
First Nations Cultural Heritage and Law



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First Nations Cultural Heritage and Law is the first of two volumes. The second volume is *Protection of First Nations Cultural Heritage: Laws, Policy, and Reform*, edited by Catherine Bell and Robert K. Paterson. Both are in the Law and Society series.

Edited by Catherine Bell and Val Napoleon

**First Nations Cultural Heritage
and Law**
Case Studies, Voices, and Perspectives



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Preface: Respect for Elder Knowledge

Eric McLay and Lea Joe interviewing Luschiim,

Arvid Charlie

Dorothy First Rider, in consultation with Frank Weasel Head

Throughout this project we have struggled with the issue of how to properly respect and acknowledge the expertise of elders. As we progressed through various stages of our work, it became apparent that elder knowledge is not well understood within academic institutions, nor is elder expertise properly compensated through funding mechanisms available to support academic research. Of critical concern is the implied hierarchy of knowledge associated with elders and other community experts through their treatment as “human subjects” and “informants” rather than as equals who bring knowledge that is different from, but equally important as, that offered by academic researchers.

Elder expertise may vary among First Nations, and elders are not experts in all areas. For this reason, and to ensure accuracy and to avoid exploitation, many First Nations have research protocols that are designed to provide assistance to outside researchers and to ensure that they speak to the right people, or a proper representative sample of the community, depending on the nature of the research question. Not all participants in this research are elders. However, all elders participating share in common a process of life-long learning, a willingness only to speak to matters within their knowledge (or to indicate where they are uncertain), and a respect within their communities for the knowledge that they have acquired not because of their age but because of their experiences and the teachings that have been passed on to them.

Part of the dilemma of compensation, as seen through the eyes of academic institutions, is the delicate balance between coercion and exploitation. Within the academic world, strict rules govern research involving human participants. Although honoraria are often paid, it is a woefully inadequate recognition of the expertise being shared. However, ethical rules governing academic work assume significant compensation may coerce people into participation and thus call into question the voluntariness of their consent. As we elaborate in the introduction and methodology section of this volume,

research programs that provide direct community benefit and that enable First Nations input into interpretation of data and dissemination of results help alleviate some of these concerns.

The issues raised here are best understood in the words of the elders themselves and those who work closely with them. We ask you to keep the following remarks in mind as you read the contributions to this volume.

Acknowledging the Importance of Elders and Listening to Their Knowledge Today

From an interview conducted by Eric McLay and Leah Joe with Luschiim, Arvid Charlie, a Hul'qumi'num elder and member of the Cowichan Tribes, on 26 January 2006, in Ladysmith, British Columbia.

What is important about the elders? Well, as you know, up to now, we have been oral, meaning everything has been passed on orally. So, our knowledgeable elders are not only volumes of books, they're a whole library of knowledge. That's why the elders are important. To be listened to. They're *st'utulnamut* – *knowledgeable, totally knowledgeable*. We can compare them to a whole library. Some of them are several libraries put together. As you know, one library is kind of hard to have everything in there. So together, the elders are our whole libraries.

Sharing the teachings is important, but it's also important to know what teachings you can share. I've had a difficult time, because in my home – meaning my dad's and mom's side, they each have grandparents and great-grandparents – my home gets large quickly. Our teachings there – you teach or share your family teachings to your children, grandchildren, great-grandchildren. In today's world, I'm asked to go outside that.

I have great difficulty doing that. And I still do. But then when I look back and listen to my mom, her grandmother, Tth'ulxwmiyel [traditional name], Mary Victor from Hwlummi [Hul'qumi'num place name for Lummi], was put in the rez [residential] school back in the late 1800s. For some, they were left there all their growing life and lost their language and their teachings at that time. From then on, our teachings and language have been eroded. And not all families are fortunate enough to have somebody that carried that. That's how I was able to open, myself, the door to share the teachings. I'm still trying to keep that door open. Meaning that I'm having difficulty sharing, but when I'm called upon in the longhouse, school, or wherever somebody comes along for a visit, I have to try keeping that door open.

One of the ways that's done by our elders, I'm starting to practise that way, I guess I have always practised that way, when I hand somebody some teachings, I'll give a limited amount and see how they handle it and handle themselves. If they don't practise it, I won't share that much more with them. Some of the teachings that elders have shared with me, one really

important one, it was thirty years before that one person shared more with me – an extension or continuation of that teaching. I was observed for that long on how I would handle myself and how I would use it. When he was satisfied that I would be using it the right way, he has been handing me this for the last twenty, twenty-five years. He's been adding to that one.

I think I'll go back to my opening remarks there and I'll add more to it. In the modern world, we can go to the library and books and study what we need to be knowledgeable about. Our oral history is such that we carry our knowledge and history with us in every one of those elders there.

Huy ts'eeep q'a [Thank you]

Consultant Status for Elders

These remarks are offered by Dorothy First Rider, a member of the Motoki Society and Blood Tribe who works closely with the elders, in consultation with Frank Weasel Head, an elder of the Blood Tribe.

The elders have passed down the history and the teachings of the Blood Tribe from one generation to the next through oral transmission because the Blood Tribe has an oral language and not a written language. The elders since time immemorial have been the keepers of the history of the tribe and are responsible for the teachings of the traditions from generation to generation. Valiant attempts have recently been made to create a Blackfoot dictionary using the English orthography. However, in many cases there is no equivalent English for a Blackfoot concept. Problems with the English orthography have also proved that the Blood Tribe needs to continue relying on the oral teachings of the elders. Without a written language, the elders will continue to be the experts on various topics, ranging from Blood history, to proper alienation of artifacts, to entitlement and rationale for repatriation, among many others.

Unfortunately, the role of elders has not been recognized as equal to [that of] anthropologists, sociologists, archaeologists and other academics who have gained the status of experts in Blackfoot history and experiences. This is because the world of academics has a list of criteria that they take into consideration before a researcher is considered to be an expert on a certain "subject." Some of the criteria used for measuring expertise include graduate and postgraduate degrees and experience researching and studying human subjects utilizing recognized social science methodologies such as participatory research methods and qualitative and/or quantitative methodology.

What is not understood by the world of academics is that elders throughout the course of their lives receive the same levels of education in order to attain the status of learned elders. Within the Blood Tribe social structure, in order for an elder to reach the status of a learned elder and to be recognized

as a learned elder, he or she will undergo traditional teachings from other elders from birth to grave. This is the true meaning of lifelong learning. These earlier years of teaching are equivalent to kindergarten. Those who continue to display interest may proceed to abide by elder teachings, attend Blood sacred ceremonies, and/or be involved on a peripheral basis only. This level is similar to that occupied by those taking general studies at university while working towards a degree. At some point the individual may make a decision to pledge to be the sole caretaker of a specific bundle, much as one decides on a specific discipline upon completion of general studies. An individual may choose to further his or her education by taking on additional bundles with other societies, much as one proceeds to graduate studies. After years of personal sacrifice and commitment, a person reaches the final level of recognition as a learned elder based upon lifelong learning, and this is similar to those who attain their doctorate.

Elders use their own form of participatory methodology to gain knowledge and to attain status. Upon acquiring this status, they are responsible for teaching the next group of upcoming elders. The Blood Tribe recognizes those individuals who have attained these teachings as learned elders not based upon their age, but based upon their experience and their understanding and knowledge of what they have been taught by elders before them. Learning the teachings of Blood elders is a lifelong process, and the transfer of bundles from one to another is a very expensive process. Individuals sacrifice personal belongings, material goods, and currency to take on such a responsibility to care for the knowledge and the bundles entrusted. They too make financial and personal sacrifices, like those who pursue an academic career.

Unfortunately, that is where the similarities end. Academics gain their teachings and receive their information from their “primitive” human subjects. Academics then go on to publish their research and are considered to be the “experts” in a particular field or a particular subject while learned elders are merely regarded as a resource.

Only in the last decade have elders begun to understand the unequal treatment of their levels of expertise as compared to the levels of expertise attained by academics who tapped into the knowledge base of elders. Elders spend hours of their time and endure the interruption of their personal schedules in order to give freely to those who go on to become renowned experts. The time has come for elders, as experts in their field, to be compensated adequately for the time they spend with external researchers – teaching them and sharing information and experiences – at the same level as professional consultants who get paid by the hour or by the day. The exploitation of elders by external researchers is no longer acceptable.

Acknowledgments

The initial idea for research leading to publication of this and its companion volume (*Protection of First Nations Cultural Heritage: Laws, Policy, and Reform*) emerged from a smaller research project conducted by Sonja Tanner-Kaplash and Associates and sponsored by the U'mista Cultural Society, First Peoples' Cultural Foundation, and the First Nations Confederacy of Cultural Education Centres. It would not have come about without the dedication of the late Linda Manz of Alert Bay (executive director of the U'mista Cultural Centre, 1992-2001), the late Lawrence Ambers (band manager of the 'Namgis Nation), and Chief Bill Cranmer ('Namgis Nation). The final design and its implementation was developed in collaboration with the U'mista Cultural Society, 'Namgis Nation, Gitanyow Hereditary Chiefs, Ganeda (Frog Clan) House of Luuxhon, Ktunaxa/Kinbasket Tribal Council, Oldman River Cultural Centre (Piikani Nation), Mookakin Cultural Society (Kainai Nation), and Hul'qumi'num Treaty Group. We owe a continuing debt of thanks to these partners for their support and active participation in this research. We also thank the First Peoples' Cultural Foundation and Hamatla Treaty Society for providing letters of support for funding applications, and we regret that Hamatla and the Nedo'at Hereditary Chiefs were unable to remain partners throughout the entire duration of the project.

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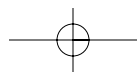
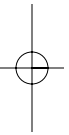
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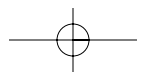
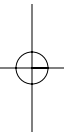
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First Nations Cultural Heritage and Law



Introduction, Methodology, and Thematic Overview

Catherine Bell and Val Napoleon

Rationale and Content of Research

The last decade has witnessed an increased demand by indigenous peoples around the world for protection, repatriation, and control of cultural heritage in accordance with their laws and protocols, internal structures, and priorities.¹ The desire for increased control is inextricably linked to relationships with the land and is concerned with continuity, revival, and preservation of languages, spirituality, values, beliefs, and practices that help form a people's cultural and political identity.² In Canada, this has been acknowledged in modern land claims and treaty processes, negotiated agreements with government and private institutions, amendments to heritage conservation laws, policy initiatives, and, in Alberta, provincial repatriation legislation. However, rights of ownership, protection, and control enforceable in Canadian courts are also regulated by federal, provincial, and territorial legislation enacted prior to recognition and judicial consideration of unique aboriginal constitutional rights. Although some change has occurred in the administration of Canadian law and policy, particularly in northern Canada, and throughout Canada in the context of archaeological sites and ancestral remains, most heritage conservation and cultural property legislation is outdated and fails to expressly address the unique legal and moral rights and interests of the aboriginal peoples of Canada.

In its brief consideration of "Arts and Heritage," the Royal Commission on Aboriginal Peoples (RCAP) emphasized the importance of protecting aboriginal cultural heritage in the process of decolonization. It recommended that federal, provincial, and territorial governments work in collaboration with aboriginal organizations to review legislation affecting cultural heritage.³ Before the RCAP, Canada engaged in some consultation concerning the creation of federal archaeological legislation. At the time of writing, research on federal legislation was also being conducted by Parks Canada. To be more responsive to aboriginal interests, British Columbia has also

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consulted on potential changes to its heritage conservation legislation.⁴ Recent decisions of the Supreme Court of Canada have also generated new consultation policies within governments regarding developments affecting aboriginal interests in land. However, since the RCAP, national federal research initiatives have largely concerned intangible heritage. For example, Canada has consulted and commissioned research on the opportunities and limits of protecting indigenous knowledge within the existing intellectual property regime independent of, and in cooperation with, initiatives of the World Intellectual Property Organization. More recently, Canadian Heritage produced a series of discussion papers and hosted regional workshops to discuss issues relating to indigenous knowledge, language, and intellectual property.⁵ Subject to these and a few other exceptions (including research in response to particular claims), little research and consultation has been conducted in Canada concerning aboriginal peoples' perspectives on Canadian cultural heritage law. These perspectives include questions regarding (1) the extent to which diverse cultural institutions, processes, priorities, and perspectives can (or cannot) be partnered and respected within Canadian law and (2) the benefits and detriments of engaging in heritage law reform within a pluralist democracy and Canadian legal system in which the rights and interests of the broader Canadian public must also be taken into consideration.⁶ *First Nations Cultural Heritage and Law* is the first of two volumes arising from a research program commenced in June 2000 to explore these issues through collaboration, consultation, and academic analysis.⁷ The research program was developed by Catherine Bell (principal researcher and coordinator) in response to concerns raised at First Nations conferences and by the first Protection and Repatriation Project sponsored by the U'mista Cultural Society (U'mista), the First Nations Confederacy of Cultural Education Centres, and the First Peoples' Cultural Foundation. U'mista initiated research because of the problems it encountered while seeking return of the Charles J. Nowell button and bead blanket exported for sale at Sotheby's in New York.

The broad objectives of the initial repatriation research were to draft a position paper on the need for protective legislation for items of spiritual, cultural, and historic importance to First Nations and to recommend strategies for action towards achieving this objective as well as preservation, maintenance, and protection.⁸ Upon receipt of the preliminary strategy, education, and policy reports from Sonja Tanner-Kaplash and Associates, it became apparent that more detailed research and diverse expertise was required to explore the legal environment in Canada and the wide array of legal issues raised. As the primary concern for U'mista at the time was to address problems First Nations encounter in preventing exports of cultural items, the first project shifted its emphasis to examine in greater detail how the *Cultural Property Export and Import Act* might better serve the needs of First Nations.⁹

Some of the results of that work are discussed in the second volume. Catherine Bell undertook to seek more funding for a broader research program to be informed by First Nations experiences and shaped in consultation with U'mista, the 'Namgis Nation, and other First Nations partners.

Developed in collaboration with First Nations partners in British Columbia and Alberta and scholars in law, anthropology, and archaeology, our research is informed in part by community case studies. Our community partners are the Ktunaxa/Kinbasket Tribal Council (KKTC); the Mookakin Cultural Society (Mookakin) of the Kainai Nation (also known as the Blood Tribe, Kainai); the Oldman River Cultural Centre (in discussion with the Knut-sum-atak, or Brave Dog Society) of the Piikani (Peigan Nation, Piikani); the Frog Clan (Gitksan) House of Luuxhon (Luuxhon) and Gitanyow Hereditary Chiefs; the U'mista Cultural Society and 'Namgis Nation (home to the U'mista Cultural Centre); and the Hul'qumi'num Treaty Group (HTG). The broad objectives of the research are to: (1) provide First Nations participants with the opportunity to identify, define, and articulate their own concepts of property and law and their experiences relating to protection, repatriation, and control of their cultural heritage; (2) facilitate greater understanding and respect for diverse First Nations cultures, perspectives, and experiences; (3) create reflective case study reports with the potential for diverse uses and means of dissemination; (4) assist First Nations partners to collect data and to develop practical resources on cultural heritage issues that are of concern to their communities; (5) disseminate information about the operation, impact, and limits of the existing Canadian legal regime as it applies to First Nations cultural heritage; and (6) critically analyze domestic law within a broad international, social, political, and legal context. It is also intended that information gathered be used by our First Nations partners to develop strategies to address their cultural protection priorities.

Through case studies, this first volume identifies (1) a range of protection and repatriation issues faced by our First Nations partners and (2) strategies within and external to Western legal frameworks that may be used to address concerns raised. The case studies represent a range of participant understandings of, and experiences with, cultural heritage, legislation, repatriation and protection, and indigenous laws and processes concerning belonging, responsibility, and control. The case studies are organized thematically around data derived primarily from discussion circles and interviews with elders, ceremonialists, spiritual leaders, community members engaged in conservation, repatriation, and heritage protection activities, and others considered by their respective communities to be knowledgeable in cultural matters. An exception is Susan Marsden's "Northwest Coast *Adawx* Study," which draws on the formal oral histories of the Gitksan and Tsimshian peoples. Marsden's methodology did not include a case study; it derives from her extensive archival work and direct experience with the

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Gitksan and Wet'suwet'en testimonies that were part of the landmark *Delgamuukw* aboriginal title case.¹⁰ We decided that, given the widespread concern with oral histories generally and the expectations created by *Delgamuukw*, we should include this careful and critical chapter. Also included is a chapter that surveys selected repatriation and protection experiences across the country, including feedback generated from the project's website.¹¹ The case studies do not represent a generalized First Nations perspective. Indeed, all participants have emphasized the uniqueness of every First Nation in Canada and the need for more extensive consultation on these issues.

Some chapters also reflect more deeply on two themes arising from the case studies – the role played by residential schools and discriminatory government policy in loss of cultural knowledge and the centrality of language to cultural preservation. Brian Noble's chapter offers a segue into the analytical chapters in the second volume by (1) exploring what he identifies as a crisis in power and respect in Western law and property practices and (2) contrasting concepts of property, owning, and belonging within First Nations and Canadian legal contexts. All of the chapters begin to consider existing and potential legal responses to issues raised, the benefits and detriments of finding solutions in Canadian law, and other strategies for change.

In the second volume, *Protection of First Nations Cultural Heritage: Laws, Policies, and Reform*, legislation affecting tangible and intangible cultural heritage is considered along with issues of law and policy reform. Its chapters are informed by a range of sources in addition to the case studies, including developments in domestic common law, international law, and policy; literature reviews; contemporary and emerging ethical principles and policies in archaeology, anthropology, museum administration, and other relevant disciplines; and legal initiatives in other jurisdictions with colonial legal histories. Reflections on the revitalization of First Nations legal orders and laws, strategies for change outside the Western legal tradition, and critical commentary on the problems of using external legal mechanisms as a means to empower First Nations communities are also important features of the second volume. We hope that, together, both volumes will generate an awareness of challenges faced by our First Nations partners and provide helpful information to other indigenous peoples within and outside of Canada. We also hope the volumes will form a platform for much needed intercultural dialogue on issues of law reform.

Inherent Contradictions: Design, Terminology, Organization, and the Trickster

When discussing the role law might play in protecting First Nations autonomy and cultural heritage, understandably, several participants were not familiar with legal barriers to their heritage protection goals and questioned

the utility of Canadian law reform. Basically, their experiences with legislation directed at First Nations people (such as the *Indian Act*)¹² were of oppression, and they saw a failure in the enforcement of general laws intended to protect heritage resources. Many desired to enforce, restore, or enact their own laws concerning cultural property protection. Francis First Charger echoes the concerns of some participants when he cautions, "We are beginning to move to the direction of the white man's ways ... Once we start doing that, then we are undermining our own ways."¹³ However, greater First Nations control may require changing some features of the existing legal environment and restructuring relationships between First Nations, Canadian governments, and public institutions. Thus, despite reservations, the Mookakin Cultural Society and respected Kainai elders participated in developing Alberta's repatriation legislation, and the Hul'qumi'num call not only for respect for customary laws concerning their archaeological heritage but also for the reform and enactment of Canadian legislation. Other participants familiar with the inadequacies of legislation in specific areas, such as intellectual property and cultural export, also address the need for change. These examples demonstrate a tension running through our work. On the one hand, some participants do not want to engage Canadian law unless necessary, preferring instead to rely on indigenous laws; on the other hand, some participants also understand that statutory reform may be necessary to achieve First Nations cultural heritage goals. All call for mutual respect and cooperation.

As both volumes illustrate, cultural heritage issues are fundamentally about how societies understand their place in the world according to their cultural horizons. How we understand ourselves as peoples, and the institutions we build, are founded on our cosmologies and ontologies. The challenging work undertaken by the people involved in the case studies was to describe the constructs and meaning of their cultural heritage so that they may be appreciated by people from other cultures. For example, ownership is not a universal construct; rather, ownership sets out a particular relationship in our culturally constructed world. Brian Noble demonstrates this very clearly in his study of the Piikani. By describing ownership as belonging, he creates a different understanding of a Piikani relationship in a Piikani-constructed world.

This is similar to ideas of the sacred and the law. Ultimately, what is sacred and what is law is entirely bounded by culture. Law or the sacred is only law or sacred in the society that created it. For instance, law created by Gitksan peoples is not law for Cree peoples. If we are to understand these cultural constructs, we must situate them within the culture that created them and that gives them meaning; and, throughout this process, we must be aware of our own blinders and judgments. Basically, if we can see our own cultural scaffolding, including our ideas of the sacred, and understand how

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it forms us, then we have a better chance of understanding the scaffolding and the sacred in other cultures. So it is not a matter of trying to explain the sacred in other cultures but, rather, of developing an appreciation of how the sacred (or law) is created and how it makes sense inside that other culture. This is one of the overarching lessons of this research project.

Case study participants were also reluctant to speak about cultural heritage in language and discrete categories familiar to Western legal thought (*e.g.*, tangible, intangible, moveable, immovable, land, object, intellectual, and material). It appears that the problem lies not with the answers given, but with the questions being asked. In order for research to be both manageable in scope and congruent with the Canadian legal system, subject areas and questions were developed in consultation with First Nations partners.¹⁴ The University of Alberta's ethics policy for conducting research with human participants also required prior approval of areas for questioning and intellectual categories for research. However, as Susan Marsden points out, despite the involvement of First Nations partners in designing the research questions, "[t]here is ... an inherent contradiction in the design of this project, namely that the issues were predefined in a non-aboriginal context."¹⁵

The very terms "culture," "property," and "ownership" are Western legal, social, economic, and political constructs that are imposed on First Nations. Given the consistent use of these terms in the literature, the dynamics of cultural interaction, and First Nations participation in the market economy, it is not surprising that most participants in this research now use and understand Western property terminology. However, to varying degrees and within specific contexts these terms are still incomprehensible (*i.e.*, no equivalent concept in First Nations languages), inappropriate (*i.e.*, disrespectful of First Nations concepts), or inadequate (*i.e.*, too narrow). Nevertheless, they continue to be used, though with qualification and explanation, in order to simplify communication and to give meaning to participant experience within a multicultural and legal pluralistic world.

The challenge of finding appropriate terminology is most pronounced in the discussion of defining "cultural property." For example, in his chapter, Richard Overstall explains how this concept "obscures Gitxsan law":

[T]he concept of "cultural property" obscures Gitxsan law; that is, through its implicit assumption that a part of an indigenous legal culture can be carved out and separate from the rest of that culture. While this may be a valid approach to Canadian legal analysis – for example, looking at the obligations of museums to return certain artifacts or remains – it obscures the significance of objects, images, words, and inventions under indigenous law. Besides being possessions in their own right, many of the objects, and particularly the images, words, and music they contain, have a critical

constitutional role in the indigenous law. Perhaps this would be less of a concern if there was a general familiarity with the indigenous legal system being considered, but this level of understanding has yet to be achieved.¹⁶

Similarly, from the *Poomaksin* chapter we learn that intangible “property” is also integrated and inalienable, one element from another. For example, “the transferred song for a teepee design; cannot be separated from the transferred bundle for that design nor can it be separated from the design itself” – a point echoed by Francis First Charger in the Kainai study.¹⁷ To the Gitksan and Tsimshian, “[t]he term ‘property’ implies separation: this thing that I own is outside of me, is controlled by me, and can be taken from me. There is no equivalent concept in Gitksan and Tsimshian thought.”¹⁸ Moreover, “there is no separation between people and the cultural ‘things’ collectively called heritage, nor is there a separation between people and the world they inhabit.”¹⁹ Whenever possible, context-specific terminology is preferable. For example, as Reg Crowshoe explains, the term “Nitsiitapii property” is far more appropriate than is the term “cultural property” or even the very word “culture.” He adds, “I would say there is our Nitsiitapii properties, whether it’s cultural property or not, the word ‘culture’ is a white man’s problem, not ours.”²⁰ A similar disdain for the word “property” is acknowledged by Andrea Cranmer, who notes that the term is not used in the Big House or by the “well-versed cultural people in the community.”²¹ The term “cultural heritage” is preferred.²²

After much deliberation, we decided to use the phrase “cultural heritage,” rather than “cultural property,” in the titles of our books because it has meaning in a range of legal and extralegal contexts.²³ It is broad enough to cover differing cultural understandings and the subject matter in both volumes while being succinct enough to be used in a book title. It is also consistent with most of the participants’ perspectives. However, we use this phrase with a sharp awareness of its limitations, including how, within a Western legal context, more specific language may be required and importance is given to protection of rights characterized as proprietary in nature. Some authors continue to use the term “property” for this reason as well as in order to be clear in their references to particular laws and legal instruments.

Although we seek to communicate information in a manner that respects First Nations perspectives, we also seek to present our research in a way that is accessible to indigenous and non-indigenous readers and that has meaning in Canadian legal and policy contexts. The difficulties are evident not only in our choice of terminology but also in how we have organized the material in the two volumes. Since one of the objectives of publishing the case studies is to portray a wide array of individual First Nations experiences and perspectives, the studies include extensive quotations. However, they were edited for publication, and more detailed versions of some are on the

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project website. The case study reports are published independently so that the information shared is not obscured or lost in the legal academic analysis contained in the second volume. In that volume, the chapters are organized along more conventional lines, according to the expertise of the academics involved: repatriation and trade in First Nations material culture, heritage sites and ancestral remains, intangible heritage, human rights, and First Nations legal orders and law. These chapters respond to those in this volume mainly through the topics examined and the use of examples from the case studies to illustrate points raised.

There is also a more fundamental question of whether Canadian law can help further First Nations goals without continuing the colonization of indigenous ways of knowing and being. As experienced in the administration of the *Native American Graves Protection and Repatriation Act*²⁴ in the United States, the administration of rules intended to benefit indigenous peoples can give rise to unanticipated effects. Given this, it is important to consider both the benefits and detriments of using Canadian law as a tool to address what is, in essence, a question of “respectful treatment of native cultures and indigenous forms of self-expression within mass societies.”²⁵ We also struggle to reconcile the belief that First Nations should be able to exercise jurisdiction over aspects of their own cultural heritage with consideration of the interests of the broader Canadian public. Several participants recognized this dual approach and the need to build respectful coexistence. However, the practical realities of the economic, legal, and political landscape in Canada – combined with (1) the vital role cultural heritage has in survival of a people, (2) the consistent refusal by governments to recognize First Nations jurisdiction over intellectual property and heritage resources located off reserve lands, and (3) the cost, time, and complexity of negotiating jurisdiction over the range of areas raised in this research – all serve to bring us back to thinking about Canadian legislation and policy reform.

To remind us of the contradictions, tensions, and limitations in our work, Val Napoleon introduces the intellectual instrument of the Trickster into both volumes. The Trickster “is a central figure in the myth worlds of many hunting and gathering societies. A divine figure, but deeply flawed and very human, the *Trickster* is found in myth cycles from the Americas, Africa, Australia, and Siberia ... The *Trickster* symbolizes the frailty and human qualities of the gods and their closeness to humans. These stand in pointed contrast to the omnipotent, all-knowing but distant deities that are central to the pantheons of state religions and their powerful ecclesiastical hierarchies.”²⁶ It is our hope that the Trickster will enable us to see contradictions and perhaps even to intellectually straddle cognitive dissonance in order to move our thinking along.

