell, what if my family decided to use one of the songs that has been recorded and copyrighted by U'Mista? To further complicate this scenario, consider also if another family challenged my family's descent from Henry Bell or challenged Henry Bell's ownership of the songs. In such a situation, copyright laws could be used to the U'Mista governing body's advantage. This brings decision-making outside of the regular circle, out of the *gukdzi*, and puts it into the hands of a somewhat foreign governing body.

Such an example reinforces how dangerous it would be for our people to continue to use the Canadian intellectual property rights system. Copyright protection endures only for the life of the author plus fifty years.⁸⁷ A primary question would be: Does U'Mista have the authority or capacity to undertake such copyright? If they do, what mechanisms are in place to ensure that the copyright is used as was originally intended? Even with these questions answered, there is the difficulty of the limited protection that copyright offers. For a general review of such problems, see the papers by Catherine Bell and Robert Howell at the website for the Project for Protection and Repatriation of First Nation Cultural Heritage in Canada.⁸⁸

Sitting at my computer thinking of these issues reminds me that we have two centres for displaying our culture in Kwakwaka'wakw territory. At the northern end of Vancouver Island in Alert Bay, we have the U'Mista Cultural Centre, and mid-island, at Cape Mudge on Quadra Island, we also have the Kwagiuth Museum. The Kwakwaka'wakw have these two museums as a result of the repatriation of the potlatch collection that was

86. Interview of Peter Knox, Mabel Knox & Dorothy Wasden (20 January 2005) Fort Rupert.

87. *Copyright Act*, R.S.C. 1985, c. C-42, s. 6.

88. Catherine Bell & Michael Solowan, "A Selected Review of Canadian Legislation Affecting First Nation Cultural Heritage", online: Project for the Protection and Repatriation of First Nation Cultural Heritage: Research Papers <<http://www.law.ualberta.ca/research/aboriginalculturalheritage/researchpapers.htm>> at 37-43; Robert G. Howell, "The Interconnection of Intellectual Property and Cultural Property ('Traditional Knowledge')" (Paper presented at the Continuing Legal Education Symposia, Morris J. Wosk Centre for Dialogue, Vancouver B.C., 16-17 July 2004) [unpublished; forthcoming as a part of Professor Catherine Bell's Project for the Protection and Repatriation of First Nation Cultural Heritage in Canada, online: <<http://www.law.ualberta.ca/research/aboriginalculturalheritage/index.htm>>].

taken in 1922 after Dan Cranmer's *p'asa*. The creation of two separate museums came from recognizing irreconcilable opinions as to how objects should be handled and housed.⁸⁹ Perhaps by recognizing the differing opinions and being respectful of those differing opinions, we could collectively decide how best to ensure the endurance of our songs for future generations.

Proper Place and Time to Share Songs and Dances

I have shared this as being the *gukdzi*. However, I would add that I have seen them performed outdoors, on the beach, in a forest clearing and from a canoe. To a certain extent, location may not be relevant. However, the key is that the person or people sharing them have authority to do so. For example, the person who performed the *tlasala* on the University of Victoria campus had no authority to do so, to my knowledge. There was no authority granted to sing the song, perform the dance, or to do either of those on Coast Salish territory where the University of Victoria is located. The authority comes from owning it or being given permission to use the song or dance by the person with ownership. I would add that there are times when even the authorized person cannot share dances. For example, with the death of a chief, the family of that chief is in mourning for one year and for that year cannot participate in dances; this is extended to four years for high ranking chiefs.

Who Can Learn, Teach and Sell Kwakwaka'wakw Artwork?

Life in our communities is difficult in itself, and opportunities to make a living above the poverty line are hard to come by. Therefore talents such as artistry need to be allowed to grow. My uncle Pete and most interviewees would not take that away from the artists, even though sharing crests in such artwork is contrary to the sacred nature of those crests and their stories.⁹⁰ However, limits should be in place to prevent non-Kwakwaka'wakw peoples from producing the works.⁹¹ This is a grey area for some and Corrine noted:

89. For a discussion of our differences from an outsider's perspective, see Barbara Saunders, "From a Colonized Consciousness to Autonomous Identity: Shifting Relations Between Kwakwaka'wakw and Canadian Nations" (1997) 22:2 *Dialogical Anthropology* 137 at 144-150.

