

Reviving Secwepemc Child Welfare Jurisdiction

by

Nancy Harriet Sandy  
L.L.B, University of British Columbia, 1987

A Thesis Submitted in Partial Fulfillment  
of the Requirements for the Degree of

Masters of Law

in the Faculty of Law

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University of Victoria

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## **Supervisory Committee**

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## Abstract

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Indigenous Nations, like the Secwepemc, look to their Creation Story to describe how we came to be on our land. The Creation Stories describe and define who we are as Indigenous Peoples living with laws which guide our conduct among each other and with others. The Creation Stories of each of the Indigenous Nations, and the Secwepemc Nation, is our Constitution. These Constitutions speak to the powers and authorities that are exercisable by those within the Secwepemc Nation, like the *St'exelcenc*. The family units are the foundation of the *St'exelcenc*. For the purposes of this thesis, these family units, individually and collectively, exercise the powers and authorities over *St'exelcenc* child safety.

For a long time now, the *St'exelcenc* child safety laws have been eroded by federal and provincial authority to make it seem like the *St'exelcenc* abide only by state child welfare law. This thesis sets aside this Canadian legal mythology and demonstrates the continued exercise of *St'exelcenc* child safety laws despite their erosion by state law. And, this thesis is also about the necessity of reviving and revitalizing the customs, traditions and practices of the *St'exelcenc* in every area of our lives as a nation-building movement. In order to achieve this vision it is important to draw on the 'living sources' to help identify and define these laws. In this thesis, the *St'exelcenc* child safety laws are drawn from the stories and memories of *St'exelcenc* living sources, the Elders and Junior Elders, who are transmitting their knowledge for the benefit of the *stsmémelt* and *im7imts* of future generations. The legal concepts and principles of structure, observation, discipline, stories, listening, respect, sharing, helping, spirituality and silence are captured in the Secwepemc term *ctk'wenme7iple7ten* which means law or rule. The literal translation of *ctk'wenme7iple7ten* is "all the law, all the power one might have."

Custom adoption is one special area of *St'exelcemic* family law which is a familiar and demonstrable exercise of *St'exelcemic* jurisdiction in the area of child safety.

*St'exelcemic* custom adoption ensured the safety of children: by tradition where they were placed with grandparents as a form of old age security, endurance of the traditional economy, and transmission of cultural and traditional knowledge; in the event of a marital breakdown, neglect, or abandonment; and where a couple may have been unable to conceive, or where the birth father gave up his parental responsibilities. Custom adoption also played a major role in maintaining the hereditary lineage for the governance of the *St'exelcemic*, which continued until 1958. The *St'exelcemic* law of banishment for the safety of children and families is implemented today by deliberation at general band meetings and band councils meetings, and formally recorded in band council resolutions. This revival and revitalization of child safety law is essential for *St'exelcemic* individuals, family and government to 'put things right' for the health and well-being future generations – like Coyote and Old One did in the Secwepemc Creation Story.

## Table of Contents

<b>Supervisory Committee .....</b>	<b>ii</b>
<b>Abstract.....</b>	<b>iii</b>
<b>Table of Contents .....</b>	<b>v</b>
<b>List of Figures.....</b>	<b>viii</b>
<b>Acknowledgments .....</b>	<b>ix</b>
<b>Dedication .....</b>	<b>x</b>
<b>Glossary of Secwepemc Terms .....</b>	<b>xi</b>
<b>Chapter One .....</b>	<b>1</b>
<b>Reviving Secwepemc Child Welfare Jurisdiction .....</b>	<b>1</b>
1.1 Introduction.....	1
1.2 Background.....	5
1.3 Locating Myself in the Research .....	8
1.4 Thesis Structure .....	11
1.5 Methodology.....	13
1.5(a) Introduction.....	13
1.5(b) Methodological Academic Expectations .....	19
1.5(c) Secwepemc Methodology .....	20
1.6 Summary.....	26
<b>Chapter Two.....</b>	<b>28</b>
<b>Secwepemc: St’excelcenc History.....</b>	<b>28</b>
2.1 Secwepemc Creation Story.....	30
2.2 St’excelcenc Governance .....	35
2.3 Stolen Lands – Or Is This Coyote Playing A Trick .....	36
2.4 Indian Act Governance .....	45
2.5 <i>St’excelcenc</i> at the Mission.....	46
2.5(a) Children who were severely traumatized by the experience of being wrenched away from their parents or grandparents and did not understand why they had to leave home or where they going .....	51
2.5(b) Children who suffered brutal psychological assault because they had to communicate in English which none of them spoke .....	53
2.5(c) Children who were provided education and religious instruction at odds with what they had learned growing up on the land; and .....	55
2.5(d) Children who experienced verbal, mental, physical and sexual abuse by Roman Catholic clergy who were overseeing their civilization and Christianizing.....	57
2.6 British Columbia Child Welfare Legislation .....	63
2.7 Historical Development of First Nations Child Welfare in British Columbia.....	65
2.8 <i>Spallumcheen</i> By Law .....	68
2.9 Provincial Government and First Nations Child Welfare.....	70
<b>Chapter Three - Secwepemc Law.....</b>	<b>74</b>
3.1 St’excelcenc Narrative of Laws, Customs and Traditions .....	74

3.2	Family Units and Child Safety.....	77
3.3	Structure – Family, Home and Land.....	78
3.4	Observation.....	80
3.5	Discipline and Boundaries.....	85
3.6	Stories.....	89
3.7	Listening.....	91
3.8	Messages.....	93
3.9	Respect.....	95
3.10	Sharing.....	99
3.11	Medicine, Environment and Spirituality.....	100
3.12(a)	Responsibility for children.....	105
3.12(b)	Custom adoption by grandparents.....	108
3.12(c)	Custom adoption due to marital breakdown.....	109
3.12(d)	Where a couple is unable to conceive naturally.....	110
3.12(e)	Where the child has been neglected.....	111
3.12(f)	Where a young mother is instructed to give up the child by the birth father.....	112
3.12(g)	Where a child has been abandoned.....	113
3.12(h)	Where the birth parents are unable to provide for the child.....	114
	<b>Chapter Four.....</b>	<b>116</b>
	<b>St'exelcenc Legal Theory.....</b>	<b>116</b>
4.1	What is Secwepemc and St'exelcenc Law? What is Secwepemc and St'exelcenc Legal Theory?.....	116
4.2	Sources of St'exelcenc Law.....	129
4.3	Natural Law.....	130
4.4	Deliberative Law.....	131
4.5	Positivistic Law.....	132
4.6	Custom Law.....	133
4.7	St'exelcenc Law Interrupted.....	133
4.8	Contemporary <i>St'exelcenc</i> Law.....	135
4.9	Custom Adoption Interrupted.....	139
	<b>Bibliography.....</b>	<b>149</b>
	<b>Appendix A – Questionnaires.....</b>	<b>163</b>
	Appendix A-1 – Focus Group Questionnaire.....	163
	Appendix A-2 Individual Interview Questionnaire.....	164
	<b>Appendix B – Consent Forms.....</b>	<b>165</b>
	Appendix B-1 Participant Consent Form – Junior Elder.....	165
	Appendix B-2 Participant Consent Form - Elder.....	171
	Appendix B-3 Summary of Research Project Consent Form.....	176
	<b>Appendix C – Maps.....</b>	<b>180</b>
	Appendix C-1 Secwepemc'ulucw.....	180
	Appendix C-2 Teit's Map of Shuswap Territory.....	181
	Appendix C-3 WLIB Map with Place Names.....	182
	<b>Appendix D - Invitations to Participate in Interviews.....</b>	<b>183</b>
	Appendix D-1 Letter of Invitation to Participate in Interviews.....	183
	Appendix D-2 Invitation to Participate Telephone Script.....	184

**Appendix E Jessie’s Story – A Case Study ..... 185**  
**Appendix F Reviving Secwpehc Child Welfare Jurisdiction – Timeline..... 190**

## List of Figures

Figure 1 Markers to Secwepemc Law .....	27
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In keeping with *St'exelcenc* protocol, the copyright of the Elders and Junior Elders stories remains with each of them; and the copyright to this thesis is with the author.

## Dedication

I dedicate this thesis to my brothers, Willie, Tony, Jimmy, Reg, Pierro and Poncho, and my sister Rita Thomas who have gone to the spirit world; to my sons, Ira Sandy and Rod Sandy and my daughters, Dancing Water and Carmen Sandy for helping me to be the parent and *Kye7e*, grandmother, I am and for continually striving to be the *Qelmucw* they are meant to be; to my grandsons, Arron Sandy, Morgan McKay, and William Lulua, and my granddaughters, Doris Nelson and Chelsea Ann McKay. I also dedicate this thesis to all the *stsmemelt* and *im7imts*, and all my *kw'séltken* on *Secwepem'ulcw*. *Kukstemc Tqelt Kukwpi7*.

## Glossary of Secwepemc Terms<sup>1</sup>

<i>Secwepemc</i>	the Secwepemc Nation and peoples
<i>St'exelcemc</i>	the people of T'exelc
<i>Yecwemenil'e</i>	to look after the children
<i>Spi7uy Sququluts Language and Culture Society</i>	The Golden Eagle Speaks Language and Culture Society
<i>T'exelc</i>	the place where the salmon charge up the river; Williams Lake Indian Band
<i>Secwepemctsin</i>	the language of the Secwepemc people
<i>C7istkten</i>	winter underground homes, also known as quiqwili houses
<i>Stwecem'c</i>	Canoe Creek Indian Band
<i>Xgat'tem</i>	Dog Creek Indian Band

<sup>1</sup> I acknowledge the assistance of Jean William, Amy Sandy and Marie Sandy for ensuring the correct spelling and usage of the *Secwepemctsin* words and phrases throughout this thesis. Words in the glossary are listed as they arise in the text of the thesis.

<i>Tsqescen</i>	Canim Lake Indian Band
<i>Xatsull</i>	Deep Creek/Soda Creek Indian Band
<i>Esketemc</i>	Alkali Lake Indian Band people
<i>Sexqeltqín</i>	Adams Lake Indian Band
<i>St'uxwtéws</i>	Bonaparte Indian Band
<i>Llenllenéy'ten</i>	High Bar Indian Band
<i>Tk'emlúps</i>	Kamloops Indian Band
<i>Qw7ewt</i>	Little Shuswap Indian Band
<i>Sk'atsin</i>	Neskonlith Indian Band
<i>Simpcw</i>	North Thompson Indian Band

<i>Tsk'waylaxw</i>	Pavilion Indian Band
<i>Kenpésqt</i>	Shuswap Indian Band
<i>Skítsestn</i>	Skeetchestn Indian Band
<i>Splatsín</i>	Spallumcheen Indian Band
<i>Stil'w/Pellt'íqt</i>	Whispering Pines Indian Band/Clinton
<i>Tseq'yet te me7 scilem</i>	it is as you have said now you will do as you promised
<i>Ta7 me7 te7 stsot</i>	you cannot back down from your word
<i>Bah'lats</i>	Carrier traditional legal and governing systems
<i>Kye7e</i>	grandmother
<i>7i7imts/im7imts</i>	my grandchildren/all grandchildren

<i>Kukwpi7</i>	Chief
<i>Tqeltk Kukwpi7</i>	the Creator, or highest authority or chief
<i>Sxusem</i>	soapalallie or soapberry
<i>Re7 newi7 xegpenwéllen</i>	you got it
<i>Qelmucw</i>	Indian, human being
<i>T'silhqot'in</i>	Chilcotin Nation, people of the Chilcotin Nation. The Secwepemc term for T'silhqot'in is <i>Pesxíxlem</i>
<i>Secwepemc'ulucw</i>	land of the Secwepemc
<i>Kw'séltkten</i>	all our relatives
<i>Yucwt</i>	City of Williams Lake
<i>Pellkik-ey</i>	Glendale

<i>Seqwu'tcen</i>	the Mission
<i>Pell'tseqwtsítsen</i>	Williams Lake Indian Reserve No. 1
<i>T'ekwílç</i>	Indian doctor
<i>N'lkapmux</i>	People of the southern Thompson River/Fraser Canyon
<i>Keltsin</i>	Pretty language
<i>Ctkwenme7iple7ten</i>	law or rule; all of the law, all the powers one might have
<i>Tsut te sullnentkwe</i>	so said the swallow
<i>Seme7e</i>	White man
<i>Tselxemwilcem re swe7es</i>	he or she is really knowledgeable about our ways
<i>Tewéxmen</i>	do not step over their legs

<i>Sté7e</i>	Drink
<i>Tselcemu(y)istes wenecwem sélksts</i>	one who really knows his or her work
<i>Wenecwem ne ttextén(s)</i>	one with exceptional skills; or gifted with understanding unusual concepts in an almost supernatural way
<i>Ne skuwetems te swe7es</i>	one who knows his ways
<i>Seckwnémtens</i>	he or she has cultural practices
<i>Cku7tens ne Secwepemc</i>	born a Secwepemc
<i>Cku7ten</i>	hereditary blood
<i>Stwetíl'e</i>	adopted out of the community
<i>Xeqpenwens re swe7es</i>	he or she obtained or learned knowledge
<i>Re newi7 tselxem u7wisc te Secwepemc k</i>	you remember you are Secwepemc

<i>Sxexe7s ne swe7es</i>	he or she is intelligent ( <b>nb:</b> too praiseworthy and would not normally be used by Secwepemc to describe oneself or others).
<i>Megcen</i>	Moon
<i>Keltsin</i>	the pretty language
<i>Qelmucw uwi</i>	a princely people – the real ones
<i>Knucwentwecw</i>	helping one another
<i>Ts mut</i>	The husband, the majestic one sits on the east side of the Fraser River in the story of the husband who got separated from his wife by the river because they could not get along.
<i>Ts mumte</i>	The wife, the small one sits on the west side of the Fraser River in the story of the wife who got separated from her husband by the river because they could not get along.

# Chapter One

## Reviving Secwepemc Child Welfare Jurisdiction<sup>2</sup>

### 1.1 Introduction

When I was a very young girl my older sister took me berry-picking up in the hills behind our house at *T'exelc*. This place was a particularly good place to pick low bush saskatoons. The kind that is very plump and juicy. As we walked from bush to bush she stopped and looked up. She said "See that tree there? That is where the old folks hung my baby basket." The basket had by then fallen to the elements. We stood looking at the tree for a while and then carried on picking berries. I don't remember her telling me why the old folks did that. I have thought back to that memory many times and remember that little girl looking up at that tree and wondering "why would they do that?" My sister and I stood in that moment and looked back at our Secwepemc world.