In indigenous societies, the Trickster is not simply a literary device (as it often is in Western society, where literature is, at least conceptually, separate

from politics, law, and economics); rather, it is an intellectual device that provides a way of seeing and thinking that does not separate politics, law, and economics from the fabric of the whole. As such, the Trickster is both a teacher and challenger of norms, be they legal, political, or social. This is why the Trickster is a part of these volumes. The critical work of the Trickster lies in the discomfort s/he creates. It is in our discomfort that we see things that we are not used to seeing and think what we are not used to thinking. Consequently, we urge the reader to stay with any discomfort that these volumes may create.

Methodology

First Nations participation, at all stages of the research program, has been an important aspect of this project. This has involved three key components: participation in research program design and preparation of funding applications; participation in case study research, design, development and authorship; and comment on, or authorship of, academic essays that draw on case studies and other sources. In particular, the case study methodology was informed by the following principles: production of practical and tangible benefits for First Nations partners; creation of reflective texts with the potential for diverse uses and broad dissemination; compliance with First Nations laws and protocols; active and meaningful participation by First Nations partners in design and development of research questions and outcomes; and regular communication throughout.²⁷ Research progressed in three stages over a period of six years: conceptualization and preliminary consultations, data collection, and, finally, analysis and publication.

Academic research has been “applied” to First Nations for many years. Research has been an integral part of the colonization that placed First Nations communities in the petri dish as research objects. Geared to primarily non-indigenous audiences, the standard premise was that research *on* aboriginal peoples was of universal benefit and so direct local impacts need not be considered. In contrast, the collaborative approach to research that we have adopted is consistent (to the extent possible within the constraints imposed by universities and funding agencies) with what, in the social sciences, is generally referred to as participatory action research (PAR).²⁸ Multidisciplinary influences have characterized this research method as a “systematic inquiry that is collective, collaborative, self-reflective, critical and undertaken by participants in the inquiry.”²⁹ Ortun Zubert-Skerritt outlines four themes in this methodology: “empowerment of participants; collaboration through participation; acquisition of knowledge; and social change.”³⁰ Gough continues, “When defined as a goal of research with collaboration of those involved, PAR can be used to assist in the reappropriation of cultural knowledge” by providing “the opportunity to reflect, maintain, and advance First Nation cultural values.”³¹ Critical questions that must be

addressed in this methodology are: Whose research is it? Who owns it? Whose intentions does it serve? Who will benefit from it? Who has designed its questions and framed its scope? Who will carry it out? Who will write it up? How will the results be disseminated?³²

At the beginning of our research project we planned and developed our strategy, organized the research team, created an international bibliography on cultural heritage law, established First Nations partnerships, drafted the case study proposals and grant applications, and commenced the preliminary research. With funding provided by the University of Alberta, Catherine Bell and Heather Raven (Nakasheohow) visited First Nations communities in British Columbia and Alberta that had expressed concerns about cultural heritage or were engaged in repatriation and protection initiatives. Local meetings were held with cultural heritage staff, elders, society members, band councillors, and other representatives responsible for overseeing cultural research in their communities. Topics discussed included research goals (broad and community specific) and outcomes; phases and time lines; short-term community benefits and long-term benefits of research and publication; community research protocols and authorization processes; the role of the case studies; community resources for the project; budgets (for equipment and interviewers, translators, interpreters, and other participants); research experience and training materials; culturally appropriate methods to gather and record information and consents; selection of participants; disposition of data on completion of research; copyright, data ownership, and anticipated published outcomes; and potential risks of participation. Subject areas for the interview questions and processes involving human participants were also discussed, with the understanding that questions could change to reflect local heritage protection priorities, practical community information needs, and differing cultural understandings.³³ Questions selected served as a general guide to structure dialogue and allowed for more narrative responses and elaboration of topics that participants thought most relevant to the broad subject areas.

Following the preliminary meetings, Catherine Bell and Robert K. Paterson prepared a detailed research proposal that was provided to all First Nations partners for comment prior to submission for funding to the Social Sciences and Humanities Research Council of Canada (SSHRC). In-kind and other funding commitments by First Nations partners helped support the research and were included in the application. Upon notification of SSHRC funding, each partner was contacted to confirm continued interest and again invited to modify case study questions to suit particular research interests and methodologies. Mookakin, KKTC, and U'mista made minor modifications to their original question sets to accommodate the range and expertise of people interviewed and specific initiatives in their communities, including language protection initiatives and enactment of repatriation

legislation. For the Luuxhon study, a unique set of questions relating to intangible possessions and laws about oral history were designed in an attempt to avoid “the imposition of Western state constructs of property and ownership.”³⁴

It was at this later point that the HTG joined the research program because, while the Hamatla Treaty Society continued to support the project, it had to withdraw due to unexpected developments in treaty negotiations. The HTG developed a unique question set to address three specific objectives of its study: to articulate Hul’qumi’num customary laws relating to historically significant places, artifacts, and human remains; examine current problems relating to respect and enforcement of Hul’qumi’num customary laws; and explore how the legal environment might be changed.

The primary methods for gathering case study data were individual interviews and facilitated discussion circles. Where interviews were conducted in the First Nation’s language, community members were hired as translators and transcribers. Community case study coordinators and interviewers, or academics with existing relationships with the First Nation, conducted the interviews and facilitated the discussions. A training workbook was prepared and reviewed with all interviewers to ensure consistency of data collection and reporting, and compliance with university ethics requirements. Nevertheless, some transcripts were reformatted and tapes were compared to transcripts, which were provided to the research team to ensure accuracy. While most case studies engaged between fifteen and twenty-five participants, the design for the Luuxhon and Kainai studies involved fewer people. With Luuxhon, only Luuxhon members or those closely related persons have the authority to speak on behalf of the House. Similarly, for the Kainai, only members of the Horn Society (recognized among the Blood Tribe for its spiritual leadership in the Sundance) and members of the Mookakin Cultural Society (established to promote and preserve the spiritual doctrine of the Blood Tribe and engage in repatriation activities on behalf of the tribe) were interviewed.

The Blood Tribe, KKTC, and U’mista had files and archival materials that were reviewed to help formulate questions and give context to information gathered. The HTG study drew on materials and experiences related to litigation and treaty negotiation. Electronic and printed community materials and some academic papers were also consulted in several of the case studies.

Data analysis began with Catherine Bell and her assistants reading a subset of interview transcripts from various communities to identify key words, phrases, and themes contained within them. The case study authors also read all transcript data relating to their case studies in order to identify themes and to organize individual participant responses. Where a large number of interviews were conducted, special software (Nudist 6) was used to code and organize transcript data according to the themes identified. The first drafts of the case study reports contained extensive quotes from transcripts.

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These drafts were provided to the originating communities and the authors of the second volume, and, upon approval, most were posted to our project website. One of the objectives of the initial drafts was to organize as much of the transcript data as possible for use at the community level and to include enough information in each study report to ensure that its evolution, purpose, and methodology were properly understood. As some of the original reports were quite lengthy and repetitive in places, they were edited for publication. The common methodology descriptions were removed and summarized in this introduction.

In our original vision, interviews and discussions were to be audio-visually recorded. Our hope was to produce audiotapes for each community archive derived from their specific case studies and an edited video of all case study interviews that might be used for educational or other purposes. However, few participants felt comfortable with video recordings. Consequently, we did not obtain sufficient footage to achieve this latter goal. Although some participants interviewed want their information kept in local archives so that maximum control over use can be maintained, others have given permission for transcript data and tapes to be donated to a public archive to be determined in consultation with our First Nations partners.

Important questions in collaborative work are: Who will write it up? And how will authorship be acknowledged? This project was built upon pre-existing relationships between academics and members of participant First Nations organizations. Thus, early in the process, the First Nation decided who would write up the case study. In all the case studies, the expertise of the case study authors and community coordinators, combined with the knowledge of local protocols, built a foundation of trust and helped to ensure that appropriate community members were consulted. Authors for the academic chapters in the two volumes were approached to participate according to their areas of expertise.³⁵ Biographies of these people, plus the general area of research they intended to explore, were provided to First Nations partners in our initial meetings. First Nations partners were also advised of changes in the research team. Community partner representatives and these researchers later met to discuss draft papers.

A more complicated question is how to acknowledge authorship in a manner that respects oral traditions and reflects a truly collaborative process. The Kainai study addresses this issue by including Mookakin as an author. In other studies, this is dealt with by specifying that the studies were developed in consultation with a specific First Nation individual or organization. For practical reasons, it became difficult to name all people who made oral contributions to this project as authors. However, if requested, we would have been prepared to do this despite the challenges it would have created for publishing and making standard contract arrangements for authors' copies, copyright, and allocation of royalties. In the end, we

decided that all participants who chose to be identified would be included in the acknowledgments; First Nations partner organizations or designated individuals from partner communities would hold joint copyright to case studies with the authors named (to the exclusion of the publisher); every community would receive not only transcripts and tapes originating from their community but also free published volumes issuing from the research; and royalties would be donated to a First Nation organization in Canada.

Drafts of all transcripts and case studies were provided to participants and other authorities within the community for review and comment on the use and analysis of transcript information. While an effort was made to maintain the actual words used and the natural flow of thoughts, excerpts from transcripts have been lightly edited using ellipses and square brackets, where necessary, to clarify meaning. Authors attended meetings to review the case studies when requested. In the community review processes, no suggestions were made to change meaning or use of data, even when disagreement over points of view were raised. However, passages identifying people by name or circumstance were removed from some studies. Subject to this exception, all comments from First Nations partners and participants pertained to the control of information (discussed further below), accuracy of the transcript, typographical errors, and, if interviews were conducted in languages other than English, matters of translation, spelling, conceptual understanding, and proper use.

During the data-gathering phase, we created a project website and contacted all First Nations cultural education centres, tribal councils, treaty organizations, and other First Nations governments and organizations in Canada about our work.³⁶ We invited these groups to participate in the research by using outcomes posted on the website (such as case studies, bibliographies, and background reports prepared for our research) and to contribute their own thoughts through electronic submissions. A few electronic submissions were received from the United States, Nova Scotia, Ontario, Yukon, British Columbia, Manitoba, and Saskatchewan. Catherine Bell, Robert K. Paterson, and other research team members also participated in various international and national conferences and workshops at the invitation of First Nations and government officials in British Columbia, Saskatchewan, Quebec, Ontario, New Zealand, and the United States. We also received suggestions from people who visited our website and were involved in protection and repatriation initiatives discussed in our survey chapter. Information and feedback gathered from these processes is incorporated into the survey chapter in Part 2 and chapters in the second volume.

One response identified what was perceived to be an application of Canadian law to First Nations spiritual matters. Although when explained fully, it was understood that this was not our intent, this response underscores the importance of addressing issues of First Nations jurisdiction and recognizing

the diversity of First Nations perspectives on matters of external law reform. If reform occurs, it is also important to explore the possibility of optional legislative frameworks and how to incorporate different positions within them.

In the final stages of our research program, we completed wide-ranging literature and case reviews and prepared the academic chapters for the two volumes. In a working group session with representatives from our First Nations partners we shared preliminary drafts and disseminated them for comment. We prepared a thematic review of the case studies and distributed it. We offered the complete manuscript to elders' councils and other local authorities for review. At this time, we also submitted it to the publisher for review.

Challenges in Meeting Our Objectives

We have already elaborated one of the biggest challenges in our work – communicating through using terminology that respectfully incorporates First Nations understandings and is cognizable to the non-indigenous legal world. Many other challenges have arisen in our attempt to work in true partnership and collaboration. These challenges include reconciling academic independence and meaningful First Nations participation, working within university and funding policies, and managing limited resources and complex approval processes within First Nations communities. It is beyond the scope of this introductory chapter to elaborate on all of the challenges we have faced. Our purpose in sharing these is not to discourage collaborative research but, rather, to illustrate the commitment required and the importance of encouraging academic institutions, publishers, and funding agencies to negotiate new approaches to research and products of research that increase indigenous control of indigenous information. Our methodology is not perfect and will not work in all partnerships, but we hope it will generate some helpful lessons. In the end, each partnership must be negotiated independently to meet the needs of the parties involved.

There is often an assumption in mainstream academic research that objective truth can be discerned through impartial analysis of a range of data. Given this, credibility in academia means that conclusions are not influenced by the research subjects who may or may not agree with the interpretation of data gathered from or about them. However, in order to decolonize research methodologies we must ensure that First Nations communities and researchers participate in the interpretation of data derived from their communities or lands. For most First Nations groups, this includes not only those participating in interviews and discussions but also local or regional authorities charged with the task of overseeing any research initiatives that relate to the group.

For this project, the rights of the interview and discussion participants

were governed by standard ethical procedures that allowed them, at any time, to withdraw information provided. Similar principles were applied to First Nation authorities charged with approving the case studies. To avoid potential problems, for example where a participant might wish his or her information included in the research but the appropriate First Nation authority did not, participants were advised of the approval processes that affected them and of how the proposed disagreements would be resolved. Participants were already aware of, and supported, these internal authorization processes. Although critics may argue that this could have influenced the information shared, First Nations internal research protocols must be respected. Further, such criticism assumes that a First Nations authority might try to dictate what should be said or attempt to revise the reports to meet political goals – an assumption that proved false in our experience and, in fact, ran contrary to the intent of First Nation protocols applied to this work.

Ultimately, we decided that all project participants and, where appropriate, First Nations authorities would be given copies of their own transcripts and case studies for comment and, as requested or required by local research protocols, drafts of all chapters produced for publication in the two volumes. In the event of disagreement about the use and interpretation of data on the part of an approving authority, we agreed that the authors would not use the information in dispute but that different points of view on interpretation of the data would be clearly articulated. All authors were asked to agree to this process before case study data was given to them. We also agreed to make it clear in the introduction to both volumes that case studies represent perspectives of the participating community members but that other chapters that draw on case studies and other sources of information reflect the opinions of the authors and not necessarily those of all communities engaged in the project. First Nations partners also retained the right to withdraw use of portions or all of the case studies. In our experience, there has been a willingness of all involved to respect academic independence. All chapters were eventually discussed at a workshop with representatives from First Nations partners and/or were circulated for comment. None of our partners identified areas of significant disagreement or chose to withdraw; rather, a wide range of voices is heard because of the time spent defining expectations, the independent publication of case studies, and the diversity of opinions offered in these volumes.

Two issues that arose in the initial and final phases of our research demonstrate the challenges of complying with community protocols and addressing the consequences of this within an academic and publishing environment. While it is important to obtain band council approval for research conducted in some communities, band councils are often not the appropriate entity to oversee and approve all forms of research. For example, the KKTC research protocol requires that research requests be reviewed by the Elders

Group, the Ktunaxa Treaty Council, and the KKTC. The latter two bodies provide comments and advice, but the authority to approve or deny research remains with the Elders Group. Our research revealed that this process may need to be modified slightly depending on the length and nature of the publication (*e.g.*, not all members of an elders group may be able to read lengthy documents in English and summaries may be required). Complying with internal processes can also be time consuming and cause a delay in the publication of outcomes. Depending on the length, sensitivity, and complexity of a manuscript and the methods of communication preferred by First Nations partners, several meetings may be required. This can cause problems in complying with granting agency timelines for expenditure of funds as well as recognition of academic work within institutions that evaluate performance on the basis of annual publications. It also requires publishers to exercise flexibility in the review process and to acknowledge the importance of including First Nations processes in academic refereeing procedures.

Identifying the appropriate authority is more complex when official research protocols have not been developed. For example, among the Gitanyow, cultural information and entitlements belong to the House groups. Given this, the proper authority to share and approve information is not the Office of the Gitanyow Hereditary Chiefs but, rather, the hereditary chief, Luuxhon, on behalf of the Luuxhon House members. Similarly, among the Piikani, only people with properly transferred rights to leadership and communal ceremonies have the authority to discuss matters raised in that study. It is therefore necessary to appreciate the appropriate authority structures within a First Nation group before preliminary consultations can even commence. The issue can be further complicated by changes in local government or internal conflicts between authority structures. Further, typical ethical procedures require written consents from participants or, where justified, recorded verbal consents. The latter is usually provided through reading and recording a script and having consent recorded on tape. Under Piikani protocol, the fact that the Brave Dog Society bundle holders hosted a circle discussion and agreed to be recorded indicates approval to use the information given.

Another example illustrates some of the challenges of trying to conduct collaborative research that respects First Nations communication processes and interests in controlling accurate and respectful use of their cultural information. In a typical publishing contract, copyright is assigned to the publisher or retained by authors and editors with the publisher. In our study, we wanted First Nations partners to have greater control over issues of reproduction and royalties associated with copyright. Consequently, we decided that the copyrights to the case studies would be held jointly by the author, the editors of the first volume, and the appropriate First Nation partner. Therefore, it was necessary to identify an individual or entity recognized in

Canadian law. For example, the House of Luuxhon is an entity recognized within the Gitksan legal order but not within the Canadian legal order. Finally, we needed to find a publisher willing to surrender copyright to the case studies in this fashion and to donate royalties to an organization of our choice.

Our approach to information control had to be reconciled with rules of funding agencies and universities with respect to ownership of data derived from research during the course of employment. It was our view that First Nations partners and participants should, to the extent possible, control use of transcripts and tapes issuing from their communities. We dealt with this in three ways: we required that (1) all tapes and transcripts used by case study authors be returned to the research coordinator and kept at the University of Alberta unless participants agreed otherwise; (2) ethics procedures approved by affected universities include the right of individual participants to determine disposition of data, including data retained by the researcher and the provision of copies to partner organizations; and (3), where necessary, in order to enable us to adopt this approach, other opinions on relevant contractual provisions be sought. We also advised participants and partners that any item deposited in a public archive would be clearly marked by us as intended for research and educational purposes only but that we could not guarantee this use restriction.

The subjects of copyright and publication also demonstrate the challenge of trying to communicate within a different cultural and linguistic context. For example, in preliminary meetings it was clear that Mookakin had an interest in ensuring that information gathered would be used in a respectful way that would promote the preservation of Blackfoot culture. Although interest was expressed in copyright, the concept of copyright is not capable of addressing the responsibilities of individuals towards use of information and the understanding that “ownership” of information rests with the Creator. In the final stages of research it also became apparent that “publication” did not have the same meaning for the case study author and one of the partner representatives. This misunderstanding gave rise to the impression that original goals had changed. Coupled with concerns over the ability to reuse words in their original form (an important issue in oral cultures) and the nature of copyright protection, these problems resulted in several meetings concerning publication of the Kainai study. It was ultimately decided that Mookakin would hold copyright to the study and that the lead author would continue to work with Mookakin as desired on legislative reform. It was also agreed that publication for an audience wider than the Blood Tribe was important to ensure that voices of knowledgeable community members – not just the sometimes inaccurate and misleading voices of academics – would be heard on matters of cultural heritage.

Happily, through creative thinking, good will, commitment, and cooperation on the part of the affected universities, First Nations partners and

participants, authors, SSHRC, and UBC Press, we were able to overcome many of the challenges we faced. However, these challenges point (1) to a need for more time and resources to develop and implement collaborative research initiatives and (2) to the importance of a flexible regime to accommodate methodologies committed to increasing indigenous participation in, and control over, the products of research.

Part 1: Our Voices, Our Culture

Case studies produced in this volume cover a wide range of topics. Although each has a different emphasis, certain themes emerge. What follows is a thematic introduction to the case studies and the subject areas discussed in the academic chapters in the two volumes. We adopt this approach to highlight connections between the two volumes as well as to introduce the content of the first volume.

General Observations

A meta-theme running throughout is the need to restructure relations (some more than others) in a manner that acknowledges and respects unique First Nations identities and is consistent with First Nations values, beliefs, laws, and practices. Such a paradigm shift involves acknowledging past injustices as well as embracing a dynamic concept of cultural heritage by supporting cultural continuity and revitalization both in word and deed. Though implicit in any discussion of First Nations cultural heritage, several case studies explicitly address the damaging effects of colonialism, the notorious residential school system, and, in particular, the *Indian Act*, which sought to destroy indigenous culture through, among other things, bans on the potlatch and Sundance ceremonies. In the words of Diana Cote:

[T]he *Indian Act* took our culture away and as a result of that we are in the situation that we're in right now, which is we have unhealthy members in our community. We have lost our culture. We have sad families because it took that ability to be a family away. So it's probably the worst thing that ever happened to the First Nations people in Canada.³⁷

Just as important as correcting past injustices is the need to support and enhance cultural expression among present and future generations. The message in this volume is that, while colonialism endeavored to destroy First Nations cultures, these cultures have survived by the sheer strength of resolve among their peoples. All community participants interviewed are committed to revitalizing their cultures and restoring that which Western society sought to colonize. Protection and repatriation of both tangible and intangible cultural heritage is viewed as important for revival and continuity

of cultural knowledge, practices, laws, and, ultimately, cultural awareness, identity, and self-esteem among the peoples.

In advocating for respect and understanding of First Nations identities, laws, practices, and protocols, some participants expressed frustration over the many hurdles encountered, which took the form of biases and prejudices inherent in the Western worldview. A fundamental point expressed by many is the need to recognize the distinctiveness of First Nations cultures. There is also concern that First Nations laws, which many feel should govern matters of cultural heritage, are not given equal standing in Canadian law and negotiations and that, instead, they are constantly adapting to conform to Western legal concepts and values. In the courts, Western academic credentials are privileged over indigenous credentials. Experiences shared also demonstrate that similar challenges may arise in repatriation negotiations with some institutions wherein Western institutional knowledge is considered to be more accurate than First Nations knowledge. Bias towards documentation may also undermine protection for sacred sites. As Arvid Charlie, Luschiim, explains, in keeping with Hul'qumi'num traditions, there are few written records of things sacred to the people. This can result in the erroneous conclusion that the Hul'qumi'num simply don't have sacred areas.³⁸

Participants also speak about relationships of belonging and responsibility to material culture, which can have individual, familial, and communal aspects. As Gloria Cranmer Webster explains, the Kwakwaka'wakw "concept of ownership differs from that of other people in that while an object may leave our communities, its history and the right to own it remain with the person who inherited it."³⁹ Similarly, participants in the Ktunaxa study argue that, based upon their cultural connection to a cultural item and irrespective of how an item was removed from the Ktunaxa territories, the Ktunaxa Nation may maintain a superior claim to the item over non-Ktunaxa citizens. Moreover, as the authors of the Kainai chapter note:

[T]he concept of communal property and the responsibilities that arise from individual relationships with spiritual objects extend to many forms of spiritual inheritance, whether involving land, objects, or intangible information, and this makes it difficult to use the term "ownership" in any context relating to cultural heritage. Rather, individuals acquire rights and responsibilities of use through clearly defined transfer processes.⁴⁰

The Luuxhon report describes House relationships to tangible and intangible possessions, noting that, while it is the House chief who holds these items, the chief does not have a personal property right in the possessions

per se; rather, the chief has the responsibility to hold and protect the House's tangible and intangible property in trust on behalf of the House members.

Several participants are frustrated by how their relationships to cultural heritage are viewed by non-indigenous people. For example, participants are critical of non-aboriginals who romanticize the communal aspects of "ownership" among First Nations and wrongly assume that there are no family or individual entitlements and responsibilities. For some First Nations, strict transfer protocols regulate the passing on of rights and responsibilities of possession and use of everything from ceremonial bundles, names, songs, dances, and knowledge to hunting and gathering territories and sacred sites. Only those who possess the proper entitlement may make a transfer, and failure to follow protocol results in an illegal transfer. It is on this basis that some seek repatriation of cultural items, noting the irrelevance of deeds of title and receipts of payment according to their indigenous laws.

The effects of colonialism – epidemics, dwindling resources, cultural interactions, Christian conversion, and the *Indian Act* – have resulted in adaptation and undermining of indigenous laws (this is not to suggest that indigenous laws were unchanging). For example, the U'mista report relates how the borrowing and singing of family songs by non-family members is common today, although permission is sought and original ownership acknowledged. The KKTC report notes that the need to educate members and reverse cultural loss has resulted in the acknowledgment of a communal interest in items to which families of origin have primary entitlement.

Repatriation and Trade in Material Culture

Rationales for repatriation vary and are rarely offered in isolation, but some are emphasized more than others. For example, repatriation efforts of the Blood Tribe are explained as part of a broader struggle for recognition of religious and cultural freedoms. However, this emphasis on sacred and ceremonial objects does not reflect a lack of interest among the Blood for repatriation of other material culture. In contrast, participants in the U'mista and KKTC studies make it clear that ceremonial use, although important, is not the primary rationale for repatriation efforts in their communities. For the House of Luuxhon, possession and control of the use of images on certain items may be of greater significance than repatriation of the object itself.

Cultural continuity is a common refrain in discussing repatriation goals. Cultural knowledge of the objects, not only the objects themselves, is important. For example, Vi Birdstone explains that, when "cultural items were sold and placed in museums, we lost a lot of our traditional cultural knowledge."⁴¹ She elaborates, pointing out that knowledge is "placed ... far away, where most of our people will never get to and never see. And our children will never see them. So, they don't have a connection to the

culture and that's, that's severed."⁴² For her, the return of representative samples of material, such as duck decoys and baskets, is important because of the knowledge they represent. Participants in the U'mista study agree and also frame repatriation as a means of redress for injustices brought about by the potlatch ban. Repatriated cultural items are building blocks that may be used to restore and strengthen the cultures that colonialism endeavoured to destroy.

Participants express mixed emotions concerning museums. Several express gratitude to museums for preserving their material culture, and some note that such measures would not have been necessary had their culture not been taken from them in the first place. Until full repatriation is achieved, and regardless of whether repatriation is pursued, a common sentiment is that museums and First Nations need to work as equal partners in caring for, displaying, and interpreting cultural items. An example of this is the partnership between the Mookakin Foundation and the Glenbow Museum for the use and, ultimately, full repatriation of ceremonial items, as well as co-management or complete Kainai control over specific uses and treatments of other material, depending on its nature, that the Glenbow continues to hold. There are many other examples of positive partnerships between museums and First Nations.

The case studies also indicate that relations between museums and First Nations have substantially improved and that a new ethic of collaboration has been adopted in Canada. Positive relations hinge on respect, mutual understanding, open communication, and compromise. First Nations have been working hard with museum personnel and museums have been developing responsive programs and policies. However, there are still barriers to overcome. For example, the Piikani report notes that *how* museums return items is just as important as *that* they return them.⁴³ Too much emphasis on documentation and independently verifiable sources may be viewed as evidencing a lack of respect for community experts and oral traditions. The discretionary nature and diversity of museum repatriation policies, the scope of items eligible for return, and the conditions imposed on the return of non-ceremonial items are other examples given to illustrate how museums have more power in negotiations than do First Nations groups. The Kainai and U'mista chapters note that underlying sources of fear, museum mandates, and issues of legal liability may affect "the tone of negotiations, direct the actions of the parties involved, or alter the spirit of communication surrounding repatriation discussions."⁴⁴ However, these concerns are not as dominant in contemporary Canadian negotiations.