90. Interview of Peter Knox, Mabel Knox & Dorothy Wasden (20 January 2005) Fort Rupert; sacred nature of artifacts from my interview of Patricia Dawson-Hunt (27 January 2005) Gwa'Sala-'Nakwaxda'xw Band Office.

91. All interview participants.

You know, it comes to, we were talking the other day about non-status Indians and, you know, the, who has the right to do something.

But, for me it's clear that First Nations people have the right to reproduce what is theirs, for commercial reasons and for family reasons. But there [are a] few people I know who are non-Native who I would accept as Native. And one of those was John Livingston, for example, so he would be in a fuzzy grey area. And I don't know that the law addresses those things.

And I know that some Native people wouldn't accept that either. But I know that John Livingston has lived among the Kwakiutl for most of his life. And knows about it in a way that is internal, and that's a part of him, rather than something that is intellectual. It's who he is, I think, which is important too.

It's not a black and white situation with non-Native artists. And then there [...] So I think it would be difficult to define those things.⁹²

Corrine agrees that Kwakwaka'wakw should definitely be permitted to participate in the art market. What became a fuzzy area for her was whether a person can become Kwakwaka'wakw without having been born Kwakwaka'wakw. She gave the example of John Livingston who has lived amongst our people for so long and is the partner of one of my cousins. Corrine shared that she would consider him to be Kwakwaka'wakw. Indeed, George Hunt, who was not Kwakwaka'wakw by birth, married into the Kwakiutl and became somewhat accepted as Kwakiutl through practicing Kwakwaka'wakw traditions.

Other interview participants shared Corrine's perspective regarding Kwakwaka'wakw people's capacity to fully participate in the art world, but did not touch on the issues of membership and belonging that Corrine spoke of. As I explained above, there were some who felt that to try to limit anything now at all would be a waste because the floodgates have already been opened; the spiritual works should never have been displayed or sold in the art market. What people would support and suggest is that some sort of system be set up to demark authenticity so that non-Kwakwaka'wakw can be prevented from exploiting these spiritually imbued works. This system of authentication might take the form of a stamp of authenticity with a website or some database that shows which artists are actually Kwakwaka'wakw.

Who Can Own Kwakwaka'wakw Artwork?

Corrine spoke of how she feels comfortable doing certain pieces of art for certain people because they have shared with her how they come to own that particular crest. Corrine's story, therefore, also illustrates that certain people

92. Interview of Corrine Hunt (4 February 2005) Fort Rupert.

can own the art form of our *nawalogwatse*. Other illustrations come to mind as I think about why this is an important topic for discussion.

I can remember my mom preparing to make my sister's prom dress. My sister wanted something that showed who she is and where she comes from. My mom planned to put a crest on a black dress, and to determine what limits there were on my sister's choices, my mom asked my uncle Harry what crest my sister could use. The answer was an easy one. She had the right to use any crest that she wanted. Okay, not so easy. But my mom's actions demonstrate that there are limits as to what crests can be used by any given individual or their family. In other words, not everybody can use or own art depicting just any crest that they desire.

Forum for Disputes

I am referring to disputes regarding the proper use and descent of Kwakwaka'wakw *nawalogwatse*. Through a literature review and my interviews, I see three avenues through which disputes can be resolved. One is what were called rivalry *p'asa*; second is breaking of *tlakwa*; and third, *digita*. In addition to these forums, I would add an overall concept that mourning *p'asa* serve, which is to let go and come to peace with the death of a loved one.

One of the uses of *p'asa*, as I have come to understand it, is to determine which party is correct or which party has a stronger claim in a dispute. Traditionally, this was done by hosting *p'asa* until relevant families supported your claim, thereby denouncing the claim of your rival. Today, however, decisions need to be made in a timely and cost-effective manner, but a rivalry *p'asa* does not facilitate either of these goals. As I understand it, the principle at play in rivalry *p'asa* is to lay your claim through speeches and having people speak on your behalf until all can agree who has the rightful claim. In this instance, dialogue is more critical than the gift distribution of *p'asa*.

