

**Intangible Property within Coast Salish First Nations Communities, British Columbia
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Brian Thom

PhD Candidate, McGill University & Senior Negotiations Support, Hul'qumi'num Treaty Group
RR#1 - 12611b Trans Canada Hwy - Ladysmith, BC V9G 1M5 - Phone (250) 245-4660
e-mail: bthom@ca.inter.net

Abstract

The objective of this presentation is to explore the nature of customary rights and responsibilities with respect to intangible property within Coast Salish communities in southwest British Columbia. The Coast Salish are the First Nations communities that include the Cowichan, Squamish, Musqueam, Chilliwack, Nanaimo, Sechelt, among many others. My analysis of Coast Salish intangible properties point to properties being in three main categories, with rights and responsibilities varying within each category of property.

The first category would be called *snew* in the Hul'qumi'num language and roughly translates as 'private advice-/knowledge'. This is inherited private knowledge that includes some rituals, spells, and a vast array of traditional knowledge including such things as food processing and highly specialized traditional manufacture (fish weirs and the like). Private knowledge often comes from myth stories, which are owned by families and not widely told outside the property holding group. In these myths, the first ancestors learn some private knowledge through their adventures and the telling of those stories ensures that the descendants learn this private knowledge.

The second category would be *ts'exwtén* in the Hul'qumi'num language. This term does not translate well but is roughly 'inherited ritual/ceremonial property'. Coast Salish culture has a large a complex set of rituals, songs, stories, masks and masked dances, rattles, powerful dolls, stuffed animal rituals, supernatural fish, designs, symbolic representations and certain funeral rituals which are inheritable and for which there are very well-defined, well-respected criteria for the use, display and performance of.

The third category is 'intangible House property', which include hereditary names, songs and legends. A 'House' *xwnets'álewem*, which is formed by certain families descended from some illustrious ancestor, own pools of names, hereditary songs and legends. Hereditary names have sometimes been described as being analogous to royal titles such as 'the Dutchess of York'. The names can be drawn on to endow on a family member at some point in their life after childhood. An individual can not take a name by themself, it must be given. Unless a family member has the right to bestow the name, it can not be granted. Hereditary songs and legends are similarly held and can only be told publically by members of these houses.

These types of intangible property continue to be important aspects of Coast Salish cultural life.

Introduction

The work of the WIPO in recent years has provided a significant framework for understanding the customary intangible properties of indigenous people in a larger social and legal context. The fact-finding missions of the WIPO have identified an important range of kinds of intangible properties held in indigenous societies, and an analytical framework through which to understand these issues. From this work, the need to further explore the details of particular indigenous IP systems from different cultural perspectives throughout the world.

This paper provides a brief examination of *in situ* cultural practices respecting intangible properties among the Coast Salish people of western North America. The centre of Coast Salish territory is the area around Vancouver and Victoria, British Columbia, extending south into Puget Sound of Washington State and north along the waterways of the Strait of Georgia. The Coast Salish First Nations communities in Canada include the Cowichan, Squamish, Musqueam, Chilliwack, Nanaimo, Sechelt, Stó:lō and others. In Washington State, they include the Lummi, Skagit, Tulalip, Swinomish and among others. My analysis of Coast Salish intangible properties point to properties being in three main categories, with rights and responsibilities varying within each category of property¹.

This paper describes three kinds of these intangible properties, following Coast Salish categories of understanding these property types. The first is a class of family-owned properties called *snew*

¹ Although I use the term ‘Coast Salish’ throughout this paper, the data I have drawn on is specific to the Central Coast Salish, as defined by Suttles 1990.

in several of the Central Coast Salish languages. The second is the class of properties with a more limited range of family ownership called *ts'exwtén* in these languages. The third type I will call intangible House property of which hereditary names or titles, hereditary songs and legends are a part². The three classes of intangible properties I will elaborate on are among the most well described in the published ethnographic literature, and represent an important range within Coast Salish customary law.

These are not, however, all the classes of intangible properties in Coast Salish culture. There is proprietary knowledge associated with what anthropologists have called a 'secret society'. Further directed research would likely reveal more categories of intangible property and different types of property within each of these classes. These three classes of property also do not reflect the full extent of how Coast Salish people see their cultural traditions in an *ex situ* context. Properties including Cowichan Indian sweater designs, Coast Salish folklore & place names, images such as the Snuneymuxw First Nation's petroglyphs, secular carved images & designs, and other cultural expressions are considered by Coast Salish peoples as their common cultural property of their communities vis-à-vis non-Salish and non-Native peoples.