Funding is always a concern. Costs associated with locating items and negotiating and facilitating their return are significant. Some participants discuss how the cost of constructing and operating museum-like facilities

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and training staff may also place repatriation beyond the realm of possibility for many First Nations and be viewed as inappropriate costs for certain materials by others. International repatriations add additional costs to, and difficulty in, locating items, as do private repatriations. This, of course, assumes that the private collectors actually agree to sell, since there are no laws requiring them to part with the items. Like domestic repatriations, international repatriations may also generate unique challenges, such as laws that forbid repatriation and positions that regard collections as part of the heritage of humankind, wherein preservation in museums ensures maximum access. Specific concerns include poor communication and lack of notification; the necessity of purchasing, and the significantly inflated prices of, cultural items that a First Nation is fortunate to discover but are intended for export; and lack of sufficient funding to make such purchases.

Repatriation of Ancestral Remains

Repatriation of ancestral remains is a theme common to the Hul'qumi'num, KKTC, and Kainai case studies. All describe it as an emotionally charged issue. While protocols surrounding the care for ancestors vary among these groups, there is a common sentiment that human remains and the land surrounding them are to be left undisturbed. Respect for one's ancestors is the value that grounds the requirement for following proper protocols when handling ancestral remains. Respect is also what makes repatriation a necessity.

It should come as no surprise that participants who discuss ancestral remains consider the storage and mistreatment of remains as contrary to concepts of human dignity and respect for the dead. Some call for equal rights so that First Nations remains will be treated with the same degree of respect afforded to non-aboriginal remains – nothing more, nothing less. This should apply equally to museums that store human remains in drawers and private citizens who showcase human skulls as candle holders. As Chris Horsethief explains:

I don't care who has them or where they came from. I don't care if they came out of a National Park. If they're human remains and you know where they came from ... then they have to be returned ... Somebody has got to come forward and say this is a basic human right ... Our people are in boxes. They're labelled with numbers.⁴⁵

Many museums and other institutions are sensitive to the concerns of First Nations and are willing to repatriate human remains, but problems remain. For example, internal laws prevent the Blood Tribe from viewing or hand-ling remains. At the other end of the spectrum, Hul'qumi'num participants discuss their customary laws regarding the inherited right to care for the dead. Similarly, a Ktunaxa participant explains that certain individuals

hold specialized knowledge concerning protocol that must also be followed. Both the HTG and KKTC chapters address the issue of funerary material and insist that such items cannot be separated from the remains and must also be repatriated. There are also fears that interfering with the dead can have spiritual and physical repercussions in the here and now. However, most participants do not speak specifically to this issue.

More generally, as with repatriation of material culture, resources and community readiness to receive repatriated remains are common concerns. Escorting remains home and reburial according to First Nations protocol is costly. Who should pay is the subject of discussion in both the institutional and the private-sector (*i.e.*, land developer, collector) contexts.

Heritage Sites

A strong and intimate connection to the land is a theme common in all of the case studies. So strong is that connection that, when asked what sites need to be protected, a common answer is “all of them.” Many participants struggle with the notion that only specific sites can be earmarked for special protection because many areas hold aspects of their history and identity and are considered vital for the continuation of cultural practices and knowledge. An exception is the HTG report, which focuses on burial grounds: “In fact, the subject of burials so dominated the discussions of heritage issues, that if other site types were mentioned during the interviews, it was usually only as an indirect reference to their importance as burial locations.”⁴⁶ When asked, other First Nations partners concur that burial grounds are particularly important, along with sacred sites, and are most in need of special consideration and protection.

Serious concerns are expressed over the lack of respect given to First Nations cultural heritage and burial sites by the general public, government officials, developers, and some archaeologists. The HTG report, in particular, places significant emphasis on this point. The Hul’qumi’num people express a strong conviction that their ancestors and ancestral places must be respected, but they perceive that their heritage is “not publicly valued in British Columbia.”⁴⁷ The message is that First Nations burial grounds should receive the same respect as do non-aboriginal cemeteries.

Failure to enforce heritage protection legislation is cited as evidence of the low value placed on First Nations cultural sites and burial grounds. The perception is that lack of public, and therefore political, will is what lies behind this inactivity. Private interests are seen to continually supersede First Nations protection efforts, and development is the trump card against which First Nations have little recourse. For example, some Hul’qumi’num elders are convinced that the roots of this disrespect may be found in colonialism and the continued public disdain for aboriginal title claims to Hul’qumi’num territory.

Knowledge of indigenous legal orders and law, protocols, sincerity, and spiritual connection are prerequisites for proper site protection and, according to some interviewees, may only be found within the First Nations. Some participants explain that unfettered access to ceremonial places, traditional hunting and gathering territories, and rights of removal are also needed both on private lands and in parks. Moreover, First Nations must have a role in interpreting cultural sites, receive proper external acknowledgment of their connection to the land, and have the power to restrict access to sacred places.

Participants who spoke to the utility of heritage protection legislation emphasize the inadequacy of existing laws and, in particular, lack of enforcement. When sites are disturbed, notification to affected First Nations is not always given. In general, the impression is that First Nations are only given a minor consultative role in heritage management. Moreover, sacred sites are not easily protected by conventional legal approaches because site identification may conflict with confidentiality requirements, and identification increases the risk of exploitation.

Language as the Core

Given the oral nature of First Nations cultures, it is not surprising that language is identified for the primary role it plays in shaping First Nations peoples' identities, culture, history, and connection to their land. According to William Wasden Jr., "It's what makes us Kwakwaka'wakw. The name says it all: Kwak'wala-speaking people. And I don't know what we are going to call ourselves after if we don't, if we're not speaking our language."⁴⁸ Without the language one's history is lost. As John Brown, Kwiiyeehl of the Gisgahaast (Fireweed) Clan of the Kispiox Tribe of the Gitksan, explains:

It was customary to transmit the *adawx* so that they may be preserved. A group that could not tell their *adawx* would be ridiculed with the remark, "What is your *adawx*?" And if you could not give it you were laughed at. What is your grandmother's name? And where is your crest? How do you know of your past, where have you lived? You have no grandfather. You cannot speak to me because I have one. You have no ancestral home. You are like a wild animal, you have no abode. *Niiye'e* and *adawx*, grandfather and history are practically the same thing.⁴⁹

Without that oral record, identification of traditional territories and ownership rights are jeopardized. Transmission of traditional knowledge, rights, and entitlements is also stymied by one's inability to understand and speak the language. Language revitalization is identified as a prerequisite for all other aspects of cultural continuity and restoration. For example, the

central role of songs in ceremonial practice and transfer protocol is premised on an understanding of the language. Elizabeth Gallant explains this interrelationship:

[T]hat's what's so important, when they can understand the language and sing the songs. The spirits that come to us do not understand English, they don't sing in English: but they do understand Blackfoot language and songs, and that's why it's so important that Blackfoot be learned. That's when we can go back to our way of life and our religion. And this is how they [children] will learn as they grow, and will know our way of life.⁵⁰

Given the central role language plays in First Nations cultures, increasing the number of language speakers is a primary concern, as is the need to transmit and record cultural knowledge before knowledgeable elders pass on. Participants agree that it is important that all members of the community receive language training and education; however, the studies note a particular emphasis on training youths.

Cultural Appropriation and Copyright

Questions fashioned in consultation with First Nations partners concerned with the issue of cultural appropriation and copyright focus much of the discussion on proper use of, and entitlement to, songs, names, designs, and crest images. Examples of appropriation take various forms, such as improper access to sacred information or songs and unauthorized taking, use, modification, reproduction, or recording contrary to the indigenous laws of the First Nation in question. For example, Troy Hunter notes:

A good example of that is the use of the word "*Nipika*." That's our word for, like, [the] Creator. And there's companies that use that word ...[T]o me it's no different than if we were to call the casino that we just opened up, say, the "Holy Mary Jesus Christ Casino" or something like that.⁵¹

Although many First Nations have their own laws concerning proper use and control of names, words, and other intangible heritage, such laws are usually orally based. A difficult question for many is whether some laws need to be written down in order for them to be recognized and clearly communicated outside the community. Even then, Canadian law may not offer the type of protection sought.

While commercial enterprises are frequent offenders, appropriation by academics is also a serious concern. Further, the Canadian intellectual property regime fails to address First Nations concepts and law pertaining to ownership and control of intangible cultural heritage. Rather than assisting in

protection, copyright law is seen by some participants to facilitate cultural appropriation by non-aboriginals and even, ultimately, to restrict the ability of First Nations to practise their own culture. This sometimes arises from misunderstanding of copyright law.

Strategies for Repatriation and Protection

The case studies stand for the proposition that First Nations partners want greater control over their culture, in all its manifestations, for the simple reason that it is theirs and that they are best equipped to care for and protect it. Some participants explain that they are tired of adapting to non-indigenous structures and having the government dictate their culture to them. As Allan Hunter elaborates, some participants want jurisdiction over their cultural heritage as well as the ability to enact laws where First Nations laws do not exist and to have those laws fully recognized:

Right off the bat, Ktunaxa law, we need to create our own laws, and then have them recognized by other governments and have them incorporate it into their laws. Something like that. [B]ut rather than changing their laws and looking at their laws and how we want their laws to fit us, we need to create our own laws.⁵²

In addition to freeing themselves from government control, some participants also comment on the need to free themselves from reliance on outside “experts” and to reclaim faith and trust in their own communities to protect their culture. There is a recognition that dependency on Western ways is undermining their own ways. As Andrea Cranmer explains:

Action needs to be taken, enough asking, enough of having people com[ing] and telling us what they think we should do, non-native people and linguists and you name it. We don’t need that. We know what we need to do. We need to put our trust into our own people [so] that we can do the job of saving our language, of teaching our children, of preserving our history, of keeping the U’mista Cultural Centre open, because it’s important. And we don’t need people coming in to tell us that. And what really irritates me is that we pay them such big dollars to do that. It’s so silly.⁵³

Increasingly, First Nations are controlling research by assuming the role of researcher and implementing research protocols and codes of conduct. Formal written protocols are discussed in the Kainai, U’mista, and KKTC studies. Central to these protocols is a concern for parity between researchers and the First Nation, and the assurance that the latter will benefit from the research. Guidelines must allow First Nations to act as gatekeepers: they must

be allowed to control the use of their knowledge and to correct misunderstandings and misrepresentations of their culture.

Building positive relationships with museum and government personnel, the scientific community, resource developers, and others, and educating them in First Nations law and practices, are essential steps towards protection and repatriation. Ideally, these will be lasting relationships built on collaborative negotiation, equality, and moral responsibility; however, some participants acknowledge that power imbalances may sometimes prevent the achievement of this goal. The general consensus of those who speak to the issue is that existing Canadian law is ineffective. Reluctance by some participants to rely on Western law reform to address these problems is caused, in part, by the tendency of Western law to ignore distinctions among First Nations cultures and a perception that legislation will impose inflexible rules that hamper relationship building. Acceptance of legislative reform hinges on First Nations having an active role in its creation and implementation rather than simply, in the name of "consultation," receiving a copy of the draft law prior to first reading. For those participants who emphasize the importance of respecting First Nations laws, successful legislative proposals will be those that validate, enable, and enforce First Nations laws. In essence, what is called for is an intercultural dialogue between First Nations law and Canadian law.

Repatriation, cultural revitalization, and heritage protection are costly. Participants are unanimous in their call for more resources to assist with protection and repatriation efforts. They speak about the significant costs associated with location, negotiation, and return of cultural items and remains. In their view, these costs are properly borne by, or at least contributed to by, the government that forced them to hand over their cultural items, the institutions that acquired and benefited from their removal, and the developers and other private parties who have uncovered First Nations ancestors and disturbed cultural sites in their exploitation of the land. A similar sentiment is shared with respect to funding for language training. First Nations communities would not be incurring great cost to save their language if not for the assimilative policies of the federal government.

Acknowledgments

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Notes

- 1 In 1995, United Nations Special Rapporteur Dr. Erica Irene Daes proposed a definition of heritage for the purpose of developing international principles and guidelines for the protection of indigenous heritage. See Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Final Report of the Special Rapporteur*:

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Protection of the Heritage of Indigenous Peoples, UNESCOOR, 47d Sess., UN Doc. E/CN.4/Sub.2/1995/26 (1995). First Nations cultural heritage includes land, language, objects, and knowledge pertaining to a particular First Nation or its territory. Marie Battiste and Sákéj (James Youngblood) Henderson explain in *Protecting Indigenous Knowledge and Heritage* (Saskatoon: Purich Publishing, 2000) at 65 that indigenous understandings of cultural heritage are not restricted to historical manifestations of knowledge or material heritage and are best understood as that which “belongs to the distinct identity of a people.” This definition is consistent with the range of issues and understandings of “cultural property” raised by participants in the research leading to this volume. The struggle to find appropriate terminology that respects First Nations understandings and has meaning within a Canadian legal context is addressed in further detail below and in most of the chapters in this volume.

- 2 See e.g. Miriam Clavir, *Preserving What Is Valued: Museums, Conservation, and First Nations* (Vancouver: UBC Press, 2002); Tamara Bray, ed., *The Future of the Past: Archaeologists, Native Americans, and Repatriation* (New York: Garland Publishing, 2001); Marie Battiste and J. Sákéj Henderson, *Protecting Indigenous Knowledge and Heritage* (Saskatoon: Purich Publishing, 2000); Terri Janke, *Our Culture: Our Future – Report on Australian Indigenous Cultural and Intellectual Property Rights* (Sydney: Australian Institute of Aboriginal and Torres Strait Islanders and the Torres Strait Commission, 1998); and Bruce Ziff and Pratima Rao, eds., *Borrowed Power: Essays on Cultural Appropriation* (New Brunswick, NJ: Rutgers University Press, 1997).
- 3 Canada, *Report of the Royal Commission on Aboriginal Peoples: Gathering Strength*, vol. 3 (Ottawa: Supply and Services Canada, 1996) at 599-601.
- 4 *Proposed Act Respecting the Protection of Archaeological Heritage in Canada* (Communications Canada, 19 December 1990). The proposed federal legislation was never enacted for a variety of reasons, including concerns raised by aboriginal organizations about insufficient consultation and failure to include aboriginal ownership of archaeological resources. Again issues concerning First Nations ownership and jurisdiction resulted in disagreement in the BC review. In the end, a section was included in the amended legislation to enable agreements between First Nations and the province concerning cultural preservation and protection of sites and objects. See *Heritage Conservation Act*, R.S.B.C. 1996, c. 87. For further discussion see Catherine Bell, “Aboriginal Claims to Cultural Property in Canada: A Comparative Analysis for the Repatriation Debate” (1992) 17 Am. Indian L. Review 457 at 495-97; Catherine Bell and Robert K. Paterson, “Aboriginal Rights to Cultural Property in Canada” (1999) 8:1 Int’l J. of Cult. Prop. 167 at 187 and 192-93.
- 5 See e.g. Simon Brascoupe and Howard Mann, *A Community Guide to Protecting Indigenous Knowledge* (Ottawa: Research and Analysis Directorate, Department of Indian Affairs and Northern Development, 2001). See also discussion papers prepared for *Traditions: National Gatherings on Indigenous Knowledge* (2005), online: Canadian Heritage <http://www.traditions.gc.ca/docs/docs_disc_e.cfm>.
- 6 A few books have been published in Canada that critically assess the extent to which the rights, needs, and interests of indigenous peoples are addressed through Canadian courts, domestic and international heritage laws, and law reform. See e.g. Michael L. Ross, *First Nations Sacred Sites in Canada’s Courts* (Vancouver: UBC Press, 2005); Rosemary Coombe, *The Cultural Life of Intellectual Properties: Authorship, Appropriation and the Law* (Durham, NC: Duke University Press, 1998). Battiste and Henderson, and Ziff and Rao, *supra* note 2, also discuss Canada’s legal regime within a broader discussion of international law and the experiences of indigenous peoples. In 1992, the Canadian Museums Association and Assembly of First Nations also released a report that considered input from museums and First Nations organizations and made recommendations relating to improving relations between museums and First Peoples, including recommendations for repatriation. See Assembly of First Nations and Canadian Museums Association, *Turning the Page: Forging New Relationships between Museums and First Peoples*, 3d ed. (Ottawa: Canadian Museums Association, 1994). There are many books, articles, and reports on indigenous cultural heritage issues and several that critically assess the application and reform of international laws and domestic laws in the United States and Australia. See e.g. Michael Brown, *Who*

- Owns Native Culture?* (Cambridge, MA: Harvard University Press, 2003), which also contains a list of sources on “Indigenous Cultural Rights” at 299; and Terri Janke, *supra* note 2. Of these, Terri Janke’s work is framed by consultations and collaboration with indigenous peoples and organizations in Australia. A bibliography of some of the sources used in this work can be found on the project website, *infra* note 11.
- 7 The second volume is also published by UBC Press. See Catherine Bell and Robert K. Paterson, eds., *Protection of First Nations Cultural Heritage: Laws, Policy, and Reform* (Vancouver: UBC Press, 2008).
 - 8 The aboriginal peoples in Canada include Indian, Inuit, and Métis peoples. Our research is concerned with Indian Nations, also referred to in Canada as First Nations. Sonja Tanner-Kaplash and Associates Inc. was hired to conduct the initial research and Catherine Bell was retained as an advisor to U’mista and the research team, which included Val Napoleon, co-editor of this volume, Dr. Eldon Yellow Horn, and Brenda Beck.
 - 9 R.S.C. 1985, c. 51.
 - 10 *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1183.
 - 11 See <<http://www.law.ualberta.ca/research/aboriginalculturalheritage>>. This website contains, among other things, more detailed community versions of case studies and background research documents, including a review of Canadian legislation, workshop proceedings, and original case study proposals. The Hamatla Treaty Society and Nedo’at Hereditary Chiefs were also original partners in this study but had to withdraw as a result of other unexpected priorities that arose in their communities.
 - 12 R.S.C. 1985, c. I-5. Earlier versions expressly ban cultural practices such as the Sundance and potlatch. See Dale Cunningham, Allyson Jeffs, and Michael Solowan, “Canada’s Policy of Cultural Colonization: Indian Residential Schools and the *Indian Act*,” c. 10, this volume at 442.
 - 13 Catherine Bell, Graham Statt, and the Mookakin Cultural Society, “Repatriation and Heritage Protection: Reflections on the Kainai Experience,” this volume at 209.
 - 14 See appendix at page 491 of this volume.
 - 15 Susan Marsden, “Northwest Coast *Adawx* Study,” this volume at 114.
 - 16 Richard Overstall, in consultation with Val Napoleon and Katie Ludwig, “The Law Is Opened: The Constitutional Role of Tangible and Intangible Property in Gitanyow,” this volume at 93.
 - 17 Brian Noble, in consultation with Reg Crowshoe and in discussion with the Knut-sum-atak Society, “*Poomaksin*: Skinnipiikani-Nitsiitapii Law, Transfers, and Making Relatives: Practices and Principles for Cultural Protection, Repatriation, Redress, and Heritage Law Making with Canada,” this volume at 272; *supra* note 13 at 229-30.
 - 18 *Supra* note 15.
 - 19 *Ibid.* at 114-15.
 - 20 Noble, *supra* note 17 at 291: “Nitsiitapii: ‘real people’ is a term designating how Blackfoot recognize themselves by their socio-cultural practices, laws, and relationships with the Creator,” this volume at 259.
 - 21 Catherine Bell *et al.*, in consultation with Andrea Sanborn, the U’mista Cultural Society, and the ‘Namgis Nation, “Recovering from Colonization: Perspectives of Community Members on Protection and Repatriation of Kwakwaka’wakw Cultural Heritage,” this volume at 39.
 - 22 *Ibid.* For further discussions of issues of terminology, see Lyndel V. Prott and Patrick J. O’Keefe, “‘Cultural Heritage’ or ‘Cultural Property?’” (1992) 1:2 Int’l J. Cult. Prop. 307.
 - 23 See *e.g.* *supra* notes 1 and 2.
 - 24 25 U.S.C.A. ss. 3001-3013 (West Supp. 2000).
 - 25 Brown, *supra* note 6 at 10. Focusing on controversies concerning sacred sites and intangible expressions of indigenous heritage, Brown emphasizes that this goal is best advanced through approaches that acknowledge the “inherently relational nature of the problem,” including “judicious modification of intellectual property law, development of workable policies for protection of cultural privacy, and reliance on the moral resources of civil society.” For discussion of potential negative effects of law reform and NAGPRA, see *e.g.* Brown at 213; the Kainai case study, *supra* note 13 at 220-23 and 225 (Frank Weasel Head). This issue is also

30 Introduction, Methodology, and Thematic Overview

- discussed in several chapters in the second volume, Catherine Bell and Robert K. Paterson, eds., *Protection of First Nations Cultural Heritage: Laws, Policy, and Reform* (Vancouver: UBC Press, 2008).
- 26 Richard Lee and Richard Daly, eds., *The Cambridge Encyclopedia of Hunters and Gatherers* (Cambridge: Cambridge University Press, 1999) at 4-5.
- 27 Particulars relating to modification of case study methodologies are discussed in the relevant studies in this volume.
- 28 See e.g. Linda Smith, *Decolonizing Methodologies* (New York: Zed Books, 1999).
- 29 R. Rappoport, "Three Dilemmas in Action Research" 23:6 *Human Relations* at 499 as cited in James McKernan, *Curriculum Action Research: A Handbook of Methods and Practices for the Reflective Practitioner* (London: Kogan, 1991) at 4.
- 30 Ortrun Zubert-Skerritt, "Improving Learning and Teaching through Action Learning and Action Research" (Paper presented to the HERDSA Conference, 1992, University of Queensland) [unpublished] at 2, cited in Meagan Gough, *Repatriation as Reflection of Stó:ló Cultural Values: Tset Tháyeltxwem Te lálém S'olh etawtxw (We Are Building a House of Respect)* (MA Thesis, Department of Sociology and Anthropology, Carleton University, 2004) [unpublished] at 2.
- 31 Gough, *ibid.* at 30.
- 32 *Supra* note 28 at 10, cited in Gough, *ibid.* at 14.
- 33 *Supra* note 14.
- 34 *Supra* note 16 at 95.
- 35 Unfortunately, indigenous legal scholar June McCue (University of British Columbia) had to withdraw. We acknowledge and appreciate her contributions to the earlier phases of this research program. Kelly Russ (Haida lawyer and member of the Canadian Human Rights Commission) participated in our research symposium but was unable to contribute to the publication.
- 36 *Supra* note 11.
- 37 Catherine Bell and Heather McCuaig, in consultation with the Ktunaxa/Kinbasket Tribal Council and Ktunaxa/Kinbasket Traditional Elders Working Group, "Protection and Repatriation of Ktunaxa/Kinbasket Cultural Resources: Perspectives of Community Members," this volume at 354.
- 38 Eric McLay *et al.*, "'A'lhut tu tet Sul'hweentst [Respecting the Ancestors]: Understanding Hul'qumi'num Heritage Laws and Concerns for Protection of Archaeological Heritage," this volume at 151.
- 39 Gloria Cranmer Webster, "The Potlatch Collection Repatriation" (1995) Special Issue U.B.C. L. Rev. 137 at 141, as cited in *supra* note 21 at 70-71.
- 40 *Supra* note 13 at 225.
- 41 *Supra* note 37 at 316-17.
- 42 *Ibid.*
- 43 This is also emphasized in the HTG and KKTC chapters in relation to the return and internment of ancestral remains.
- 44 *Supra* note 13 at 233.
- 45 *Supra* note 37 at 350.
- 46 *Supra* note 38 at 157.
- 47 *Ibid.* at 173.
- 48 *Supra* note 21 at 43.
- 49 *Supra* note 15 at 115.
- 50 *Supra* note 17 at 273.
- 51 *Supra* note 37 at 328.
- 52 *Ibid.* at 357.
- 53 *Supra* note 21 at 61-62.

Part 1: Our Voices, Our Culture

In the land that is now Virginia, the Monacan Trickster is the Great Rabbit Chief known as Bobtail. This Trickster is a “moral trope designed to teach the normative ideal, mores, and morals through reverse psychology.”¹ He is international and contemporary – irreverently showing up in the Supreme Court of Canada² and in obscure editorial discussions about the aggressive actions of Israelis and Palestinians.³ Bobtail gets a kick out of the cosmopolitan Tricksters and has been doing some travelling himself around the beautiful lands now called Alberta and British Columbia.

And Bobtail is reading and listening. There’s a lot of interesting stuff happening, especially about cultural heritage and aboriginal peoples. This involves law and tradition. Bobtail considers: “Tradition can be the dead faith of living people, or the living faith of dead people. If Indigenous traditions are not regarded as useful in tackling contemporary concerns and recognized as applying in current circumstances, then they are nothing but the dead faith of living people.”⁴ Bobtail picks up another book: “Tradition means giving votes to the most obscure of all classes, our ancestors. It is the democracy of the dead. Tradition refuses to submit to the small and arrogant oligarchy of those who merely happen to be walking about.”⁵ And another: “[I]f our people, institutions, and ideologies have relevance beyond our boundaries, this marks the living faith of our ancestors – the living traditions of dead people.”⁶

Hmmm. Dead faith. Democracy of the dead. Living traditions of dead people. Bobtail suspects that this has something to do with him, too, but he just can’t quite pin it down. Bobtail wonders how these questions apply to the current cultural heritage dialogue. These are exactly the kind of questions that give Bobtail a big headache. Why do things have to get so complicated and uncomfortable?

Hmmm ... Lately, Bobtail just can’t shake the suspicion that somebody is getting him back and is having a good laugh on him. Weget? Clown? Or maybe Wisakedjak has returned?

Val Napoleon

Notes

- 1 Jay Hansford C. Vest, "Braves or Brave Hawks at UNCP: A Philosophical Review of a 'Native' Mascot" (Paper presented to the Mid-Atlantic Conference on the Scholarship of Diversity, Roanoke, Virginia, 2005), online: University of North Carolina at Pembroke <http://www.uncp.edu/relation/bulletin/v6/16/jay_vest.doc> at 2.
- 2 John Borrows, *Recovering Canada: The Resurgence of Indigenous Law* (Toronto: University of Toronto Press, 2002) at 57.
- 3 Mary Lynne Hill, "Trickster's Mask: Representations of Aggressive Actions of the Israelis and Palestinians in Editorial Coverage" (2003) 2:2 *Trickster's Way*, online: *Trickster's Way* <http://www.trinity.edu/org/tricksters/TrixWay/current/Vol%202/Vol_2/Mhill.htm> and <http://www.trinity.edu/org/tricksters/trixway/current/Vol%202/Vol2_2/mhill.pdf>.
- 4 Borrows, *supra* note 2 at 147.
- 5 G.K. Chesterton, *Collected Works* (San Francisco: Ignatius Press, 1986) vol. 1 at 251, quoted in H. Patrick Glenn, *Legal Traditions of the World, Sustainable Diversity in Law*, 2d ed. (Oxford: Oxford University Press, 2004) at 5, n. 13.
- 6 Borrows, *supra* note 2 at 147.