Breaking of *tlakwa* is another important tradition. It symbolizes discontent and shows intent to fight for what you believe to be true or proper. Traditionally, if someone broke a copper, it demonstrated power and either meant war was ensuing or rivalry *p'asa* until the dispute or the discontent was solved or wiped away.⁹³ This practice was also accompanied by words that expressed the discontent, and, in some cases, simply speaking of the dispute will at least help to better understand the problem.

Another element of *p'asa* that can be used is the principle behind a *digita*. These feasts are meant to either wipe away a shame or wrong that a member of the host family has suffered or to point to a wrong or shameful

93. See e.g. Reid, *supra* note 15 at 124.

act that a member of the family has caused. The person or people are put at front and centre, and the wrongs suffered or inflicted by that person or persons are identified. Following this, the host family proceeds to either wipe that away or show its discontent by feeding and gifting those present; in the case of pointing to harm suffered, the inflicting party then must reciprocate. However, for such a method to be effective, the wider community must be taught and come to understand its significance; otherwise, it is rendered meaningless where non-Kwakwaka'wakw people are involved.

As I understand memorial *p'asa*, the proceedings at that *p'asa* begin with *tseka* (cedar bark ceremony) and finish with the *tlasala* (peace ceremony). *Tseka* includes passing along names and dances. *Tlasala* symbolizes the peace that the grieving family has arrived at and the peace that the deceased is allowed by being officially let go by his living family and friends. The procedure that we are in now mimics memorial *p'asa*; we must go through the motions of mourning our ancestors and other losses in order for us to arrive at a peaceful coexistence and to allow our ancestors a peaceful afterlife.

Who Has the Capacity to Resolve Disputes?

We know that disputes are resolved in the *gukdzi* or through *nanokwala* (gathering of *ninogad*). The *ninogad* who are called together are knowledgeable and equipped to aid in resolving problems. My understanding is that the *ninogad* are holders of stories and history, and that working together, they are best able to remember how things were and how they came to be today. Paddy shared an excellent example of how he got to listen to one of our elders do just that. There was a sharing of stories about the ownership and use of a particular place. The story of another nation was listened to and the Gwa'Sala-'Nakwaxda'xw elder indicated with a nod that that is how it should be; they had to listen and let the other person finish. The Gwa'Sala-'Nakwaxda'xw elder in turn challenged certain facts of the story with his own teachings and understandings. The other nation backed off from their claim of that particular spot. The power is in our elders who know the stories and who have the patience to hear from all parties.

Our *ninogad* are the people most capable of resolving disputes. They learned from and observed their *ninogad*. They have lived a life full of its own lessons that are beneficial to resolving disputes. In the past, decisions reached, or rights demonstrated and accepted in the *gukdzi*, were final decisions. In this case, we need individuals who have traditional training, and who are trusted and respected by their family and community. Traditional training in this case means knowledge of our *ninuyem* (sacred

stories) and interpersonal skills. In special cases, it may be necessary to gather all *ninogad* of all Kwakwaka'wakw communities to resolve issues.

Role of Education

In protecting the integrity of Kwakiutl property, there are various forms and levels of education that come into play. Within Kwakwaka'wakw territory, there are two elementary schools, a number of pre-schools and some adult programs. The elementary schools of the Gwa'Sala-'Nakwaxda'xw and the Namgis have cultural programs that I believe are quite successful in teaching children our language and our culture.

An example of this success is the production of a DVD recording by the intermediate classes of the Gwa'Sala-'Nakwaxda'xw school. A group of students were given the opportunity to sit with four groups of elders and to listen to them tell stories. The stories were from their lives and they were told in Kwa'kwala. The children sat and listened, even though they did not understand the elders, some because of the opportunity to sit behind a camera or hold a microphone. Many of our leaders are ready to share their knowledge and to teach children Kwa'kwala, and our community has not been taking full advantage of that resource. I could not help but envy the opportunity that these children had.

