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First Nations oral histories on trial:

Finding a voice between narrative and discourse

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Abstract

First Nations' oral histories provide evidence necessary for establishing legally recognized rights and titles. Court decisions have confirmed the validity and admissibility of oral histories; however the histories are constrained by an institutional system with different cultural values and communication protocols that require a re-contextualization of the oral histories. This research uses narrative and critical discourse methods to analyze excerpts of court transcripts and rulings to examine the inter-cultural communication between Canadian and First Nations governments. The research seeks to contribute to an understanding of how oral histories function; how the histories and associated narratives are altered in the context of the legal discourse; and how conflict resolution can move from an adversarial towards a consensual process.

Keywords: First Nations oral histories, legal discourse, conflict resolution, inter-cultural communication, narrative analysis, critical discourse analysis.

First Nations Oral Histories on Trial: Finding Voices between Narrative and Discourse

In 1763, King George III issued a proclamation acknowledging the continuity of Aboriginal land title and rights. This was reaffirmed in 1982 by the Canadian Constitution Act. To establish title and rights, First Nations are required to provide evidence of historical collective use and ownership of the territory in question and prove that these rights have not been extinguished by agreements with the Crown prior to 1982 (McKee,2000). There were few treaty settlements in British Columbia before 1982 and the province had denied the existence of Aboriginal rights (Price, 2009). However several Canadian court decisions supporting Aboriginal title created economic uncertainty because investors were hesitant to invest in Crown land resources that could be contested by First Nations. Consequently, British Columbia began treaty negotiations in the early 1990s (Woolford, 2004). The British Columbia treaty process involves tripartite negotiations between the federal, provincial and First Nations governments and is under the auspices of the British Columbia Treaty Commission (BCTC), which mandates negotiations between parties be transparent, inclusive, and based on mutual trust, respect, and understanding (BCTC, 1991). Although negotiations have resulted in treaties, the process continues to be criticized for not reflecting the mandates of the BCTC (Mckee, 2000). Consequently negotiations often break-down requiring costly litigation to establish and define Aboriginal rights and titles that are infringed upon by continuing resource extraction in the territories, without consultation, compensation or participation of First Nations (Gord Bruyere, personal communication, May 24, 2010). Regarding the treaty process, late Ahousaht Chief Earl Macquinna George (1998) writes, "We want to look after our own people and return a sense of self respect. It appears to me based on the way negotiators talk to us that the government does not believe we can take care of ourselves and our resources" (p.42).

The negotiations are marked by large disparities in resources and power between First Nations and Canadian governments (Woolford, 2004). Current conflict resolution practices also do not adequately encompass the complexity of First Nations communications nor acknowledge the importance of recognizing historical patterns of colonialism and ethnocentrism that continue to constrain negotiations and perpetuate conflict (Lebaron, 2004; LaFever, 2008; Turner, 2004). Former Grand Chief of the Assembly of First Nations, Ovide Mercredi commented, "Wherever we are forced to get involved in these tables we are forced to assimilate. Tables are not about culture." (as cited in Woolford, 2004, p.119). Differences in cultural values and communication frameworks can cause misunderstandings and exacerbate pre-existing conflicts. In analyzing how communication patterns continue to negate consensual negotiations, this research strives to assume a post-colonial theoretical perspective that seeks an understanding between cultures from Bhabha's (1995) third space of enunciation; a space of hybridity. Bhabha (1983) notes colonial power is "connected to a strategic limitation of prohibition within the authoritative discourse itself" (p.362); therefore, the primary data is comprised of excerpts from court transcripts where First Nations' oral history is offered as evidence and rulings regarding the acceptance of oral histories in the legal system. The following questions are addressed to examine how cultural differences between Canadian legal discourse and First Nations' narratives contribute to misinterpretation and resistance to understanding:

RQ1: How do oral histories function to create meaning?

RQ2: How are oral histories altered by legal discourse?

RQ3: Has there been a change in inter-cultural communications from adversarial to consensual conflict resolution?