1

Recovering from Colonization: Perspectives of Community Members on Protection and Repatriation of Kwakwaka'wakw Cultural Heritage

Catherine Bell, Heather Raven, and Heather McCuaig, in consultation with Andrea Sanborn, the U'mista Cultural Society, and the 'Namgis Nation

I hope that some day before I leave this world that I see a lot of – all our stuff come back. 'Cause I hear we got things all over the world. And why did we lose it? What really happened? Why was the government against us? ... [was] it just to kill our souls? To kill us? Maybe that was one way of getting rid of us. And why was it against the law to have a potlatch? And it's so, it's so beautiful, especially when you celebrate the birth of a baby, when you're giving names to your child when it grows up, and when [a] woman becomes a woman and the young man steps into his father's shoes. And that they did such a beautiful job on doing that. You know, why on earth was it against the law?

— Emma Tamin¹

Loss of cultural items, knowledge, and language arising from government-sanctioned discriminatory laws and policies, and the importance of recovering from that loss to Kwakwaka'wakw (Kwakiutl) survival, is a fundamental theme in this case study. Anger, grief, shock, confusion, and frustration are some of the feelings expressed by participants as they reflect on efforts undertaken by the U'mista Cultural Society (U'mista), the 'Namgis Nation, and the broader Kwakwaka'wakw community to repatriate material culture, revive cultural practices, and reclaim the knowledge, values, laws, principles, and beliefs associated with them. Yet equally strong are feelings of optimism, hope, happiness, pride, confidence, and satisfaction as participants recall the potlatch ceremony and discuss the positive effects that repatriation of cultural objects and information and the revival of the Kwak'wala language can have on the cultural life of the community. The importance of repatriating material culture surrendered and sold as a consequence of anti-potlatch laws

is linked to community well-being and healing through the revival of traditions and the acknowledgment of injustices suffered at the hands of the Canadian government. The value of potlatch items lies not only in the “tangible evidence” they provide of Kwakwaka’wakw history but also, and more significantly, “in the intangible aspects of the culture they symbolize and the cultural knowledge and norms they represent.”²

Although participants offer broad definitions of cultural property, the emphasis in this case study is on material culture, stories, and songs; the importance of reviving the potlatch system; and how the potlatch system has operated as a means for understanding laws, values, rights, and responsibilities in relation to the tangible and intangible cultural heritage of the Kwakwaka’wakw. Equally important to the retention of cultural knowledge, identity, and traditions is the survival and protection of the Kwak’wala language. For this reason, U’mista also chose to include specific questions concerning language use and preservation. However, the emphasis in this study is not intended to suggest that protection of traditional lands, cultural sites, and other aspects of Kwakwaka’wakw cultural heritage are less important to the Kwakwaka’wakw than is the protection of language.

We begin this study with a brief introduction to the Kwakwaka’wakw, the ‘Namgis Nation, and U’mista. This is followed by a description of case study methodology and a thematic presentation of information gathered primarily through a focus group involving U’mista board members and interviews with Kwakwaka’wakw elders, U’mista employees, and others who are assisting U’mista with specific protection and repatriation initiatives. We define cultural property and explore priorities for protection, then offer a discussion of language retention and revival. Next, we address three broad themes: the potlatch, establishing “ownership” or belonging, and repatriation. We place particular emphasis on the role of the potlatch in sustaining and recovering Kwakwaka’wakw cultural knowledge and traditions. This is followed by discussions about the rationale for repatriation, ownership issues that arise in repatriation claims, the role of museums, the repatriation of information and language material, and the authenticity and appropriation of art. We conclude with reflections on the role of Canadian law and government in addressing some of the issues raised. As one of the goals of the case study methodology is to accurately portray the views of a range of individuals selected by U’mista to participate in this research, the study includes extensive quotations from transcripts.³ However, it is not intended to represent a generalized Kwakwaka’wakw or ‘Namgis perspective.

The People and Their Territory

Kwakwaka’wakw refers to the people who speak Kwak’wala in the northwestern regions of British Columbia. They have also been known as the

Kwakkewlths (by the federal government) and the Kwakiutl (by anthropologists).⁴ Traditional Kwakwaka'wakw territory extends from Comox to the north end of Vancouver Island and the adjacent mainland inlets from Smith Inlet south to Toba Inlet. Consisting of a number of tribes with separate names and creation stories, Kwakwaka'wakw communities include Kwagu'ł (Fort Rupert), 'Namgis (Alert Bay), Da'naxda'xw (New Vancouver), Dzawada'enuxw (Kincome Village), Kwikwasutinux (Gilford Island), Gwawa'enuxw (Hopetown), Gwugimukw (Quatsino), Gwat'sinuxw (Winter Harbour), Tlatlasikwala (Hope Island), Weka'yi (Cape Mudge), and the Wiwek'am (Campbell River). Other tribes no longer inhabiting their original territories include the Mamalilikala (Village Island), Ławit'sis (Turnour Island), Ma'amtagila (Estekin), 'Nak'waxda'xw (Blunden Harbour), and Gwa'sala (Smiths Inlet). Some of the original tribes have disappeared, including the A'wa'etłala (Knight Inlet), the Nakamglalisala of Hope Island, and the Yutlinux of the Cox and Lanz islands.⁵

The main village site of the 'Namgis is at Alert Bay, on Cormorant Island, which is located off the northeast coast of Vancouver Island. The name 'Namgis comes from the 'Namxlagiyu, who was a halibut-like monster. After a great flood, 'Namxlagiyu swam ashore near the mouth of the Nimpkish River. Once on land, he became a man named 'Namukusto'lis. Needing shelter, he wanted to build a house at Xwalkw, which is located at the mouth of the Nimpkish River. However, he could not lift the beams by himself. He saw a large bird perched on a nearby rock and wished that it could help him. Being a supernatural creature, a Thunderbird, the bird knew about 'Namukusto'lis' wish without being asked. Thunderbird agreed to help build the house and revealed his human face underneath his bird face. Thunderbird used his talons to lift the beams into place. After the work was completed, Thunderbird removed his bird skin and became human. He threw his bird skin into the air and it flew away. As the bird skin flew away, he said, "You will only cause thunder and lightening [sic] when one of the Chiefs of the 'Namgis dies."⁶

After the establishment of Xwalkw, the 'Namgis occupied the entire watershed of the Nimpkish River, Malcolm Island, and Cormorant Island, and they regularly travelled to Knight Inlet and Kincome Inlet on the mainland of British Columbia. Xwalkw was the major 'Namgis village until most of the people moved to 'Yalis (Alert Bay), beginning in the 1870s. 'Yalis had long been a place that the 'Namgis used for various purposes. In 1870, two entrepreneurs, Spenser and Huson, constructed a saltery at 'Yalis and attempted to induce the 'Namgis to move from Xwalkw and their other permanent settlements. The banning of the potlatch and removal of children to residential schools caused the decline of outlying villages as parents moved closer to Alert Bay to be closer to their children in the residential school. Although the 'Namgis have eight separate reserves in their former territory, today most members live in Alert Bay.

As the U'mista Cultural Centre is located on the 'Namgis reserve in Alert Bay, the 'Namgis Nation has been actively involved in supporting cultural research and other initiatives undertaken by U'mista. For example, the 'Namgis have partnered with U'mista to conduct research on language retention and renewal, the creation of the Kwakwaka'akw Centre for Language and Culture in Community (KCLCC), initiatives concerning the protection and repatriation of cultural property, and, along with the other Kwakwaka'wakw nations, it is supporting U'mista in a specific claim against the federal government concerning harms suffered as a result of the anti-potlatch laws. Members of the 'Namgis Nation, along with other Kwakwaka'wakw, serve on the board for U'mista, volunteer as instructors in language and cultural education programs offered by U'mista, and participate in a variety of research programs designed to document and preserve Kwakwaka'wakw culture. The 'Namgis are also engaged in the British Columbia treaty process and are negotiating increased protection and control of cultural resources, including lands and natural resources, as part of that process.

U'Mista Cultural Society

The U'mista Cultural Society was established in 1974 and is governed by a board of ten directors composed of members from any tribe of the Kwakwaka'wakw.⁷ The broad mandate of U'mista is to “ensure the survival of all aspects of cultural heritage of the Kwakwaka'wakw.”⁸ It “exists to serve both the Kwakwaka'wakw and non-native population as a whole by the dissemination of cultural, historical, and artistic information about the Kwakwaka'wakw regionally, provincially, nationally, and internationally.”⁹ Kwakwaka'wakw elders provide an “invaluable” role in research conducted by U'mista, including collections interpretation and advising on traditional potlatch protocol and other aspects of Kwakwaka'wakw culture.

One of the initial objectives of the society was to build a facility in Kwakwaka'wakw territory to exhibit potlatch items “illegally confiscated in 1922 by Indian Agent William Halliday” after the Village Island potlatch and “returned from the Canadian Museum of Civilization [then the National Museum of Man] and the Royal Ontario Museum in 1979 and 1988 respectively.”¹⁰ “Repatriation of all the illegally confiscated regalia is a continuing commitment that the Society has had from its inception.”¹¹ The name of the society reflects this purpose. The term “*u'mista*” is derived from a historical practice of the Kwakwaka'wakw. In earlier times, people were sometimes taken captive during raids. They were most often returned to their homes through the payment of a ransom to their captors or by a retaliatory raiding party. On returning home, they were said to have *u'mista*.¹² The modern equivalent of *u'mista* is the recovery and return of artifacts, records, and other items that have been held captive in museums and personal collections outside of Kwakwaka'wakw territory. Since 1980, the permanent display at

U'mista has contained items in the Potlatch Collection, which was recovered, or *u'mista*, from museums and private collections in Canada and the United States. Other permanent exhibits include "description of the traditional ethnobiology of the Kwakwaka'wakw and origin stories of the Kwakwaka'wakw villages, as well as historical and contemporary Kwakwaka'wakw pieces."¹³

Although repatriation of the Village Island potlatch items continues to be an important part of U'mista operations, the objectives of the society have evolved over the years to reflect the role of U'mista in the revival of Kwakwaka'wakw culture and the Kwak'wala language. Some of the more specific objectives of U'mista are to:

- 1 Collect, preserve, and exhibit native artifacts of cultural, artistic, and historical value to the Kwakwaka'wakw;
- 2 Promote and foster carving, dancing, ceremonials, and other cultural, artistic activities engaged in by the Kwakwaka'wakw;
- 3 Collect, record, and make available information and records relating to the language and history of the Kwakwaka'wakw;
- 4 Promote, build, and maintain facilities for carrying out the above aims; and
- 5 Recover from other institutions and individuals artifacts and records of cultural, artistic, and historical value to the Kwakwaka'wakw.¹⁴

Pursuant to these objectives, U'mista has engaged in a number of initiatives inside and outside the community, invoking the legal system where necessary. In addition to maintaining and displaying the Potlatch Collection, U'mista is actively engaged in law reform activity and has initiated a specific claim, with the support of all Kwakwaka'wakw tribes, to seek compensation for the harm suffered as a consequence of the anti-potlatch laws.¹⁵ This claim was submitted to the Specific Claims Branch of the Department of Indian and Northern Affairs in 1998. A detailed description of this claim is offered further on in this chapter.

Other U'mista initiatives include gathering tapes, photographs, books, slides, and any other information available to facilitate its role as an information and resource centre on Kwakwaka'wakw culture; recording and documenting elder knowledge; conducting genealogical research; working with Kwakwaka'wakw and other interested individuals to develop language retention programs; promoting retention of language and culture through cultural activities in the community and support for Kwakwaka'wakw artists; upgrading and funding facilities, including the Big House, in which potlatches and other community events are held; and creating resources that will enable non-Kwakwaka'wakw to obtain accurate information and to learn more about Kwakwaka'wakw culture. U'mista is also involved in

supporting the education and training of individuals of Kwakwaka'wakw descent and in economic development through tourism in Alert Bay.

Case Study Methodology

Participation in this study was supported by resolutions of the U'mista board and was approved by the chief and council of the 'Namgis Nation. As research was conducted on the 'Namgis Reserve, the methodology also complied with '*Namgis Guidelines for Visiting Researchers*.¹⁶ The guidelines are intended to "ensure clarity and fairness" in the relationship between the researcher, his/her supporting institutions and funding sources, and the band.¹⁷ Before research commences, researchers must submit a curriculum vitae, references, and a written proposal for assessment by band staff and cultural advisors and approval by the chief in council. Research must "be of benefit to the Band, both in its intent and its outcome," comply with "professional standards and ethics," and ensure that the "interests of the Band" and "the confidentiality of informants be protected with respect to the dissemination of original research data to any third party."¹⁸ Upon approval, a contract may be required that generally stipulates that all original tapes and notes "remain with or be provided to the Band," that "copies of the original research data not be disseminated to any third party (person or institution) without prior knowledge and consent of the Band," and that "the Band be consulted prior to the publication or public presentation" of research outcomes.¹⁹ Issues of copyright and restrictions the band may wish to place on interpretations and dissemination of research data must also be discussed before the proposal is submitted.

Data for the study was gathered primarily through interviews, focus groups, and a review of files in the U'mista office dealing with repatriation of culturally and historically significant items and artifacts. Information about the first Potlatch Collection repatriation is also drawn from published sources, including articles written by Gloria Cranmer Webster, U'mista's first director and curator. Participants spoke mainly in English but also used Kwak'wala words. A list of potential interview and focus group participants was developed by Andrea Sanborn and Barb Cranmer. These include people who have memories of, or whose families participated in, the Village Island (Cranmer) and other potlatch ceremonies before the ban: six Kwakwaka'wakw elders and others with significant knowledge and expertise who live in Alert Bay; the executive director and collections manager for U'mista; a lawyer and anthropologist working on the specific claim; and an anthropologist working on language matters for U'mista. Five U'mista board members from the 'Namgis, Ławit'sis, Dzawada'enuxw, and Kwagu'ł nations also participated in a focus group discussion.

With the exception of those asked of Guy Buchholtzer, Stan Ashcroft ('Namgis legal counsel), and John Pritchard (specific claim researcher), the

standard question set was used as a general guide for interviews and focus groups. Additional questions relating to the role of Canadian museums and the challenges of repatriation were asked of those with experience in these areas. Guy Buchholtzer was asked to describe his work on the language repatriation project for the KCLCC, and Stan Ashcroft and John Pritchard were asked questions concerning the specific claim and the role of law in protecting cultural heritage. The interviews and focus group were guided by cultural interpretations of the questions asked and the interest and importance that participants placed on particular topics.

Definition and Protection of Cultural Property

Individual and focus group interviews with Kwakwaka'wakw participants began with an introduction to the project and examples of how we were using the phrase "cultural property." Participants were asked what the term "cultural property" meant to them. William Wasden Jr. suggested that the term "is a little bit more precise to families because the family makes up the community, but the community doesn't own everything. The families are the ones in control of it."²⁰ Andrea Cranmer notes that the term "cultural property" is not used in the Big House or by the "well-versed cultural people in the community" and that she feels more comfortable with the phrase "cultural heritage" to describe what the Kwakwaka'wakw "own as a people."²¹

In response to these questions, participants set out a wide number of tangible and intangible items, such as the land, medicines, songs, history, values, and language. Participants do not make divisions among kinds of property, and they connected property with values and things given by the Creator to be used by the Kwakwaka'wakw. A mask might have particular songs, dances, land use, or rights, names, and families associated with it. All are seen as part of a whole. The mask has little to no meaning or value if it is separated from the other elements of its whole being. The Western practice of dividing property into distinct classes does not fit with the view of property being "a whole existence." Responding to the question, "What does cultural property mean to you," Andrea Sanborn replies: "[C]ultural property, to me, is anything about us, for us, given to us by our Creator and is ... to be used by all of us with respect."²² Nevertheless, the concept of "property" as rights and responsibilities adhering to a particular group or individual is consistent with participant views on the meaning of property:

Okay, my whole existence as Andrea is cultural property. It's who I am. It's all the traditions of the Kwakwaka'wakw that belong to me and belong to our people. It's the language, the Kwak'wala language and, most importantly, our values we have as a people, *maya'xala*, which means respect or treating someone good or something good. It's protecting all our songs and

dances and history. It's protecting our land because all the land base comes out of our creation stories in this area. That's cultural property. So those are the things. It's family passing on family values and the history of each family and all the treasures they own culturally. (Andrea Cranmer)

The language is the most important I think, 'cause without the language, we wouldn't have any culture at all. So, yep, the songs, the songs are cultural property ... specifically to families. And that's pretty sacred and important to people. And the masks, masks go along with the songs. Not everybody has the right to certain masks and dances. So that's cultural property in my eyes. The land, I think that the land is real cultural property, specifically to families. I think we've drifted away from the ownership and our land title. Our people used to – we lived off the land and our people controlled these areas and monitored them and guarded them. (William Wasden Jr., part 2)

[C]ultural property, to me, is what everybody has said, but I'll go into the food, things that we eat, the fish, clams, whatever, even the bears. It seems to be harder and harder to go and pick the natural things and that, to me, is really important.²³ (Peggy Svanvik)

The areas of priority for protection identified by Kwakwaka'wakw participants reflect the broad concept of cultural property adopted and the importance of the potlatch ceremony and language in the survival of Kwakwaka'wakw cultural practices and identity.

It's really important to keep giving the history [of] what [the] potlatch is supposed to do. It's supposed to give an example, a record – the history of each of those dances and the names that go with it – in front of our people because they are there to witness the property that belongs to the family.²⁴ (Vera Newman)

The potlatch ceremony and all that it represents – marriage, births, deaths, etc., the Kwak'wala language and the cultural ... and creation stories – those are all the kind of things that I think should be protected here. Property and intellectual knowledge, anything that is derived through the potlatch ceremony, should be protected ... They should be protected because they are our culture. It is who we are and that's why it should be protected. (Andrea Sanborn)

When asked if it is important to “protect our ways that we practise in our Big House,” Ethel Alfred replied that all customs, including regalia, language, songs, and dance, are gifts from the Creator that must be protected so that

they will not “disappear” and so that “white people won’t touch it” or “come around and boss what belongs to us.”²⁵ This includes the skills relearned by artists and the contemporary potlatch regalia created by them. All participants expressed a common fear of further cultural loss. It is important to reclaim cultural knowledge and pass it on to younger generations before the old people die. When asked, “Is it all right in your heart to call it cultural property?” Ethel Alfred replied:

It’s terrible what they did to our people. It completely destroyed our customs in all areas, not just when they took the masks. Our people learned themselves to be great artists. Nobody taught them how. It was their natural ability. They learned it while they were growing up, by holding a strong heart and listening to our old people when the old people instructed them on what to create. That’s why it’s so important for us to protect our culture now, our regalia, and all the customs of our people. That’s the way of our people ... That’s why it is so important for us to protect it, so we will never lose it again. It really destroyed the people, what they did. (Ethel Alfred)

Kwakwaka’wakw participants are confident the community will take the necessary steps to ensure that the culture will survive. This confidence is inherent in their discussions of strategies and community responsibility. They can rely on their resilience and perseverance to find solutions to the problems they are facing:

[Y]ou know, as Kwakwaka’wakw people, all the Kwak’wala-speaking people are survivors of the flood, and the ancestors that survived the flood were all chosen by the Creator. They were sent messages that it was coming, so they prepared. So we are all chosen people [whose purpose is] to carry out these sacred things and to continue on. So that’s why I think we’re okay with where we’re at culturally, because the Creator already had it in place that we were going to be survivors and survive this thing – the flood – and that we’re here for a reason and we’re still here today. No matter what, all the different types of catastrophes that have happened to us, our people are still here. Even all the epidemics and that, you know, the germ warfare that was put on our people, we still survived it, and the Creator wants us here for a reason. So these, you know, these cultural properties that we talk about are all part of a – all these things are gifts given to us by our Creator for a reason. (William Wasden Jr., part 2)

In considering protection priorities, Juanita Pasco, a former employee of the U’mista Cultural Centre, explains that the current focus of the society is repatriation of material culture such as blankets, masks, and rattles because Canada’s system of export controls “isn’t really working.”²⁶ She also

draws attention to the fact that “Canadian copyright law doesn’t really take into consideration First Nations customs and what they consider ownership of songs.” Bill Cranmer, chief of the ‘N̄amgis, shares those concerns and also identifies language protection and revival as a priority.²⁷

Spruce Wamiss expresses concern about people taking items from burial grounds, and he wishes they could somehow be returned: “[I]t would be awesome if there was a way to protect our burial grounds wherever they are.”²⁸ Participants also feel it is important to protect the land and its resources, particularly forests and seas, as they are a source of traditional foods and medicines. William Wasden Jr. explains that rights to certain harvesting areas are also considered family property:

I’m just thinking about my great grandfather [who] owned a trapline, and he also had a halibut kind of fishing ground that was given to him through dowry through my great grandmother ... [O]ur people of old weren’t stingy, and they allowed other people to access the resources when they needed it and stuff. And there was certain families that were in control of certain areas, and it all ties back to the origin story, where the first ancestor came down. That’s the reason they are the owners of it. They were the first ones there and the first ones to occupy it and re-populate it after the flood. (William Wasden Jr., part 2)

In his opinion, protecting the land is a top priority, and the ‘N̄amgis should not have to participate in a treaty process to prove that it is theirs; rather, the government should have to prove that it is not theirs because “the writing is everywhere. The paintings are on the cliffs ... the petroglyphs are all over the land [and] there’s old fish weirs and middens everywhere.” It is also important that the treaty process discuss hereditary chieftainships because “those are the original landowners, keepers, land keepers and owners of the territories.” Different chiefs had responsibility over the management of different resources, such as sockeye and eulachon, “to ensure that these resources were going to survive into the next season or cycle of return.” These are obligations of the people and “are heavy roles that come along with the different cultural properties.”

Language Retention and Renewal

As U’mista is currently engaged in several initiatives concerning language retention and protection, we chose to ask participants specific questions about this issue. Kwakw̄aka’wakw participants were asked whether it is important to protect Kwak’wala, why it is important, and what challenges the community faces in protecting this and other forms of cultural property. All participants spoke passionately about the centrality of language to the continuity and survival of Kwakw̄aka’wakw cultural practices and identity.

It is, according to Andrea Cranmer, “the thread that puts it all together.” “When you lose language” Spruce Wamiss adds, “[Kwakwaka’wakw] culture is gone, Indian names are gone, songs are gone.” According to Bill Cranmer, knowledge is also lost without language because, without it, “you are not going to be able to look into the oral traditions.” William Wasden Jr. sums it up this way:

I just say that our language is so important. It’s what makes us Kwakwaka’wakw. The name says it all: Kwak’wala-speaking people. And I don’t know what we are going to call ourselves after if we don’t, if we’re not speaking our language. So we got to get on it. So many good elders have passed away. Just look at Uncle Glen and Uncle Charlie Williams. [Y]ou know, that’s so sad, how we just lost two key players in our culture, just like that, and we didn’t think that was going to happen. So there’s so much we gotta grasp, and [it’s] time to get serious about our language. (William Wasden Jr., part 2)

Protection of the Kwak’wala language and the potlatch ceremony are inextricably linked. Potlatches are conducted in the Kwak’wala language. This practice ensures that the language is preserved and that it continues to evolve. It also requires the Kwakwaka’wakw to learn their language if they want to fully participate in their culture.

It’s most important because if we don’t have our language, we don’t have a culture. Because our language has all the meaning of our culture in it. And you know, when you are in the *guwkzdi* [Big House] it’s so – means so much more. When it’s spoke[n] in your language, it means so much more. I understand my language, so I understand when the chiefs speak Kwak’wala, especially wonderful speakers like Charlie Williams. He could speak our old Kwak’wala. There’s a few of them left, you know, and it means so much more when it’s in our language. It tells us who we are. We’re not Haida. We’re not Nuu-chah-nulth. We are Kwakwaka’wakw and we have our own language and it separates us from anything else. And it’s really, really important; it’s probably the most important of our properties, is our language. (Vera Newman)

Some participants speak about how difficult it was to maintain their language after they were punished for using it in the residential schools. The suppression of Kwak’wala is linked not only to undermining the survival of Kwakwaka’wakw culture but also to separating the people from their land.

That’s why it is so terrible that our newer generation don’t seem to know anything because they went as far as not allowing us to speak our language

because they wouldn't allow us to practise our customs ... Like when I was in school and when I was caught speaking our language with my friends by the matron, I had to write out five hundred times, "I must speak English." I had to do it after school, before we had supper. The reason I never lost our language is because my friends and I used to sneak in the corners to speak our language together. That's how I never lost our language. I was only eleven years old when our culture was taken away. (Ethel Alfred)

Andrea Cranmer agrees that one of the challenges to language revival and retention is to overcome the impact of the residential schools: "Generations of people have been influenced to say that Kwak'wala is not important anymore, and they really believe it now." Consequently, not everyone in the community has the same "mind set or the passion behind saving the language." An overriding theme is the urgent need to increase the number of language speakers before elders die. This can best be accomplished by community and family members taking responsibility for learning and using the language. Participants acknowledge the importance of language education through community programs and the schools but emphasize that both adults and youth must be educated and use the language outside of the classroom. Andrea Cranmer notes that one of the challenges is the absence of teaching material in Kwak'wala and the need for Kwak'wala to write their own books. Although he agrees that language retention and revival is dependant on initiatives within the community, Bill Cranmer adds that the federal government should also enact a law for the protection of aboriginal languages. Common sentiments are reflected in the follow passage:

And if we keep stalling and we keep sitting back, we are going to lose it. And we have to find a way to try and save as much as we can and teach as much as we can. Because I know that there are many different teachers that we have out there [who are] supposed to be teaching Kwak'wala and they can't even speak it. And then I ask them, "[W]ell, what are you using? What are you using to teach our children? Tape recorders?" And I don't understand sometimes that they don't use, they don't use us, the elders that can speak Kwak'wala, in the teaching system. And it's pretty sad because some of our children, they speak Kwak'wala but it doesn't sound the same. So I believe it's very, very important.²⁹ (Christine Joseph)

Although some participants stated they did not expect to be compensated for teaching the language, Basil Ambers thinks it is important that those teaching Kwak'wala be recognized by the school system and paid properly.³⁰ Language teachers are "underpaid" and "cut back." Money is also needed so that community members can develop creative programs rather

than having to rely on outside consultants. However, Spruce Wamiss does not feel that community members should expect payment. To him, the only payment that is needed is “to see more and more of [the] young people learn to speak the language properly.” This means developing a written and recorded curriculum for the schools, and resources are needed for such projects. Peggy Svanvik also agrees with Spruce but says, “if we are going to pay people to teach our language, they should be paid a decent wage.”