This memory has inspired me in the quest of searching for, finding and revitalizing traditional Secwepemc ways. As a band member, former chief, lawyer and researcher, I have undertaken this research in order to fulfill the requirements of the Masters of Law degree. However, the aim of this task is much broader in terms of strengthening and decolonizing my Secwepemc Nation.<sup>3</sup>

In this study, I will identify, record and apply *St'exelcenc* laws, customs and traditions in the area of child safety in the community of the Williams Lake Indian Band. This research project was conducted exclusively with the Williams Lake Indian Band in their

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<sup>2</sup> I reluctantly used the term 'child welfare' in the title of this thesis because it has such negative connotations for Indigenous Peoples. However, after much consideration I decided to use it since it is a readily understood term in the Canadian legal system, and I wanted to provide a stark contrast to the *St'exelcenc* way of keeping children safe. *Yecwmenil'e* is the *Secwepemtsin* word which means to look after the children. *Yecwmenil'e* would be fairly close to the term for child welfare recognized in Canadian law where the state must step in when children are at risk of harm. I thank members of the *Spi7uy Sququluts Language and Culture Society* for their assistance in translating a term to capture our collective responsibility to care for and ensure children are safe. Much more research is needed to derive the laws from *Secwepemtsin* in all social spheres of our lives. See footnote 5 infra at 2.

<sup>3</sup> The Secwepemc Nation is made up of seventeen 'Indian bands' which comprises between 5,300,000 to 5,600,000 hectares of territory in central British Columbia. Their territorial boundaries extend north to Quesnel, southwest to Salmon Arm, west to Alexis Creek and east to Wells Grey Park. <http://www.nstq.org/nsts.htm>. Retrieved on February 18, 2011.

main village of “*T'exelc*”.<sup>4</sup> *T'exelc*, is the place where the salmon charge up the river. The population of *T'exelc* is approximately 500 citizens – half of whom live on the reserve and the other half live in the urban areas of British Columbia and other parts of Canada and the United States.

The people who come from *T'exelc* are called “*St'exelcenc*”, and our language is “*Secwepemtsin*”. Despite the concentration on *T'exelc*, the family connections of the participants extend throughout all seventeen bands of the Secwepemc Nation through birth, adoption and intermarriage (see [Background section](#) for more information below). The objectives of the research are to utilize Secwepemc laws, customs, and traditions to revive the jurisdiction in one area of self-governance that contributes to the foundation of a strong, healthy and progressive Secwepemc Nation. The thesis may also assist in the future development of legislation which is the foundation upon which to develop children and family services. It is my opinion that Secwepemc child safety legislation must be based upon Secwepemc laws, customs, and traditions in order for the Secwepemc to truly exercise self-government and attain self-determination.

My position is that the Secwepemc must revive our legal system by internally defining our laws, customs, and traditions in all areas of our social relations, and more specifically, in the area of child welfare.<sup>5</sup> I've chosen child safety as the unit of social relations because children and family are the best foundation upon which to revive Secwepemc nationhood. I take an interdisciplinary approach which integrates law and social work because both disciplines have a primary role in the historical development of child welfare as it relates to Indigenous children. The interdisciplinary approach will bring together content, concepts and approaches from law and child welfare as it relates

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<sup>4</sup> Williams Lake Indian Band is the legal name; however, I will refer to the Band as *T'exelc* throughout this thesis. *T'exelc* is the preferred name. *T'exelc* is also known locally as the Sugar Cane Reserve. The name Sugar Cane comes either from the sweet tall grass that grows there or from a story of sugar falling off a pack mule as a pack train travelled through.

<sup>5</sup> I will use the terminology of ‘child safety’ rather than ‘child welfare’ as much as possible throughout this thesis due to the negative connotation of the latter term in Indigenous communities, and a desire to positively reflect Secwepemc family unity. Where reference to child welfare is made in this thesis it is in reference to the provincial child welfare system. The term ‘child safety’ is one in which all the research participants could understand as a universally accepted principle in raising and looking after children.

to the *St'exelceme* of the Secwepemc Nation. I include a comparative aspect to argue that the Secwepemc must articulate their laws, customs and traditions. They have relied upon these laws for generations to survive the imposition of non-Secwepemc law-making in the social, political, legal and economic aspects of their lives. Non-Secwepemc law-making makes valiant, but futile attempts, to transform constitutionally recognized 'existing rights' into rights and legal principles which are often inconsistent with the Secwepemc world-view.

This thesis will not be a comprehensive review of case law nor be a detailed study of social work practice and theory, rather this thesis will explore how customary law can be utilized to revive the inherent jurisdiction of the individual, family, community and nation in the area of child safety. This research grows out of the increasing pressure from Indigenous peoples on the federal and the provincial governments to implement recommendations from the Royal Commission on Aboriginal Peoples in the one area of self-governance which could potentially move forward without a full-fledged negotiated self-government agreement.<sup>6</sup> It is also born out of the shocking and disproportionately high numbers of Indigenous children in care, and the flawed government policy and legislation which is traumatizing another generation of Indigenous peoples.

Despite the best of intentions the numbers of Indigenous children in care is approximately three times the number of children attending residential school at the height of their operation.<sup>7</sup> This thesis will use *T'exelc* participants' stories and voice and

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<sup>6</sup> *Report of the Royal Commission on Aboriginal Peoples: Gathering Strength*, [RCAP] vol. 3. (Ottawa: Ministry of Supply and Services, 1996); Report of the Aboriginal Justice Inquiry of Manitoba, [AJI] Chapter 14 – Child Welfare, <http://www.ajic.mb.ca/volume1/chapter14.html>; Dr. Rose-Alma J. McDonald and Dr. Peter Ladd, et al., *Joint National Policy Review*, (Ottawa: First Nations Child and Family Services and Assembly of First Nations, and the Department of Indian and Northern Affairs Development Canada, 2000)

<sup>7</sup> Cindy Blackstock, "First Nations Children and Family Services: restoring peace and harmony in First Nations Communities" in K.Kufeldt and Brad Mackenzie, eds., *Child Welfare: Connecting Research Policy and Practice* (Waterloo: Wilfrid Laurier University Press, 2003) cited in First Nations Child and Family Caring Society of Canada. *Wen:de We Are Coming to the Light of Day*. (Ottawa: First Nations Child and Family Caring Society of Canada Publishing, 2005) at 8 [Blackstock]. This research was in response to the Joint National Policy Review recommendations with respect to funding of First Nations delegated children and family service agencies.

research findings to support my view that revival of self-governance in the area of child welfare is the key to the revival of Secwepemc nationhood. I have relied heavily upon historical record in the Williams Indian Band Specific Claims evidence to describe the creation of the Williams Lake Indian Band and its Reserves.<sup>8</sup> I have also used witness transcripts describing their arrival at *T'exelc*.<sup>9</sup> Ethnographer James Teit's research on the Secwepemc was also used in developing this thesis<sup>10</sup>, as well as, other secondary material such as child welfare and legal texts and articles that put the *St'exelcemic* experience into context. I have also consulted academic opinion about the status of Indigenous legal orders in Canada. I have been guided in the research and writing of this thesis by Doctors John Borrows, Faculty of Law and Cathy Richardson, School of Social Work, Faculty of Human and Services Development.

This inquiry into the Secwepemc laws and their historical internal and external application in the area of child safety forms the foundation of this thesis.<sup>11</sup> In developing the questionnaire for the interviews I endeavoured to ask the questions in such a way that the life stories relayed might respond to questions like:

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<sup>8</sup> Indian Claims Commission [ICC] Williams Lake Indian Band – Village Site Inquiry, 1 May 2003, Ottawa. The Williams Lake Indian Band Specific Claim with respect to their Graveyard Claim was filed in 1992. The Village Site Claim was filed in 1994. The ICC held their inquiry into the Graveyard Claim on June 18, 2003 and held in favour of the Band. The Village Site Claim is awaiting the restructuring of the ICC Tribunal.

<sup>9</sup> ICC, supra note 8. Exhibit 12d. Transcripts of Williams Lake Elders Interviews conducted by Jean William, 1972-74, 978 and 1994-1995.

<sup>10</sup> James Alexander Teit, *Part VII – The Shuswap, The Jesup North Pacific Expedition: Memoir of the American Museum of Natural History*, Franz Boas, ed., vol. 2 (New York: AMS Press, 1975).

<sup>11</sup> I will refer to Secwepemc law in recognition of Secwepemc nationhood where laws of a general nature apply within the Secwepemc Nation despite the location within the territory. I will refer to *St'exelcemic* law throughout this thesis in recognition of the linguistic and geographical differences between the villages within the Secwepemc Nation. The Secwepemc say the law is written on the land hence the recognition of the territorial differences based on the landscape and resources within the territory. Ronald Eric Ignace (Stsmél'ecqem), *Our Oral Histories Are Our Iron Posts: Secwepemc Stories and Historical Consciousness*, (Department of Sociology and Anthropology, Simon Fraser University, 2008) [PhD Dissertation, unpublished] at 99-91. Ignace recalls hearing his Elders talk about Secwepemc rights in relation to the land, *stsq'ey̓ ne7elye te swe7ce*, and the land being marked to show the boundaries, *stsq'eyúl'ecw re Secwépemcúlew*. The marks on the land, *tsq'yúl'ecw*, include rock formations, rock paintings or significant landscapes that prove Secwepemc occupation. Junior Elder #2 [JE#2] Interview, July 15, 2009 at 9. JE#2 says “[i]ts like the term *k'ulucw* – our lands are marked already we don't need to put in on paper”. **Note:** there are slight variations in spelling of words between the Northern and Southern Secwepemc dialects.

- Is there *St'exelcenc* law that regulates the internal relationships of the village members?
- If so, how are those laws implemented?
- Do *St'exelcenc* citizens and others abide by the laws and decisions made based on those laws?
- What are the laws to keep children safe?
- Does *St'exelcenc* ritual recognize the autonomy of the individual yet continue to protect the rights of the collective?
- How does *St'exelcenc* law, custom, and tradition impact on those individuals from other Indigenous Nations who have married into the *T'exelc*?
- What is the Secwepemc law that guides the conduct of their citizens and their relationships with surrounding Nations?
- Is the law from the *St'exelcenc* recognized and respected in another community?

See [Appendix “A”](#) for a further description of these questions.

## 1.2 Background

The Secwepemc Nation is made up of seventeen ‘Indian bands’ in central British Columbia.<sup>12</sup> The Secwepemc are categorized as Interior Salish. Historically the Secwepemc are hunter and gatherers and their seasonal rounds consisted of moving in family units within resource rich lands as their survival required and settling in summer and winter camps. The Secwepemc language is of the Salish group known as the Interior Salishan. The Secwepemc lived in *c7istkten*, winter underground homes, also known as quiqwili houses. The Secwepemc territory is rich in resources such as wild game, birds, and fish, forest and berries, roots and shoots with many lakes and streams and three major rivers, the Fraser, and the North and South Thompson, flowing through our territories.

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<sup>12</sup> Indian Band is the legal definition in the *Indian Act*, RSC I-5; Focus Group, September 27, 2009. The Secwepemc refer to themselves by the name of their village from which originate. Historically, an individual would be named according to the land on which he lived and this is how his genealogy would be recorded. The Secwepemc also refer to themselves as Indians, First Nations, or by *Qelmucw* which means people of the land.

The Secwepemc Nation is further broken down into the northern and southern Secwepemc.

The northern Secwepemc have further defined themselves as the Northern *Secwepemc te Qelmucw* (“NStQ”) for the purposes of treaty negotiations. The NStQ membership includes the *Stwécem’c/Xgat’tem*, (Canoe Creek/Dog Creek Indian Band), *Tsqescen*, (Canim Lake Indian Band), *Xatsull First Nation*, (Deep Creek/Soda Creek Indian Band), and *T’exelec* (Williams Lake Indian Band). These four bands also belong to the Northern Shuswap Tribal Council (formerly known as the Cariboo Tribal Council). The *Esketemc First Nation* (Alkali Lake Indian Band) is also part of the Northern Secwepemc but have acted as an independent ‘nation’ or band since they separated from the Cariboo Tribal Council. The Esketemc First Nation is negotiating their treaty as an independent ‘nation’ or band.<sup>13</sup>

The southern Secwepemc include *Sexqeltqín*, (Adams Lake Indian Band), *St’uxwtéws*, (Bonaparte Indian Band), *Llenlénéy’ten* (High Bar Indian Band), *Tk’emlúps*, (Kamloops Indian Band), *Qw7ewt*, (Little Shuswap Indian Band), *Sk’atsin*, (Neskonlith Indian Band), *Simpcw*, North Thompson, *Tsk’waylaxw*, (Pavilion Indian Band), *Kenpésqt*, (Shuswap Indian Band), *Skítsestn*, (Skeetchestn Indian Band), *Splatsín* (Spallumcheen Indian Band), and *Stil’w/Pellt’íqt*, (Whispering Pines Indian Band/Clinton). These Bands are politically organized under the Shuswap Nation Tribal Council in Kamloops, British Columbia.

*T’exelec* is governed by custom election under the *Indian Act* and has one Chief and five Councillors.<sup>14</sup> *T’exelec* economic activity is mainly in the forest and tourism industry.

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<sup>13</sup> BC Claims Task Force Report Recommendation 7 – The Organization of First Nations for the negotiations is a decision to be made by each First Nation. The BC Treaty process recognizes a groups of ‘Indian Bands’ as a Nation for purposes of treaty-making if those Indian Bands provide band council resolutions supporting their participation in treaty negotiations as a Nation. These Indian Bands are usually united as a Tribal Council. If an Indian Band is not part of a Tribal Council they can enter treaty negotiations on their own as an independent Indian Band. It has become common practice for Indian Bands to self-identify as a Nation. [http://www.bctreaty.net/files/pdf\\_documents/bc\\_claims\\_task\\_forced\\_report.pdf](http://www.bctreaty.net/files/pdf_documents/bc_claims_task_forced_report.pdf). Accessed April 5, 2010.

<sup>14</sup> *Indian Act*, I-5, s.74(1) (February 26, 2011). <http://laws.justice.gc.ca/PDF/Statute/I/I-5.pdf>. Accessed March 31, 2011.

They have a long-standing logging and sawmill operation which is overseen by a corporate board of directors. These businesses, while long-standing, are not money-making ventures but they do employ *St'exelceme* on a seasonal basis and contribute to the local economy. The mill operation, in particular, is a gauge of the social welfare of the village as when it is in operation families are busy and well-cared for. When it is shut-down social despair (like addictions and family violence) come to the forefront, and the social development department services operate at its peak. The tourism businesses include the gas station and repair shop, and the RV campsite facility which includes a beautiful log structure called the 'arbour' where the annual Fathers Day Pow Wow and other cultural celebrations and workshops are held. There is winter lodge there called the *c7istkten* which is used for educational purposes. These latter businesses have contributed a considerable amount of financial resources to the *St'exelceme* for recreation programs, hardship assistance for families experiencing a traumatic event, monthly honorarium for the Elders, and to the overall band government administration.