Literature Review

Although studies specific to First Nations communication or inter-cultural communications between Aboriginal and non-aboriginal governments are limited in the field of communication, numerous studies are available in the legal field and on First Nations' inter-cultural conflict resolution. Regarding the treaty process, Woolford (2004) notes that not only are First Nations' governments constrained by inequalities, Canadian government officials present at the negotiation table are also limited by bureaucratization, which mandates what officials can discuss. This negates transparency in negotiations and further erodes trust and respect. First Nations representatives suspect negotiated treaty settlements are based on a 'cookie cutter' formula, which, according to Woolford (2004), is implied by settlement offers made by non-aboriginal governments that seem to be based on a formula of $40,000 to $60,000 per band member. This limits the land claims of urban First Nations as well as the resource claims of other bands that are striving to participate in a co-management process to assure resource access for future generations.

Proponents of the treaty process claim it is modeled on an "interests based" negotiation framework (Woolford, 2004). However, as negotiations between Aboriginal and non-aboriginal governments involve the distribution of limited resources, the dispute resolution process has an adversarial orientation (Price, 2009), which also dominates Canadian legal institutions. Furthermore, prescriptive approaches to alternative dispute resolution (ADR) practices work best between similar cultures and often reflect the values and assumptions of the dominant culture (LeBaron, 2004; Kahane, 2004). ADR has focused on intercultural behavioural differences, but in asymmetrical relations there is "a tendency to treat marginalized cultures as ones in need of

elucidation, while the dominant culture is treated as self-evident and value neutral" (Kahane, 2004, p.45).

An understanding of First Nations' cultural communication practices can contribute to inter-cultural communication skills foundational to all conflict resolution, but only when combined with self-awareness by the dominant culture, which is necessary for understanding how culture can shape others (Napoleon, 2004). Napoleon (2004) notes inter-cultural understanding is a pre-requisite for establishing reconciliation goals between Aboriginal people and Canadian states. Development of this understanding has been limited to increasing awareness of the importance of Aboriginal ritual and ceremony, without increasing non-aboriginal self-awareness, perpetuating the "myth of a cultureless ministry with cultureless bureaucrats" (Napoleon, 2004, p.185). Consequently, LaFever (2004) describes the negotiations as parallel dances with Aboriginal speakers opening meetings with prayers and stories, which government officials listen to politely, and government officials presenting pie charts and procedural flow charts while Aboriginal members listen politely.

Prior to 1990, and subsequently with the collapse of treaty negotiations, several First Nations have taken rights and titles cases through various levels of the court system. Despite court rulings acknowledging rights and titles, the nations remain locked in negotiation processes with the Canadian and British Columbian government. Within the legal system, the Canadian Supreme Court has ruled that "the laws of evidence must be adapted" so that oral histories can be "accommodated and placed on an equal footing" with other type of evidence (Delgamuukw v. British Columbia, 1997, ¶87), but legal interpretation of Aboriginal histories remains primarily under the centralized administration of non-aboriginal people and the court system (Borrows, 1999; Turner, 2004). First Nations languages and cultures are co-constructed through narratives

that define and shape complex legal, economic, and political structures, which are interwoven by socio-cultural relationships. As the narratives or oral histories are culturally specific, validity and meaning is contingent on the language and cultural context. When this information is interpreted by a culture with a different language and knowledge framework the resultant discrepancies contribute to misunderstanding and further marginalization of the non-dominant culture, thus perpetuating the legacy of colonialism (Borrows, 1999).

There are 273 First Nations bands in British Columbia (First Nations, 2010); each with distinct cultures. For example, B.W. (2006), whose testimony is referenced in this research, belongs to two different tribes with a shared language, similar "performance," but "different culture, different way of doing" (p.259). The Gitxsan and Wet'suwetin speak different languages, but share the same basic social and political structures. Cultural generalizations can potentially limit and erode this rich cultural diversity. Concerns regarding generalizations are valid. But developing an understanding of inter-cultural communications requires generalizations; otherwise differences between cultures are ignored and the dominant culture is implicitly supported (Kahane, 2004).