It is these latter kinds of cultural expressions which have received the most attention in the discourse in which the WIPO has been engaged. Disputes over property in these kinds of cultural expressions have been accessible to a broader public, as they have often found

² Homer Barnett (1955:141) recorded the term for this type of hereditary property as '*tealāngan*' in Saanich and '*otakan*' in Comox. His transcription of these terms was not informed by a linguistic methodology and I have not encountered these terms published in other sources, so I am hesitant to use them here.

themselves in litigation or in some other kind social or legal arrangement between indigenous people and other non-indigenous parties. There has been some doubt expressed that, at least in the context of Canadian Aboriginal peoples, indigenous communities have their own customary laws regarding intangible properties within their own *in situ* cultural contexts. It is to this concern that I will address the remainder of my paper, drawing on the methodology of anthropology and the data published in ethnographies and my own fieldwork to elaborate on Coast Salish customary laws regarding their intangible properties.

Coast Salish Culture & People

It is important to spend a few moments outlining some of the important unique features of Coast Salish culture and life. Coast Salish peoples live in one of the most resource abundant locations in North America. Large salmon runs and a temperate rainforest ecology have provided Coast Salish communities with a historic abundance of locally available food and resources. Abundant resources and good storage food storage techniques contributed to the development of highly affluent hunting-gathering-fishing societies, typical among Northwest Coast societies, like the Haida, Kwagulth, Nisga'a, Nuu-chah-nulth and others (Suttles 1990). Traditional economies in Coast Salish society centred around the production of surplus food and resources with labour organized along extended family lines. Traditionally, potlatches were a central part of the economy where wealthy people were able to mark important life passages by hosting large events where surplus wealth (including both material and intangible property) was given away to guests who were there to witness it. While some things distributed at potlatches were outright gifts, most the giver would be able to count on receiving back at a future potlatch of another person.

Today, potlatches continue to play an important role, though their economic importance has diminished since the 80-year potlatch ban of the Canadian Government (Cole and Chaikin 1990).

One thing that distinguishes Coast Salish life is the organization of their communities and society. The most important social and political group in Coast Salish society is the extended family. Coast Salish people live in villages and speak languages in common with other villages in a region, but political and economic realities focus around these extended family networks. Family heads are the main leaders in the community with no village or community chiefs outside of the current Indian Act system. Many of the leading families can trace their descent from a notable ancestor, and have properties, both material and intangible, that have been inherited over the generations within the family. These notable families are called *xwnets'álewem* in several Salishan languages, and have been referred to as a 'House' in the sense of European nobility in the ethnographic literature (Jenness 1934-5:52).

Ritual plays a central role in Coast Salish culture. In the winter Coast Salish longhouses are filled with hundreds of people every weekend night, participating in the winter dance *seyewen*. Other ritual functions continue in the Coast Salish way. Major life events are marked with appropriate ritual acts, from traditional marriages, to namings, funerals and changes in social status. This ritual life is steeped deeply in Coast Salish cultural tradition and customary law (Amoss 1977a, 1978).

Though this is a very brief and inadequate sketch of Coast Salish culture and society, it does

draw out the fact that wealth has been important in the traditional economies of these communities and that there are social and cultural institutions in place to deal with the production and distribution of the wealth and the relationships between people in the community. This should provide sufficient background to begin to understand the kinds of intangible properties that I will now go on to describe.

***Snew* or Family Knowledge**

The most immediately familiar kind of intangible property among the Coast Salish are the professional lore, ritual knowledge, and certain moral advice that are often referred to in Salishan languages as *snew* (Collins 1979:247). *Snew* has been defined as private intangible property in the context of secret knowledge (Suttles 1987:8; Amoss 1977b). Specialized technical skills for harvesting resources or doing a craft or trade well is derived from knowledge developed by ancestors and held privately in families (Barnett 1955:142; Collins 1979:247). This information may not even be widely known within a family, but rather is taught selectively to individuals with certain aptitudes and community standing, from one generation to the next.

Some of the traditional knowledge about food-getting sites, including practical and ritual knowledge for the successful operation of these places are held privately by families (Collins 1979:247; Suttles 1987:8). In the Coast Salish world, productive resources are not evenly distributed around the landscape. Some resources, such as salmon returning to their spawning streams, are able to be taken in abundance only in certain areas. Other resources, such as certain medicinal plants or types of wood, are located in very particular areas which may not be common

knowledge. Detailed practical knowledge would include how to harvest resources at that location, and specialized traditional ecological knowledge about the resources at that local. Private ritual knowledge can include special songs or words that can be used to engage one's guardian-spirit helper in these locations. Other songs were held in secret by families and sung in preparing for fishing or hunting. Though in the past everyone fished and hunted, those who were 'professionals' were considered supernaturally favoured and were generally owners of *snew* that fostered these special relationships (Barnett 1955:79).