Citizens of *T'exelc* operate their own businesses including: basket-making and archival quality buckskin work, construction, cattle and buffalo ranching, silviculture and tree planning, art studio, casket making, consulting, and catering. There are *St'exelceme* who obtained post-secondary degrees in education, forestry, law, arts, and social work. *St'exelceme* is a village of talented and resourceful citizens whose visions and aspirations are witnessed on a daily basis in their quest to revive their language, culture, and spirituality. Much of this professional and social activity is geared toward reviving the traditional governance and economy in the face of state sanctioned destruction of the resources. Intermarriage has also introduced inter-Nation traditional laws and created multi-cultural Secwepemc communities. These were not envisioned when family units historically formed the nucleus of their societies and Secwepemc laws were applied within those relationships.

### 1.3 Locating Myself in the Research

I was born and raised at *T'exelc* and grew up in a very strong matriarchal home. My mother had firm beliefs about the 'Indians' (as she called us) as human beings with rights which were just as valid as those of the people in the dominant society. At the same time, she respected her father as the patriarch and as a respected Counsel to the Chiefs in the village. His decisions were the law in the sense that once he advised the Chiefs in their decision-making he would abide by his own counsel and help them carry out their work. If he were to falter in carrying out his decision his wife would remind him *Tseq'yet te me7 sxilem* – it is as you have said now you will do as you promised. *Ta7 me7 te7 stsot* – you cannot back down from your word.<sup>15</sup> In the mid-1960s one of my young cousins had been abandoned at the hospital by his mother. My grandfather instructed my mother to go to the hospital and get the child since “that is your blood” and “you can't let your blood go away”. She was in her mid-60s by then and had raised almost all of her children on her own, but she respected his authority and went and got the child. This cousin became my brother through what is commonly referred to as 'Indian adoption'. My grandfather then helped her with clothing, food and a carriage for the boy. This story illustrates powers of authority in *St'exelceme* law which will be brought forth in more detail in the narrative in chapter three of this thesis.

My responsibilities were to assist my mother with all aspects of care-giving for my younger siblings and other children she cared for. I helped her with the housework, laundry, cooking, shopping, letter writing, and paying bills. She would instruct me to pay the BC Hydro bill but to withhold the taxes on it since the Indians didn't have to pay taxes on reserve. I didn't question her since she told me that this was a 'right' we had, but the knowledge didn't comfort me as I stood in front of the teller saying I wouldn't pay the tax. I remember having enough change in my pocket in case the teller insisted I pay the amount. I owe my decision to enter law school in great part to her firmly held belief in our 'rights' as Indians and human beings.

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<sup>15</sup> Personal story as told by an elder sister, Summer, 2009.

My mother's practice of taking care of her immediate family and her extended family, as well as other First Nations children, left an indelible impression of our Secwepemc laws, customs and traditions. This knowledge forms the basis for my desire to begin the work of reviving Secwepemc law and jurisdiction in the area of child safety. My work as a Chief of *T'exelc* from 1996 to 2002 provided me with a first-hand experience of the social, political, legal and economic legacy of the *Indian Act* style of governance. It was during my chieftainship that my desire to revive Secwepemc law and governance started to take shape. It was painfully evident that our Council was charged with administering our own poverty under western law and policy. For example, our community health centre was in an old and dilapidated modular unit. I went there one day to inspect the premises and visit with the Community Health Representative. She was very happy to see me because she wanted to show me the crack that had appeared right down the middle of the floor of the whole building. She was worried about the stove and fridge collapsing into the crawl space below. She also worried about the safety of her clients using the bathroom facilities.

At the time the Bands within the Cariboo Tribal Council were negotiating to take over the administration of non-insured health programs from the federal government.<sup>16</sup> Actually, negotiation was not what was occurring because there was only a limited amount of funds for a limited amount of service. I had been negotiating for a new health building and the government response was that there was no money for this. If we wanted, we were told we could have another modular unit which was cost effective. We were also told we could have second-hand government vehicles, office furniture and equipment. Most despicable was the cap on mental health services for individual band members, capped at ten visits to a therapist in their lifetime. I discovered in health negotiations of other Indigenous nations, that if you did not ask for it you got what the federal government offered. In the end, we did get the new building, new vehicles and office furniture and

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<sup>16</sup> Assembly of First Nations. *A First Nations Guide to Accessing Non-Insured Health Benefits*. (Ottawa: Assembly of First Nations, 2006). Non-insured health benefits include: eye and vision care, dental, medical transportation, drugs, medical supplies and equipment, crisis counselling and approved health services outside of Canada.

equipment, but I wonder if we got them at the expense of another Indigenous nation who accepted the limited government offer under the mistaken view that is all there was.

In addition, I worked as a Program Director for Carrier Sekani Family Services (“CSFS”), a First Nations children and family services delegated agency charged with the responsibility for voluntary care agreements, and guardianship.<sup>17</sup> There was daily stress because of the conflict of laws between the Carrier traditional legal and governing systems (the *bah’lats*), and provincial child welfare law, which is supposedly designed to be culturally appropriate and in the best interests and safety of the children. For instance, the Ministry of Children and Family Development (“MCFD”) encouraged CSFS to use dispute and conflict resolution models developed in New Zealand by the Maori rather than fund a ‘culturally appropriate’ model developed by CSFS based on their *bah’lats* system. It was only after CSFS acquired funds from the Law Foundation to develop the model, curriculum and program that the MCFD agreed to partner with CSFS, the Justice Institute, and the University of Northern BC to train mediators. It is these life experiences, the guidance of the ancestors, and the wisdom of the Elders which will guide the work and vision in this thesis from completion to implementation.

I am writing with the knowledge that the Secwepemc have a legal order that exists. I undertake this work on the basis that changes made on the individual level can evolve to the community level which can evolve to the Nation level. A lifetime of internal searching will be reflected in my written words of this thesis. The most common sense method of working through my reflections is to work from inside my *St’excelcenc*, my memories, and my peoples’ memories. Doing this research in my community has awakened in me a strong belief in our spirituality and culture. I am more in-tune with the meaning of visions and voices and how they are important in reading the world around me. My interpretation of this world along with a renewed sense of culture and spirituality comes from my first life as a Secwepemc child. This early experience most profoundly

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<sup>17</sup> The province legislatively allows itself to delegate child welfare powers and authorities to a tribal council, a band government or First Nations entity pursuant to the *Child, Family and Community Services Act [CFCSA]*, [RSBC 1996], c.46, ss 90-93. The levels of delegation include voluntary care (C1), guardianship (C3) and child protection (C6).

formed who I am, before my life was interrupted by non-Secwepemc values, customs and traditions. I am also a *kye7e*, a grandmother, who has had the Secwepemc laws, customs and traditions within me all of my life – and I am fortunate to be able to go back to university after having obtained my Bachelor of Law degree 1987 – to act on my responsibility along with the *T'exelc* philosophers, theorists and storytellers to put our laws, legal concepts and legal principles on the table for acknowledgement and recognition.<sup>18</sup>

#### 1.4 Thesis Structure

This thesis is divided into four chapters:

Chapter 1 outlines my thesis topic and introduces the importance of doing this research. This chapter also describes my thesis structure, and the methodology I used to conduct this research. In chapter 2, I present an overview of the history of the *St'exelcemic* from first contact with Europeans and the missionaries, to the creation of the St. Joseph's Indian Residential School. I also give an overview of British Columbia child welfare history in Chapter 2. The overview of the history of the *St'exelcemic* is based on the Specific Claims legal record of the Williams Lake Indian Band filed in 1992 which was completed to address the unlawful pre-emption and subsequent crown grant of settlements of the Williams Lake Indian Band between 1861 – 1885.<sup>19</sup> The Band in that

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<sup>18</sup> John Borrows, *Recovering Canada: the Resurgence of Indigenous Law* (Toronto: University of Toronto press, 2002) at 13-48; Peter Cole, "aboriginalizing methodology: considering the canoe" (2002) Vol. 15, No. 4 *Qualitative Studies in Education* 447; Gordon Christie, *Indigenous Legal Theory: Some Initial Considerations* in Ben Richardson, Shin Imai, and Kent McNeil, eds., *Indigenous Peoples and the Law: Comparative and Critical Perspectives*, (Portland: Hart Publishing, 2009) at 195-231; Valerie Napoleon, *Ayook: Gitksan Legal Order and Legal Theory*, (Faculty of Law, University of Victoria, 2009) [PhD Dissertation unpublished] at 294-310; Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (London, UK: Zed Books, 1999); Dale Turner, *This Is Not A Peace Pipe: Towards a Critical Indigenous Philosophy*. (Toronto: University of Toronto Press Incorporated, 2006) at 88-93. I relied upon these authors to develop my ideas about Indigenous legal orders and theory, in general, and to help focus my ideas of Secwepemc legal methodology, legal order and legal theory in the development of this thesis. Cole's dissertation is especially fascinating because it is written in verse and juxtaposes colonial and western institutions up against Indigenous thinking and world-view to construct his methodology and framework. Cole utilizes words, phrases, play on variations of words which captures my uneasiness with the need for categorizing writing styles, methodology, framework and theory.

<sup>19</sup> ICC, supra note 8 at Exhibit No. 2a

case claimed that the Colonial Government, and subsequently the Federal Government had a fiduciary obligation to the Band to protect the Band's settlements for its use and benefit, and the Federal Government was in breach of this obligation.

In addition, in this period, the Band filed the Williams Lake Graveyard Claim relating to the taking of several graveyards reserved for the Band by Indian Reserve Commissioner, Peter O'Reilly. This legal record is important to the development of this thesis because it tells the story of *St'exelceme* displacement from our lands. This displacement remains a serious transgression of Secwepemc law that has never been adequately acknowledged or addressed. In the legal record there is the oral history of several *St'exelceme* Elders who tell stories from their grandmothers and grandfathers time in the mid to late 1800's about the ejection from *St'exelceme* land.<sup>20</sup> This oral history will be transmitted with that of the Elder and Junior Elder participants in this thesis to pass on the knowledge to future *St'exelceme* and the world.

The creation of the St. Joseph's Residential School on *St'exelceme* lands added to the injustice of the displacement because the Oblates used the legal instruments of the state to obtain the land. Because the *St'exelceme* were pushed out of their main summer village by the settlers, the Oblates "permitted" the *St'exelceme* to settle on part of the Mission land. With the settlers and missionaries firmly entrenched on *St'exelceme* land, the colonial policy of civilizing and Christianizing the Indians had a firm foundation upon which to destroy the foundation of the *St'exelceme* and our world.

The traumatic experiences of the Elders who participated in this research is told in chapter 2 to acknowledge their pain and sorrows of being forcibly removed from their families. The Elders' stories tell of the disintegration of the family units and the safety of *St'exelceme* children, but more importantly, they reveal the *St'exelceme* resistance, resilience and survival. The Junior Elders' stories of family breakdown are acknowledged and, like the Elders stories, they speak to the survival of the *St'exelceme* as Indigenous Peoples. A brief overview of the history of child welfare will be told to set

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<sup>20</sup> ICC, supra note 8, Exhibit 12a to Exhibit 12d.

the context for the assault on the stability of *St'exelceme* children and families based on Eurocentric concepts of the best interests of children.

In chapter 3, I provide a narrative summary of the Elder and Junior Elders' interviews in response to how the *St'exelceme* historically kept children safe in the village. These stories are important in that they are the knowledge to be transmitted for the benefit of their *stsmémelt*, their children, and their *i7imts*, their grandchildren and for the future generations of *St'exelceme*. Furthermore, these stories contain important *St'exelceme* legal concepts and principles for keeping children safe who survived the imposition of state law.

In chapter 4, I provide an analysis of the *St'exelceme* legal concepts and principles in comparison with state legal principles and concepts to demonstrate that there are Indigenous legal orders like the *St'exelceme* legal order, which form a part of the 'law and legal order' in Canada. In chapter 4 I also discuss:

- Contemporary examples of the exercise of Secwepemc law in governance, which utilizes state legal instruments to maintain order and safety in the village (based on my experience as a former *Kukwpi7*, a former chief; and
- A case study of how one *St'exelceme* family exercised their authority in keeping members of children in their family safe.

I will conclude the thesis with a summary of what I have learned on this journey to revive and revitalize Secwepemc and *St'exelceme* law with respect to child safety.

## **1.5 Methodology**

### **1.5(a) Introduction**

The participants selected for the research project are people recognized by the *St'exelceme* as Elders and Junior Elders. Historically, people were considered an Elder if

they were of ‘old age’ meaning seventy years and more, and based on their personal reputation as someone who spoke the language and knew and practiced the culture, and was a hard worker. While there was much importance placed on speaking the language and practicing the culture, a person demonstrated their worthiness if they were seen to be a ‘hard worker’. Elder status has changed over the years partly due to the deaths of the older people at *T'exelc*, and partly due to the social and economic changes brought about by colonization, and the impacts of residential school. During my term as Chief, the Elders Council agreed that an Elder would be one who attained sixty (60) years of age for the purposes of accessing band government programs and services and other benefits.

Junior Elder status is recognized by the *St'exelcenc* as those people who are nearing Elder status but are still in training. The training is not formal in the sense of a formal or structured education but rather looked upon as a person who is continually learning and practicing the culture. The trait of being a ‘hard worker’ is also applied to these Junior Elders. Not every Junior Elder participant is fluent in *Secwepemctsin*, but many are either fluent, semi-fluent or beginning their journey of restoring their language. The status of an Elder or Junior Elder requires the person to behave in a respectful manner and be respectful of the people, the land, and all the resources within, under and above the land.

My original goal for participants in this research was six (6) Elders and four (4) Junior Elders, however, this changed as more *St'exelcenc* became aware of the project. In developing the criteria for this research project I became aware that the Elders I selected as participants were the last generation of *St'exelcenc*:

- Whose parents agreed upon an arranged marriage; and
- Who lived according to the ‘seasonal rounds’ where family units followed the seasonal cycle for harvesting the resources for their livelihood.

This is significant. The particular time period that these Elders were supposed to have married according to custom signalled an abrupt change in the laws, customs and

traditions. This is because not every Elder married according to custom. For some, this was a personal choice. For others, it was a family decision to change the custom. This occurred in the case of Elder #1, because her grandfather saw that the arranged marriages of his daughters were not working, so he would not permit the marriage. His decision changed the law to fit within his observation and can be interpreted as an act of family preservation, and an adaptation to the changing social organization of the *St'exelcenc*. The time period is also of significance because their seasonal rounds had been severely restricted by the mid-1940s because of settlement and confinement to reserve living and residential school. The Elders' speech and thought patterns were changed by the residential school experience so the translation of the laws, customs and traditions became corrupted by the English language and colonial thinking.