Constructing cultural generalizations is a political act and it is important to do so in ways that resist marginalization (Kahane, 2004). Academic theories must also be aware of implicitly marginalizing Aboriginal communications. For example, media ecology theorist Carey (1989) theorizes that there are two forms of communication in North America: transmission and ritual communication. In transmission, communication is directed at control of distance and people. Ritual communication is directed "toward the maintenance of society in time; not the act of imparting information but the representation of shared beliefs" (p.18). Fullerton and Patterson (2008) expand upon this noting First Nations' communication follows a ritual framework.

However, First Nation's oral histories not only convey shared cultural values, but also impart knowledge of environmental management, leadership succession, economic protocols, indigenous law, territorial boundaries, and societal networks.

Oral histories are also not fixed in time, but are evolving living entities sustained by repetition during feasting or potlatch ceremonies where community consensus confers validity. Stories, symbols, ritual, and ceremony are integral to First Nations' communication. The use of ritual has been promoted as a conflict resolution tool in British Columbia, but accepting First Nations' rituals without understanding the culture does not address the serious underlying problem of power inequities. Aboriginal negotiators should also be cautious not to substitute ritual for substance in negotiations (Napoleon, 2004).

Method

Research data is comprised of excerpts from court transcripts where oral history was presented by First Nations Elders, J.D. (1985) during Delgamuukw v. British Columbia (1991) and by B.W. (2006) in Ahousaht Indian Band and Nation v. Canada (2009). Rulings regarding the admissibility of oral testimony in the above mentioned cases, as well as the Canadian Supreme Court rulings; Tsilhquit'in First Nation v. British Columbia (2007); and Delgamuukw v. British Columbia (1997) are also assessed to determine if incremental changes have occurred within the legal system to accommodate oral histories. Analysis of the data is further informed by secondary data from academic studies in Aboriginal law and conflict resolution practices specific to Aboriginal and non-aboriginal governments.

Narrative analysis is used to study the oral histories presented as legal evidence. A narrative analysis of First Nations' oral histories presents unique challenges as meaning is conferred by incorporating songs, dances, symbolic artefacts, and figurative language. The

resultant complexity requires a multi-dimensional analysis process that strives to acknowledge the different communication modalities within a holistic form (Keats, 2009). Accordingly, the data analysis applies a holistic approach wherein the context of the narration is essential to understanding the conveyed reality (Shkedi, 2005). This permits an exploration of how the traditional context and presentation of the narration contributes to meaning, as compared to the disruption to meaning that occurs within a legal context. Narratives reference people, places, and symbols that are culturally specific and validity is therefore inter-subjective and interpretative, and is conferred by establishing occurrences of key events and/or consensus (Polkinghorne, 2007). The analysis of oral histories and case rulings will assess how the legitimization of oral histories is culturally specific and therefore questions regarding the validity of narratives remain unresolved in negotiations between First Nations' and Canadian governments.

Many First Nations' narratives are private property, restricting presentation and consequent interpretation to ensure the creation of meaning remains with the owners of the story. There is concern that if narratives are given to another culture that will re-interpret the meaning, the narratives' assertion of Aboriginal self-definition is weakened (Borrows, 1999). This is also an ethical concern of this research and therefore analysis will strive to understand how oral histories function to create meaning (Lewis, 2006) rather than assert interpretations. This will contribute to an understanding of how meaning is created by Aboriginal histories and how it is altered by transcription, translation, and legal dialogue.

To examine how social inequities may be embedded in and perpetuated by legal discourse, methods affiliated with critical discourse analysis (CDA) are used to study the mediating relationship between discourse and social practices and how language variation is

socially controlled (Fairclough, 2003). Mediation, in the context of CDA, refers to the "movement of meaning from one social practice to another" (Fairclough, 2003, p.28) or from one genre to another. As meaning is transferred, it is appropriated, transformed, and colonized according to the hegemonic social relations determining the process of re-contextualization (Fairclough, 2003). This method is used to assess the questioning of oral histories presented in the trials. As CDA pursues an emancipatory objective (Bloomaert & Bulcaen, 2000; van Noppen, 2004; Fairclough, 2003), analysis also examines how dialogues are orientated towards differences, negation, and conflict; or towards consensus, understanding, and resolution to identify if there has been a shift between 1991 and 2009.