Participants offered a number of creative strategies for teaching the language in a way that would appeal to the youth and make it fun for all members of the community to learn. One important strategy involved the singing of traditional songs. William Wasden Jr. tells of a CD recording of traditional songs he and a friend sang and recorded at a fundraiser for the Łaxwe’gila canoe gathering. Remembering how he laughed when Moody picked him up once with “our Łaxwe’gila blaring in his car,” he suggests that “CDs are an awesome learning tool.” Basil Ambers and several others also suggest using tools that children like to play with, such as video games and TV. It is important to “[m]ove with the times” and “take the technology and use it to your advantage.” However, all participants recognize that learning the language also requires hard work and personal commitment on the part of those wishing to learn. Several discuss the importance of First Nations control over education and of having immersion programs that students can begin at an early age. Whatever strategy is adopted in the schools, Christine Joseph emphasizes the importance of working with elders.

In 2000-1, U’mista commissioned a report entitled *Review of Kwakwaka’wakw Language Retention and Renewal*, which was a review of Kwak’wala language usage in the ‘Namgis Nation.³¹ The report was a product of extensive consultation among U’mista, the Nimpkish School Board, tribal school staff, and community members. The core finding of the study on language use was that, “without immediate community-wide changes and additional language programming, Kwak’wala will become extinct. The community probably has no more than a decade to reverse this decline.”³² An important outcome of the review of language usage was Dr. Guy Buchholtzer’s idea to establish the Kwakwaka’wakw Centre for Language and Culture in Community. The main purpose of the project is to “bring together community members to full exposure of the Kwak’wala language, and to facilitate re-immersion.”³³ The idea includes gathering all information produced in any language about the Kwakwaka’wakw language in a centralized place easily accessible to the community. Grants have been obtained from private and public funding sources to begin the process of cultural information and language material repatriation. In addition to his work on language repatriation, Buchholtzer has assisted U’mista in its attempt to repatriate work conducted by a linguist. U’mista annual reports describe how the linguist maintains that the work he did with Kwak’wala speakers

in compiling a Kwak'wala database (computerized interactive dictionary) is his property and that he is not required to share the information with the 'Namgis Nation until he is satisfied with it.³⁴ Language repatriation is also a matter that should be discussed at the current treaty negotiations among the 'Namgis Nation, Canada, and British Columbia.

U'mista is engaged in a number of other language programs dependent on project-based funding. For example, it has secured funding for a "series of introductory level interactive media (CD-ROM) language lessons and developed the digital materials for the first of those lessons."³⁵ U'mista continues to work on this project as well as on the comprehensive computerized talking dictionary. U'mista has also produced educational videos and "digitally video-taped seventy hours of interviews with elders on language, history and culture of the Kwakwaka'wakw."³⁶ Other projects included developing the Kwak'wala alphabet, language books and tapes, and the translation of Anglican hymns into Kwak'wala. The centre also offers beginning Kwak'wala classes. U'mista has been working with Kwakwaka'wakw school districts, bands, and tribal councils on these and other initiatives. It identifies the major problem as being lack of funds. Other challenges it has identified include lack of in-depth curricula, insufficient support inside and outside the community, lack of a common writing system/orthography, and a need for more qualified teachers.³⁷

The Potlatch

Importance of the Potlatch

The potlatch is of fundamental importance to the Kwakwaka'wakw. "Potlatch" is a term used to describe ceremonies that mark significant events, such as marriages, naming of children, memorials to the dead, raising of totem poles, and transfers of rights and privileges. As part of the ceremony, these events are validated before witnesses by the giving of gifts of property. Feasting, speeches, storytelling, dancing, and singing are also an integral part of the potlatch. Potlatches were the foundation of Kwakwaka'wakw economic, political, social, spiritual, and legal systems and the means for transferring cultural knowledge to future generations. They also promoted values such as humility, generosity, responsibility, and respect. Potlatches were the "essence of Kwakwaka'wakw culture":³⁸

The literal word "potlatch" means "to give," so our people had really strict laws around the ceremonies and around the potlatch. And in the old days ... it was about competition within tribes and who had the most status and who had the most power and things like that. And you showed that through the treasures you gained, and the treasures you gained [were] from your wife ... Treasures that would come through marriage would be the songs,

the dances, the names, high-ranking names, names for your babies, names for the children, property, rights to go to hunt in certain places, rights to go and trap furs in certain places. And in the old days you married someone of your status. And in our culture, what is really unique is that the more you gave away as a chief, the higher your status went. So it wasn't about – even though it was like a competition with other people within your tribe, chief[-] wise, there was still this place of humbleness, because the more you gave away, the higher you became. And you could say anything you wanted to whoever you wanted because you gained such status within your tribe. Also what comes with the potlatch and with being a chief, it's not about boasting and being arrogant. It's about looking after and embracing. [I]t was about looking after your people. A chief would look after his people, provide shelter, food, make sure the tribe [was] running well ... And as a witness, your responsibility was to pay attention so that you can see all the treasures and all the names and all the things that the chief's doing. And the reason for a potlatch was very important. Naming his children was one big thing. Passing on his chieftainship, passing on privileges and rights, passing on songs and dances, weddings, memorials. All those are very important things in a person's life, and our people had a structure in place for that. And that was through the potlatch system. So it was very important. (Andrea Cranmer)

The reality of the thing is that the chief that's throwing the potlatch, that's his way of choosing his successor for his family. He usually picks his oldest son to become the *hamat'sa* and that's his way of making sure that he's passing on the rights to the rest of his family. And like, he's supposed to end off, if he's done everything right and he's thrown the four potlatches he's supposed to throw, he's supposed to have nothing left. He's supposed to have no rights left, and all his rights are supposed to have gone to his oldest boy. You know, it's up to the oldest boy to make his name right. You know, he's got to throw four potlatches and start the process of passing the rights on – songs, dances, and names, and stuff like that. (Basil Ambers)

Modern potlatches continue to be integral to Kwakwaka'wakw culture and serve many of these same functions, sometimes in a modified form. However, not everyone in the community is aware of, or endorses, the values, beliefs, and principles that the potlatch represents. Thus, strategies for protection of Kwakwaka'wakw culture discussed by participants later in this report include the need to educate community members in their own traditions. Repatriation of potlatch items and acquisition of as much material as possible relating to Kwakwaka'wakw history and culture is pivotal to achieving this goal.

Significant financial and human resources are expended in preparation to host a potlatch. The old people need to be consulted to ensure that

proper protocols are followed and that accurate family information is shared. New dances and songs may need to be composed, money and gifts need to be gathered, and meals must be prepared:

And whenever they showed the cedar bark ceremony, when it comes in through the front door, you have to distribute a bit of money to the people. My uncle Sam Charlie held [the] right to that ceremony in Village Island. And my mother, being his sister, always supported him financially ... That's the best way to be is to stand as one, as a family, to help out in any way you can when one of the family members have to practise our customs. Some of us still practise that custom today because potlatches are such a tremendous undertaking, even today, financially. It's an incredible custom [t]hat our people have. It takes months to prepare for a potlatch. What I remember seeing was incredible, enormous wealth being distributed. What our people did when they started to have money, silver coins, they melted it down to make jewellery to be distributed. All our relatives helped prepare, the people that do silver jewellery start doing it to help out. And they all come with their different talents to help out. (Ethel Alfred)

Well, one of the responsibilities dad had was to save his money. He had to – he always used to say that, in the Big House, you want to talk, put your money where your mouth is. And maybe, in everyday language, that's what my dad used to say 'cause it's very costly to carry on our culture. It's very time-consuming and, and one of his, one of our responsibilities, as a family, is to stand up and back up our chief, whether it be food preparation, regalia-making, the carvers to carve, or what's needed to be sewn. (Vera Newman)

We went through thirty, forty years where people didn't even have an Indian blanket anymore. When they first started to teach how to Indian dance, people used bath towels because there's no more regalia at that time. So that's part of the responsibility that granny had to have as the grandmother of our family. She made blankets for all of us grandchildren who were interested. (Vera Newman)

Potlatches are held in the Big House, where there are strict protocols surrounding activity. Vera Newman explains that “if you fell while walking in the Big House 'cause you're being clumsy and not paying attention to what's going on, then your family has to, what they call *digita* [to make it right]; they have to pay money to wipe away the shame of what just happened.” Money also had to be distributed for other transgressions of protocol, such as allowing animals in the Big House or allowing kids to run freely; also, dancers had to pay for any mistakes or clumsiness on their part.³⁹ However,

these protocols are not followed as strictly today as they used to be. “Rules” ranged from ceremonial protocol about matters such as who could be on the dance floor and when and what jewellery a person could wear to laws about who could exercise certain intangible property rights, such as the performance of a dance or song:

I remember those black-faced *hamat'sas*, they were so scary [A *hamat'sa* is a young man becoming possessed by the man-eating spirit Baxbakwalanuksiwe' who through rituals, song, and dance is purified and tamed, which brings him back to his human state. This is the most important ceremony in the potlatch ceremony. It is a rite of passage]. My uncle was one of them, uncle Alfred, and I – oh, God, when I used to walk into the Big House. I see them sitting there and all they do is watch the crowd, and boy, if you made a mistake, they would just get up and they would hit each other with their sticks and yell ... and jump around and, oh, my God. I asked my mom, “What are they doing, anyway?” and she said, “They are very angry. Something happened in here that shouldn't have happened. So somebody's gonna have to pay for it.” Everything was serious in those days, hey. And it's something that I don't see anymore. Sometimes I wish they could bring it back so they can scare the kids that are running around in the Big House today, because we're not allowed to. (Emma Taminlin)

And my older brother, Alec, was the attendant for the *hamat'sa* and he tripped on a rope that was holding the dance screen up. He fell and he left right away to go get money at our village. They had to have a washing ceremony right there. (Ethel Alfred)

[T]he Nułamała [the enforcer, or keeper of order, in the potlatch ceremony], he was the second most important guy in the potlatch. He was the keeper of the rules. If he came in – like he could come in anytime – he didn't just come in to act the fool. Like, he came in sometimes all dressed in black, and he looked around. I got caught once in Turnour Island, Umbas gave me a, a chocolate bar, and I was chewing the chocolate bar. You're never supposed to eat before the chiefs, no matter if it's your food or not. Well, I got caught eating this chocolate bar and they put a stake in by the fire and tied me up to the stake with a stick in my mouth, you know. And Umbas had to bail me out. That's just an indication of how strict the rules were. (Basil Ambers)

Historically, the potlatch served (and continues to serve) as a means of sharing and verifying Kwakwaka'wakw history. It serves to remind participants about their family histories and the connection to their lands. Masks are danced and songs are shared to tell of family origins and significant historical events:

[T]he chiefs that invite, whether they are hereditary or potlatching chiefs, invite the various nations that are able to attend and the ones that they want to witness – to come and witness this family’s business, that they’re taking care of, whether it’s commemorating death or marriage, or transferring ... names, or putting up a totem pole. They’re inviting the people to publicly show them whether it’s just through songs, or song and dance, relaying their history through, you know, song and dance. [A]nd that’s what it is. And the speaker gets up and tells the history. So what the host is doing is sharing that family’s history with the people that have come to witness and, in the end, paying them according[] ... to what ... their standing is. [Giving them] gifts, so that they will remember that forever ... and ... be able to repeat the story. And that’s why the speaker in the Big House is so key, because he is the one who relates the stories of the dances, relates the name that’s associated with the dance, [tells] who is assuming the dance and where it comes from. And always, with everything that is done, the speaker is retelling the history that goes along with these specific ceremonies and different activities that are going on. (William Wasden Jr., part 2)

Drama, magic, and theatrics are also an important part of the potlatch ceremony, whatever its particular purpose. Ethel Alfred and Emma Tamilin share the same vivid memory of the brilliance of some of the dramas performed:

I’m sitting up there with my mother and this woman came out. And she – there was a man behind her with this knife, with this big sword ... All of a sudden, this woman – and they were singing and she was walking, she went around the Big House, I think, probably four times, and, all of a sudden, this man went and chopped her head off. And her head fell on the floor, and the man behind her picked it up. The head and the blood was running down, it was running down his arm. I didn’t know what to think. I just about started – I just about screamed. My mother had to put her hand on my mouth so I wouldn’t say anything. She said, “You better keep very quiet. This is really, really serious.” Yeah, but that poor woman, you know, all I could see, all this blood. And they picked up her head, and they put it on these boxes in the corner of the Big House. And the eyes was moving, the eyes were moving like, you know, they were just moving, you know, and the blood was running down. And, oh, my God, I kept saying to my mother, “How come that woman was killed? How come that man killed that woman?” The fourth day, they came out again ... and the woman was singing and here come[s] the man behind her with this head, her head, in his hand. [He] put it back on her shoulder. How did they do this? This was pure magic. (Emma Tamilin)

The potlatch also operates as an educational and legal system. For example, through the potlatch ceremony, entitlements to songs, dances, masks,

and regalia are demonstrated and transferred before witnesses. It is also a forum for the public resolution of disputes:

We have our own laws through the potlatch ceremony. It includes the protocols for the use and ownership of the materials, whether it be songs, dances, stories, names, this sort of thing ... [Y]ou have to be part of the Kwakwaka'wakw to want to understand what the potlatch ceremony means. And if you want to save your cultural property and intellectual knowledge, you have to want to learn the language to do that ... I, again, I only refer to the potlatch ceremony as being the law. Anything that is conducted, any ceremonies that are conducted and information given to the people, that is the law. If, if a song is being identified as being passed down from a chief to his son, or from whomever, and it's done in a potlatch ceremony, that's the law. (Andrea Sanborn)

And that was in Gilford Island, and Tom Patch had a big potlatch in Gilford Island, and that's when I saw the breaking of the copper ... I guess what happened was Bill, Billy Matilpi, angered Tom Patch in some ways, and that's when the breaking of the copper came in. And they – that's how they used to solve a lot of the problems, by breaking the copper. My grandfather says after it was broken, when it finished, you don't talk about it anymore. (Emma Tamilin)

The potlatch may also connect participants to the spirit world and function as a place of healing and spiritual awakening. For example, William Wasden Jr. explains that some ceremonies, such as the cedar ring ceremony, could only be carried out by certain tribes and people within those tribes. He emphasizes that ceremonies and accompanying songs, stories, and regalia were “very sacred and guarded stuff and [that] they were handed to deserving people.” Christine Joseph speaks to the healing nature of the potlatch, offering a story about how, despite crippling arthritis, her grandmother would “brighten” up as if “she had no more pains” and “would just dance” in the Big House. Below, Andrea Cranmer elaborates on the spiritual and healing functions of the potlatch:

[I]n the potlatch, there is the *t'seka* ceremonies, which is the red cedarbark dances. And our people would go and fast in the woods; and the supernatural beings would be around, our people believed, in the wintertime. So when they were out there, those beings would come to them and they would get possessed by the different spirits and then would be brought back into the Big House. And those are how the dancers – that's how they got their spirit to do the dance that they do. So not only was the system in place, but the spiritual connection was there also, which is a very important

part of who you are as a people ... I would say that it makes your body, spirit, and mind strong, being connected. And you go to the land, you know, so you cover all the bases. Again, you'd go to the land, you'd go in the water, all those important connections, then you'd go back into the Big House. So it all goes full circle ...

It embraces all your emotions, and because of the process of the potlatch, you always start with the mourning songs. And the mourning songs are about – they are cry songs that you sing ... when your family loved ones have crossed over to the spirit world. So you go through the emotions of crying and letting go the spirit so that they can go walk with grace to the Creator. And all the emotions are present at a potlatch. There's crying. There's happiness and joy because a chief is seeing his family come together to prepare for the potlatch and sees his grandchildren or great-grandchildren dancing ... The potlatch brings a lot of the spirituality, and it brings a lot of the emotional part of who we are. And it's the basis of cultural, the cultural well-being of this community, the potlatch. That's where I feel, in 2003, that we can still go, and, yes, I may not agree with so and so politically, but we can still go to the Big House and let go of our differences so we can sit and witness what's going on in the Big House. I believe that's ... the place that still has honour and respect to a certain degree, whereas when you go anywhere else in your community or anywhere else in the world, well, you don't see that all the time. But at least we still have that in our Big House. (Andrea Cranmer)

The potlatch also serves an important function in bringing the community and families together, providing a space for the participants to step outside of their current activities and put aside their disagreements with each other:

[E]verybody gets together with all their relatives and interacts, and there's a lot of hugging and stuff going on. And I think the reason – the real reason, you know, on a spiritual level – is the oneness of people coming together. And we all know that when we go to the Big House that we're supposed to have one spirit and we leave all our worldly B.S. behind, outside of the Big House, and that when we go in there, we change ourselves and we become spiritual and we carry ourselves with dignity and pride in that House. And we should carry it on outside, but you know that doesn't happen. (William Wasden Jr., part 2)

It's very important. It gives you a sense of belonging. It gives you a sense of pride and humbleness and a feeling of belonging to a tribe. See, once we are in the Big House, there is nobody out there that's starving because everybody gets fed while they are in the Big House. That's just a little example

of taking care of, of the chief that is hosting the potlatch. They feed you right there. (Vera Newman)

The Banning of the Potlatch

In 1884, amendments to the federal *Indian Act*⁴⁰ were introduced, enacting the first legislation prohibiting the potlatch ceremony.⁴¹ This legislation was later revised in 1895⁴² because its vague wording made it difficult to enforce.⁴³ The legislation was aimed at expediting the assimilation of First Nations in Canada. The primary proponents of the ban were missionaries and government officials intent on civilizing the Indians. However, people continued to potlatch and ignored the laws. Subsequent amendments were made in 1918 to make celebration of the potlatch a summary conviction offence.⁴⁴ Prior to this, John Pritchard (specific claim researcher for U'mista) explains that, although it was an indictable offence, it was difficult to “find a judge anywhere in the province” who would send a person to jail “for what nobody considered to be a crime.” He also points out that “convictions routinely resulted in suspended sentences.”⁴⁵ The prohibition remained in place until 1951.⁴⁶

The actions of Duncan Campbell Scott (deputy superintendent general of Indian affairs), Indian Agent Halliday, and Sergeant Angerman were instrumental in bringing about the 1884 and 1918 amendments. John Pritchard suggests that Scott and Halliday “induced government to pass the (1884) amendment on the basis of incomplete and faulty information.” They knew that the potlatch was not the “deprived, barbarous custom that [it] was made out to be by the missionaries and the Indian agent.” Following the amendment, Scott “struck a deal with the people of the Kwakiutl agency that, in exchange for [the agency] going along with certain parts of the prohibition, a full-scale investigation would be carried out on the [potlatch] custom because the [Kwakwaka'wakw] people were convinced [that] if the government knew really what was going on, it would ease up or back off.” Although Scott had “information in hand that the potlatch was not what it was made out to be,” he “effectively suppressed the information and broke the agreement.”

Stan Ashcroft (Nan̓am̓gis legal counsel) speaks to evidence that indicates that “Halliday and Sergeant Angerman effectively concocted a scheme to ... break the potlatch” through the 1918 amendments, with full understanding of its significance to the economic, cultural, and social life of the Kwakwaka'wakw.⁴⁷ John Pritchard argues that the intent of the amendment was to “jolt the community and terrorize them” into giving up the potlatch ceremony. Indian agents were instructed to “observe carefully the comings and goings of people.” The following passages describe the scheme they concocted and the illegal nature of their actions:

Halliday had amendments made to the *Indian Act* which provided that the conviction could be by way of summary conviction. What that meant is it didn't have to go to a judge. It could go to a magistrate, which happened to be Halliday. So what happened then, of course, is the people go before Halliday, he convicts them, sentences them to prison. But he and Angerman concocted a scheme whereby the individuals and the various bands and chiefs are offered, essentially, an ultimatum. If you turn over your potlatch artifacts and regalia, not only of those persons who have been charged and/or convicted, but all the other, the other potlatch regalia and artifacts, we won't put these people in jail and we will be lenient in terms of any other prosecutions. In the future, in fact, we won't prosecute if you agree to this. So, effectively, it was coercion. It was duress. It resulted in the giving up of a huge amount of regalia and artifacts, portions of which have only recently been returned. (Stan Ashcroft)

[O]ne of the most odious features of this is that people who are not present at the potlatch at Village Island and who may have not been subject to prosecution, were essentially coerced into giving up their material to keep people out of jail. So that, in itself, that kind of collective punishment is utterly inappropriate. In addition to which, although the *Act* had specified that people could not engage in ceremonies at which dances were given and songs were given, it neglected to prohibit the possession of regalia. So ... they were perfectly entitled to possess that material, whether they had been at a potlatch or not. (John Pritchard)

John Pritchard explains that, following a large potlatch held at Village Island in 1921, forty-five people were charged. Offences included making speeches, dancing, arranging articles to be given away, and carrying gifts to recipients. Gloria Cranmer Webster describes the potlatch and the trial that ensued:

Three or four hundred people came from several villages to witness the ceremony. Unfortunately for the potlatch givers, the missionaries had been partially successful in their efforts, as several people who attended the potlatch became police informers. They gave the names of forty-five people, most of whom were the highest-ranking chiefs and their wives, who had performed such criminal acts as singing, dancing, making speeches, and giving and receiving gifts. The trial took place in April of 1922, with Indian Agent William Halliday, who had laid the charges, acting as magistrate. The interpreter was a woman who had become a Christian. When the magistrate asked each of the accused, "How do you plead, guilty or not guilty?" she translated the question into our language as, "He wants to know, were you there?" Everyone, of course, replied, "Yes."⁴⁸ (Gloria Cranmer Webster)

Twenty men and women were sent to Oakalla Prison. First offenders were to serve sentences of two months, while second offenders were to serve three months. The rest received suspended sentences after agreeing to give up their potlatch items to Indian Agent William Halliday.⁴⁹ According to Stan Ashcroft, “[U]pon receiving these artifacts and regalia [Halliday] did two things. One, he sold a number of them to Mr. Heye of the, what is now known as the American Museum of American Indian⁵⁰ [sic], and even Duncan Scott himself has said that was improper. And second, the coppers that were supposed to be paid for never were.” After being inventoried and crated, most items were sent to Ottawa, where they were divided up between the Victoria Memorial Museum in Ottawa (renamed the National Museum of Man and known today as the Canadian Museum of Civilization) and the Royal Ontario Museum in Toronto. Some objects were set aside for the personal collection of Duncan Campbell Scott, who was at that time the superintendent of Indian affairs. New York collector George Heye purchased thirty-three items from Halliday before the material even left Alert Bay for Ottawa. These were shipped to the National Museum of the American Indian/Heye Foundation in New York.⁵¹

The Kwakwaka'wakw are a resourceful people and, following the Village Island potlatch, the potlatch continued in modified forms. During the oral evidence given at the Indian Claims Commission Inquiry in February of 2003, several witnesses spoke of the elaborate ways that potlatches had to be hidden. For example, no potlatches were held in Alert Bay, even though the main village site had been the scene of most potlatches prior to the ban; instead, they were held in the winter and in outlying areas where the police boat could not travel due to ice. In addition, rather than hold potlatches, chiefs would often have to go door-to-door telling of the naming of their children and presenting gifts.⁵² Although prosecutions continued following the Cranmer potlatch, “white officials lost their desire to enforce the law” and “no one was sent to jail”:⁵³

I was sitting on a Japanese orange box, those little wooden boxes, when the police arrived and stood at the doorway. Chief Harry Mountain made light. He was looking at the singers, saying, “more, more, more,” trying to lead the police to believing that they were having a play potlatch. He was joking around. I got so scared. I slid off my little box when I saw the police standing there; I thought for sure I'd be put in jail. Chief Harry Mountain and Bob Harris just started clowning around. We got so terrified of the police. (Ethel Alfred)

Harms Flowing from the Ban

Every Kwakwaka'wakw settlement has a story about its creation. Most families

know their histories or are attempting to rediscover them. These stories and histories are kept vibrant by their retelling in the Big House at potlatches, by being retold to younger family members, by being recorded, and by being added to as new events occur. These stories are a living connection to the ancestors and to the future of the Kwakwaka'wakw. The events surrounding the banning of the potlatch and the aftermath of the Village Island potlatch have been incorporated into family histories so that the Kwakwaka'wakw do not forget the lessons learned in those dark and trying times.