Criteria used for the selection of Elders was as follows: to be sixty (60) years old or older, fluent or semi-fluent in *Secwepemctsin* (and if semi-fluent, then active in reviving their language) as well as active in cultural activities. Being raised by a grandparent was not a necessary condition to be selected as an Elder; however, as the research progressed it became evident Elders not raised by the grandparents did not have the same degree of traditional knowledge of those who were raised by their grandparents. I strove for gender balance, but due to the demographics of the Elders and the availability of the Junior Elders, this was not entirely possible.

Criteria used for Junior Elders was as follows: to be fifty-nine (59) years old and younger, fluent or semi-fluent in *Secwepemctsin* (and if semi-fluent, then active in reviving their language), active in their cultural activities, and a necessary condition was they were raised by their grandparents. It became very evident the criteria that a Junior Elder be raised by grandparent(s) and fluent in *Secwepemctsin* were too restrictive for a Junior Elder to be included in the project. As the interview process began, Elders or Junior Elders recommended two other Junior Elders who carried a significant amount of traditional knowledge due to their upbringing, and they were included in the research project as a result. One Junior Elder was included due to her commitment to relearning *Secwepemctsin*, her commitment to learning to become 'human' again (what it means to

be a Secwepemc), and her formal education as a practicing social worker in the Northern Secwepemc communities. She also contributed much insight about child safety from a cultural perspective, and about child welfare practice based on provincial delegated powers and authorities. An interesting finding was that several of the Junior Elders lived according to the seasonal rounds in a limited way that was not as extensive as the Elders. The seasonal rounds the Junior Elders experienced, had been more severely limited by settlement of *T'exelc* territory, residential school, day school and employment off reserve, than during the Elder's lifetime.

Each participant was contacted by telephone or in person to request their participation and a considerable amount of time was spent reviewing the consent form (see [Appendix "B"](#)). I explained to the participants that prior to conducting the research I had the research project approved by the Human Research Ethics Board at the University of Victoria. I was also careful to explain the purpose of the research, the objective of the research, the method in which the research would be conducted, the research ethics and the potential uses of the research<sup>21</sup>. In *St'exelceme* custom it is proper to acknowledge the person who transmitted their knowledge; however, in this research project the participants preferred to remain anonymous. I explained I would maintain the participants' confidentiality and anonymity by using codes in place of their names, and where information might identify them I would change the identifying features or information but retain the original content of their information. I also explained complete confidentiality could not be guaranteed due to the small size of the *T'exelc* community.

The consent form was a rather lengthy and daunting form for the Elders to read and comprehend so they preferred to have me explain the details to them before they signed the form. To help resolve this challenge and assist the Elders I developed a point form

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<sup>21</sup> Martyn Denscombe, *The Good Research Guide for small-scale social research project* (Berkshire: Open University Press, 2008) at 143. Although the Elders and Junior Elders felt they could be easily identified by the information they provided their desire to remain anonymous was out of respect for those who might be affected by the information divulged. In essence, they did not want to harm anyone because of their decision to participate in the research but they also recognized their responsibility to transmit their knowledge.

summary of the consent form to use in the recruitment process. The majority of the Junior Elders were content to read the consent form themselves and sign off.

The interviews took place either in the participants' homes, or in my own home at *T'exelc*. The interviews were scheduled for two hour intervals, and in some cases, were dependent on the content of the information divulged. While there was much excitement about the research there were times when recollections became very emotional or tiring. The interview process was stopped either for the participant to collect themselves or to set another time to continue with the interview. A list of counselling and therapy resources, names and telephone numbers were presented to the participants at the beginning of the recruitment process. Each participant was also encouraged to contact their support person or spiritual advisor or me if they needed to further debrief the contents of the interview. I also asked each participant if I should follow up the interview with a telephone call as a check-in on the participant. The one thing I did not anticipate was the depth of the emotional impact on me. This required a period of rest after most interviews before any other work could be accomplished.

The participants were asked ten questions. They were informed that I might ask more questions during the interview to have a fuller understanding of the information provided, or to elicit more information based on their response. The participants were advised prior to each interview of the voluntary nature of their participation. If one chose to withdraw at any point their decision would be respected. They were told their information would be deleted from my computer and hard copy recordings of their information would be shredded and destroyed. If the participant wanted a hand copy of their interview for their family history I would also respect that request. If any of their information formed a part of the focus group record then that information would be deleted to the extent it was possible. The participants were also told that complete deletion of an Elders' contribution might not be possible due to the similarity and intertwining of life experiences, stories and memories.

As a prelude to the interview, each participant was asked to think about the laws, traditions, and customs of the Secwepemc with respect to child safety as they reflected about their lives. To obtain a sense of the family history and genealogy of each participant they were requested to begin the interview by speaking of the primary people who took care of them. The questions were designed to help the participant recall as far back into childhood as they could remember while they progressed to adulthood. The Elders generally spent a significant amount of time recalling their style of upbringing, their family connections, their roles and responsibilities in the family unit. They told their stories in a circular fashion as they wound back in reflection of how each stage of life prepared for them for their life journey. In comparison, the Junior Elders just got on with the interview in a quick fashion once they recounted who their parents were and who had the primary responsibility of raising them. It was only during the specific questions that they began ‘story-telling’ about their lives as they grew up. It was at this point that they made the links back to custom. Most interviews lasted two hours or more and the verification process took several meetings.

The data from the interviews was handwritten and later inputted onto a laptop computer. A couple of the Elders were computer literate and initially preferred to have their information e-mailed to them so they could verify the content themselves. These Elders wanted to make changes directly to the data, make notes for changes to the data, or confirm the information as recorded. However, those two Elder interviews were very long and so they asked me to review the data with them until they were satisfied with the content. The Junior Elders personally reviewed their information and made the changes and were generally satisfied with the data much sooner than the Elders. One Junior Elder preferred to have me review the material with her as she wanted to be able to practice conveying her thoughts by utilizing the language and then translating her thoughts into English.

Two focus groups were conducted of all the participants – the first of which was to inform them of my progress in the research, the challenges and successes encountered, and the preliminary findings; the second, was meant to further draw out the authority of

the child safety laws and any other insights the participants could relay based on the findings.<sup>22</sup> In the first focus group, I described the process by which I conducted and recorded the interviews, verified the information with the individual participants, and then began the laborious process of manually retrieved recurring themes of how *St'exelceme* cared for one another and how they shared this responsibility. This manual retrieval permitted me to become intimately knowledgeable of the contents of each interview. I was able to visualize the family connections, their activities on the land, their despair as some aspect of their families came undone and how they put them together again. This allowed me to better understand the deeply held convictions of Secwepemc beliefs about their world and how we are connected to it.

### **1.5(b) Methodological Academic Expectations**

What is my methodology? Who are my sources? What academic form does my research take? Where do my responsibilities lay with regard to ethics and legal professionalism?

As an Indigenous student in the masters program in the Faculty of Law at the University of Victoria I constantly struggled to understand the legal and theoretical concepts written by legal and social theorists like Foucault, Dworkin, and others. Likewise, I struggled to understand the meaning of legal methodology as it related to my research. Conceptually, it was easy to develop the framework of how this research was going to be conducted, who the participants were going to be, where the research was going to happen, and the ethical procedures around human research. The difficulty came with the requirement for me to describe my methodology that did not fit within the typical academic methodologies described in the reading materials. It was not difficult for me to describe the methodology I wanted to use, but found myself questioning whether people would ask me: "is this methodology legitimate?" I wondered if my research would be legitimate

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<sup>22</sup> I had a similar questionnaire to the one used to conduct the individual interviews but abandoned its use as repetitive. Instead the participants used the preliminary findings to further emphasize whatever was important to their contribution. For instance, Elder #1 recalled that in the 'old times' one could always connect the people to the land by their names. She said "The genealogy is in the land because they got their names by what the land looked like where they lived." (Focus group, September 24, 2009) This information then conveyed who could live on that land and use its resources and the family connections which permitted sharing the resources.

in the sense that “would the methodology be acceptable in the legal institution within which I am writing my thesis?” One might respond that the University of Victoria Faculty of Law is at the forefront of recognizing Indigenous legal orders through its preparation to develop the combined Bachelor of Indigenous Law degree so why worry about it? However, legal training does that to a person – it teaches you to ask the questions out loud which, perhaps, no one wants to ask.

### **1.5(c) Secwepemc Methodology**

So, begins the journey of this Secwepemc woman writing her thesis, and the best way to do this and describe it is through my world-view. When we, meaning the Secwepemc, begin a journey we often start out the journey with a prayer for safety and of thankfulness. Here is a prayer which could be said in *St'exelcenc* ceremony and cultural celebrations:

***Kukstéc-kuc Tquelt Kukpi7 te skectéc-kuc te tmicws-kuc.***

We thank you Creator for giving us this beautiful earth.

***Yucwminte xwexwéyt te stem ne7élye ne tmicw.***

Take care of everything on this earth.

***Yucwemente re qelmucw, re mesméscen,  
re spipyuy'e, re séwllkw, ell re stsillens-kuc.***

Take care of the people, the animals, the birds,  
the water, and our food.

***Knucwentec-kuc es yegwyegwt s-kuc.***

Help us to be strong.

***Kukstéc-kuc Tquelt Kukpi7 te skectéc-kuc  
Te xwexwé te stem.***

We thank you Creator for giving us  
Everything we need.<sup>23</sup>

This prayer can be preceded or followed by smudging oneself with the healing smoke of the sage. In my preparation, I used the powder of the sage as well as the cedar which is also known for its healing powers. As the primary researcher, I needed the strength, the understanding, the empathy, and the knowledge I would be acquiring from the participants to complete this journey. This prayer speaks to the nourishment of the mind and body and to our benefactor – *Tqelt Kukwpi7* – the Creator, or highest authority or chief. This thankfulness is not a one-off thing, to do as you remember it, but as a daily reminder that the *Tqelt Kukwpi7* has gifted one with another day to do our work on earth.

As important as this prayer is for the spirit, one must also do the physical preparation of the body to carry them through to the end of their journey, and the return. The Elders in this project spoke to me of the importance of eating the traditional foods, and drinking the *sxusem* (known as soapalallie) juice or swamp tea (known as Labrador tea) to keep my body and mind strong. As I carried out their instructions my memories kept going back to the childhood lessons I learned from my mother and the instructions I received from the oldest living citizen (“Elder Advisor”) in my village who was one of my primary advisors during my chieftainship. These memories led me to the understanding that my sources are my living sources – the Elders passed on and the Elders here today. When I go back to their words as I am struggling with *S'texelcenc* and Canadian legal concepts and legal theories it is the same as going back to general principles in common law when one is tackling a legal issue. I go back to their words for direction, instruction, and resolution. My responsibilities are to the words of those Elders and to keeping true to the direction, instruction and resolution of the dilemmas I face in writing this thesis, and to future generations who will benefit from this work.

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<sup>23</sup> Secwepemc News. “Secwepemc Prayer” (February, 2010), at 3. This prayer is written the way the Southern Secwepemc write and spell the words and phrases which differs in some respects from the Northern Secwepemc way.

For instance, Elder #5 spoke eloquently of how the laws were passed down with regard to responsibility for siblings when he recalled his mother saying in *Secwepemctsin* “are you listening?” His understanding was that it wasn’t just a question to be asked in thin air, but a test to see if the message was ingrained in his mind, and followed up by what he was to do with the information. In essence, once he took the siblings out of the natural care of his parents he became the parent with the parental responsibility to keep the children safe. He used the same test on me as I recorded his responses when he spoke in *Secwepemctsin*, and then translated the words into English for me (as I am not fluent). I would repeat the words back to him and explain what I understood him to mean. Sometimes we would have this back and forth conversation until he was satisfied and he would indicate with a satisfied nod and smile and say *re7 newi7 xepqenwéllen*, “you got it” as he pointed to his head. My responsibility then lies with staying true to the word, and to the commitment of the revival of the Secwepemc law, customs and traditions with respect to child safety.

I also told the participants that before I presented any part of the thesis or the thesis itself I would first present to them. I did this so they could hear their words before anyone else, and to give them an opportunity to correct me if I might misrepresent what they had said. In this way, the participants could hear the words they were transmitting and be satisfied their knowledge was being passed on for the benefit of children and families in the future. The knowledge was also transmitted on the land where their stories emanated. In the first focus group I reminded them of my commitment, and told them I had been invited to present at the Indigenous Child Welfare Conference in Victoria. When we concluded the session with the additional information they provided me Elder #5 told me “if they ask you who your authority is – you tell them, ”“we here’ are your authority” as he pointed to the participants sitting in a circle. His words are the endorsement given to me to transmit the knowledge I have gained in this work by the highest authority in my village of *T’exelec*.

Another dilemma that perplexed me was the perceived need to classify my writing into a specific academic discipline. Again, I came back to the question of ethics and to whom I

owe my responsibility. I recalled the Elder Advisor asking me “who gave them (the Ministry of Forests) the right to give out licenses to cut down the trees and to build roads into the meadows?” She said, “Do you see the *Qelmucw* going over to Europe cutting down trees and building roads?” In her mind, the *Qelmucw* owned the land and they had the right to say what happened on the land, and as Secwepemc law bids we do not trespass on another peoples land or make decisions about their land and resources. So, if I am saying the Secwepemc have laws with respect to child safety, that Secwepemc have a legal order and legal theory, that Secwepemc need to revive those laws in order to survive, then my responsibility lays with the Secwepemc. My place at this academic table means I cannot corrupt my worldview with categories and classifications constructed by the colonizers. This doesn’t mean I cannot draw on other legal orders, theories and concepts. However, it does mean my loyalty lies with the people who this research is about. My place at this table is to interpret and pass on the knowledge with respect to Secwepemc law.

This dilemma about ethics and responsibility brought me to another question about power imbalances within the research setting. Since I was a former *Kukwpi7*, chief, one could easily perceive a power imbalance if participants felt they were obligated to participate in the research. I recognized this possibility as I knew chiefs were authority figures and their decisions were the law once a decision was made in Secwepemc culture. When I broached this subject with the Elders their response was to point to my responsibility, my ethics, my professionalism and to remind me they placed trust in me to do the work as I described it to them. Just as I am not permitted to conduct my research outside the bounds of my Human Research Ethics application without amendment to it (if changes are required) – I am not permitted do the research in the village in any other way than as I described it to the participants, and for any other purpose other than the revival of our child safety laws. I am bound by Secwepemc law as it is translated in *Secwepemctsin*, *Tseq’yet te me7 sxilem* – it is as you have said now you will do as you promised. *Ta7 me7 te7 stsot* – you cannot back down from your word – to do the work and not to abuse the trust bestowed by the participants.