Findings

Analysis of the testimony given by B.W. (2006) during the Ahousaht Indian Band and Nation v. Canada (2009) and by J.D. (1985) during Delagmuukw v. British Columbia (1991), found the following relevant thematic categories common to both testimonies: traditional and non-traditional occupations; traditional names and meanings; territorial boundaries; kinship and band affiliations; and knowledge sources. Examples drawn from an analysis of the themes elucidate the study of cultural communications according to context, language, and cultural values.

Adversarial Context

In court the plaintiff's lawyers sought to determine information deemed relevant to the case, while the crown defence undermined the testimonies through objections to oral histories and questions designed to confuse and challenge the elderly witnesses. For example, crown attorneys in both cases attempted to undermine Aboriginal claim to title by highlighting non-traditional jobs the witnesses had held. With each question regarding different jobs, J.D. replied he continued to hunt, fish, and trap and did not stop until he became too weak to work,

demonstrating continuity of the traditional means of living. When B.W. was questioned regarding the different professions he had held, he refused to answer in the affirmative until the question was rephrased to refer to jobs where he was "paid for different things" to which B.W. (2006) replied, "Yeah, I had, the only profession I had was fishing. Fishing was my profession" (p.259).

First Nations efforts to reclaim rights and title have been resisted in several cases by implying land entitlement and cultural preservation have been forfeited by First Nations' adaptation to dominant culture (Lebaron, 2004), not only through jobs, but also because of the incorporation of different knowledge sources. This resistance is apparent in Tsilhquit'in First Nation v. British Columbia (2007) where a crown expert witness claimed the oral history evidence of the Tsilhquit'in witnesses was unreliable because it had been altered by the reading of historical documents. The same expert witness also noted that oral history was to be given weight within the court system by corroboration from external written documents. For First Nations' witnesses the written document contaminates the evidence; for the crown it is called upon as evidence. During Ahousaht Indian Band and Nation v. Canada (2009), a mid-ruling was required to determine the reliability of the evidence given by a First Nations witness who had learned the history from several band members, as well as read relevant ethnographical material; the same material which expert witnesses often draw upon. In this case the judge ruled that the evidence still met the threshold of reliability.

Language

Aboriginal witnesses are left with the burden of not only providing evidence to support rights and titles cases, but must do so through oral histories that are not readily accepted by the legal system. The witnesses also face the challenge of attempting to explain a complex culture in

a foreign context and language. J.D., a then 90 year old Wet'suwet'en Chief, did not speak English and required a translator. J.D. is asked several times to explain the meaning of traditional names; often the names did not have a translation. J.D. explains one of his traditional names as "Name means a person jumping over – over something and it's a feast name and it's been used for many years'" (as cited in Mills, 2005, p.87). In Wet'suwet'en culture a name is passed on through generations, and when a Chief's name is passed on, so too is the associated territory as well as songs, dances, crests, totem poles, and regalia: all are inter-connected. The transference is legitimized through *Niggiyotsi*, a tradition where all clan chiefs gather to call out the name and say something about the associated crest (J.D. as cited in Mills, 2005).

Another name is explained by J.D. as "an animal that grabs, grabs a piece of wood and pulls it off" (as cited in Mills, 2005, p.75), referring to the spirit symbolized by the name. Aboriginal wisdom denotes a world wherein everything has a spirit and is inter-connected through a web of relationships including an inextricable equal link between human and animal societies (Ghostkeeper, 2004; Omen, 2004). J.D. is next asked what the animal is and replies, "Grizzly bear. . . that's the way the old law was" (as cited in Mills, 2005, p.75). In the non-aboriginal legal context a name, which is connected to a spiritual way of life and denotes one's relationship to society and nature, is reduced to a particular sign, losing meaning through a process of re-contextualization according to different cultural values.