Private knowledge also relates to the specialized skills needed to make certain things, such as canoes, baskets, traditional clothing and regalia, certain food-getting tools and implements, and so on. The canoe-maker is a good example. A canoe-maker holds the tools and tricks of the trade as guarded secrets. They will often work alone, sometimes in secret where their techniques can not be observed by others. The canoe-maker will have certain songs that they have held privately and which were learned in order to aid in the felling, splitting, excavating and steaming of a canoe. Anthropologist Homer Barnett reported from his observations in the 1930s that "it was a serious personal offense for anyone to try to" watch the canoe-maker at work and try to learn the secrets of the trade (Barnett 1955:110).

Another type of *snew* is the esoteric information concerning the approach of guardian spirits (Collins 1979:247). In the Coast Salish world-view, guardian spirits are required to be successful in life's endeavours. They are called upon to aid in everything from basic economic production, to overcoming personal life challenges. It is usually assumed in Coast Salish life that if someone

is successful in what they do, that they ‘must have something’, meaning have a guardian spirit. While the spirits themselves were not property in any way, careful instruction on how to obtain one - through fasting, seclusion and other means, was held in private by families as a part of their *snew*.

***Ts'exwtén* or Ritual Intangible Property**

There are a number of important ritual prerogatives in Coast Salish culture associated with cleansing, a type of ritual performance that is “used to ‘wash’ persons undergoing life crises, changes in status, or removal of some source of shame (Suttles 1982:59). These prerogatives are called *ts'exwtén* in several Salishan languages. These rituals include the *sxwayxwey* mask dance, a goat horn rattle ritual *shelmuxwtse*s, and several others that are not as well documented in the published ethnographic literature (Suttles 1987:108; Stern 1934:57; Jenness 1955:71; Barnett 1955:141). Wayne Suttles, the preeminent ethnographer of Coast Salish culture has observed that *ts'exwtén* “form an important class of inherited privileges”, and that the paraphernalia and ritual knowledge associated with the ceremony “were restricted by primogeniture or other means to certain members of a lineage [family members tracing descent from a common ancestor]” (Suttles 1987:10).

The paraphernalia associated with *ts'exwtén* include the *sxwayxwey* mask, the goat horn rattle, and the images associated with them. These images are so guarded that the person who possesses them (who is not always the owner) stores them in private locations in the house that not even other family members may disturb. Additional rights related to the paraphernalia

include a ritualist's own "hereditary set of designs that varied with different functions, such as healing the ghost-struck, and recovering lost 'vitalities' as well as performing puberty rites" (Suttles 1987:106). Ritual knowledge would include certain words or acts that are need to successfully perform the cleansing rite.

While these rights may be restricted to certain individuals within the lineage, they may be "performed by the owner for any member of the lineage" (Suttles 1987:10). During the performance, the host will hire an orator "to announce the purpose of the gathering and to explain his inherited right to use the particular type of" *ts'exwtén* (Stern 1934:56). Though the lineage may have owned the rights to a *ts'exwtén* for generations, over time many of these rights have spread widely among Coast Salish communities through the mechanism of intervillage intermarriage (Jenness 1955:71). A good example is the *sxwayxwey* mask. There are several different styles of *sxwayxwey* masks, each associated with a different origin story (Suttles 1982:59; Codere 1948). In one story, the mask emerges from the water near Chilliwack (an area about 100 kilometers up the Fraser River) and is presented to a young girl. She and her female descendants own the mask and may pass it and associated ritual prerogatives along to male members in their families to dance who possess it but do not in most cases have a similar ownership right (Codere 1948; Duff 1952:123-126; Lévi-Strauss 1982). I have listed to debates and recollections of detailed family trees by Coast Salish people trying to figure out how this mask and the related rights have travelled from Chilliwack to as far away as Cape Mudge on Quadra Island.

Intangible Property of the ‘House’

Certain notable extended-family groups (*xwnets’álewem* or ‘House’ as mentioned earlier) collectively own ‘properties of privilege’ including hereditary names, legends, songs, dances, secret words, medicinal remedies, and ceremonial prerogatives (Barnett 1955:141, 250; Jenness 1934-5:52).