One particular aspect of the ensuring the safety of the participants almost always felt artificial as I ensured the participants had the contact numbers of counsellors or therapists in the event they required debriefing. The idea of a close friend, spiritual adviser or Elder they could call upon had more resonance with the participants. While a participant understood there may be a need to stop the process before they could continue either after a pause to reflect on the information being relayed, or on another day the idea of them not finishing the interview was unsettling. This led me to recall the times when the Elder Advisor was requested to join the natural resources team out on the land to collect information about the use of a particular area. She would automatically ask “when do you want me to go?” and if the response was “we have to get the information right away” she would get her coat and hat. More often than not she would be told “oh no, we don’t have to go until first thing in the morning” she would respond “you said right away, so we are going to do it right away, not tomorrow or the day after, right away”.

At one point during her interview Elder #11 was recalling a particularly emotional time in her life; and, as she related her information, a feeling of cool water washed down over me from the top of my head down my face, shoulders and upper body. My elder sister’s spirit immediately came to mind and I told Elder #11 “X is here”. This had the effect of halting the interview as she stopped talking. She had a wide open smile as she recalled “X, was my best friend, and she was the only one who would stand up to my husband. No one else could tell him anything, but she would stand up to him and tell him he was doing wrong”.<sup>24</sup> Elder #11 said that this was normally the time she would light a candle in honour of the ancestors, but since she didn’t have any at the time we took a few minutes to feel the depth of my sister’s presence as she comforted us both. This kind of exchange isn’t covered in any kind of formal academic methodology yet it is there as a holistic means of collecting oneself to finish the work at hand.

Another dilemma I considered was my fluency in *Secwepemctsin* and conducting the research without the aid of a fluent speaker. I spoke with an Elder on the *Spi7uy Sququluts Language and Culture Society* about my insecurities around my fluency in

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<sup>24</sup> This is a paraphrase of the Elder’s words as they were not included in her response to the questionnaire.

*Secwepemctsin*, and my ability to convey into English what was being said in *Secwepemctsin*. She thought about this for only a second and said “you, you have a different kind of knowledge, and you will be able to say what we want to say in English but can’t”.<sup>25</sup> So, where I sit as a lawyer, an Indigenous scholar, and a member of my community is not being stuck in the middle of two worlds. It is a powerful place to convey knowledge between these two worlds.

Again, the words of my mother came back to me when she spoke of helping others. She was emphatic that I was never to tell anyone to call on me if they ever needed help. My responsibility was to be alert to what needed to be done either through visual inspection of a situation (i.e., a wake at someone’s home) or through the spoken words of another who indicated they were going to garden, for instance. I would wash dishes, bring in water, pack in wood or start digging in the garden. Upon completing my task I was never to ask for payment and went on my way; and, if the individual I helped wanted to give me a gift or money at some point I was always to take it. This was especially so if the person was not ‘well off’ since to refuse payment was a strict taboo that caused harm to the individual and to my family.

In this research project the gift exchange took the form of an honorarium paid for the participants’ time, but more often than not, transmitting knowledge from one to the other. As the primary researcher, I explained to the participants the concept of law and they spoke to me in *Secwepemctsin*. Those who refused the honorarium contributed the money towards a feast to be held at the completion of the thesis to celebrate the revival of our child safety laws. Our combined responsibility is to bring the knowledge home in the minds of the individuals for whom it is meant and to pass it on for the generations to come. One of those individuals is my grandson who is of Secwepemc and *T’silhqot’in* descent. He is a constant reminder to me to be true in the words I write as an Indigenous legal scholar.

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<sup>25</sup> This is a paraphrase of the Elder’s words. She was not a research participant.

## 1.6 Summary

In this chapter I strove to describe how I utilized *St'exelcemic* custom to demonstrate a uniquely *St'exelcemic* methodology. This exercise was very important as I am writing this thesis on the basis that a Secwepemc legal order exists and with it concepts and principles that guide my research and writing. It is also important to understand that *T'exelc* is one community of 16 other communities within the Secwepemc Nation and there are linguistic difference between us as well as the distinct geographical and resources within our respective territories. The Secwepemc concept of law is drawn from the land – we say the ‘law is on the land’ because it is the lay of the land, what is on it, what is in it, what flows through it, and what flies above it that tell us how we live and order our lives.

I also drew comparisons between the human research ethical guidelines of the University of Victoria and *St'exelcemic* protocol to demonstrate the similarities for carrying out research in a respectful manner. I chose to abide by *St'exelcemic* protocol within my community and to guide me in this work while respecting the rigours of research methods of University of Victoria. On the day my grandson and his parents dropped me off to begin my second term he left two rocks on the steps of my travel trailer. Those two rocks signify to me the *St'exelcemic* laws, customs and traditions with respect to the child safety laws I am working to revitalize for revival of Secwepemc child welfare jurisdiction within the Secwepemc Nation. The rocks also symbolically represent the markers the

participants are helping me post as we make our way back to Secwepemc law.<sup>26</sup>

**Figure 1 Porch Rock**



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<sup>26</sup> Photo Credit, Dancing Water Sandy, March 4, 2010. My family are notorious rock collectors with stories of where each one was picked, who was with us when we picked them, what they mean to us, and they are always placed prominently in our homes.

## Chapter Two

### Secwepemc: St'exelcemic History

...A war with the white man will end in our destruction, but death in war is not so bad as death by starvation. The land on which my people lived for five hundred years was taken by a white man; he has piles of wheat and herds of cattle. We have nothing – not an acre. Another white man has enclosed the graves in which the ashes of our fathers rest, and we may live to see their bones turned over by his plough! ... Chief William, 1879

In the preceding chapter I described the goal of this thesis which is to identify, record and apply *St'exelcemic* laws, customs and traditions in the area of child safety in *T'exelc*. I stated the objectives of the research which is to utilize the Secwepemc laws, customs, and traditions to revive one area of self-governance jurisdiction which contributes to the foundation of a strong, healthy and progressive Secwepemc Nation. This work will assist in the future development of legislation which is the foundation upon which to develop children and family services for *T'exelc* (and other bands within the Secwepemc Nation). Secwepemc legal order exists and child safety legislation must be based upon Secwepemc laws, customs, and traditions for the Secwepemc to truly exercise self-government and attain self-determination.

This research grows out of the increasing pressure from Indigenous peoples on the federal and the provincial governments to implement recommendations from the Royal Commission on Aboriginal Peoples. The Commission said Indigenous peoples could move forward in certain areas of self-government without a full-fledged negotiated self-government agreement. This thesis is also born out of the shocking and disproportionately high numbers of Indigenous children in care. Federal and provincial government policy and legislation is creating another generation of traumatized Indigenous peoples and this must stop. Despite the best of intentions, the numbers of Indigenous children in care is more than twice the number of children attending residential school at the height of their operation.

Present policies include the federal delegation of their jurisdiction over Indians and lands reserved for Indians in the area of child welfare to the provincial government. Children and family service delegated agencies have been formed under the *Society Act of British Columbia*, to provide child welfare services to First Nations in British Columbia.<sup>27</sup> The federal government funds these agencies to service on-reserve First Nations pursuant to their policy Directive 20-1, and pay the province for off-reserve services to First Nations.<sup>28</sup> The high numbers of children in care is not only caused by social factors like poverty, lack of housing, and unemployment, it is also a result of these agencies exercising state-imposed powers and authorities. These powers and authorities are ‘delegated’ to us by the state to exercise, and they are not, in *T'exelc's* case, our powers and authorities exercised under Secwepemc and *St'exelcemic* law.

In order for the *T'exelc* and other bands within the Secwepemc Nation to exercise their own jurisdiction in the area of child safety they must comprehensively define their laws. They must do so in every aspect of their social organization. This revival requires that *St'exelcemic* understand their history. Such understanding must build from before the time of contact with European settlers and missionaries and beyond. We must learn from our part so we do not make the same mistakes of imposing what we believe is in our children's best interests onto another people.

The primary purpose of this chapter is to tell the story of how the *St'exelcemic* came to be at *T'exelc*. It tells of our difficult journey as landless people in our homeland. This

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<sup>27</sup> RSBC [1996] c.433; Knucwentwecw Society (“KS”) was formed at the direction of the Chiefs of the Cariboo Tribal Council in 1995 to provide delegated children and family services to the Canim Lake, Canoe Creek/Dog Creek, Deep Creek/Soda Creek and Williams Lake bands. KS is fully delegated which means they have achieved all levels of delegation permitted by the *Community, Family and Community Service Act*, supra note 17. This thesis was written in recognition of the limitations of provincial delegation of child welfare authority to KS and other First Nations delegated child and family agencies. I chose not to discuss the services of KS nor to determine, what if any Secwepemc culture, they have been able to incorporate into their services because of my interest in reviving the *St'exelcemic* child safety laws for the future development of *St'exelcemic* legislation that would replace provincial delegation.

<sup>28</sup> First Nations Children and Family Services Program. <http://www.ainc-inac.gc.ca/hb/sp/fncf/inex-eng.asp>. Retrieved March 10, 2011; First Nations child and Family Services –National Program Manual, Appendix A Program directive Chapter 5 Social Development PD.5.1[Program Directive 20-1], <http://www.ainc-inac.gc.ca/hb/sp/fncf/pubs/fnc/fnc-eng.asp#chp9>. Retrieved March 10, 2011. These agencies are working with provincial jurisdiction but from my experience the preference is to exercise the inherent jurisdiction of their First Nation.

chapter recounts our tenacious hold on our cultural and spiritual beliefs. The stories of Coyote and Old One, of settlers and colonizers, of the missionaries and child welfare specialists create the foundation upon which the *St'exelceme* can revive and recreate the Secwepemc Nation. At times the foundation seems like it is non-existent; at other times it is shaky, corrupt and blasphemous. Fortunately, these stories show that at their core the spiritual and cultural strength of the *St'exelceme* still exist. We have rights to exercise our spiritual beliefs and cultural practices. We have responsibilities to 'put things right' as the Old One does in the Secwepemc Creation story. The chapter will conclude with the lessons extracted from the Creation Story. This will be intertwined with *St'exelceme* history to reclaim, not only the rights we have as Indigenous peoples, but also the responsibilities that were stolen from us in the guise of the best interests of our children. These principles will lay another foundation for the retelling and reclaiming of our child safety laws in chapter three.

I will begin with the Secwepemc Creation Story because that is the first story of our history. It should be told to our children today and for generations so they know where they come from. It is the story that places us on our land, on our *Secwepemc'ulucw*, and it tells of how we must live our lives as good people, together with all living beings.

## 2.1 Secwepemc Creation Story<sup>29</sup>

The Secwepemc believed there was a mythological age in contrast to the present [circa

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<sup>29</sup> Teit, supra at note 10 at 595-597. I will be using the Secwepemc Creation Story as recorded by James Teit in the early 20<sup>th</sup> century as part of his ethnographic research for Franz Boas. I was disappointed to find that neither of the participants of this project recalled being told the Creation Story by their parents or grandparents. As a result, I was very reluctant to use a version recorded by a non-Secwepemc person, however, as I read more about James Teit I came to understand that he must have had the trust of the Secwepemc to be able to record such a rich body of work on the Secwepemc, their culture and their lands.

1900] when

[s]ome of the present features of the earth were made by transformers ... the people who inhabited the earth during the [mythological age] partook of the characteristics of both men and animals. They were called speta'kui. Some were cannibals.

At that period many kinds of animals, birds, and fishes, did not exist, nor many kinds of trees, plants, and berries. The earth was much troubled with great winds, fires, and floods.

In those days the Old-One, ... sent coyote to travel over the world and put it to rights. He was gifted with magical power beyond that of all the other mythological beings, and had great knowledge and cunning; yet often he proved himself to be selfish, lazy, and vain, doing many foolish and bad tricks. In fact, he was fond of amusing himself and playing tricks on other people. Nevertheless he did a great deal of work which benefited people, and did away with many evil beings. Although Coyote was a long time on earth and travelled all over it, yet he left much of his work undone. Probably his greatest work was the introducing of salmon into the rivers, and the making of fishing-places. All the best fishing-places on the large rivers were made by him. Another work that he accomplished was the creation of the seasons and of day and night. He did many wonderful things along North and South Thompson and Fraser Rivers, and all over the Shuswap country. When the time came for him to leave the earth, he disappeared, and no one knows where he went. It is certain that did not die; and it is expected that he will come back some day, and do wonders on earth again. Many Indians claim that Coyote disappeared towards the east, and that from that direction he will re-appear. ...

The Old-One was the chief of the ancient world, and finished the work of Coyote and other transformers, leaving the earth in the way we see it at present. He travelled in the form of an old man, but sometimes he changed his appearance. He was all powerful in magic, and always able to do what he took in hand. He never acted the fool, like Coyote. Whenever he played any tricks, they resulted in good. When he appeared, no one knew who he was; and he travelled rapidly over the country, performing much more work than Coyote, in much less time. He made transformations wherever he thought they were required. He flattened the land in some places, and raised it in other places. Where it was too dry, he made lakes; and where there was too much water, he made it dry. He put the sun and moon in their proper positions, and made rain and snow to fall at the proper seasons. Some say there was no rain in the world until he caused it to come. He also regulated the winds, telling them the proper

directions from which to blow, and when to be calm. He introduced trout into many of the streams and lakes, and ordered salmon to ascend new rivers. He made many new kinds of trees, bushes, and plants to grow in places where they were required. He introduced certain kinds of animals, such as the deer, elk, bear, and hare, and told them to multiply. Before that, they had lived all together in their own worlds, underneath the ground. He told the people to be respectful to them, use them properly, and not make them angry. At that time the people were all poor and foolish, and he taught them what kinds of animals, fishes, and roots to eat. He also taught them many methods of catching, procuring, and preserving the food, and how to make certain tools and weapons. He introduced sweat-bathing and smoking, and taught the people how to make baskets, snowshoes, and canoes. He transformed the remaining bad people into animals, birds, fishes, and rocks. Where he found too many people in one place, he told them to move, and live in other places. He led the different tribes into the countries which they now inhabit, and gave them the languages they were to speak.