Cultural Values and Communication

Representation and meaning of foreign words is part of the complex task of cross-cultural communication and is further complicated the more divergent the cultures are in worldviews and knowledge frameworks. First Nations' is a holistic culture and aboriginal language is often necessary to communicate aboriginal concepts (Ghostkeeper, 2004). According to a model

developed by Condon and Yousef (1975), cultural values can be clarified by examining the relationship to the supernatural, nature, human nature, society, family, and self; each category overlaps by varying degrees and is further sub-categorized. For example, a culture's relationship to nature includes relationships with ways of knowing, nature's structure, and the concept of time. A fundamental component to Aboriginal wisdom is daily personal experiential interaction with nature and learning from other's experiences, which are often communicated across generations through stories (Ghostkeeper, 2004).

In contrast, non-aboriginal culture tends to seek knowledge through what are considered objective sources, such as written documents and expert testimony in the case of legal discourse. For example, B.W. (2006) explains the boundaries between Che:k'tles7et'h' and the Quatsino through landmarks; "If the rivers flow this way, that's our boundary. If the river flows the other way, that's the people on the other side's boundary" (p.221).When asked how he learned of the boundaries, B.W. replies, "From my grandfathers and parents. All the people know where it was all the time" (p.221). In turn, the crown lawyer asks B.W. to identify the area on a map and draw a boundary line. A similar pattern occurred during evidence given by J.D. (1986) who explains the shape of the territory, the landmarks that mark the boundaries, and who lived on the territory. The crown attorney then asks if he can draw a map of the territory. J.D. replies, "No, I can't, but I know where the territory is" (as cited in Mills, p. 358).

Traditionally the oral histories of the Wet'suwet'en are communicated through the *Kungax* that is performed during feasts where each Chief conveys the part of history they are responsible for (Omen, 2004). The histories are continuously renewed by individual experiences and therefore are not static, rather revived as dynamic living entities conveyed through narration, songs, dances, regalia, and other symbols that serve to reinforce and integrate the knowledge in a

holistic manner. J.D. presented evidence in his home, and therefore he was able to point to the totem pole outside and explain the images, as well as produce regalia that also portrayed symbols of the knowledge. He performed both the song and dance associated with his name, and the rights and titles to his territory, thus recreating the part of the feast for the court. Omen (2004) notes that this was done to offer the court an opportunity to develop an inter-cultural understanding and reduce the distances between the cultures. The court observed the performances and listened to the explanations, but the subsequent questioning shows an attempt to categorize and label each component by asking what the different animals depicted on the poles and regalia are. When asked directly what the song and dance signified, J.D. did not separate these elements from the *Kungax* to provide an explanation because the performance had already been explained indirectly by his descriptions of the passage of name and title. Instead he replied, "The songs and dances happen whenever there's a feast and that's how we have been doing it" (as cited in Mills, 2005, p.105).

This distance between cultures is described in the Report of the Royal Commission on Aboriginal Peoples (1996), which is cited in Tsilhquit'in First Nation v. British Columbia (2007) and Delgamuukw v. British Columbia (1997):

> The Aboriginal tradition in the recording of history is neither linear nor steeped in the same notions of social progress and evolution [as in the non-Aboriginal tradition]. Nor is it usually human-centred in the same way as the western scientific tradition, for it does not assume that human beings are anything more than one – and not necessarily the most important – element of the natural order of the universe . . . It is less focused on establishing objective truth and assumes that the teller of the story is so much a part of the event being described that it

> would be arrogant to presume to classify or categorize the event exactly or for all time (as cited in Tsilhquit'in First Nation v. British Columbia, 2007, p.50)

For First Nations, time is not linear and events are not fixed; rather "we live moment to moment, and this moment is our past, present and future all in one" (Ghostkeeper, 2004, p.173). The experiences of the past are carried into the moment through the oral histories, which provide knowledge for future guidance. Just as time is not segmented, the narrative portion of the oral histories struggles with the fragmentation imposed by the questioning within the legal context. When Antonio Mills (2005) was transcribing J.D.'s testimony, a colleague wrote down part of testimony word for word, but without interjection from either lawyers or translators. What emerged was as narrative blank verse:

> There are many of us
> In the feast hall
> We sit in twos
> And there are many of us
> And I sit in the middle.
> There are many of us (p.61).