The following account illustrates the traumatic effect that the forfeiture of regalia and imprisonment had on Amos Dawson and his family. It also shows that some Kwakwaka'wakw were able to persevere in practising the potlatch, despite the ban and the likelihood that they would be imprisoned and have to forfeit their regalia if caught. Emma Taminin recalls how she only learned about her grandfather's imprisonment when she was about ten years old:

I was in a Big House in Gilford Island. There was a big potlatch going on there and I was sitting with my mother and Mr. Todd, and two RCMP officers walked into the Big House and scared the heck out of my poor mother. Anyhow, she started to cry and I looked at her, "What are you so afraid of? It's only our Indian agent. He's not here to harm us." And she kept saying, "We're going to go back to jail. We're going to go back to jail." And I says, "What do you mean, we're gonna go back to jail?" And I says, "What is going on here anyway Mom?" And she said, "When you go back to Alert Bay you go and see your grandmother, she'll tell you everything." And so when I came back I went to see my granny, and I asked her what happened in 1922. Well, she said: "Your grandfather went to jail. I remember the day those people walked into our house ... Halliday, Angerman, and Mrs. Cook walked in." Mrs. Cook said to my grandfather, "Dawson," she said, "this has to stop. You've been going to potlatches and I hear you have been doing a lot of things that [are] against the law. And if you don't stop this you're going to go to jail. But if you forfeit your masks and your regalias you won't go to jail." And he said, "I promise you [I] won't." And she says, "Do you promise never to attend a potlatch anymore?" And I guess he looked at my grandmother and ... he said to my grandmother: "If that's what they want I will never do it again. I will never attend another potlatch as long as I live." Anyhow, they lied to him. He lost everything and went to jail anyway. And that was the beginning of the end for my grandfather, 'cause once he came back from Oakalla my grandmother said he was never the same. He just lost his spirit. He couldn't do anything. What he wanted to do when he came home was to have a feast to fix what happened to him 'cause that's what we do when something bad happens: we fix it. So anyhow ... that's what happened. And I guess he just slowly died inside [so] that he lost his spirit. My grandmother said [that] he still put his suit on every Sunday and went to church, like he was afraid not to. He went to church every Sunday,

but he was not the same. My grandmother said he just lost everything, like he had no will to live anymore. So, and I wonder, you know – God, you know – I wonder why was this happening to our people? I can't fathom what they went through because it must have really, really hurt him, and I think his pride was cut in half or whatever ... And I guess my Grandfather Spruce, he just fought and he didn't care what they said. And he said, "They can't hurt me anymore, anyways. I don't care what they do to me but I'm going to have another potlatch." And he did. And I wonder why my grandfather [Amos Dawson] wasn't strong enough to fight them. But I guess maybe he was hurt so bad that he didn't want to fight anymore. (Emma Tamilin)

Kwakwaka'wakw individuals like Amos Dawson paid a very high price for their participation in the Village Island potlatch. Dan Cranmer, the giver of the Village Island potlatch, predeceased this interview process, but his widow, Agnes Cranmer, talked to John Pritchard in an interview he conducted as part of his research for the specific claim on the harms stemming from the potlatch prohibition. Dan Cranmer apparently suffered much grief and guilt about his part in holding the potlatch:

We did, as I say, talk in a preliminary way to Dan Cranmer's widow, who talked about the effect that the process had on him. How for the rest of his life he grieved about the anguish he thought he had caused to fellow members of the community by [their] having to go to jail, by seeing the effects of everything on the language, economy, on the social system. And, wrongly, he took on the burden himself, thinking had he not held that potlatch this calamity would have not happened to his community; and that had a grievous effect on him for the rest of his life. (John Pritchard)

Participants share other accounts of the shame felt over the treatment of noble women in the community and the trauma that they suffered:

I can imagine the shame they felt by going to jail. For Pete's sake, the women went to jail. Like Mit'sa said, that's what really bothered him ... [T]he noble ladies feeding the pigs. And then they hosed them, with cold water too, just in case they had lice. He said it was, it was awful, it was an awful thing to see. He said he cried. Him and my grandfather were watching this, and he said, "You know, Emma, you don't even know what we went through." (Emma Tamilin)

I'll never forget Watis, when she used to cry down the beach here. And she said they shamed her. They cut her hair. They undressed her in front of everybody. She used to cry about that. And it's true, what Basil said, we never ever talk about the ones that held us up, that never stopped to continue to teach us these different things. (Christine Joseph)

Fear and trauma characterized the relationship of the Kwakwaka'wakw to the "white man" during this time. Parents and grandparents were afraid to teach the language and culture to their children and grandchildren because they knew the consequences they would have to endure:

Our grandparents were afraid to teach us for fear of the implications that they felt we would have to endure, such as beatings like they got at residential school, humiliation, and even jail sentences. I remember asking my mother about this when I heard her singing in Kwak'wala and how beautiful that I thought those songs were, even not knowing what they were about. But she would never teach them to us or tell us about them because she was afraid of what would happen to us if we talked about it in public. It was not until I came to work at the U'mista and discovered that one of the masks in the Potlatch Collection has my grandfather's name on it that I then came to understand why my grandfather at times seemed to me to be in another place. I think I can now understand how he was torn between religion and culture – taking up religion in fear of using the culture and what using it could/might bring to us.⁵⁴ (Andrea Sanborn)

[Vera Newman] talked about growing up in Alert Bay in the large houses that they were in and having the fear once of being arrested. Fear was embedded in people such that when the women were in the houses and white people of whatever description came to the door, whether they be salesmen or schoolteachers or whatever, the women would flee to the back of the house and children would be told to go to the door and say nobody is home. And that effectively characterized the relations with the outside community. It was fear and trauma.⁵⁵ (John Pritchard)

In addition to personal guilt, fear, and trauma, the Kwakwaka'wakw endured other harms from the banning of the potlatch and the events flowing from the Village Island potlatch. Some people totally rejected Kwakwaka'wakw practices and culture and took up the culture, religion, and practices of the settlers. Their withdrawal from the traditional practices produced gaps in the overall knowledge of Kwakwaka'wakw culture that, to this day, have not been filled. Stan Ashcroft succinctly assesses the impact of the potlatch ban: "we say that the bringing in of the potlatch laws was designed to and did have the effect of destroying the potlatch, which was, of course, the fundamental social and economic basis of the culture." The Crown's banning of the potlatch through the creation of this law effectively functioned as a tool of forced assimilation. According to Ethel Alfred, it was part of a campaign to make the Kwakwaka'wakw "disappear."

As the Kwakwaka'wakw struggle to reclaim their laws and culture, the gaps caused by the aftermath of the potlatch ban continue to be problematic.

Some generations do not know their laws and traditions, so they are unable to pass them on to the members of their families who want to properly respect them. And, most unfortunately, some of the elders died without passing on their knowledge:

I guess one of the things that's challenging is we're living in a time now, in 2003, where a lot of family members that are in their fifties and late sixties, they grew up in a time where they weren't paying attention to what was going on with our potlatch system. So now they have younger generations wanting to learn and some of them don't, just don't know, they just don't know what the system is. They don't know names. They don't know songs, dances. And that's the scary part ... [W]hen my granny, Agnes Cranmer, lived to be eighty-seven, eighty-eight, there was a whole set of them, all these older people that were still alive and sharing all the things that go with culture. Not just singing, not just dancing, but everything that went. [W]'ve lost a lot of old people that are knowledgeable and that's the scary part. And the challenge is, where do we go now, to preserve, with the present-day old people, what we have. (Andrea Cranmer)

Because of being so young when they took away the masks, I have forgotten what masks belonged to certain families [and were] used during the peace dance and the Red Cedar Bark Ceremony. That's why it's of the utmost importance for us to be concerned to protect our customs so that the government will never take it away from us again. Because when you think of what the government did to us, it was devastating what they did. They went on an out-and-out campaign to work towards making our people disappear. That's why it [is] right for us to worry about it, because when you think of what they did to us, it's really amazing: they just wanted us to be like a white man. (Ethel Alfred)

Loss of language and, thus, a loss of culture also flowed from the ban. School-aged children were forced to speak English in residential schools for eight months each year, and this made it difficult for younger people to learn how to speak their language fluently. Since the potlatch and most Big House ceremonies were conducted in Kwak'wala, young people, unless they were determined to pay the costs of retaining their language, could not fully participate. As Ethel Alfred explains in the following passages, the residential school system also caused people to be ashamed of their culture. She recounts how, for a time, she was "brainwashed" and did not want to continue with her cultural practices:

I didn't complete what I said earlier about my older sister losing her oldest child. My dad did something right away. I was the one that knew where

my dad kept his money, and he asked me to get some. My mom trusted me. I said to my dad, "Dad, it's not good what you are doing." 'Cause I got really, got confused and brainwashed while I was in the girls' school. I didn't like to practise our customs anymore. I told my dad that we were gong to end up with no money if [he] continue[d] to practise our customs. "Don't speak that way," my dad said to me. He said, "Your older sister's heart would be just broken if we didn't do anything for her." They gave a potlatch right away. (Ethel Alfred)

In an ironic twist, after the ban came into force, carvers continued to produce masks and other items; however, since they could not be used in the Big House, they were sold to non-aboriginal collectors and tourists:

And what I can't understand today is that they would purchase masks now from our carvers when they are the ones that stopped us from practising our customs. It puzzles me when I think about it, why they would want to touch our sacred objects, our sacred pieces, when we weren't allowed to continue to use them. (Ethel Alfred)

Revival of Kwakwaka'wakw Culture

A consistent theme in all interviews is that the potlatch must remain a central institution, although the reasons given for this vary. For some, it is because the potlatch is a spiritual and healing practice that gives strength to the participants. Equally important is the role the potlatch plays in educating community members about history and affirming relationships of belonging. Songs, dances, names, and associated regalia have their own histories, and these histories identify entitlements:

[T]here's always a purpose for a potlatch. A speaker is there, along with the chief and the chief's family, to reinforce ownership of the chief's property ... who owns the songs, who owns the dances, how they got them, who they will be passed on to. That's how the potlatch ceremony works and [is] relevant to carrying on culture. [I]f somebody wants to challenge a statement, it should be done right ... during that ceremony ... and it will be settled at the ceremony. (Andrea Sanborn)

The potlatch also has a role in reviving traditional governance and management of land rights:

I'm just saying we need to redefine what 'Namgis people are and who are our hereditary chiefs and who the, you know, the potlatching chiefs are and establish our own traditional government again to get things rolling. And, in that way, we can find out who, what families lived in certain territories 'cause we all didn't live together at certain times. We travelled

around and had different camps and stuff; and people, their cultural property was their specific territories for doing things and they controlled it, guarded and protected it, you know, and made sure it was reusable in the next seasons and stuff. (William Wasden Jr., part 2)

Revival is not just a matter of bringing back the potlatch and traditional dances, songs, and ceremonies; it is also a matter of reviving the language, values, beliefs, teachings, and principles that go with them:

I think that songs, you know, are a crucial part of our ceremonies. Without the songs, we wouldn't dance. However, I believe that one of the challenges we have is that the beliefs and values have to go together with the teaching of the songs and the protection of the songs. That just 'cause a young person is learning how to sing songs, it doesn't give them the right to be in any public forum to be singing inappropriate[ly] or out of turn, kind of thing. So I believe that older members and wise people and knowledgeable people need to be present during the sharing of these songs so that the beliefs and values go along with what they are doing, and it's not just something cool to do. (Andrea Cranmer)

Of particular concern to Spruce Wamiss is the fact that social services continues to remove children from the community. Once they are taken, they are "lost in the system." Those he knows "lost their language. They lost their culture. They lost touch with their families." Many come home and want to reunite with their families, and it is "very hard for them to learn anything," especially the language and the culture. He compares this to the impact of the residential schools: "We lost our culture. We lost our language. We lost touch with our families and that's the same way social services is doing it. Take them out, take [them] away from the community, and they get lost in the system."

Participants know what must be done in order to best accomplish the revival and continuance of Kwakwaka'wakw culture: they must trust their own people to take the lead in protecting and preserving their culture and laws. Community research and education play a vital role in this process, as does the child's ability to learn "old ways" from parents and grandparents.⁵⁶ Although participants feel it is important to work with youth, it is equally important to work with adults and to provide them with an opportunity to learn:

Action needs to be taken, enough asking, enough of having people come and telling us what they think we should do, non-native people and linguists, and you name it. We don't need that. We know what we need to do. We need to put our trust into our own people that we can do the job of saving our language, of teaching our children, of preserving our history, of

keeping the U'mista Cultural Centre open, because it's important. And we don't need people coming in to tell us that. And what really irritates me is that we pay them such big dollars to do that. It's so silly. And the other thing, we need a college. We need a First Nations college that teaches history, that teaches language, that teaches the beliefs and values ... going back to the land ... going on the canoes, going to the rivers, bathing in the rivers. We need a cultural university in this community because we are educating our young people. They get singing. They get dancing. They get Kwak'wala once in a while. They have community members go in and share their story about legends and all those kinds of things. But the adults aren't getting it. The adults don't have the opportunity to learn. And I'm only fortunate because I grew up in a family of potlatch people. Since I could walk, I knew what the Big House was, while not everyone my age had that opportunity. And we need to get everyone my age and give them that opportunity and give them that choice. (Andrea Cranmer)

I guess, for me, one of the most important [things] is research from our own people and learning our own songs. And thank God there was our old people [who] recorded things way back and we are able to now access it, to research it, like the Łaxwe'gila CD. And if it wasn't for Dan Cranmer, we would have not – we would have lost the 'Namgis songs that belong to our people. And I'm really grateful to the young men that kept it alive, like Wa, because of his research. (Vera Newman)

As we discuss below, the repatriation of potlatch material that had been surrendered and confiscated after the Village Island potlatch is an important part of cultural revival. It is crucial to helping to address harms caused by the potlatch ban and to acknowledging those who suffered as a consequence. The Kwakwaka'wakw do not seek the return of potlatch items so that the originals can be used in the potlatch ceremony; rather, they seek them so that they may learn from them, so that they may transmit and preserve the cultural knowledge that those items represent. The histories, dances, and songs associated with these items are infused with cultural significance. Thus, the repatriation of potlatch items and the information concerning them provides a "basis for rebuilding and strengthening" Kwakwaka'wakw culture.⁵⁷

Ownership and Belonging

Kwakwaka'wakw Traditions around Belonging

Entitlements to, and responsibility for, dances and associated songs performed at potlatches have individual, family, and community dimensions. Dances and associated prerogatives can be held by men and women and are

transferred from generation to generation. Some songs and dances are intended for men and others for women. It is also customary for a woman to transfer property to her husband on marriage. Transfers within and among families occur at potlatch ceremonies marking death, marriage, and important family events. The following passages illustrate these points:

Talking about my grandfather's dance, what House he came from, who he danced it for, and it belongs to our family. Because dad only had one son, it went to my dad first after my grandfather, then it went to his son, his only son. And then, when my brother became a *hamat'sa* for my dad, the old people from the Mamalilikala – Jimmy Sewid, Jumbo Bell – put it on me, not my granny. [T]hose guys, the chiefs of Village Island people at that time, [put it on me] to be a caretaker for it with the understanding that it would always remain in our family. You can't give it away like we do other property in an Indian wedding and that. It stays in the Dick line, my dad's family line. I took the time to tape my grandmother who was the mother of the grandfather of the young lady who was having an Indian wedding this weekend at the potlatch in Alert Bay. And what we did, what I did as being a member of the Alfred family ... I went through my tapes, through my books, to think about what we could transfer to the husband because that is what we do. "You," my granny said, "the worst thing you could do as a family is to have an Indian wedding and your daughter doesn't bring anything, you come empty-handed." Whether it be a name, a dance, a song, you know, you had to transfer something because it means that you are upholding your daughter or granddaughter in our way. (Vera Newman)

The groom's parents have to approach your family to request a marriage to be arranged between their son and you. So I can become a wife, they turn over a sum of money to the bride's family. I guess it could be looked at as an engagement ring. Granny Axu got grandpa Moses to give three hundred dollars to have a hold on me. [M]y uncle Sam Charlie didn't think it was enough. So granny just put her hands inside her petticoat and gave some more to grandpa. Then my uncle felt the money was enough. They transferred a copper to my husband's family. Then my husband's family was asked, "Does the copper stay with us?" So all the money that was transferred was given back to keep the copper, and the money went back to my father-in-law. And the copper was to validate the event. That was the way [of] the custom of our Indian marriage at that time. It was very different in the olden days. (Ethel Alfred)

Songs and dances are also composed for specific reasons, to acknowledge specific events and to relate family histories. Just as there were skilled carvers in the community, so there were skilled composers who composed

songs for individuals and families. New songs and dances continue to be composed today:

I've heard the majority of our elders say that every new dancer had their own new song ... either composed for them or it comes to them through their fasting and dreaming and stuff. So this is part of our ceremonies ... I went to a really awesome singing conference in Kincome, and one of my uncles said to me up there, "If you don't have new songs, then the dances ... everything will remain the same. Our culture will never move forward. Only the faces will change." ... [E]verybody had their own songs in the old days. And those songs sang and talked about that person, specifically, and it was really personal. You know, it was something individual and sacred, and it lifted people up about who they were ... I just thought that was really powerful that, you know, in your lifetime, that if you're part of the system, you'll have your own song to kind of carry you and you'll feel good about yourself and proud. When you hear your song, you know your spirit is lifted and you dance and feel good. (William Wasden Jr., part 2)

Family lineage groups have their own creation stories, which trace their ancestry to a supernatural being. Crests, names, songs, dances, and masks may represent, or derive from, that supernatural origin. The traditional concept of "belonging" associated with masks, dances, stories, and songs does not anticipate wrongful appropriation but, rather, common knowledge and compliance with Kwakwaka'wakw protocols on use and responsibility. Relationships of "belonging" were traditionally demonstrated through performance and verified when witnessed by the community. Songs, dances, and masks were an integral part of family identity. Andrea Cranmer explains that "it was the elders, the ladies, like the grannies, that were the record keepers of the language, or names, or songs and dances." Although the chief and other men speak and take on important roles at the potlatch, it is the "grannies and the knowledgeable ladies of that family that guide the male in what he is doing":

The other one that I'm familiar with is my grandmother, the Speck side of my family, is Numas, the butterfly, how we got the creation story. That belongs to the family that my grandmother comes from, Ławit'sis, Turnour Island ... [M]ost creation stories all started ... from the great flood, from the bible. That blew me away when I found out. Numas was an old, old man with a neck ring on. He was sitting on top of a mountain. He could see something flying towards him, way off. He was holding his hand ... on top of his forehead, looking up, and here it was a butterfly, and [it] came straight for him and sat on his head. And to this day, when the Tlowitsis people potlatch,

Numas will walk in and come visit us; and if he gives a cedar ring, that means we have to continue on and he goes back out. My dad talks about Granny Ada crying every time Numas came to visit because of the connection of who we are. She was a Ławit'sis; that's this person from Turnour Island. (Vera Newman)

[L]aw and order in the Big House was very, very important, very strict. And our leaders, the hereditary chiefs, they were taught at an early age, and everybody knew who their songs ... belonged to, who their dances belonged to. And there was law and order. And if you *udzagali* [mishap in Big House] or *digita* [to make it right] somebody else's, long time ago, they would stop you and correct you on that part. We don't do that anymore. A lot of our own songs, even our own dances, [are] gone because of what happened to our elders. (Christine Joseph)

Stories, dances, and songs may require regalia to be properly performed. Regalia is transferred to, and held by, an individual as part of a family's "treasures." Ceremonial masks are intended to be danced and transferred among family members, along with the songs and dances that go with them. Dances, songs, and masks are viewed as part of an integrated whole. Repatriated items belong to the originating family by virtue of the fact that they were held by a family member who is now deceased and unable to transfer it to another family member. These items were lost as a result of confiscation, forced surrender, or sales (sometimes for a token payment).

Dynamic Traditions

Despite the cultural and societal changes experienced by the Kwakwaka'wakw, the potlatch continues to play a vital role in their ability to acquire and learn about their traditions and rights to ceremonial dances, songs, masks, and other potlatch regalia. However, some families and individuals converted to Christianity and totally withdrew from any potlatch-like activities. Others died without passing on their knowledge. As composers died, confusion and disagreements arose. These situations led to disagreements about belonging and usage that are still being worked out. They also resulted in the emergence of new traditions and a form of community property that enabled a wider section of the community to use family property. The example that almost all participants referred to involves the practice of borrowing and singing other people's songs. The tension between retaining older values, fulfilling responsibilities, and adapting to contemporary circumstances underscores the comments of many participants as they discuss the potlatch. Given the gaps in cultural memory caused by the anti-potlatch laws and other forms of assimilation, it is not surprising that disagreements

arise in the process of rebuilding. And, of course, original Kwakwaka'wakw laws had no way of anticipating the problems that would arise with contact and the suppression of the potlatch.

However, seeking permission and acknowledging original entitlements is still an important part of Kwakwaka'wakw culture. If a mask is borrowed from a family member so that it may be danced, permission is necessary. Also, it must be kept safe, and "you return it and make sure it's returned to the person you borrowed it from."⁵⁸ Similarly, if the owner is known, using songs without gaining permission from the appropriate family or individual is viewed as a form of wrongful appropriation and disrespect. If a song is borrowed, its origins and owner should be acknowledged when it is performed:

And because we've lost a lot, we just sometimes ... borrow each other's in the Big House. But we don't use those songs just as they are. You have to ask the person who it belongs to before you can sing it. Especially with our masks and dances. If I was to use Basil's dance, one of his dances, I don't just go on the floor and use it. I have to ask permission from him ... And if I used his dance, he'd come after me right away. (Spruce Wamiss)

I know there's a lot of problems with families breaking special laws now, you know, because I don't think a lot of them know where it came from ... [Y]ou know, like we have different crests ... Well, everybody uses other people's crests now. Like, you know, it used to belong to one family. Now everybody is entitled to use it ... and that's the way it looks to me now. (Emma Tamilin)

Everything that we do in this world comes from the Big House. We say that all our laws that govern our lives come from the Big House. Everything we do in this world comes from the Big House. But we don't really do that. We don't really protect a lot of those things ... [o]ur family has the butterfly. It's now being used by other people, you know, and it's sad. There's nothing really we can do to protect that. Your relatives, my relatives, have asked me to do something about it, but what can I do about it? There's nothing I can do about it. I can't even go to anybody in the Big House to say, "Look, that should not be used by other families. That belongs to our family. That's our right." I've been told, "Why don't you potlatch to try to straighten it out?" Other people have tried to potlatch, and it really never has, it's never come to anything because there's no rules regarding that ... [T]here's people that potlatch that don't really have a right potlatching but we don't have anything to stop that. I know that the system is changing ... but that's fine. There's nothing wrong with that. It's the ones that don't have the right that get in there that bothers me ... And I don't see anything wrong with other, other families using other songs and stuff like that because we almost lost that. We're now getting a rebirth in that, where we have young people

like Wa creating songs and stuff like that ... What do we got to be scared of? The only thing that we've got to be scared of really is loss of our culture. (Basil Ambers)

Generosity and giving of oneself is a fundamental tenet of Kwakwaka'wakw society, demonstrated not only through gift giving at potlatches but also through the generosity of individuals who share their family songs. At the same time, entitlements to songs, dances, and potlatch regalia come with responsibilities. The delicate balance between generosity and responsibility is revealed in the following passages:

I think ... the example I'd like to give again ... [is] Elsie, when a lot of young people learned her mother's sacred chant, you know, *Yelak'wala* [sacred chant] for the *hamsamt* [cannibal bird mask]. I think things would have been different if there was acknowledgment [of] where the song had come from and if they had gone to get permission, there would have been a different route taken on that. But she did things publicly in the Big House, played a tape of her mother and father singing this sacred song, and she told the people: "[T]his is my mother's song and I would appreciate it if people would stop just getting up and singing it freely." So, I thought that was powerful, and people may [have] thought, "gee, she's rowdy" or whatever. This goes back to cultural property, and this was a sacred chant, and it had to have been in their family for a long time, a gift from the Creator to their family in order to carry out their ceremony. So, of course, they need to protect it. So, to me, she had to make a serious stand because that was her obligation, on behalf of her mother's song. So, to me, like a lot of people, like back to the Numas, their obligation is to protect that mask. There's a lot of big history that goes along with each piece and each mask and ... there's a lengthy story and a lengthy spirituality that came with it and teaching and lessons. (William Wasden Jr., part 2)

We got ten, ten top values, I guess, or ten commandments of the Kwakwaka'wakw [that] came through my granny, and a lot of them paralleled ... what Uncle Glen had to say. And one of them was to give of oneself; and to give of oneself to your family and friends because that's what our culture is based on, is giving, and not just giving gifts at potlatches but to give of yourself to help somebody if you know they need help. To give of yourself and to be, to be a total asset to your community and to help your community to make your community and people proud of you. (William Wasden Jr., part 2)

Economic pressures, the commercial art market, the process of cultural revival, lack of knowledge, and other factors have resulted in disagreement

over proper use. For example, some artists have used images that, under traditional protocol, should only be used by a particular family or tribe. William Wasden Jr. also suggests that new guidelines and rules, or at least “common respect,” are needed to address these problems:

But when there's outside parties, like with non-native people, copying our styles and ... these things are our right and our privilege, and these have been handed down to us, and what we do with it is our, ultimately our personal choice. But I don't agree with other tribes that don't know anything about what they are producing, imitating and copying our style. And I know they feel the same about us because I've heard that when our people carve *xwi xwi* masks, that the Salish people are very offended by that, or even when we dance it. We have stories [of] how it has come down to us and to me. I've seen many other First Nations groups carving in our style the *hamsam̓t*, and that's our most sacred mask, and it offends me. So maybe we just have to establish some kind of guidelines and rules around that or some common respect. I think it's just out of the knowledge about it. You know, our own people need to be educated about ... what these things represent. There's a lot of cultural people out there and cultural carvers, and then there's carvers who are seriously in the commercial market – you know what I mean – that they're just banging things out to make a living. And I'm not condemning that, you know. People need to make a living in this day and age, and a lot of our industry has collapsed on us. Now there's not too [many] places to turn to. But I think that there are other ways of getting around selling very sacred pieces. (William Wasden Jr., part 2)

The commercial art market has also induced individuals to sell items that, under traditional protocols, they do not have the right to sell outside of the family or that have come to be recognized by the community as cultural treasures. As Juanita Pasco explains, the problem is exacerbated by Canada's export control system. This is one of several problems identified with Canadian export laws, which are discussed later in this study:

Some of the challenges are, say, for instance, people selling things that they don't have the rights to sell; and when things are done through cultural properties, they don't really demand a paper trail. I don't think they ask for enough assurances that whoever is selling it has the right to sell it. We get things that we purchase from them, and there's no history behind it, who owned it, and how did they get it. And I think that's important, that they should have to prove ownership of it. (Juanita Pasco)

Reflecting on this problem and safeguards that might be taken to ensure

that material culture is returned to the appropriate community, Juanita Pasco also suggests that museums have no legal or moral right to place conditions on return; however, she also suggests that returning the Village Island potlatch items to family members who, for economic reasons, might be pressured to sell to dealers, would not have been a good idea. The community, affected families, and elders agreed that “the pieces were too fragile to go back to individual families.” Two facilities were created in Cape Mudge and Alert Bay. It was “up to the families to decide where the pieces went.”

A common theme among participants is that removal of important items from the community can be avoided if both outsiders and community members increase their respect for and understanding of Kwakwaka'wakw culture. More steps need to be taken within the community to educate people about traditional laws and the significance of cultural property to retention of cultural knowledge and practices on the part of the broader Kwakwaka'wakw community.

Repatriation

In the early 1960s, repatriation efforts began. With the assistance of Professor Michael Jackson (Faculty of Law, University of British Columbia), representatives of the Kwakwaka'wakw community began negotiations with the National Museum of Man (formerly the Victoria Memorial Museum and now the Canadian Museum of Civilization). In 1975, the museum agreed to repatriate the Village Island potlatch items in its collection on the sole condition that a museum be built to house them. The Kwakiutl Museum opened in 1979 in Cape Mudge, and in 1980 the U'mista Cultural Centre was opened in Alert Bay.⁵⁹ However, negotiations with the Royal Ontario Museum (ROM) were not as smooth. The ROM asserted that its claim to legal ownership was “as strong as anyone else’s”; sought compensation for expenses such as “curatorial care, conservation, [and] insurance”; and wanted a “co-operative travelling exhibit,” with some of the collection, or contemporary replacement pieces, to remain at the ROM.⁶⁰ It was not until 1988, after the intervention of the minister of Indian affairs, that the potlatch items were taken out of the ROM collection and returned to U'mista.⁶¹ An Order-in-Council was also passed, affirming the transfer of title of the collection to U'mista.⁶²

Around that time, the Museum of the American Indian/Heye Foundation became the National Museum of the American Indian (NMAI) and part of the Smithsonian Institution. This turn of events resulted in a change of museum staff, and negotiations went much more smoothly than they had previously. Prior to this, efforts to deal with the Museum of the American Indian were unsuccessful, partly due to a fear that repatriation to the Kwakwaka'wakw would open the door to many more claims:

[W]hen I went to New York we went to the fourth floor ... We were allowed to see the stuff that was all hidden in vaults ... and we had to, we had to go up to the fourth floor, and they were all open for us and I was looking at all the stuff that was in there. My God, there was hundreds of items. And I asked the curator, "Why don't you give it back to us?" And she says, "Because, for one thing, if we give it back to you people, we'd have to give everybody's back." "Yeah, but ours was stolen," I said, "Our stuff was stolen. So I think it's about time you returned it, don't you think so?" ... [A]nyhow I, that's all I said. I didn't want to, I didn't want to get into a fight with her. It's not her fault, like, you know, 'cause this happened ... just about a hundred years ago now. (Emma Tamin)

In the United States, in the late 1980s, the relationships between museums and First Nations were changing. A new federal law was being negotiated to provide for repatriation, ownership, and control rights over Native American "cultural items" to federally recognized Indian tribes.⁶³ Although the NMAI and Canadian First Nations do not fall within the scope of the legislation that was eventually enacted, the NMAI developed its own repatriation policy in the spirit of that legislation, which was even broader in scope.⁶⁴ In addition to human remains, funerary objects, communally owned material, and ceremonial and religious items, the NMAI policy also contemplates the return of illegally acquired material. Although the policy anticipates that claimants will be Native American groups or Hawaiian organizations, claims have not been limited to these groups and may be made by "descendants and those that can demonstrate cultural affiliation to the materials."⁶⁵ Pursuant to negotiations under this policy, nine items were returned to Alert Bay in 1994. In July of 2000, the NMAI agreed to return another sixteen pieces.⁶⁶ The return of these items was celebrated on 23 November 2002.