The present Indian tribes are therefore descendants of the good people of the mythical period; but, as they were not all equally good, therefore we find some people better than others at the present day. When the Old-One finished his work, he disappeared towards the east, and no one knows what became of him. Some say he went to the sky, where he now watches the earth, and makes rain and snow; others think he became chief of the dead, and lives in the spirit-land, whence he sometimes sends messages. The Indian expect him to return some day, and make the world better even than it is. It is said, Coyote may precede or accompany him. Many boulders, rocks, and cliffs are pointed out as transformed people or animals of the mythological period.

Much of this story speaks to the gifts people are born with and how they use them. They have a choice about – whether they will use them for good or bad, just like Coyote, who is known to the *St'exelcenc* as the trickster. The creation story also tells of others, like the Old-One, who may be better equipped to complete the work at hand. These people can approach work with an ethic “to make things right” for the benefit of all beings. Our talents must be respected and we must ensure our knowledge is transmitted to our children. The Old One placed the *St'exelcenc* on *Secwepem'ulecw*; he gave us our language, our livelihood and the rules to live by. The Old One is known as the Creator, the *Tqeltk Kukwpi*<sup>7</sup>, the highest authority or chief, and guides our conduct with all of our

*kw'séltkten*, all our relatives. This knowledge led me to an analysis of the Creation Story utilizing the stories and memories of the participants which will be more fully discussed in chapter 4.

The next section will review the ethnographic record of the *St'exelceme* which James Teit conducted of the Secwepemc for the Jesup North Pacific Expedition in the summer and fall of 1900.<sup>30</sup> This occurred nine (9) years after the *St'exelceme* came to settle permanently at *T'exelc*. The map included in his study was the first map outlining the territories of the Secwepemc, which is between latitudes 50°, 30', and 53° north, and from the Fraser River to the Rocky Mountains. Three large rivers flow through the territories which include the Fraser, North Thompson, and South Thompson. (See [Appendix "C-2"](#))

Teit divided the Secwepemc Nation into six divisions including the: Fraser River Division, Canon Division, Lakes Division, Rocky Mountain Division, Shuswap Lake Division and the Bonaparte Division. The *St'exelceme* belong to the Fraser River Division as did the Alkali Lake Band, the Dog Creek and Canoe Creek Band, the Empire Valley Band, the Big Bar Band, the High Bar Band the Clinton Ban, the Riskie Creek Band, the North Cañon Band, South Cañon Band, and the Chilcotin Mouth Band. The people of the Canon Division virtually became extinct due to the smallpox epidemics of the 1860-62 and their members became absorbed into the Alkali Lake Band. Teit reported the people of Williams Lake lived in seven villages, and had ... other winter camps. They lived principally around Williams Lake, but some wintered along Fraser River ... to near Chimney Creek, and others up the San José valley to Lac la Hache.

Our names for ourselves as a people and as individuals come from the lands on which we are born. Teit recorded the Williams Lake or Sugar-Cane band was known as the "people of Skolā'ten" (Williams Lake), or "people of tka'kaike" which was a place near Williams

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<sup>30</sup> Teit, supra note 10.

Lake.<sup>31</sup> The principal village or headquarters of the Williams Lake band was called *Peltcoktcotci'tcen* in the Williams Lake valley, east of Fraser River, a short distance below the 150 mile post (from Lillooet), about 140 miles north of Ashcroft.<sup>32</sup> By the time Teit had begun his study the Indigenous peoples of the area would have been given 'legal names' which were recorded in the Department of Indian Affairs land registry. These names were usually English corruptions of the Secwepemc descriptions of ourselves or the name given us based on the name of a close by settlement. These settlements took on the names of the settlers who recorded preemptions and then obtained fee simple title.

According to an Elder, Agnes Anderson the original *St'exelcemic* village was situated in what is now the City of Williams Lake and the area is called *Yucwt*. The people also lived, fished and hunted in an area just north-west of the main village called *Pellki-yhey*, which is now known as Glendale. *Pellki-yhey* is the area where the original Chief William is buried along with the many who died from the smallpox epidemic 1860-1862. After being pushed out of *Yucwt* the St'exelcemic settled at *Seqwu'tcen* (which would later become the St. Joseph's Indian Residential School site).<sup>33</sup> Our main village known as the Williams Lake Indian Reserve No. 1, was called *Pell'tseqwtsitsen*. The name *T'exelc* has only taken precedence in the last 20 years; however, it is still a site located within the Williams Lake Indian Reserve by Highway 97 approximately 6 miles south-east of Williams Lake.<sup>34</sup>

*St'exelcemic* followed the resources in cycles known as the 'seasonal rounds'. In the winter time they gathered as family units in winter villages where a number of underground pit houses were constructed. Teit describes the pit house as being built to fit the lay of the land whether in a large or a small valley and in relation to the river. The pit

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<sup>31</sup> Teit, supra note 10 at 458. Teit used the phonetic spelling of the Secwepemc words. In this thesis I use the spelling and phonetics of Duetch linguist, Aert Kuipers who worked with Secwepemc Elders to develop the Secwepemc alphabet and language system.

<sup>32</sup> Teit, supra note 10 at 458.

<sup>33</sup> ICC, supra note 8, Transcript of Agnes Anderson, Exhibit 12d at 86.

<sup>34</sup> Ibid, Transcript of Felicia Wycotte, Exhibit 12d at.23.

house consisted of four living quarters described by the activity happening in each quarter.<sup>35</sup> These villages were always situated with close access to water and trails. In most instances a cache pit was built adjoining the pit house, to facilitate food storage. There is ample evidence of these underground homes and cache pits. They are visible today as inverted impressions on the ground. In the summer time family units would break up and travel to various parts of their territory. They would go to the Fraser River to harvest the salmon, hunt deer and gather berries and roots. They would also venture to the lakes and creeks where they would harvest trout and birch bark to make their baskets.

## 2.2 St'exelcenc Governance

The Secwepemc political organization included sub-chiefs whose responsibility lay with their expertise in war or the hunt. For example, there was one Hereditary Chief for each Band whose title was passed onto his most capable son. If there were two capable adult sons, the male relatives and the people chose one (and it was usually the elder son). The people announced the son as the Hereditary Chief and he gave a feast. The Hereditary Chief's son took precedence over everyone else. If there was no son to inherit the title then it would go to a grandson, failing a grandson a brother, and failing a brother then a nephew. If the son was a child upon the death of his father, then the deceased Hereditary Chiefs' brother held office until his own demise at which time the son became the Hereditary Chief. The Hereditary Chief was in office for life.<sup>36</sup> These sub-Chiefs, as well as other Elder men in the village, acted as advisors to the Hereditary Chief when decisions were to be made that would impact the people of the village.

For the purpose of this research, Hereditary Chief William, and his son William, referenced by the Elders and Junior Elders, are the first *St'exelcenc* chiefs to have

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<sup>35</sup> Teit, supra note 10 at 492.

<sup>36</sup> Teit, supra note 10 at 569.

contact with European explorers and missionaries.<sup>37</sup> During this period the *St'exelcenc* became entangled with colonial policy to civilize and Christianize the Indigenous Peoples of this country. Contact also led to the theft of lands and resources, and the breakdown of our social, political, economic and spiritual organization.<sup>38</sup>

For further context, this section provides a short history of the *St'exelcenc*, their territories, and the family structures. This section also describes how the *St'exelcenc* responded to and survived the changes brought about by:

1. The first settlers occupying their territory to exploit the resource;
2. The imposition of federal jurisdiction on their hereditary systems of governance;  
and
3. The residential school system and the exercise of provincial child welfare jurisdiction on reserve.

### **2.3 Stolen Lands – Or Is This Coyote Playing A Trick**

Instead of providing a chronological written history, I write about our 'past' history from the point of European contact to fashion a coherent narrative for future *St'exelcenc* to make sense of our world. In writing this thesis I want the *St'exelcenc* to be witness our own revival as a strong and healthy nation. This story affirms our attachment to the land which can never be extinguished.

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<sup>37</sup> Author unknown, *The History of the Sugar Cane Reserve And Its Chiefs*, undated. The hereditary lineage is as follows: the first Chief William, 1860-62; his son, Chief William, 1862-1897; Chief Tomahusket, 1884-1888; Chief Baptiste William, 1897-1917; Chief Tillion William, 1918-1927; Ol' Nelson, 1927-1928; Chief James Louie, 1928-1958. Ol' Nelson was not a full time chief as he acted in Chief Tillion William's place when the latter chief travelled on business; ICC, supra note 7 at 235. Chief James Louie was the stepson of Chief Baptiste Williams and was the last hereditary chief. When the *Indian Act* election system took effect these last two Hereditary Chiefs were voted in as the *Indian Act* chief; and thereafter, the hereditary system ended.

<sup>38</sup> There has been no land settlement with the Secwepemc Nation. The Northern Secwepemc have a draft agreement in principle in the BC Treaty Process, but have yet to formally vote on it for the agreement to proceed to the final agreement stage.

This part of the story begins with the first recorded *St'exelceme* contact with Catholic missionaries.<sup>39</sup> In 1842 Father Demers Modeste wrote to the Bishop of Montreal about the Indians at Williams Lake who 'have built house for several years.'<sup>40</sup> He noted that the old Chief William had lent him the use of his own home and had a chapel built in 1843 on the land.<sup>41</sup> A settler by the name of Davidson asked Chief William if he could build a cabin and plant a small garden on the same land in 1858. Chief William, being a kind and generous man, gave his consent. When he was offered money for the land he refused the twenty dollars. Davidson then registered a pre-emption to all of the land which Chief William and his people had lived on as their summer village. Thus began a series of pre-emptions and land transactions making Chief William and his people landless for the next two decades.

The colonization of British Columbia began with the Hudson Bay Company's exclusive license to trade with the Indians.<sup>42</sup> In Canada these areas came to include the colony of Vancouver Island, and later the mainland of British Columbia. The company was purportedly given proprietary rights to Vancouver Island for a nominal rent with a promise to establish a settlement or settlements on which to base residents from the United Kingdom and other Dominions. James Douglas, chief factor of the Hudson Bay Company became the Governor in 1851. Douglas began the practice of purchasing the Indian title to the land on Vancouver Island. This was based on colonial practice of divesting the Indians of the title to their lands in other British Commonwealth countries. He did this to avoid conflict. He wanted the peaceful settlement of the colony of Vancouver Island (and later of British Columbia). However, this policy was not

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<sup>39</sup> Teit, *supra* note 10 at 449. The Secwepemc were first visited by the employees of the Northwest Company, by Sir Alexander Mackenzie in 1793 and by Simon Fraser in 1808.

<sup>40</sup> ICC, *supra* note 8, FN, Ex2A, Doc 19, CAN, Ex3A, Doc 1. In this section I heavily relied upon the Williams Indian Band Specific Claim legal record to draft this historical overview. I will refer to the *St'exelceme* and other Indigenous Nations as "Indians" to reflect the colonial view of the original peoples in the chapter. Also see Mickenberg, *infra* note 37.

<sup>41</sup> *Ibid* at note 8.

<sup>42</sup> Peter A. Cumming and Neil H. Mickenberg, eds. *Native Rights In Canada*, 2nd edition. (Toronto: The Indian-Eskimo Association of Canada in association with General Publishing Co., Limited, 1980 Fifth printing) at 171.

consistently followed. This failure is the historical backdrop of aboriginal rights and title litigation of the late 20<sup>th</sup> century. First Nations lands were only purchased through a few isolated treaties on Vancouver Island. No other purchases in British Columbia were concluded due to the lack of funds from the Home Government who made it clear that it was the Colony's responsibility to collect the monies from settlement of the land.<sup>43</sup>

The Gold Rush of 1858 quickly changed the settlement pattern of the colonies as miners invaded the colony. The British asserted control of the mainland which became the colony of British Columbia. Governor Douglas resigned his position as chief factor with the Hudson Bay Company and was appointed Governor of both colonies. He was the colonial sole-law making authority in the region during the gold rush when there was a clash between miners and Indians on whose lands the miners had invaded. Douglas' attempts to compensate the Indians for their lands were met with bold action by unscrupulous settlers. These settlers took Indian lands without permission or tried to purchase them from the Indians. The cost of settlement prohibited the government from concluding any further agreements with the Indians. They decided not to enter treaties without any financial assistance from the Home Government, despite entreaties made by Douglas.<sup>44</sup>

Douglas' goal to treat the Indians fairly led to a policy of reserve creation.

Unfortunately, his instructions for laying out reserve lands led to inconsistencies in the amounts of land allotted. Informal methods for marking out reserve lands and for recording a pre-emption led to the Indian population being divested of vast territories. Douglas' attempts to have reserve lands set aside for Indians was soon overwhelmed by the sheer burden of governing such a huge land base. Unfortunately, the ten acres per family allotted underlying reserve creation was negligible, considering the 160 acres

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<sup>43</sup> Ibid at 178.

<sup>44</sup> Ibid at 180-181. After Governor Douglas' retirement and the appointment of Sir Joseph W. Trutch as Chief Commissioner of Lands and Works the colonial policy of divesting Indian title changed drastically. Trutch wrote in a letter to the Acting Colonial Secretary the Indians had little use of the lands and really no claim or rights to the lands. Thereafter, the colonial government acted as if the reserve allotments were fair and liberal settlement of the Indians claims. Joseph W. Trutch letter to Acting Colonial Secretary, ICC, supra 7, CAN, Ex 3A, Appendix D. Doc D-1.

available for pre-emption by single non-Indigenous person in British Columbia beginning in 1860.<sup>45</sup>

The Indigenous Peoples in British Columbia would become politically active utilizing the services of non-Indian advocates to advance their cause.<sup>46</sup> Deputations happened provincially, nationally and internationally as chiefs took their petitions to England seeking redress for the theft of their lands. But, before that occurred Indigenous Peoples like the *St'exelceme* were displaced from their territories by settlers using pre-emption rights to take up the most valuable of lands. *St'exelceme* always settled on major waterways and picked the most suitable lands for their summer and winter settlements. They were soon pushed out by settlers recording a pre-emption. To add to this insult, the land legislation in 1870 prohibited the right of pre-emption to the Aborigines without permission in writing of the Governor (later legislation would also deny the Chinese the right to pre-empt as well).<sup>47</sup>

By 1861 the *St'exelceme* were in desperation as the salmon fishery had failed that year, as noted by Phillip A. Nind, Gold Commissioner.<sup>48</sup> Nind reported he had to provide the Indians relief in the form of 'cheapest diet I could obtain' and sought instruction about making a reserve for the Indians of Williams Lake. Nind, as a Gold Commissioner ought to have been aware of Indian settlements being exempt from pre-emption. Yet he lived in a home upon lands that had been unlawfully pre-empted. He was informed the land in the District was not included in any official survey and could not be conveyed by deed

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<sup>45</sup> ICC, supra note 8, Proclamation No. 15, 4 January, 1860, ss. 1-2, Ex.6b, p.2; Proclamation No. 21, 17 August 1861, ss.3-4, Ex. 6c, p.2. The confusion about the amount of land to be allotted and the fury of the Indians led to the McKenna-McBride Commission in 1913. The Commission consisted of five members who were responsible to adjust the acreage of Indian reserve lands. The Indians were outraged with the final report that recommended decreasing the size of some existing reserves by 47,000 acres and conveying 87,000 acres of other lands to the Indians. The Indians felt unjustly treated since they believed lands of little value were conveyed to the Indians where lands of greater value were made available to the whites. I relied on this work in the development of the *St'exelceme* historical overview.