That is a good approach to teach children. One of the elders, Spruce Wamiss, spoke about a need to be immersed in order to learn Kwa'kwala or at least to use it when you are talking to your grandparents. Immersion was used for a one-time short-term camp in July of 1996, in the Kwa'kwala Immersion Teacher Training Program ("KITTP"). Daisy Sewid-Smith with colleagues and some support people spent 26 days on Gambier Island with 20 students.⁹⁴ My grandmother Irene Hayman (my grandfather Roy Hunt's sister) and my cousin, Irene's grand-daughter Robin Rosborough, were among this group, and I remember them both having enjoyed the experience. The only downfall mentioned of the program was time; that is, it was not long enough. This is yet another educational opportunity that our people have come together to offer, and in this case, to adults.

My uncle Dick suggested that a more contemporary way to record ownership would be to have a family member write a book recording our family history and, in that way, lay our claims of ownership down for others to see.⁹⁵ He shared this thought in part because in addition to the chieftainships mentioned in section two there are other chieftainships that our grandfather Henry Bell had. These chieftainships can be given to his

94. Colleen Hemphill, "First Nations Unify to Revive Language" *Awa'k'wis "A Place to Sit and Talk"* (15 August-15 September 1996) 1 at 8-9.

95. Interview of Richard Dawson (1 February 2005) Port Hardy.

grandsons born to his sons, but that requires our family to host a *p'asa* and my understanding is that, given previous instructions, such an event is not forthcoming. Therefore, a book would be an alternate method of recording ownership. Such a book would be mainly for the benefit of future generations of each family, but would also be beneficial in educating other Kwakwaka'wakw as well as non-Kwakwaka'wakw people about a family history.

The above examples are, for the most part, ways in which we can educate one another as Kwakwaka'wakw people. Knowing our language, songs, dances, crests and stories of each and how all of these interconnect is integral to protecting our *nawalogwatse*. By educating ourselves, we are better able to stand up and speak when somebody is out of line.

However, when considering the scene I came across on the University of Victoria campus, I think that interrupting and speaking up are not effective without people who are respectful in return. You would not angrily interrupt the person at the wrongful display of a dance, song or crest. As the Gwa'Sala-'Nakwaxda'xw elder demonstrated, it is important to know and to remember to be patient and not confrontational. By offering criticism from a respectful place, you hope that what you hear in return is respectful.

Conclusion

As I prepared for and conducted my interviews, respect for my potential interview participants was at the top of my mind. My research interest could have crossed "cultural boundaries" and there was a possibility that the information could have been used wrongly in order to exploit interviewees. In themselves *ha'se* and *tlikilala* were my guides at the beginning and as I neared the end.

The experiences that we each have throughout our lives are affected by history and affect the future of our people whether we are aware of the effects or not. We have choices to make as individuals, as families, as individual nations, and as Kwakwaka'wakw people. As Paddy said, those choices need to be made with a view to how our children and their children and so on are going to survive and how their lives and livelihood will be affected. The more obvious decisions deal with *awinak'ola* in the choices faced as some of our nations engage in the treaty process. There are others that affect our *nawalogwatse*, *gigitsu* and *tlugway*, and we must make those choices in the same careful manner.

The principles and elements described above are not only helpful in situations regarding proper *mayaxa* for Kwakwaka'wakw *nawalogwatse*, *gigitsu*, *tlugway* and *awinak'ola*, they are applicable to other situations regarding Kwakwaka'wakw people. Considering property and having read

the available research papers of the Project for Protection and Repatriation of First Nation Cultural Heritage,⁹⁶ I see these principles, elements, and stories as being applicable to other areas of property law, for example, repatriating cultural heritage, creating a mechanism for authenticating Kwakwaka'wakw art, ensuring proper respect of Kwakwaka'wakw sacred sites (including burial sites), providing a mechanism to ensure research of Kwakwaka'wakw peoples and property is *mayaxa*, and building internal capacity to do all of these things.

Our protocols and laws found in *p'asa* are as important today as they were in my grandfathers' time. They may have changed and adapted over time, but they are no less significant. Our *nawalogwatse*, *gigitsu* and *tlugway* command *mayaxa* and *tlkilala* from us as Kwakwaka'wakw people. To demand anything less from non-Kwakwaka'wakw is not an option.

96. Online: Project for the Protection and Repatriation of First Nation Cultural Heritage in Canada: Research Papers <<http://www.law.ualberta.ca/research/aboriginalculturalheritage/researchpapers.htm>>.