Even with disruption, J.D. speaks in a continuous narrative wherein key elements are repeated. The testimony of B.W. holds traces of a similar pattern including repetition, although it is frequently interrupted by the attorneys. For example, when B.W. introduces his traditional names, he begins to explain how he acquired the names and their meaning; the lawyer mentions she will return to the topic, but does not. This occurs several times during testimony, much of which involves the transcription of aboriginal

names, but without inquiry as their meaning other than an explanation of the *hoopakwinum*, a symbolic box containing the chieftainship and the concept of *nomaak*.

In the Che:k'tles7e't'h? and Tla-o-qui-aht culture that B.W. belongs to, *nomaak* ensures the truth is told in the "pass-on" stories. The Wet'suwet'en validate claims to title and territory through the performance of the *Kungax* at feasts or potlatches and with subsequent consensus from the community. In the Che:k'tles7e't'h? and Tla-o-qui-aht cultures, the traditional knowledge that B.W. (who was a speaker for the Head Chief) holds, has been acquired through potlatches and also "pass-on" stories. Validity is conferred in the "pass-on" stories through *nomaak*, "which means bad luck. They would take your family one by one, die if you tell untruth about what went on…, This was a strong belief by our people, very strong belief" (B.W. 2006, p.261). When questioned if he had heard of a case of this happening, B.W. replies that what was important was the people believed it.

To further explain *nomaak*, in an inter-cultural context, B.W. compares it to the belief in the Ten Commandments and in God, which is central to the swearing of the oath in the court context for Christians and B.W. is also a Christian. J.D. attempts to bridge the same inter-cultural gap in mentioning that "Old Dennis was a strong Christian and he did not lie to other people" (as cited in Mills, p.120) when conferring information told to him regarding events that happened when J.D. was a child.

J.D. also spoke of the contentious history the Wet'suwet'en people had with the non-aboriginal legal system, referencing the fear of law and jail 15 times when explaining why Aboriginals did not speak out against the theft and deliberate destruction of aboriginal property by white people. Despite the history of colonialism, J.D. tries to cross the cultural divide by explaining the Wet'suwet'en legal system through an analogy to non-aboriginal law:

> Eagle down is our law. It is blown in the direction of the people and it is similar to the white man's way now where they sign their name . . . once the eagle down is blown the revenge or murder is stopped . . . and you are not allowed to break the law . . . the same is done with the passing of a mountain or territory (as cited in Mills, 2005, p. 266).

Throughout the testimony, J.D. repeats that nothing has been signed: the territory has not been passed. J.D.'s indirect appeal to the legal system was not heard. In ruling on Delgamuukw v. British Columbia (1991) McEachern C.J. stated oral histories do not serve "as evidence of detailed history, or land ownership, use or occupation" (as cited in Delgamuukw, 1997, p.45). It was not until after the death of J.D. that the 1997 Supreme Court appeal of Delgamuukw v. British Columbia ruled oral histories are to be acknowledged as evidence.

Limitations

The data for this research is limited to a sample of court rulings specific to British Columbia and the testimony analyzed was given by two First Nations' Elders. Identity evolves through a complex interaction within shifting cultural boundaries (Kahane, 2004). Therefore, future research would benefit from an increased data sample to account for inter-generational changes and regional differences in cross-cultural communications. Research is also limited by methodologies primarily designed in the context of the dominate culture, and therefore have an ontological perspective that differs from the Aboriginal worldview.

Conclusion

The data analysis in this project shows First Nations' narratives are holistic and cannot be categorized. Each part of the narrative, whether it is figurative language, songs, performance, regalia, totem pole or crest symbolizes the whole narrative, while also contributing to and reinforcing the narrative. In the *Kungax,* one part is not separated from another. The songs,

dances, totems, crests, and regalia are intrinsically connected to oral histories conveying kinship networks; name and title; rights and responsibilities. For example, the passage of the name confers the connected rights and titles as well as the responsibility to carry forward and build upon the associated narrative. B.W. (2006) explains the *hoopakwinum* contains the entire chieftainship; the seat, songs and dances and everything the Chief owns. Both examples demonstrate a communication pattern that is holistic, reflecting a world view interconnected by a spiritual web of relations between people, land, animals, and creation.