<sup>46</sup> Teit, supra note 47.

<sup>47</sup> ICC, supra note 8, No. 144 An ordinance to amend and consolidate the Laws Affecting Crown Lands in British Columbia, ss.3, 1 June 1870, Ex. No. 6g.

<sup>48</sup> ICC, supra note 7. Letter from Phillip A. Nind, Gold Commissioner to Charles Good, Acting Colonial Secretary, 4 May 1861, FN, Ex.2A, Doc 20, CAN, Ex3A, Doc 2.

and was directed to lay out a reserve of 400 or 500 acres for the use of the Natives.<sup>49</sup> He did not do this and the illegal pre-emption permitted continuous settlement. The smallpox epidemics of 1860-62 decimated *T'exelc* population by about 50%. My Elder Advisor recalled being told “people died right there in their *c7istkten* and “they just buried them right there – altogether – just covered ‘em all up”.<sup>50</sup>

The Catholic priests in 1867 also pre-empted land what is known as the San Jose Valley. They ‘permitted’ Chief William and the people to use some of the missionary pre-emption for a settlement. By accepting the priests offer to settle on the pre-emption, Chief William and his people were heavily influenced by the teachings of the Catholic Church (which in addition to the theft of the land) would change their social and political organization.

In 1879, a settler by the name of William Meason wrote to Commissioner Gilbert Sproat that:

The chief of this tribe has just requested me – in the most formal manner to write you and say,

1. That unless you come up and give them land on or before two (2) moons from date – we may look out for trouble.
2. That his tribe has nothing to eat; in consequence of their having no land on which to raise crops.
3. That their horses & cattle have many of them died this winter because they had no place of their own on which to cut hay last summer.<sup>51</sup>

Meason also warned that the Indians were threatening to take by force the lands which had been taken from them by pre-emption in 1861. Meason was one of the many white advocates writing to the government on *St'exelceme* and other Indians behalf.<sup>52</sup>

<sup>49</sup> Ibid, Letter from Charles Good to Philip A. Nind, 10 June 1861, FN, Ex2A, Doc 21; CAN, Ex 3A, Doc 3.

<sup>50</sup> Teit, supra note 8 at 464. Teit estimated the population of the Williams Lake Indians in 1850 at 350 and by 1906 it was 155. This Elder Advisor was one of the Elders Committee who provided advice to the Band Council during my terms as Chief of the Williams Lake Indian Band.

<sup>51</sup> ICC, supra note 7. Letter from Laing-Meason, William, Justice of the Peace to Sproat, Gilbert Malcolm, Indian Land Commissioner, 7 March 1879, FN Ex 2a, Doc 22; CAN, Ex 2A, Doc 5.

<sup>52</sup> Wendy Wickwire, “They Wanted ... Me to Help Them”: James A. Teit and the Challenge of Ethnography in the boasian Era”. *With Good Intentions: Euro-Canadian & Aboriginal Relations in Colonial Canada*,

Chief William wrote a letter which was published in the British Daily Colonist in November, 1849 stating:

I am Indian chief and my people are threatened by starvation. The white men have taken all the land all the fish. A vast country was ours. It is all gone. The noise of the threshing machine and the wagon has frightened the deer and the beaver. We have nothing to eat. My people are sick. My young men are angry. All the Indians from Canoe Creek to the headwaters of the Fraser say 'William is an old women, he sleeps and starves in silence. I am old and feeble and my authority diminishes every day. I am sorely puzzled. I do not know what to say next week when the chiefs are assembled in council. A war with the white man will end in our destruction, but death in war is not so bad as death by starvation. The land on which my people lived for five hundred years was taken by a white man; he has piles of wheat and herds of cattle. We have nothing – not an acre. Another white man has enclosed the graves in which the ashes of our fathers rest, and we may live to see their bones turned over by his plough! Any white man can take three hundred and twenty acres of our land and the Indian dare not touch an acre. Her majesty sent me a coat, two ploughs and some turnip seed. The coat will not keep away the hunger, the ploughs are idle and the seed is useless because we have no land. All my people are willing to work because they know they must work like the white man or die. They work for the white man. Mr. Bates was a good friend. He would not have a white man if he could get an Indian. My young men can plough and now and cut corn with a cradle. Now, what I want to say is this – there will be trouble sure. The whites have taken all the salmon and all the land and my people will not starve in peace. Good friends to the Indians say that her Majesty loves her Indian subjects and will do justice. Justice is no use for a dead Indian. They say 'Mr. Sproat is coming to give you land.' We hear he is a very good man, but he has no horse. He was at Hope last June and he has not yet arrived here. Her Majesty ought to give him a horse and let justice come fast to the starving Indians. Land, land, a little of our land, that is all we ask from her Majesty. If we had the deer and the salmon we could live by hunting and fishing. We have nothing now and here comes the cold and the snow. Maybe the white man can live on snow. We can make fires to make

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eds. Celia Haig-Brown & David A. Nock. (UBC Press, Vancouver, BC) chapter 12, pp 297-320. Wickwire, Wendy. 'We shall drink from the stream and so shall you': James A. Teit and native resistance in British Columbia, 1908-22, *The Canadian Historical Review*, North York: Jun 1990=8, vol. 79, Iss, 2, pg. 199 retrieved on October 14, 2010 from <http://proquest.umi.com.ezproxy.library.ubc.ca/pqdlink?index=2&sid=1&srchmode=#&...> Retrieved October 24, 2010. James Teit was very active in the political activities of the Interior of British Columbia as a translator, scribe and lobbyist.

people warm – that is what we can do. Wood will burn. We are not stones. William, Chief of the Williams Lake Indians.<sup>53</sup>

This letter encapsulates the utter devastation and helpless feeling of being subjected to begging for a piece of your own land. It is a part of *St'exelcenc* history I call the sorrow story. 150 years later the insult is still fresh in the minds of the *St'exelcenc*. The theft of our lands was a serious transgression by the settlers and the power of *St'exelcenc*. Authority to ask for redress was not available to right the wrong until the 21<sup>st</sup> century. The letter also caused fears of an uprising if the *St'exelcenc* did not have a reserve marked out for them.

Those fears were well-founded and as evidenced by the story of *Sel'pitse7e*. He along with two other men were fighting to regain ownership of our lands when they killed a man. The two men were hung but *Sel'pitse7e* made it to run away. Elder Clothilde Thomas recalled that *Sel'pitse7e* got away and the police could not catch him because when they were close he would transform himself:

CT: ...Sel'pits'se7, Sel'pits'se7 got away for 11 years. For 11 years they say they couldn't catch him. When they just about catch him, just about catch him, he disappeared, he disappears and come behind a tree and climb up, a squirrel and his horse, in a hole a squirrel too.

JW: He must have been powerful?

CT: Yes, every time he make them polices, just about get him. He would disappear. Right there. And maybe a porcupine and his horse will be something else. He was gone for 11 years. He just made the police try and catch him and he would disappear and turn himself into something. He would climb up a tree and turn into something else. He would go behind those polices. Turn himself into something. Into something else himself. He done this for 11 years. He gave himself up. He told them you do whatever you want to do with me. What are you going to do with

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<sup>53</sup> ICC, supra note 7. FN, Ex 2A, Doc. 23, CAN, Ex 3A, Doc 6. During my term as Chief of *T'exelc* development was occurring to extend a mobile home tract close to where Chief Williams had his cabin. During the land preparation human remains were unearthed and Chief Williams' prediction that 'we may live to see their bones turned over by his plough' came true 150 years later. There has been much controversy over the years as to exactly where Chief William was buried. The actual site has never been formally marked.

me. He wanted to know what they were to do with him. Old Pet'al was the one turning himself into something. The cops told him I guess you win you name. I guess you win your name. You are a Chief. We can't do nothing with you. We call you Chief. They called Old Pet'al Chief. Because they couldn't do anything with him. ... After 11 years not long after that Old Pet'al went blind. For 11 years he lived all over the place. Sel'[pits'e7]. Blind. He was an Indian doctor for 11 years he was in the mountains. Indian doctor he was called. You know them Indian doctors. They couldn't do anything with that old Chief.<sup>54</sup>

On another occasion when the police almost caught *Sel'pitse7e* the Elder, Clothilde Thomas said:

... when he knew they were almost catching up with him. Se[pitse7] he climbed up on to a tree and he made himself into a crow. And his horse, a buckskin, sat beside him on the branch. The policemen were going by, he was on a tree, Se[pitse7]. As a crow. And he was crowing, Se[pitse7]. The policemen didn't think it was Sepitse7. No. Thinks its just a crow. When the policemen passed, that's when he got down.<sup>55</sup>

The federal government and provincial government blamed each other for not setting aside reserve lands for the *St'exelcenc*, but eventually, in 1881 the federal government purchased the land of one A.S. Bates, who died intestate. The Bates pre-emption became the *St'exelcenc* main village of *T'exelc* at the southeast end of Williams Lake.

Lily Alphonse in a visit with other ladies at *T'exelc* talked about the settlement at the Mission and the graves of the people buried there. She recalled a lady by the name of Ole Jeannie telling her

... your mother was 1 year old when people moved from the Mission. Your mother was just starting to walk. When his daddy came, they packed everything on the pack horses, move with the pack horses, them Indians. No wagons. ...

<sup>54</sup> ICC, supra note 7. Transcript of Clothilde Thomas, Exhibit 12d, at 74. In the text of the thesis I use the current spelling of *Sel'pitse7e*. The spelling of *Sel'pitse7e* in the text of the quote is how it was written in the transcript and the person is one and the same.

<sup>55</sup> Ibid at 91.

That's when the Indians moved here to stay in Sugar Cane. That's when the government loaned the place and then they lost it after. Lost out on it government won that place and they made a school there. Started it was the first school in here. And he said, and they started to school over there.<sup>56</sup>

In 1895, a church was built at *T'exelc* which meant religious observance was practiced in accordance with the Roman Catholic routine, with prayers in the morning and evening. There was mass on Sundays and on specific Catholic holy days. These holy days included ceremonies of matrimony and indoctrination and acceptance into the church. Despite this religious invasion Clothilde Thomas spoke of the power of vision questing when she told the story of *Sel'pit'se7e* and explained

... You know them Indian doctors. They couldn't do anything with that old Chief. ... You can try it, you sleep outside, you'll dream about something, when you dream it will come and tell you what you are going to do. You got to do it. I can do that now. I'll do that. ... You bathe, if you bath, ... 3 times a day for 4 days. Go to sleep beside a creek or where ever you are going to swim. By the water. Its called the "body of water" That a body. You know the water. You know that water. Its been running since the very beginning of time. That's the first thing the Creator let go. That will run till the end of the world. That a body. If you lay by the creek, wherever you are going to do your vision questing. That creek or whatever, you want to go and vision quest. The creek river, lake... but the priest said, because we are Catholic, don't believe it. We can't help it, it comes true. When you dream. They tell us not to dream about it. We can't help it. That's the Indian style. I can go and dream like that. I dream before. I know. When my father was alive he chased me to go and bathe. I'll bathe. Where am I going to bathe? I'll go bathe in that body of water. ... It's the body of water that's running down there. Some kind of a body. I'm telling what it is. It's the body running. It will run and run till the end of time. Since, God made the water, running. Its still there. Its got to stay there. God made it to run. Look at all the oceans, body. You can dream about that. You can dream about that. I know I did that myself.<sup>57</sup>

Elder #1 (as well as Elder #3) remembered all the spots along the San Jose River and Borland Creek (both tributaries) which flow through the *T'exelc* where each family had

<sup>56</sup> Ibid. Transcript of Lily Alphonse, Exhibit 12d at 60

<sup>57</sup> Ibid. Transcript of Clothilde Thomas, Exhibit 12d at 75.

their sweat lodges. She remembered the men going into their own ‘sweats’ while the women went into their own. This practice was mainly for cleanliness as only certain people performed ‘purification’ rituals and were recognized as *t’ekwiltc* or Indian doctors. The sweat lodges were active until the residential school system began to interfere with the seasonal rounds and social life of the *St’excelcenc*. From Elder #1’s recollection, the *St’excelcenc* still practiced their spiritual beliefs which cleansed their minds and bodies as they had prior to contact despite the intrusion and/or acceptance of the Catholic religion.

The anguish of being displaced from their lands is a sorrowful story that has been passed on down from one generation to the next. Elder Charlie Gilbert said, in his evidence before the Indian Claims Commission, about his knowledge of the creation of ‘reserve’ land and the meaning of the word “pre-emption” as it related to *St’excelcenc* history:

The reason why I couldn’t answer some of your questions was that I did not hear directly from a lot of the ancestors something like pre-emption – questions drawing pre-emption as different as I know of it today. ...

But the thing is, you’re talking to a traditional ancestral imprint, Shuswap imprint from back in 1938, very traditional, very ancestral. Quite staunch in that belief [that the land had been stolen from us]. ...<sup>58</sup>

The confusion or lack of knowledge as to how the *St’excelcenc* lost their land is a partial explanation for much of the apathy that exists in our village today as a symptom of the trauma of having our homeland and resources stolen from us.

## 2.4 Indian Act Governance

In *T’exelc*’s history the hereditary lineage of the chiefs is confusing. For certain there are two Chief Williams: the first, being the one who gave his permission for Father Demers to live in his cabin and build a church on land; the second, being Chief Williams’s son who wrote the letter to the British Daily Colonist about his people’s plight. This is

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<sup>58</sup> Ibid. Exhibit 5a at 284.

certain but then an adoption occurred to blur the lines. Chief Baptiste William is the son of the second Chief William, and he married a woman from Soda Creek who brought with her a son, James Louie. When Chief Baptiste William passed on his son Eugene Jack did not want to be the next hereditary chief so his younger brother Atrion ‘Tillion’ William became the chief. Upon Tillion’s death, the adopted son, James Louie became the last Hereditary Chief for *T’exelc*. Chief James Louie was chief from 1928 until 1958 and witnessed and participated in the transition of traditional governance to *Indian Act* governance. The hereditary lineage discontinued after the election of Chief Felix Bob in 1958, and *T’exelc* chiefs since have been elected pursuant to the *Indian Act*.<sup>59</sup>

Chief James Louie would have seen the changes that were coming over his people as they were confined first to the reserve, and then to the residential school for much of their young lives. He would have witnessed the beginning of the dependency created by federal government policy as the Indian Agent imposed his counsel in the conduct of band meetings. He would have also witnessed the post traumatic stress of the *T’exelc* men who served in World War I and came home without the recognition extended to other war veterans. He would have witnessed the post traumatic stress of residential school that demoralized the men’s position at *St’exelcenc*, and the damage to their family unit.