Unlike the repatriation claims of some First Nations, those of the Kwakwaka'wakw with regard to potlatch items are not so much linked to the assertion of communal rights or to violation of traditional laws concerning belonging, possession, and control as to rectification of injustices suffered as a consequence of the potlatch ban and its disruption to the continuity of Kwakwaka'wakw culture. Nor do they assert that actual, original use is necessary for the performance of spiritual ceremonies. Although the potlatch ceremony is central to the spiritual life of the community, masks and other potlatch regalia continue to be created by Kwakwaka'wakw artists. As Gloria Cranmer Webster explains:

Most demands for repatriation are based on the argument that the treasures are vital to the spiritual health of native communities. This was not the basis in our case. We did not need our masks returned so that we could use

them. In fact, most of them are in extremely fragile condition, due to years of neglect in the museums which housed them. Our goal in having our treasures come home was to rectify a terrible injustice that is part of our history. The objects used in contemporary potlatches have been and continue to be created by our artists. Some of the masks are replicas of earlier ones, several of which are from the Potlatch Collection. Our concept of ownership differs from that of other people in that, while an object may leave our communities, its history and the right to own it remain with the person who inherited it.⁶⁷

However, as transfer of ownership was considered to be an important step in rectifying past injustices, U'mista was not prepared to accept the potlatch items on long-term loan. The same position has been taken with respect to potlatch items not yet returned. According to Andrea Sanborn: "It's important to have it returned because it belongs to our people. They, the institutions, can keep replicas. The originals have to come back."

Many participants spoke about the experiences of their relatives and of how the repatriation of their regalia is one way to acknowledge that suffering and to help the family and community heal. As Emma Tamilin explains, "[i]t's just part of healing, 'cause we all need to be healed because of what happened in 1922 it affected all of us." Basil Ambers emphasizes that it is also important to acknowledge "old-timers" as "heroes" and to respect those who are still in the community and who suffered, or whose immediate family members suffered. He suggests that U'mista could still do more in this regard.

Lack of emphasis on their original use in spiritual ceremonies does not mean that the spiritual nature of repatriated materials is ignored or that their return is unimportant to the spiritual and emotional well-being of the community:

Because if we believe in spirituality, the spirit[s] of those masks, the spirits in those masks that are all over the world ... they must be really sad and lonely. Like, if you think about it in that [way], and it's probably lost, they're probably lost, wondering, "[W]here am I?" And, "[I]t's time for me to go home now." And I believe when the masks, like the ones from New York, they came and they bridged that gap with our people and we got our stuff back. Now I believe that the spirits can rest now. They can go home now, and the essence of them can go now and the masks can stay with us to remind us of that time when our people went through so much hardship.
(Andrea Cranmer)

Participants also speak of the importance of repatriating items in order to rebuild ceremonies, values, beliefs, and knowledge. All participants

emphasized that the importance of repatriating potlatch items also lies in the cultural knowledge that they represent. As William Wasden Jr. explains (part 2 of interview): “There’s a lot of big history that goes along with each piece and each mask, and ... there’s a lengthy story and a lengthy spirituality that came with it, and teaching and lessons. And you know that a lot of pieces in our ceremonies represent things and are giving us teachings and tools to function better.”

Participants, including those who are members of families that have had potlatch items returned, agree that it is important to keep them safe and accessible so that future generations can learn from them, despite the fact that, under Kwakwaka’wakw law, they belong to specific families. For this reason, the requirement that they be housed in a museum-like facility is not considered to be an unreasonable request, particularly given that the facility is located on Kwakwaka’wakw territory and controlled by Kwakwaka’wakw. Participant opinions confirm Clavir’s observation (below) that proper care of the items validates their importance to the family and community.⁶⁸ Vera Newman’s words reflect a common sentiment:

I’m so proud of U’mista because we have our own members that are board members, our own people. There’s no non-native administrator telling us how to do things. It’s our people that are the board members of our cultural centre, and I believe that’s where our family treasures are stored and it’s really important for us to know it’s in a safe place. So I have a great deal of respect and appreciation for the cultural centre. (Vera Newman)

However, Basil Ambers cautions that it is important not to lose sight of the fact that families are the true owners of the potlatch material.

Access to potlatch items on the part of entitled family members is crucial. However, circumstances can arise in which it is important to use a particular item that is too fragile. Quoting Juanita Pasco, Miriam Clavir explains how U’mista accommodates this need:

In the preceding case, the use of the objects at the potlatch was facilitated by staff at the U’mista Cultural Centre, where the family had chosen to house the objects. As museum-like storage in Alert Bay was the family’s choice, and as the family was concerned about the objects’ well-being, in this instance standard conservation practice integrated well with First Nations’ need for use of the object at the potlatch. In fact one could say that following standard conservation practice validated the importance of these older pieces for their family of origin because it signified that the family took good care of the pieces. The collections manager at U’mista brought the objects over to the Big House for the potlatch: “I brought them in, and told them how to handle things, just a little: ‘This is how you do it, you

know, you use two hands. Don't hold two objects' – and just went over the basics with them. They were all excited. They wanted to use the little white gloves – but I didn't have any!"⁶⁹

U'mista also purchases contemporary objects to loan to families to use in potlatch ceremonies and, when requested, stores personal regalia that is still in use.⁷⁰

A challenge in repatriation involves divergent views on "ownership." Concepts of ownership and belonging vary among First Nations and between First Nations and Canadian institutions. For these reasons, repatriation negotiations in Canada have tended to be resolved according to moral and ethical grounds rather than according to which concepts and laws of ownership and belonging prevail. Nevertheless, it is still necessary for First Nations communities to establish prior cultural connection and "ownership" of the items they want returned. Sometimes it is possible to find written information to verify community understandings or entitlement. However, conflict between written documents in the hands of museums and oral traditions in the hands of the First Nations community can result in protracted, expensive, and complicated negotiations. Sometimes items are clearly marked. For example, Emma Tamilin explains that it was not uncommon for people to carve their names inside of masks. However, at other times the objects are so old and worn that it is impossible to identify the original owner:

A lot of the problem is establishing, or having the records to establish, the rightful ownership because there were no written – there wasn't a written language for Kwak'wala in the early days and anything that was written was ... second-hand information, which can easily be misconstrued or whatever, misinterpreted, by those that are writing them ... So I think that's, that's a big problem, establishing the ownership without written information. (Andrea Sanborn)

Once ownership is established, negotiations can be further complicated by disagreements in the community and legal barriers that prevent a museum from deaccessioning objects without imposing conditions with respect to preservation and public access. This may mean that a First Nation must first obtain funds to create and operate a museum-like facility in their community. For example, a condition for repatriating the Potlatch Collection from the National Museum of Man and the ROM was that U'mista build a museum and follow museum conservation procedures. Exceptions have been made with respect to the loan and return of sacred and ceremonial items necessary for the practice of ceremonial and religious traditions.⁷¹ As Gloria Cranmer Webster explains:

This condition, unfortunately, resulted in long delays as there was disagreement about where such a building should be located. Eventually it was decided that two museums would be built, one in Cape Mudge and the other in Alert Bay, with the collection to be divided between the two. Another problem emerged. Halliday had prepared a list of the objects for the Victoria Memorial Museum [later the National Museum of Man and then the Canadian Museum of Civilization]. The document was quite inaccurate according to our own research on ownership of the individual pieces, so that reaching an agreement on the division of [the] collection took some time.⁷²

All participants see a role for elders, family members, and the community in resolving disagreements and ascertaining rights to Kwakwaka'wakw material culture. Juanita Pasco describes the approach that she used when conducting repatriation research with U'mista: "[I talk to] the older people first and then, if there aren't any that can help me, then I work my way down the line to the knowledgeable people that I know." Bill Cranmer also emphasizes the importance of consultation:

I think the safeguards would have to involve open discussions with – take, for instance, the Kwakwaka'wakw. We, our territories, stretch right from northern Vancouver Island to the Campbell River, and so it would have to involve discussions with everybody within that, that area. I think we have already experienced that with the return of some of the collection to the Kwakiutl Museum in Cape Mudge, where some of the families that lived in this area wanted their pieces returned to the U'mista so that they would see these pieces here on a daily basis if need be. It's a matter of talking to everybody and making sure that what the families want is what actually happens. (Bill Cranmer, part 1)

Although the Kwakwaka'wakw are best suited to deal with healing the harms caused by the potlatch ban, participants agree that there is a role for Canadian institutions in restoring the potlatch to its central place. Participants expressed an appreciation for the role museums have played in protecting cultural items and as repositories of cultural information. U'mista has now assumed this role for the Kwakwaka'wakw community it serves. Participants also note that it is important for museums to continue to return regalia and other items significant to Kwakwaka'wakw culture. Museums have responsibilities to the community with respect to Kwakwaka'wakw items and the information that they retain. This includes sharing information, consulting with regard to proper use and display, and limiting access to information not intended to be shared with the public. As Bill Cranmer emphasizes, "[T]he reason that they have these [potlatch] pieces and information in their collection is because of the circumstances our people found

themselves in as a result of different government policies." Their responsibilities to First Nations should be viewed in this light.

Participants who are engaged in negotiations for potlatch items and cultural information relayed positive attitudes towards Canadian and American museums that understood the harm suffered by the banning of the potlatch and the importance of returning potlatch items for community healing and cultural revival. U'mista's success in building positive relationships and repatriating cultural items and information is attributed to a number of factors, including having a facility that meets museum standards, common interest in preserving cultural items and information for future generations, properly trained staff, and a credible reputation within the museum community. As part of the repatriation process, U'mista also conducts its own research and engages in constructive publicity to raise awareness about the importance of repatriating the items requested. Successful relationships are also attributed to the efforts and understanding of individuals who are working for museums and are helping to initiate change, such as Peter MacNair, a former curator in the ethnology department of the Royal British Columbia Museum (RBCM).

Participants also identified several challenges to successful repatriation negotiations. The recovery and repatriation of confiscated regalia costs a significant amount of money. Although many museums will provide lists of materials within their collections, these lists are not always accurate and site visits are required both for the identification of items and for the negotiation of their return. Once found, a missing item may have to be purchased from the present possessor and then be shipped, catalogued, cleaned, and restored before it can be placed on display. Money is also required to build an appropriate facility and for the ongoing maintenance of the display and research space. These costs are one reason why the 'N̄amgis and U'mista have initiated a specific claim against the federal government:

The difficulty with the specific claims policy is that it only can provide monetary compensation. Nevertheless, what we are seeking is monetary compensation for the harm that was done to the community or the communities by the taking away of the potlatch and compensation for those articles that were seized and which were never paid for and, in particular, we are talking about the coppers. What we have sought from the federal Crown, and will be seeking, is monies in order for there to be repatriation of any remaining items that were, were seized or surrendered, the proper housing and maintenance of those items, the proper museum facilities for them to be properly presented, proper storage, and all of the administration and the costs that go along with that. (Stan Ashcroft)

In 2004, the University of British Columbia's Museum of Anthropology

returned, on long-term loan, three masks that were believed to be part of the Village Island Potlatch Collection. Another item recently returned to U'mista on long-term loan is the Transformation Mask held by the British Museum. The RCMP officer who carried out the 1921 arrests sold it under his wife's name.⁷³ Originally part of the collection of the National Museum of the American Indian, in 1936 it was transferred to the Cranmore Ethnographical Museum in Chislehurst, Kent, England, and from there to its current location.⁷⁴ Repatriating from the British Museum has proven to be the most difficult task yet. The museum initially refused U'mista's request for the mask's return, citing legislative barriers.⁷⁵ According to museum director, Dr. Robert Anderson, to turn over the mask would be illegal: "I would, in fact, be breaking British law."⁷⁶

U'mista's usual approach to repatriation is to avoid the assertion of legal rights, emphasize moral obligations, and avoid using the media to put pressure on negotiating parties. Rather, the media is used constructively to celebrate returns and to build understanding about the importance of the repatriation of cultural items. However, initial difficulties encountered with regard to the British Museum repatriation resulted in the adoption of different strategies. Particularly frustrating was the fact that the Transformation Mask was not even on display:

They told us that the gallery that was housing it was under construction and all the pieces were packed away and would be for at least three years. Since that time, I've talked to people that know about the situation. People from England, people from the Netherlands have told me that they have gone specifically to see that piece and it is not on display. And they don't know if it will ever be on display, and I'm sure it's because of the controversy around it now ... [t]hey'd just as soon leave [it] in the back room somewhere and not allow people to have access. Although they have said it is the museum law for them to have it so that anybody who wants to study it, anybody with any interest in it, will be able to go at any time and study it, and yet it's not even on display ... It's pretty hard to go and study something that's in a box. (Andrea Sanborn)

As a result of media interest, public pressure, changes in personnel at the British Museum, and U'mista's increased experience with negotiating, an agreement to return the Transformation Mask on loan was finally reached – eight years after the first request was made. This return was largely due to the efforts of Jonathan King, a keeper at the British Museum's Department of Africa, Oceania, and the Americas. He supported the request that the mask be returned to the U'mista Cultural Centre.⁷⁷

U'mista purchases and seeks the repatriation of various items of cultural, historic, or artistic value that are currently in the hands of museums or

private collectors. Of particular concern is the export of Kwakwaka'wakw cultural items outside of Canada. Whenever possible, U'mista has attempted to prevent export and to negotiate the donation and/or purchase of such property. Because of various problems encountered in this process, in 1999 U'mista initiated a review of the impact of federal import and export law on First Nations.

Given the passing of elders and the impact of acculturation on retention of cultural knowledge, it is important that items be returned along with the information that is associated with them. Also, sometimes associated information is inaccurate; because of this, the community needs to review it:

In the meantime, it's very important to keep that link between language and objects in any kind of action we are undertaking now outside to get this material back, so that [it is] not coming without the rest of the information which belongs to [it]. Very often a museum has information about a mask or even has not done proper research about the information regarding the mask. So the museum [has an] obligation to produce this information, to do their own research, at their own cost, [and] to give it back with the object.⁷⁸ (Guy Buchholtzer)

Since 1993, U'mista has been developing its capacity as an information and resource centre on Kwakwaka'wakw culture. Although a significant amount of research has been conducted by academics and others on Kwakwaka'wakw communities, until recently original research data and outcomes were rarely shared with the community. Given the importance of this information to rebuilding Kwakwaka'wakw knowledge and cultural life, U'mista has expanded its repatriation efforts to include information concerning the Kwakwaka'wakw culture wherever it is situated. As discussed earlier in this chapter, the 'Namgis Nation and U'mista have also responded to this problem by establishing research protocols that must be followed by people conducting research on the 'Namgis Reserve.

Reflecting on his research and involvement with the Kwakwaka'wakw Centre for Language and Culture in Community, Guy Buchholtzer explains:

[M]any scholars, many people who write about the community, many people who go there, they often forget about the community as soon as they've done their publications, as soon as they've done their research ... I felt that it was very important that the community regain control over all the information concerning itself, whatever the information is. The community [needs] to look at this information, to judge it, to discuss it, and to supplement it, to evaluate it ... [T]he project consists of first identifying the sources then retrieving those sources, retrieving some material, looking at some material, indexing all this material. And I have a fair knowledge,

because I have worked for more than a quarter of a century on this issue, where it can be. It's all over the world. I made a feasibility study for the U'mista, and that feasibility study indicated that 70 percent of everything is outside the community. More than 50 percent, perhaps 60 percent is outside of Canada, so that repatriation concerns Canada as well, and I hope that we have the support of Canada [in] repatriating this material to Canada ... Secondly, what is important too is that we are not creating a dead archive or a dead library. What we want to do, and that is in agreement with the elders in the community, is to have a centre where ... those things are going to be discussed, criticized in positive or negative – whatever it deserves. [A]nd to have it integrated again within the community, and the community becomes again – and stays as – the producer of its own culture. Outcomers [people from outside the community] can be invited under, under agreements with the community to look at those materials, to discuss them to do research, but with the agreement of the community and in very clear legal terms. (Guy Buchholtzer)

Although participants acknowledge the importance of having access to material written about them in order to learn more about their language and culture, William Wasden Jr. cautions that such material must be approached with caution:

You know when Europeans write about us, they've already got an opinion on us because their culture is almost [the] reverse of ours. So there's always going to be some sort of flavour to the way they are going to speak about us and stuff. And, you know, a lot of times they might not understand what these, what these spiritualities and what these pieces and these cultural properties do for us, you know. (William Wasden Jr., part 2)

Some participants express frustration over the removal of data from the community but, at the same time, are grateful that recordings had been made as these have been pivotal in relearning songs, ceremonies, and language. Copies are sufficient, in most cases, to serve the objectives of cultural education and retention and the revival of cultural information and the Kwak'wala language. Those who speak to this issue did not indicate a need for the return of original tapes, archival material, or other records. Sometimes, when budgets allow, the costs are born by the institution receiving the request.

U'mista is engaged in a number of initiatives, other than repatriation, to increase its effectiveness as an information and resource centre, including recording and digitizing oral history in a number of areas. For example, in 1991, U'mista undertook a project to record traditional songs. These have been entered into an audio collection database, and a catalogue record,

“which lists whom the song belonged to and the village it came from,” has been completed.⁷⁹ Family members can request copies of songs “as well as the legends and histories.”⁸⁰ Such recordings have played a vital role both in learning about and reviving Kwakwaka’wakw ceremonies and Kwak’wala itself.

Authenticity and Appropriation of Art: An Artist’s Perspective

William Wasden Jr. spoke at length about the challenges faced by Kwakwaka’wakw artists.⁸¹ It is now common for Kwakwaka’wakw artists to borrow designs and images, such as ancestral crests, from outside of their families or from another tribe. Outside interest in this art and lack of knowledge on the part of some artists has resulted in the commercial sale of images that, in his opinion, should not be shared outside the community without the consent of the appropriate family. He views the use of images, such as emblems and other family images, without proper permission as a form of wrongful appropriation that threatens the cultural integrity of the image. Basil Ambers shares similar concerns about people who are carving totem pole crests and mystic figures, “some Indian and some not.” He wonders if the community is “afraid of looking” at this “properly” as it has failed, to date, to take steps to prevent it.

Understanding the need for other artists to support themselves, William Wasden Jr. suggests that families should be responsible for speaking out if they are concerned about the use of a particular image, given the extent to which borrowing has become commonplace among the Kwakwaka’wakw. He does not see the sale of images without prior permission as improper and speculates that “[m]aybe the Creator gave us our culture, our wonderful carving style, ’cause he knew how tough the times were going to be.” However, the following comments raise difficult questions about what amounts to wrongful appropriation within the community, which images are appropriate for commercial sale, and whose permission is required:

[I]f people are carving other people’s cultural property and the owners don’t say nothing about it, then it’s kind of like, it’s kinda like when somebody, somebody tells a lie and you don’t correct them or you don’t stand up for the truth and you become a part of it. If that becomes the accepted truth, and you were a part of the lie because you didn’t speak up for it ... And, you know, I think people would respect it and respect the, the leaders of those families if they were to say, “You know, I would appreciate it,” or whatever, “if you carve my ancestor that you come and talk to me about it first.” You know, there would become a more common respect for people and each other over that because it’s one thing to be behind the scenes nattering and going on about something, but if it bothers you that much, then go and talk about it.

In his opinion, there is also a difference between ceremonial pieces and pieces intentionally produced for the art market. The “carvers of old” did not sell sacred masks or “major pieces” in the commercial market. Carving at a time when traditions were strong, people could live off the land, and before the anti-potlatch laws and international demand for West Coast aboriginal art exponentially increased its value, they were not faced with the same issues as are contemporary artists who are trying to determine what is and what is not appropriate for sale to outsiders. Wasden Jr. also suggests that new guidelines must be established that include not selling items considered sacred by a particular family or those prepared for ceremonial purposes outside the family. However, in some circumstances, sale of replicas may be acceptable.

Wasden Jr. also considers the use of Kwakwaka'wakw images for commercial gain by non-indigenous artists, other than those formally adopted and considered part of the community, to be a form of cultural appropriation. Kwakwaka'wakw should not have to “compete with white carvers” who are using their images. He is also concerned about issues of authenticity, accreditation, and cultural integrity. In his interview, he suggests a few strategies for preventing non-Kwakwaka'wakw artists from passing off their work as Kwakwaka'wakw and for enabling buyers to authenticate items of interest to them. One strategy he proposes is to develop a website that gives information on Kwakwaka'wakw artists. He sees U'mista as having a role in developing this resource because the staff have the knowledge and expertise. He also sees it as a way for artists who wish to be on the list to learn more about their own family history and culture and to reduce the need to borrow from others. Some artists have discussed “a stamp or something like that.” Although not opposed to it, Wasden Jr. sees this as just “buying into the white man’s ways.”

Role of Canadian Law and Government

Participants in this study think that cultural heritage must be protected on many levels. The starting point is considered to be with the Kwakwaka'wakw themselves because failure to protect their own culture will have deleterious consequences. Reflecting on the meaning of “cultural property,” Vera Newman emphasizes the importance of the community’s doing its own research while the “old people” are still alive rather than relying on outside experts. For her and others, protection means learning the traditions and living according to the values, beliefs, and principles that the elders teach. It also means being teachers. It means recording and documenting the knowledge of the elders. According to Basil Ambers, these efforts must be accompanied by a respect for Kwakwaka'wakw laws: “If we don’t look at our laws and don’t put teeth to it, then its never going to right itself.” Putting forward a canoe gathering called Łaxwe'gila, or “gathering

strength,” as an example of a recent event that embraced members of the community from “all walks of life,” Andrea Cranmer is optimistic the community will come together and emphasize the importance of healing so that “people can get their voice back and be empowered” to develop strategies and to discuss rights that many do not know they have:

I believe that if we continue to heal as a people, we can continue to make the proper decisions that need to be made for cultural property and all the things that encompass cultural property. And we need to come clean. We need to get our minds clean, our souls clean – all those aspects, we need to come clean with it. And I believe that we can do it, our people can do what needs to [be] done around here. (Andrea Cranmer)

Participants also recognize a strong role for Canadian law and governments in protecting Kwakwaka'wakw cultural heritage. All participants called for the Canadian government to acknowledge that the banning of the potlatch was a wrong committed against the Kwakwaka'wakw people. Several suggested compensation must be made to the people who had their regalia confiscated, to those who were charged, and to those who were imprisoned for participating in potlatches. One participant draws a parallel between the compensation granted by the Canadian government to Japanese Canadians who had their property wrongfully confiscated during the Second World War. She wonders why the Kwakwaka'wakw have not been compensated in the same manner:

About rightful ownership to the property of all types, cultural, intellectual, anything that belongs to a First Nation, especially ours, they – the government – has to accept responsibility for that ... For instance, the Japanese Internment, where they have extended apologies to those people, extended financial compensation to those people, which is fine. It was wrong that was done against those people, but we are the First Nations of Canada, and here we are still, all these years, a century later, arguing about this. Where is the sense in that? (Andrea Sanborn)

One way to compensate communities harmed by anti-potlatch laws is to fund repatriation initiatives, programs, and First Nations cultural centres. The chronic underfunding of the U'mista Cultural Centre and the Kwakiutl Museum with regard to these and other cultural protection initiatives is a major impetus behind the specific claim discussed below.

U'mista employees and board members commented on the need for existing laws to be strengthened and enforced so as to recognize the importance of material culture. Governments need to work with First Nations communities towards this end. Of particular concern are the limited protections

offered by Canada's export control laws and copyright law. These laws are viewed as facilitating, rather than preventing, wrongful appropriation and loss of cultural items and information. Other participants speak in more general terms about the need for laws to protect different aspects of Kwakwaka'wakw cultural heritage, including the Kwak'wala language. A common sentiment expressed by those addressing these issues is that outside laws must respect and protect Kwakwaka'wakw concepts of belonging and way of life. In the words of Ethel Alfred, "[W]e want laws in place by the government so that people will not disturb our things that are sacred to our people." According to Andrea Sanborn, this means working with Kwakwaka'wakw to enact laws that "protect our cultural identity, our cultural objects, our cultural ways" and that make "all the institutions, the dealers, the collectors ... accountable, first to their conscience and, secondly, to the laws."

Participant comments on Canada's export laws are informed by the difficulties U'mista encountered in trying to purchase and prevent the export of the Nowell bead and button blanket. Of particular concern to U'mista is the ability of dealers and collectors to manipulate the permit system to inflate sale prices for items that First Nations may be seeking to have returned. The "Nowell blanket is significant for its artistic merit, but more importantly, because of its exceptional history, craftsmanship, and what it represents to the descendants of Charles Nowell."⁸² U'mista tried to purchase this blanket and prevent its export. Exports of cultural items outside of Canada are controlled by the *Cultural Property Export and Import Act*.⁸³ The Act is designed to discourage the export of cultural objects and to keep objects of national importance within Canada. It does this through export controls that delay permanent export permits and through the provision of repatriation grants, loans, and tax incentives. U'mista received notice of the decision to delay the export of the blanket from the Canadian Cultural Property Export Review Board (CCPERB) because the U'mista Cultural Centre is one of the few First Nations institutions that meets the requirements necessary to receive notice.⁸⁴ U'mista applied for a grant under the *Cultural Property Export and Import Act (CPEI)*, informed the Board of its intent to purchase, and advised Sotheby's (Toronto) of this. At this stage, U'mista understood it would need about Cdn\$11,800 to purchase the blanket. Although the *Act* itself places no conditions on grants or loans, the policy at the time was to require organizations applying for funding to contribute towards the purchase price, although in some cases this could be waived. Upon securing a private donor to contribute towards the purchase of the Nowell blanket, U'mista alleges that it was advised that a recommendation for the grant would be made to the minister responsible for administering the *CPEI* and assumed the CCPERB would deny an export permit pending this decision. However, the four-month delay imposed by the CCPERB expired and an export permit was granted to export the blanket to Sotheby's

(New York). One of the reasons cited was that an offer to purchase had not been made to Sotheby's within the delay period, a step U'mista was unable to take before funding was confirmed. Although the estimated value of the blanket was between US\$6,000 and US\$9,000, U'mista requested a grant for \$US18,300 to enable it to bid competitively. Although U'mista eventually received the grant, the maximum amount it was able to bid for the blanket at the auction was US\$21,500. At auction the blanket was purchased by a gallery in Ontario for US\$24,500, which subsequently agreed to sell it to U'mista for US\$30,000. U'mista requested an increase in its grant and received US\$27,300. The balance was paid for by private donation.