Individuals who were members of these noble families are able to claim rights to these properties, but must to validate their claims through public events, such as a potlatch or family gathering. New intangible House properties can be created, provided that the right gets ratified at a public gathering. Typically, this is at a potlatch where the public generally hears “the statement of claim without demur and accept[ed] the gifts that follow[ed] the statement” (Jenness 1934-5:53; see also the example of this (Barnett 1955:90) with the variation on the First Salmon ceremony practised by one Nanaimo family).

Individuals with no legitimate claim to these properties may know some of their details, but they are not able to “recite them in public or depict them on any carving” (Jenness 1934-5:52). An excellent example of this was given by Homer Barnett in his 1955 ethnography on the Coast Salish of British Columbia, where a House story and related ceremonial prerogatives was told to him. The informant was very aware of his transgression in revealing these intangible House properties to someone who was not eligible to know them. Barnett reports:

Tommy Paul’s [intangible House property] were the hollow wooden rattle, the *sxaihwe* performance, and the sotry of the Sanetch first man, *kwalakwanthat*. A variant of the dog-husband story was localized at *skaihai* (Mill Bay) and was the [intangible House property] there. Mrs. Paul’s grandfather knew *siwin* [secret words] for the winter-dance

initiation, and the 'story' of that belonged to her [*sic*]. Paul was fully conscious of his violation of rights in talking about his wife's story or about any other person's privileges. Even the right to tell about a privilege belonged to the owner. He would 'be jealous' if he knew that someone else had been talking; he would 'want something'. Paul told me about his wife's grandfather's *siwin* only so that I would 'be thinking what to do for her'. Anciently, nothing whatever would have been devolved. Any outside knowledge of the esoteric particulars was, of course, guarded against by the secrecy surrounding the instruction. However, as far as real theft was concerned, caution was ordinarily unnecessary, for one would not think of publicly claiming another's [intangible House property]. He would be ridiculed unmercifully unless he could show a legitimate blood connection with its owners and could back-up his claim with a property distribution (Barnett 1955:141).

That these kinds of intangible properties have additional economic value is clear from the example of certain inherited songs *seye'wenem*. Suttles has reported how "if the amount of wealth required [to pay someone] were very very great" the person owing might 'pay for it with a song'. When such a song is sung at a potlatch, the person to whom there is something owing "might then feel obliged to thank him for his performance with a give of wealth, or treat him in the same fashion when the situation was reversed" (Suttles 1987:19). These inherited wealth songs belong to a family and are transmitted from father to son (Gunther 1927:307).

The final and maybe most important type of intangible House property to be considered here is hereditary names. In Coast Salish society, there are several different types of names held by an individual during their life. Traditionally, everyone was given what we might call a nickname as a child (Barnett 1955:132). Today, Christian names are the universal practice. Held within Houses, however, are honoured hereditary names which are bestowed on an individual later in life (Barnett 1955:133). Each House has a pool of hereditary names which are passed on between generations. Some of these names date back to mythological times, having been held exclusively by these families for centuries (Jenness 1934-5:55). As a rule, only one living person

should hold a hereditary name at a time, though exceptions are occasionally made to this rule (Collins 1966:426).

A formal ceremony is held when a name is being given, and the bestowal is often validated with a potlatch. Although the specific practices for a naming ceremony vary between families, generally, when the guests are assembled, and any ritual performance such as a *sxwayxwey* mask dance is complete, the family spokes-person who is giving the name announces the name and calls on the older generation present to witness the giving. They are given gifts to mark their witnessing of the event. If there came to be a conflict over who has the right to hold these prestigious titles, this older generation would be called on to They would “affirm the owners right to the name” (Collins 1966:429; see also Suttles 1987:201; Barnett 1955:138-9).

The names in themselves hold prestige for the bearer, as they are the names of honoured ancestors. They also hold the privileges accorded to the bearers of the name in the past (Barnett 1955:134). The Houses which held these names generally lived in the same area from *time immemorial*, linking the names to these ancestral territories and resource sites (Jenness 1934-5:55). A name is generally connected with the village which that ancestor came from. Even if the bearer of the name resides in a different village than that ancestor, holding the name “was sufficient to establish rights for his descendant to use the resources of the village” of that honoured ancestor (Collins 1966:430).

Naming is a practice that is taken very seriously by Coast Salish peoples. It is a serious offence

to take a name from a House or extended-family to which a person does not belong. Disputes over the taking of a name are resolved through the potlatch system, with ‘speakers’ being hired to explain the family prerogative in the name and gifts distributed to offended people (Haeberlin and Gunther 1930:46; Jenness 1934-5:56).