The legal system is founded on a different worldview with an associated communication pattern that is linear, direct, and seeks an objective truth through categorization and a binary logic. The concept of time is also sequential, marked by the imposition of segmented dates rather than a narrative given in the moment that encompasses all time. Space is not marked by natural boundaries, but by written lines. What is fixed on paper is considered more objective than a fluid language of performances and symbols. When the two worlds collide, the linearity of the non-aboriginal culture disrupts the Aboriginal narratives by applying a deductive logic that reduces symbols to signs, while events that not marked on paper or by an imposed sequential date are lost. Ghostkeeper (2004) notes, "They listen to a story and try to discern a scientific fact, rather than personal, spiritual, or emotional connection, or they ask us to reduce our teachings to what we can prove by western scientific means" (p.78).

As the cultures collide, inter-actions continue to be marked the hegemonic effects of colonialism. The oppression encountered by First Nations is internalized and consequently confidence in the traditional methods and communication protocols is further diminished (LeBaron, 2004) by dominate institutional systems. Historical documents written by non-indigenous people are given legal precedence over oral histories in defining Aboriginal rights.

By explicitly recognizing the legitimacy of oral histories, the 1997 Delgamuukw decision was considered a victory by First Nations. However, when presented as evidence the articulation of the oral histories continues to be constrained by legal institutional context (Turner, 2004). Despite the court ruling, the Wet'suwet'en still do not have an agreement with the Canadian government. The Tsilhquit'in judgement (2004) notes earlier decisions regarding the legitimacy of oral histories failed to "foster Aboriginal litigants' trust in the courts ability to view evidence from an Aboriginal perspective. To truly hear the oral history that is presented as evidence, courts must undergo their own processes of decolonization" (pp.36-37) marking an important recognition of how colonialism and ethno-centrism continue to shape legal systems wherein First Nations are marginalized. The Tsilhquit'in Nation was granted title over the land in the court case, but ownership was to be negotiated with the Canadian government; the negotiations continue. During B.W.'s testimony, the crown council states oral history given as evidence "will be subject to Canada's general objection" (p.209). The Ahousaht Indian Band and Nation v. Canada (2009) ruling, in favour of the plaintiffs, relied on expert testimony and historical documents and did not consider the oral histories. Ahousaht First Nations won the right to fish within a specified region and were given two years to negotiate the terms; the Crown has appealed the decision.

There have been incremental successes in the recognition of First Nations rights and titles. However, cross-cultural negotiations between First Nations government and non-aboriginal governments remain strained, requiring lengthy, expensive adversarial processes that place an overwhelming financial burden on already impoverished First Nations. This reflects racism defined as "the tendency by groups with institutional and cultural power to use that power to oppress members of groups who do not have access to the same kinds of power" (Cooper,

Calloway-Thomas, & Simonds, 2007, p.83). It is difficult for the dominant racial group to comprehend what it means to be non-white or to be aware of how white privilege is institutionalized, but this is a necessary prerequisite for countering racism.

To develop the mutual trust foundational to conciliatory negotiations requires acknowledging the impact of colonialism, recognizing how it continues to perpetuate inequities and addressing the issues in ways that equally respect both cultures. This requires the creation of a culturally shared horizon wherein both worldviews co-exist through interactive empathy and mutual understanding. Such a horizon necessitates a cultural intelligence that includes an awareness of the context of relationship (including a history of negative interaction) and self-awareness of cultural mental programming that restricts understanding (Thomas & Inkson, 2007). Bhabha's (1995) space of hybridity, where "we will find those words with which we can speak of Ourselves and Others" (p.209) marks the boundaries of this shared horizon. It is a space that demands an understanding of both cultures, because defining another culture, while blind to one's own, perpetuates marginalization and ignores differences in the cultural values that are continuously shifting creating and re-creating worldviews that can potentially enrich all cultures.

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