Problems with the Nowell blanket repatriation and the experiences of another West Coast First Nation resulted in U'mista joining with other partners to research reforms to Canada's export laws:

Well, one of the problems with the Export Review Board is, of course, the prohibitive costs of ... stopping the export. We'd have to come up with some monies to pay for the pieces, so that was one problem. And the other problem, of course, is a, is – what seems to happen when a piece is to be exported is the price skyrockets. An example is the piece from Bella Coola, where I think a collector bought it for a few thousand dollars and it cost the Bella Coola people I think pretty near a quarter million dollars to get it back.⁸⁵ So that was a, that was a real tragedy there, but they did manage to get it back. But, for the most part, lately we've been getting some very good cooperation from the museums in repatriation not only of actual physical property but also for the written materials and the recorded materials. (Bill Cranmer, part 1)

Copyright laws concerning ownership of recorded songs are inconsistent with Kwakwaka'wakw understandings of belonging as relayed by the participants in this study. Concern is also expressed about the inability of federal law to protect artists from having their unique style appropriated through unauthorized copies and derivative works. To the extent that these protections exist in Canadian and international law, they are not known or fully understood. As Basil Ambers notes, "a lot of people don't know what our rights are":

And also, I think there's issues around copyright which need to be resolved because Canadian copyright laws [don't] really take into consideration First Nations customs and what they consider ownership of songs ... [T]here's the material we recorded from Mackenzie in '91. As it stands now, we would retain copyright because it was our equipment. We hired the people. We paid for the information to be collected. But we don't consider ourselves as owners of the material, more [as] caretakers. (Juanita Pasco)

Giving the *Heritage Conservation Act*⁸⁶ as an example, Stan Ashcroft and John Pritchard also comment on the inadequacy of existing laws and speak to the importance of educating people about their legal obligations so that they know when they are in breach of them. However, even if people are aware of the limited protections this legislation offers, that is not enough. It is not enough because the scope of property protected by the *Act* is too narrow and because the minister can permit developers to destroy and alter heritage sites that the legislation is intended to protect. According to Stan Ashcroft, what is needed is “a much broader understanding of what constitutes, or at least from the government’s side, what constitutes cultural objects for aboriginal people and what should be protected and laws that will provide severe penalties for them being disturbed or taken.”

The 1998 claim that U’mista and the Nuyumbalees Cultural Society submitted to the Specific Claims Branch of the Department of Indian and Northern Affairs was made on behalf of fifteen First Nations that, formerly, were part of the Kwakiutl Agency. The specific claim asks the question: “[D]id the passage of the prohibition and its enforcement constitute a breach of the lawful obligation owed by the federal government to the Native peoples of Canada, and in particular, with reference to the facts in the claim, to the Bands of the Kwakwaka’wakw filing this Specific Claim[?]”⁸⁷ Broadly put, the specific claim alleges breaches of fiduciary duty in three areas: the passage by Parliament of the original prohibition in the *Indian Act* and its subsequent amendments; the role and actions of Deputy Superintendent General of Indian Affairs Duncan Campbell Scott in securing the original prohibition amendment and his actions in enforcing the prohibition against the Kwakwaka’wakw; and the role and actions of Indian Agent Halliday in securing the original prohibition, acting as both Indian agent and judge in the trials following the Village Island potlatch, in demanding the forfeiture of regalia and his acquisition of same, and for failing to prevent Sergeant Angerman’s improper acquisition of potlatch items. The claim also alleges negligence, breach of the *Indian Act* (statutory duty), and breach of an agreement between Scott and the Kwakiutl Agency Canada to investigate prohibition of the potlatch.

The specific claim was filed because “U’mista wants Canada to accept that what they did was wrong [and to] cover the costs of continuing repatriation of the Potlatch Collection, costs for caring for the Collection, and resources to assist U’mista in language preservation.”⁸⁸ The only remedy under the specific claims process is monetary compensation. Compensation is being sought for the “harm done to the community or communities by the taking away of the potlatch” and for “articles seized that were never paid for and in particular ... the coppers.”⁸⁹ Harm includes not only loss of “regalia and the material itself” but also loss of language and the shattering of the social and economic system of the Kwakwaka’wakw.⁹⁰ Specific

examples of breach of fiduciary and statutory obligation by federal agents include the activities outlined in our discussion of the banning of the potlatch. Alleged breaches include Parliament's enacting the anti-potlatch laws based on false information, Canada's enabling Halliday to "convict those very persons who as Indian agent he was supposed to protect," and Halliday and Angerman's creating a scheme to "force people to surrender potlatch regalia and artifacts."⁹¹

The specific claim was rejected in December 1999. It has since been resubmitted, in February 2005, to the Specific Claims/Claims of a Third Kind Branch, which is where it currently sits. One of the primary reasons that the specific claim was rejected in 1999 was because "the broader category of breach of fiduciary duty *per se*" does not fall within the categories of claims identified in the policy as an area that the federal government is prepared to negotiate.⁹² Further, only bands recognized under the *Indian Act* have the status to bring a claim. Therefore, in April 2002, the 'Namgis Nation, on behalf of U'mista and the fifteen tribes, requested an inquiry by the Indian Claims Commission (ICC). The ICC is an independent advisory body that holds public inquiries into specific claims rejected by Canada. It also provides mediation services to help facilitate the process of negotiation. The claim before the ICC is ongoing. If the federal government does not accept the report of the ICC and agree to negotiate the claim, or if a First Nation is unsuccessful at the ICC, the only remaining recourse is to litigate the issue before the courts. At the time of writing, the ICC had not yet completed its investigation of U'mista's claim.

One of the inherent problems with the specific claims negotiation process is that the federal government is not only the defendant in these claims but also the institution that determines the validity of the claims submitted. This has been a concern to First Nations since its inception; it is the reason the ICC was formed; and it is the main rationale behind proposals for the new *Specific Claims Resolution Act*.⁹³ As John Pritchard explains:

This is going before the Claims Commission right now, this claim, because it was rejected by Specific Claims West and it was done, we believe it was done on a narrow technical defence. They are claiming that, irrespective of the rights and wrongs here, the injured parties or individuals are not bands as such. So they are taking refuge in that narrow reading of the law. They are saying, in effect, that such things as language, economics, social systems, and so on were not band property as such. If the way that claims tend to work is that expropriation took place through a right of way through a reserve, and that right of way was supposed to be sixty-six feet and took sixty-seven feet, you've got a specific claim here and because it's band property. If you destroy an economic system, a social system, or wreck a language and traumatize people for generations, that's too bad because that's not band property.

Since this interview, the proposed *Specific Claims Resolution Act* has gone through several changes, including expanding the category of eligible claims to include breaches of fiduciary obligation other than those related to funding and delivery of public programs. Given the scope of potential fiduciary obligation claims, it is difficult to determine how this provision will be interpreted. Under the *Act*, if the minister decides not to negotiate a claim it is referred to the ICC. Matters of validity that cannot be resolved through the ICC dispute resolution process and issues of compensation may be referred to an independent tribunal that can make an award binding on the federal government. Although First Nations may make representations concerning appointments to the tribunal, appointments are made by the federal government. Another problem is that the maximum award that can be granted by the tribunal is \$10 million.⁹⁴

Conclusion

The not so distant history of the Kwakwaka'wakw people was influenced by European settlement, Christian proselytizing, residential schools, legislated discrimination, and forced assimilation. Anti-potlatch laws, as well as other government-sanctioned discriminatory laws and policies, resulted in the significant disruption of Kwakwaka'wakw social, economic, political, spiritual, and cultural structures. Not only was material culture illegally confiscated, but the transfer and retention of cultural knowledge, protocols, history, laws, and other information through the potlatch ceremony was severely inhibited. Most participants in this study see the revival of the potlatch ceremony as imperative to successfully strengthening and recovering traditions, values, teachings, beliefs, and the Kwak'wala language. It is central to the continuity of cultural identity and what it is to be Kwakwaka'wakw. Factors influencing the urgency and complexity of this process include gaps in cultural knowledge created by the potlatch ban, the passing of knowledgeable elders, decreases in the number of people who can speak Kwak'wala, and the difficulty of maintaining oral traditions and transmission processes if the language is lost.⁹⁵

An important step in addressing the injustices suffered by Kwakwaka'wakw, healing from the wounds of acculturation, and strengthening Kwakwaka'wakw cultural pride and identity is the repatriation of material culture and information and the creation of cultural centres in the community to house this material and work with the community on language and culture initiatives. Numerous initiatives on the part of U'mista, the 'Namgis, and other Kwakwaka'wakw communities have fostered pride, encouragement, hope, and interest in the Kwakwaka'wakw culture at home and abroad. Fundamental in the repatriation initiative is an understanding that the value of potlatch regalia lies in the cultural knowledge these items represent, easy access to them so that one may learn from them, public

acknowledgment of illegal interference with Kwakwaka'wakw property and cultural practices, and the promotion of family and community healing. Unlike some other repatriations, with potlatch repatriations the rationale for return is not based on the need to actually use these items in religious or ceremonial activity. Nevertheless, these items play a fundamental role in rebuilding cultural practices and values. Just as important as the repatriation of potlatch items is the revival and protection of the Kwak'wala language. A variety of strategies have been implemented to deal with this, including the repatriation of oral and written material. A significant barrier to these and other efforts is a lack of human and financial resources.

Participants in this study feel that their cultural heritage must be protected on a number of levels. At the community level, prominent themes are the need to generate Kwakwaka'wakw research by Kwakwaka'wakw researchers, self-empowerment, recording and documenting the elders' teachings, and community collaboration and discussions. Participants also want the Canadian government to acknowledge the unjust banning of the potlatch and the harm it caused. Some want the government to provide appropriate compensation, perhaps through funding of current and future repatriation efforts, programs, and operations. Others also speak to the importance of collaborating with the government to strengthen and enforce ineffective laws and to take into consideration Kwakwaka'wakw concepts of property. Currently, export control and copyright laws indirectly facilitate the loss of cultural objects and information. The second phase of this research program considers these issues of law reform in greater detail.⁹⁶

Notes

- 1 Interview of Emma Tamilin by Barb Cranmer (9 January 2003), Alert Bay, British Columbia. Transcripts of all interviews are located at the U'mista Cultural Centre in Alert Bay.
- 2 Miriam Clavir, *Preserving What Is Valued: Museums, Conservation, and First Nations* (Vancouver: UBC Press, 2002) at 119. As several of the individuals interviewed in Clavir's book are Kwakwaka'wakw and two of those individuals (Juanita Pasco and Peggy Svanvik) are also participants in this study, it is not surprising that some of the themes that emerge in this research confirm Clavir's prior observations. These include the importance of knowledge and practices associated with cultural objects, such as songs and dances; the role objects have in the restoration, performance, and preservation of ceremonies and the cultural identity of the community; the fact that both families and communities of origin have legitimate interests in the return and preservation of cultural items; and, with regard to the rebuilding of traditional processes, the importance of access to recordings, archival material, and other written documents associated with objects.
- 3 More extensive quotations from participants can be found online at Project for the Protection and Repatriation of First Nation Cultural Heritage in Canada <<http://www.law.ualberta.ca/research/aboriginalculturalheritage>>.
- 4 The Kwakwaka'wakw, online: U'mista Cultural Society <<http://www.umista.org/kwawa/kwawa.asp>>. See also "The Kwakwaka'wakw (The Kwak'wala Speaking Tribes)" *U'mista News* (Summer 2002) at 5, which also contains a map of Kwakwaka'wakw territories. Issues of *U'mista News* are available from the U'mista Cultural Centre, Alert Bay, BC.
- 5 Creation stories for most of these communities can be found on the U'mista website, <<http://www.umista.org>>, and in post-2000 editions of *U'mista News*.

- 6 U'mista Cultural Society, "Source of Creation Story," *U'mista News* (Fall 2001) at 8.
- 7 For general information about the U'mista Cultural Society and the potlatch collection history, see online: U'mista Cultural Society <<http://www.umista.org>>. It is registered under the *Society Act*, R.S.B.C. 1996, c. 433 and is a registered Canadian charity.
- 8 U'mista Cultural Society, *Annual Report* (31 March 2003) at 1.
- 9 *Ibid.*
- 10 *Ibid* at 3. The return of the Potlatch Collection from the National Museum of Man (now known as the Canadian Museum of Civilization) and the Royal Ontario Museum resulted in the creation of two museums. The U'mista Cultural Centre was opened in Alert Bay in 1980, and the Kwakiutl Museum in Cape Mudge was opened in 1979. However, the Kwa-kiutl Museum is no longer in operation, and some of the artifacts from that collection are now held by U'mista. See Maurie Mauzé, "Exhibiting One's Culture: Two Case Studies – The Kwagiulth Museum and the U'mista Cultural Centre" (1992) 6:1 *Native American Studies* 27.
- 11 Mauzé, "Exhibiting One's Culture," 27.
- 12 *Supra* note 7.
- 13 *Ibid.*
- 14 *Supra* note 8. For further U'mista initiatives for artists, see Margaret Neufeld, *An Exploration of First Nations Artists in Alert Bay, BC: Connecting to the Art Market from Home* (MA Thesis, UBC Department of Anthropology, 2005) [unpublished].
- 15 The Kwakiutl Museum is currently closed because of lack of funding. However, the Nuyumbalees Society continues to be a partner in the specific claim. If the claim is successful, funds will be used for the Kwakiutl Museum and the U'mista Cultural Centre.
- 16 'Namgis First Nation, *Guidelines for Visiting Researchers/Access to Information*, available through the Band Council Office and online: <<http://www.law.ualberta.ca/research/aboriginalculturalheritage>>.
- 17 *Ibid.* at 1.
- 18 *Ibid.* See also *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans*, online: Government of Canada <<http://www.pre.ethics.gc.ca/english/policystatement/policystatement.cfm>>.
- 19 *Supra* note 16 at 3.
- 20 Interview of William Wasden Jr. was in two parts, both of which were conducted by Barb Cranmer, Alert Bay, British Columbia. Part 1 was conducted on 14 January 2003, while part 2 was conducted on 16 January 2003.
- 21 Interview of Andrea Cranmer by Barb Cranmer (9 January 2003), Alert Bay, British Columbia.
- 22 Interview of Andrea Sanborn by Barb Cranmer (9 December 2002), Alert Bay, British Columbia.
- 23 Interview of Peggy Svanvik (U'mista board member) by Barb Cranmer (15 December 2002), Alert Bay, British Columbia.
- 24 Interview of Vera Newman by Barb Cranmer (14 November 2002), Alert Bay, British Columbia.
- 25 Interview of Ethel Alfred by Barb Cranmer (12 January 2003), Alert Bay, British Columbia [translated by Vera Newman]. Ethel Alfred's interview transcript also contains details on how traditional Indian weddings and ceremonies marking the transition of girls into womanhood were carried out in the community before the banning of the potlatch.
- 26 Interview of Juanita Pasco by Barb Cranmer (5 December 2002), Alert Bay, British Columbia. She is referring here to the export control system under the *Cultural Property Export and Import Act*, R.S.C. 1985, c. 51, discussed in section entitled "Role of Canadian Law and Government" (below).
- 27 Interview of Bill Cranmer by Barb Cranmer (15 December 2002), Alert Bay, British Columbia. The interview of Bill Cranmer was in two parts. Part 1 was conducted on 10 December 2002, and part 2, with the board focus group, was conducted on 15 December 2002. Both interviews were conducted by Barb Cranmer in Alert Bay, British Columbia.
- 28 Interview of Spruce Wamiss (U'mista board member) by Barb Cranmer (15 December 2002), Alert Bay, British Columbia.
- 29 Interview of Christine Joseph (U'mista board member) by Barb Cranmer (15 December 2002), Alert Bay, British Columbia.

- 30 Interview of Basil Ambers (U'mista board member) by Barb Cranmer (15 December 2002), Alert Bay, British Columbia.
- 31 The report was drafted by Dr. Jay Powell, professor of anthropology at the University of British Columbia; Dr. Robert Anthony, professor of education at the University of Victoria; and Dr. Henry Davis, professor of linguistics at the University of British Columbia. Doctors Powell, Anthony, and Davis have extensive experience in the areas of First Nations language programs, First Nations education programs, and First Nations languages.
- 32 Jay V. Powell, Robert Anthony, and Henry Davis, "Review of Kwak'wala Language Retention and Renewal Programs 2001 – Draft" *U'mista News* (Spring 2001) at 15. The draft report is reproduced at 15-22 of this issue.
- 33 *Supra* note 8 at 5 [italics removed]. See also U'mista Cultural Society, *U'mista News* (Spring 2004) at 8.
- 34 U'mista Cultural Society, *Annual Report* (31 March 1999), Appendix F at 53.
- 35 *Ibid.* at 11. For discussion of the range of language initiatives in place at the time of writing see *supra* note 8 at 4-6, *ibid.* at 10-16, and Appendix F at 48-54.
- 36 *Supra* note 34 at 13.
- 37 *Ibid.* at 49.
- 38 "The Potlatch Collection History," online: U'mista Cultural Society <<http://www.umista.org/potlatch/potlatch.asp>>. See also Gloria Cranmer Webster, "U'mista Cultural Centre" (November/December 1965) *Canadian Collector* 64.
- 39 *Supra* note 28.
- 40 *An Act to amend and consolidate the laws respecting Indians*, S.C. 1880, c. 28.
- 41 *An Act further to amend The Indian Act, 1880*, S.C. 1884, c. 27, s. 3. Section 3 reads: "Every Indian or other person who engages in or assists in celebrating the Indian festival known as the 'Potlatch' or in the Indian dance known as the 'Tamanawas' is guilty of a misdemeanor, and shall be liable to imprisonment for a term of not more than six nor less than two months in any gaol or other place of confinement; any Indian or other person who encourages, either directly or indirectly, an Indian or Indians to get up such a festival or dance, or to celebrate the same, or who shall assist in the celebration of the same is guilty of a like offence, and shall be liable to the same punishment."
- 42 *An Act further to amend the Indian Act*, S.C. 1895, c. 35, s. 6.
- 43 Gloria Cranmer Webster, "The Potlatch Collection Repatriation" (1995) Special Issue U.B.C. L. Rev. 137 at 138.
- 44 *An Act to Amend the Indian Act*, S.C. 1918, c. 26.
- 45 Interview of John Pritchard by Barb Cranmer (21 November 2002), West Vancouver, British Columbia.
- 46 *An Act Respecting Indians*, S.C. 1951, c. 29, s. 123(2).
- 47 Interview of Stan Ashcroft by Barb Cranmer (21 November 2002), West Vancouver, British Columbia.
- 48 *Supra* note 43.
- 49 *Ibid.*
- 50 *Ibid.* The official title of the museum is the National Museum of the American Indian. It was created from the G. Heye collections.
- 51 *Ibid.*
- 52 See *e.g.* testimony of Arthur Dick, Transcript of Proceedings U'mista (Prohibition of the Potlatch Community Session), Indian Claims Commission (26 February 2003) at 124. The proceedings include detailed accounts of the impact of the potlatch ban by elders Vera Newman, Arthur Dick, Peggy Svanik, Emma Tamlin, Bill Cranmer (26 February 2003); and Harold Mountain and Ethel Alfred (25 February 2003).
- 53 Christopher Bracken, *The Potlatch Paper: A Colonial Case History* (Chicago: University of Chicago Press, 1997) at 228-29.
- 54 Electronic correspondence from Andrea Sanborn (7 August 2004).
- 55 Emma Tamilin also tells of how her grandmother would "run into the bedroom" and "hide under the bed just about" whenever white people came to the door. *Supra* note 1.
- 56 *Supra* note 28.
- 57 *Supra* note 43 at 141.

- 58 *Supra* note 1.
- 59 *Supra* 43 at 140.
- 60 Gloria Cranmer Webster, "The 'R' Word" (October 1988) 6:3 *Muse* 43. She is quoting here from notes taken at meetings or from phone calls with ROM representatives.
- 61 *Ibid.* at 43-44. In the latter article Gloria Cranmer Webster explains that U'mista had in its possession a letter from Duncan Campbell Scott, Superintendent General of Indian Affairs, to Edward Sapir of the Victoria Memorial Museum stating that the potlatch items were to remain the property of the Department of Indian Affairs. This letter was brought to the minister's attention when intervention on behalf of U'mista was sought.
- 62 *Supra* note 43 at 140. *Financial Administration Act*, O.C. 1987-1701 (14 August) (*Transfer of the Potlatch Collection of Artifacts to the U'mista Cultural Centre at Alert Bay and the Kwakiutl Museum in Cape Mudge*).
- 63 *Native American Graves Protection and Repatriation Act* 25 U.S.C.A. ss. 3001-3013 (West Supp. 2000). Cultural items are defined in s. 3001(3) A-D of the *Act* and include human remains, associated funerary objects, unassociated funerary objects, sacred objects, and cultural patrimony.
- 64 *NMAI Repatriation Policy Statement*, reproduced in Barbara Meister, ed., *Mending the Circle: A Native American Repatriation Guide* (New York: American Indian Ritual Object Repatriation Foundation, 1997) 129-33.
- 65 *Ibid.* at 131.
- 66 *Supra* note 38.
- 67 *Supra* note 43 at 140-41.
- 68 *Supra* note 2 at 140.
- 69 *Ibid.*
- 70 *Ibid.* at 140 and 146.
- 71 In Alberta, the provincial government felt it necessary to enact legislation for the permanent return of such material in order to relieve it of liability. See *First Nations Sacred Ceremonial Objects Repatriation Act*, R.S.A. 2000, c. F-14.
- 72 *Supra* note 43 at 140.
- 73 *Ibid.*
- 74 "The Potlatch Collection History," *supra* note 38. See also *supra* note 43 at 140.
- 75 *British Museum Act 1963* (U.K.), 1963, c. 24, as am. by *Museums and Galleries Act 1992*, c. 44, s. 11(2), Sch. 8, Pt. I, para. 5(a) [*BMA*]. Under this *Act*, trustees have limited powers regarding the lending or disposal of objects. Only objects that are deemed "unfit to be retained in the collections of the Museum and can be disposed of without detriment to the interests of students" can be taken out of the collection. *British Museum Act 1963* (U.K.), 1963, c. 24, as am. by *Museums and Galleries Act 1992* (U.K.), 1992, s. 5. For further details, see Catherine Bell and Robert K. Paterson, "International Movement of First Nations' Cultural Heritage in Canadian Law," in Catherine Bell and Robert K. Paterson, eds., *Protection of First Nations Cultural Heritage: Laws, Policy, and Reform* (Vancouver: UBC Press, 2008).
- 76 Jack Knox, "Exposed By a Mask," *Edmonton Journal* (11 August 2002), D8. While the *BMA* restricts disposal of objects, s. 5 lists some exceptions. In particular, see s. 5(c) *ibid.*
- 77 Personal communication with Andrea Sanborn, Director of U'mista Cultural Centre (17 January 2006). See also Jack Knox, "British Museum Returns Mask to B.C. Band: Potlatch Ceremonial Regalia Taken in 1921 took 30 Years to Recover," *Edmonton Journal* (5 November 2005), A7; and Jack Knox, "The Mask That Has Finally Come Home," *National Post* (6 November 2005), A8. The details of this repatriation are discussed in Bell and Paterson, *supra* note 75.
- 78 Interview of Guy Buchholtzer by Barb Cranmer (20 January 2002), Simon Fraser University Library, Vancouver, British Columbia.
- 79 *Supra* note 34 at 20.
- 80 *Ibid.*
- 81 Note that all quotes in this section are from William Wasden Jr., part 2, unless otherwise indicated.
- 82 *Supra* note 34 at 7.
- 83 R.S.C. 1985, c. 51. For a more detailed discussion of this legislation, see Bell and Paterson, *supra* note 75.

- 84 This account is taken from "Chronology of Bead and Button Blanket Purchase," appended as C-1 to the 1999 U'mista Annual Report, *supra* note 34. Under current federal policy, only category "A" designated organizations are notified about export applications. Category "A" designation is granted for an indefinite period of time to institutions and public authorities that fall within the legal definitions under the *Act*; receive repeat gifts of cultural objects; are established primarily for exhibiting, collecting, and preserving cultural material; and meet certain legal, curatorial, and environmental standards. See Movable Cultural Property Division, *Cultural Property Export and Import Act: Designation of Institutions and Public Authorities Information and Procedures*, rev. ed. (Ottawa: Canadian Heritage, 2000) at 6-12.
- 85 Cranmer is referring to the Nuxalk Echo Mask discussed in Bell and Paterson, "International Movement" *supra* note 75. See also Janet Kramer, *Switchbacks: Art, Ownership, and Nuxalk National Identity* (Vancouver: UBC Press, 2006) at ix-xiii, 87-96.
- 86 R.S.B.C. 1996, c. 187.
- 87 John Pritchard, "Making Things Right: The Prohibition of the Potlatch 1884-1951 – A Specific Claim," submission to British Columbia, Specific Claims Branch, Indian and Northern Affairs Canada (January 1998) at 2.
- 88 *Supra* note 27 (part 2).
- 89 *Supra* note 47.
- 90 *Supra* note 45.
- 91 *Supra* note 47.
- 92 *Supra* note 45. Under the specific claims policy in effect when this claim was filed, claims could only be brought for non-fulfillment of obligations arising under treaty and other agreements, breach of the *Indian Act* or other federal statutes, breach of obligations arising out of administration of funds, and other First Nations assets and illegal sales or other dispositions of First Nations land. For discussion of the Indian Claims Commission and its role, see <<http://www.indianclaims.ca>>.
- 93 [not in force as of 10 January 2006] 2003, c. 23.
- 94 Mary C. Hurley, "Bill C-6: The Specific Claims Resolution Act," online: Parliament of Canada <http://www.parl.gc.ca/common/bills_ls.asp?Parl=37 and Ses=2 and ls=c6>.
- 95 See e.g. Anne Marie Goodfellow, *Talking in Context: Language and Identity in Kwakwaka'wakw Society* (Montreal/Kingston: McGill Queen's University Press, 2005 [McGill-Queen's Native and Northern Series]).
- 96 See Bell and Paterson, eds., *supra* note 75.