Conclusion

Though I do not intend to give it a full treatment, it is worth mentioning briefly some of internal and *ex situ* challenges that Coast Salish intangible property has faced in recent years. For *snew* one of the biggest challenges has been language loss, and a radical shift in the economic centre of the communities. Salishan languages along the coast are highly threatened with only a few speakers in some communities. With this loss comes a loss of some of the detailed traditional knowledge that is held privately. The proprietary nature of some of this knowledge has made it even more at risk from being lost, as the older generation is sometimes hesitant to pass it on. This is a serious challenge in Coast Salish communities, and one that is being faced today by some Elders, leaders and youth with positive initial results.

For *ts'exwtén*, the challenges have come from the outside, with museums having masks and regalia that was obtained long ago under very different cultural and political circumstances (see for example the example from Musqueam in Thom 2001). Recently, owners of masks and the rights to carry masks have negotiated with several museums such as the UBC Museum of Anthropology and the McCord Museum at McGill so that those old masks in collections are not displayed or otherwise inappropriately revealed (Bierwert 1999:169-170). As Kew (2000) has

observed, this proprietary relationship to *ts'exwtén* has been a major factor in Coast Salish art not becoming a large commercial industry, unlike many other Northwest Coast and Native American art traditions. For the Coast Salish, these important *ts'exwtén* prerogatives can not be commodified or sold, though they have immeasurable continuing value for 'cleansing' these communities. Anthropologists have also caused problems by publishing and discussing details of *ts'exwtén* that were shared with them with little knowledge of how widely the material once printed would be circulated (both within and outside of the Coast Salish communities from where they came) (Bierwert 1999, chapters 4 and 6). Here, the ideas of public domain and academic freedom come up against local concepts of intellectual property.

Of the intangible House properties, it has been the use the hereditary name names that have provided some of the biggest challenges. There is a constant dialogue and debate in these post-residential school communities about who has rights to hold these names. Outsiders have also taken an interest in some of these names. The *Swaneset* for a golf course near Vancouver has caused great concern for the Katzie community whose original ancestor held that most prestigious name. Political attempts by the band to change the name were not successful and it stands as a very public, stolen House property.

These are only a few examples of a myriad of contemporary issues relating to the protection of Coast Salish intangible properties in contemporary Canadian society. The recent work of the World Intellectual Property Organization has suggested that understanding the details of the unique customary laws related to these intangible properties is key in developing locally relevant national solutions to these problems. While at first blush, it may seem that using patents,

trademarks, copyright, trade secrets and other mechanisms in the intellectual property toolkit could resolve some of these issues, these legal devices certainly would not provide the kinds of protection that are in effect in a face-to-face, kin-based society such as the Coast Salish. Some states have sought developing certain *sui generis* approaches that build on existing intellectual property mechanisms to provide a certain degree of protection, but that these protections are often mitigated by the lack of political will to develop more rigorous solutions.

I would suggest that the Canadian Coast Salish example may point to another *sui generis* solution. Canadian legal pluralism may have space for recognizing aboriginal customary laws related to intangible cultural property as section 35 aboriginal rights under the *Constitution Act, 1982*. The Supreme Court of Canada has laid the foundation for recognizing customary laws as being absorbed into the common law in their discussion of aboriginal title in the *Delgamuukw* decision. The fact pattern described for the Coast Salish example here would very likely pass the *Sparrow-Vanderpeet* tests developed by the Supreme Court of Canada for being an aspect of the aboriginal right to governance. Once such a right was declared, the real challenges begin in implementing practical systems to have these laws recognized and enforced not only within aboriginal communities, but within the larger society. More policy analysis would need to be done to fully explore the possibilities of this solution.

Clearly from these ethnographic details, intangible properties are important in Coast Salish life. This particular importance is underscored by the fact that at this workshop, three different Coast Salish experiences are being discussed (Tulalip, Snuneymuxw and Coast Salish generally). It is

no coincidence that Coast Salish people are engaged in the larger intellectual property debate today.

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Biography

Brian Thom is a Doctoral Candidate in the Department of Anthropology at McGill University. His areas of expertise are indigenous land tenure and property systems, aboriginal oral histories and customary legal systems, Coast Salish and Northwest Coast cultures (British Columbia) and the history of North American anthropology. He has worked in and studied Coast Salish communities and culture for the past 12 years. He is currently working as Senior Negotiations Support for the Hul'qumi'num Treaty Group, an organization representing six First Nations communities on Vancouver Island in the British Columbia Treaty Process.

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