## **2.5 St’exelcenc at the Mission**

The St. Joseph’s Indian Residential School was established in 1891 by the French order of the Roman Catholic Church, the Oblates of Mary Immaculate (“the Oblates”), and is known as the “Mission”. The Mission is located four miles southwest of *T’exelc* deep in the San Jose Valley. To get there one would travel east on highway 97 for eight miles and turn left at the Mission Road heading south for another four miles. Today there are none of the original buildings from the time the Roman Catholic purchased the initial farm in 1867. The Oblates purchased adjoining farms and pre-empted land so the

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<sup>59</sup> Author unknown, supra note 37.

Mission came to encompass a very large farm. This farm permitted the Mission to be self-supporting with the assistance of the students in residence and other farm labourers. In addition to the separate residences for the boys and girls there were the farm building and chapel that required year-round maintenance.<sup>60</sup>

The federal government and the Oblates entered into an agreement whereby the government would pay per capita for each child that was educated by the Oblates and their missionaries. All *T'exelc* children six years and older were taken from their homes to attend the Mission for ten months of the year. Children from the surrounding villages of the *T'silhqot'in* and Carrier Nations were also enrolled there in addition to children from the *N'lkapmux* Nation. An amendment to the *Indian Act* of 1894 forced Indian children to attend residential school, and imposed fines and imprisonment for parents who did not send or permit the children to attend the school.<sup>61</sup>

The time period the Elders and Junior Elder participants attended the Mission was between the mid-1940s until the Mission closed in 1981. Some of the Elders' parents or uncles were coming home after serving in World War II (1939-1945). These men were changed by that experience and usually never spoke of their war time experience. Alcohol was also permitted on reserve in the 1960s. Its use became a way of 'coping' with the many challenges we faced. It eventually turned to addictions and the subsequent destructive and abusive behaviours. The amendment to the *Indian Act* of 1951<sup>62</sup> permitted provincial laws of general application to apply on reserve, and led to what is known as the "Sixties Scoop". In some cases children in British Columbia were taken by the busload off reserve due to white social workers belief they were in need of protection. In the best of times, people have difficulties coping with stressful situations, but the *St'exelcenc* were not ordinary people with ordinary life stresses. First, we were displaced from our lands and resources; second, our traditional governance was usurped

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<sup>60</sup> Furniss, *infra* note 63; Margaret Whitehead, *The Cariboo Mission: A History of the Oblates* (Victoria: Sono Nis Press, 1981). I've relied extensively on these sources for the overview on the Mission.

<sup>61</sup> An Act to further amend "The Indian Act," SC 1894, c.32 [Indian Act, 1984]; *infra*, Furniss at 12.

<sup>62</sup> The Indian Act, SC 1951, c.29 [Indian Act, 1951].

by colonial legislation; third, our children were held in custody at the Mission; and fourth, our children were apprehended and adopted out from our communities by the child welfare system. All this happened within the span of approximately 150 years.

There has been much written about the devastating impacts of every aspect of Indigenous peoples lives, and in general, the writings have captured what the *St'exelcenc* have experienced. The physical, sexual, mental and spiritual abuse has been well documented.<sup>63</sup> Cultural genocide is not a harsh phrase to describe the civilizing and Christianizing policy of the Canadian government. Genocide may be a harsh term for those who believe in what Roland Chrisjohn, *et al.*, refer to as the 'standard account', whereby the government policy was meant for the best interests of the Indians to civilize, Christianize and educate them.<sup>64</sup> This account relays where there may have been incidences of abuse those were unfortunate and the apathy, violence, family breakdown, cultural and spiritual degradation, loss of language and identity are what the Indians themselves have passed on from one generation to the next. These symptoms so says the standard account is the syndrome from which Indians must work to heal.

On the other hand, this standard account is a 'pernicious, misleading, and immoral myth' which is interconnected with other myths like *terra nullius* and the sovereignty of the Crown. The rationalization held within the standard account is used to justify the immoral and illegal acts to colonize the Indians for the benefit of the colonizer, not the colonized. What happened, in fact, was confinement in prison conditions, starvation,

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<sup>63</sup> Infra, Furniss; Haig-Brown, Celia, *Resistance and Renewal: Surviving the Indian Residential School* (Vancouver: Arsenal Pulp Press, 1988); Nuu-Chah-Nulth Tribal Council, *Indian Residential Schools: The Nuu-Chah-Nulth Experience* (Port Alberni: Nuu-Chah-Nulth Tribal Council, 1996).

<sup>64</sup> Roland Chrisjohn, Sherri Young, and Michael Maraun, *The Circle Game: Shadows and Substance in the Indian Residential School Experience in Canada* (Penticton: Theytus Books, 1997) at 40-60. Chrisjohn, *et al.*, refer to the definition of genocide in Article II, ss.(b) to (e) of The United Nations Genocide Convention to assert the creation and operation of Residential Schools was and continues to be nothing short of genocide.

brainwashing in English and religious dogma, and verbal, psychological and physical violence against children. These multiple abuses have resulted in colonial and current government intervention designed to educate, heal, and govern communities of people in ways promoted by that government and their social, economic and political institutions.

Two explicit examples of these interventions happened after the conclusion of the Royal Commission on Aboriginal Peoples: the *First Nations Governance Act*, which more or less would have legislated how First Nations were to govern themselves according to federal government design; and the Aboriginal Healing Foundation which would not fund language initiatives and provided time-limited healing strategies. The challenge for *St'exelcenc* and Indigenous Peoples of Canada is to take advantage of these limited opportunities to launch a new memory in the minds of their children. This research is about utilizing the legal institution to push an agenda that is based on *St'exelcenc* experience and knowledge of their laws, customs and traditions to exercise their right of self-government and self-determination as Indigenous Peoples.

In this research all of the Elders and one Junior Elder attended the Mission. The Junior Elder was sent to the Mission as a teenager after her adoptive parents could no longer care for her. Her experience was similar to the Elders' but not in all respect due to the her age when she went to the Mission, the time period, and the length of time she spent there. All of their parents, and usually one of their grandparents, attended the Mission. It was very important for the Elders and Junior Elders to speak of their residential school experience and its effects on them because of the impacts on every aspect of their lives.

It was unnecessary and unwise to delve further than each of them felt comfortable. I respected their right to present information at their comfort level. For example, some of the Elders described a 'black out' where they remember only some parts of being taken to or arriving at the Mission. For others, they remembered too much. Either it was too painful to speak about or the anger was overwhelming.

Upon arrival at the residential school the Elders as children were deloused, had their hair roughly cut in a page boy fashion, were given a number and a uniform with their number written on it to wear. The Elders' grandparents would have been given an English name along with their number.<sup>65</sup> The children were separated into age groups as juniors, intermediates and seniors and put in their respective dormitories. In these dormitories were rows upon rows of single cots where the children slept. Each morning after their morning prayers and breakfast the children received a basic education. After lunchtime, they attended to all facets of the farm operation. The food they ate was foreign and unappetizing. The boys did all the farm labour while the girls did the cooking, cleaning, laundry and sewing. This daily routine took place for ten months of the year, and some children who were unable to return home because it was so far away, never went home until they completed their 'time' at the Mission.

When the children did return home for the summer months, their prior life in the home and on the land with their parents often ceased to exist. Surely, they might have carried on the same activities of the seasonal round, but these activities were now distorted by what was ingrained in them at the Mission. Rebellion in the form of violence and self-destruction was a common mode of survival while for others it was the continuous immersion in the Catholic faith which sustained them. Either way, looking back on their Secwepemc world in this research has provided them a perspective for the possibilities of reviving their birthright as Secwepemc in the 21<sup>st</sup> century.

Upon review of the data it became clear the Elders and Junior Elders suffered four major traumas as children separated from their parents or grandparents which have had lifetime

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<sup>65</sup> *Beyond the Shadows*, 1992, VHS. (Williams Lake, British Columbia: Cariboo Tribal Council, 1992). *Beyond the Shadows* is a 28 minute documentary of the personal experiences of Northern Secwepemc who attended the Mission and the physical and sexual abuses they suffered. The documentary relates the historical background of the Canadian government mandated schools and those who were confined in them. The documentary also contains segments of the first Residential School conference held in Vancouver, British Columbia in June, 1991. Those segments contain clips of workshops held at the conference to provide tools for the survivors to help them with their 'multi-generational' grief; Jean E. Speare, *The Days of Augusta*. (Vancouver: J.J. Douglas Ltd. 1973) at 18-19. This book is a collection of stories told by Mary Augusta Tappage who was born in 1888 at Soda Creek, British Columbia. She was 87 at the time the book was published and it is one of the first published books that talks about daily life at the Mission. She is related to people at *T'exelc*.

effects. I honour and pay the highest respect to the Elders and Junior Elders for telling these stories and their desire to revive and revitalize the *St'exelcenc* laws that kept our children safe:

**First and foremost**, the children were severely traumatized by the experience of being wrenched away from their parents or grandparents and did not understand why they had to leave home or where they going.

**Second**, the children suffered brutal psychological assault because they had to communicate in English – which none of them spoke.

**Third**, the children were provided foreign education and foreign religious instruction at odds with what they had learned growing up on the land.

**Fourth**, the children experienced verbal, mental, physical and sexual abuse by Roman Catholic clergy who were overseeing their ‘civilization’ and Christianizing.

The Elders’ stories of residential school will be acknowledged below to describe the damaging effects of their traumatic experiences and the corruptive influence of Eurocentric values and catholic teachings on the *St'exelcenc* child safety laws:

**2.5(a) Children who were severely traumatized by the experience of being wrenched away from their parents or grandparents and did not understand why they had to leave home or where they going**

When Elders as children were brought to or dropped off at the Mission they did not understand why they were being taken there and left behind. Nor did they understand why their parents did not fight to keep them at home. Elder #1 described the trauma of being separated from her grandparents as follows:

I had no inclination I was going to the Mission. I remember the day before I went there we went to town and my grandfather got me the

clothes I needed like my shoes, and my grandmother made my dress and underwear and they told me I would be going to the Mission. And, the only time I knew I wouldn't be coming back was when she started to cry. My grandfather got up in the middle of the night and made fire, they never slept, granny never slept. I never realized they were taking me to leave me there. It was peculiar because they never rested that night. I remember my grandmother getting me up and telling me "bring your shoes" and she put on my shoes for me. When they left me and then I blacked out and I don't remember. I guess I was raised to not show my emotions. I don't remember crying for anything in my young life even when I broke my collar bone. I just remembered that I couldn't lie down and my grandmother asked me why. I told her my shoulder hurt. I guess I sat up all night. There was a sliding accident on a bob sleigh.

I remember them in their wagon going around the first bend. I remember a little bit. But then I had lots of cousins there already. After that I was the first student there every year and I used to get prizes every year for that. I got special treatment from the nuns like cookies or juice and I got to look around. But then as soon as the other students came I had to go with the others. I don't remember, I remember a few things, it was so traumatic I don't even want to remember because I had lived a very family oriented life.<sup>66</sup>

The children were separated by gender and slept and ate in separate parts of the building. This was so unlike at home where they slept in the same room and most often in the same bed. They were not permitted to communicate with each other even if they were siblings. Family could only visit during specified times. At the Mission there were two 'parlour' rooms where the visits with the children took place. These parlour rooms were an enigma to them, their visits stilted as they were supervised by a priest. Elder #4 recalls the hurt and confusion

... [w]e only came home for the summer but we couldn't go home for Christmas or Easter. I don't think it had anything to do with the cost of transportation, and it had a lot to do with control of the children by the government. One Easter my Mom and Dad sat up a tent behind the old building. We were only allowed to visit so many hours or something a day. The tent city was behind the new old building but we still lived in the old building between the graveyard and the dormitory. I remember the people from Alkali Lake and from all over came to stay at Easter time, and we were allowed to go and visit with them and eat the foods we wanted to.

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<sup>66</sup> Elder #1 [E#1] Interview, July 14, 2009 at 8.

... They made bannock, cooked meals and we went and ate. When they packed up to go home I remember we were all crying because we didn't want them to leave. I have a picture of me behind that building when my Mom and Dad came with my little brothers and sisters at Easter time. At Christmas time our parents could only come one day. It was a sad time because they would let them come but wouldn't let them stay.

There was kind of a living room, a parlour, where you could visit with your family for a certain amount of time. This was how you visited and our family went in there. I don't know if it was for one hour but I know it was a limited time with our parents.<sup>67</sup>

E#1 also said:

I don't think my grandfather ever came into the parlour because he felt so sad. It must have been devastating for them. Our uncles always came to visit their children but they always included me in their visits not just their children. Our Dad used to bring us dry meat, fish and berries. At Christmas Uncle KY would bring us a little box of oranges and we'd each get one. Uncle XX1 would dance for us – he would step dance or do the cross dance, all our family would get together and Uncle XX1 would make us all laugh. There were two parlours across from each other where we would have our little gathering. Male and female cousins all met in the parlour.<sup>68</sup>

The joyous moments they spent with relatives lasted until the visit ended when they went back to the routine of school, church, and chores.

### **2.5(b) Children who suffered brutal psychological assault because they had to communicate in English which none of them spoke**

All the Elder participants in this project spoke of the impact the Mission had on their ability to speak *Secwepemctsin* and how their thought patterns changed as the English language became the dominant form of expression. Elder #1 remembered a particular time after she was dropped off at the Mission and said “that was around the time I started thinking in English instead of Secwepemc”. Elder #5, like many of the Elders,

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<sup>67</sup> Elder #4 [E#4] Interview, March 10, 2009 at 1-2.

<sup>68</sup> E#1, supra note 66 at 9.

remembers the date he went to the Mission, the date he lost a particular relative, and markedly the year when he felt his *Secwepemctsin* slipping away

I started at seven (7) years old at the Mission. ... There were some intervening years where my Dad was working and the older ones were at school – approximately '45 was when the residential school stuff started to kick in and when the traditional stuff started to lose out. When [I] started to lose some of the Secwepemctsin. I was fairly fluent when I went to school by hearing and listening. [I lost some] of it at residential school and English started to interfere.<sup>69</sup>

The Elders spoke of being punished for speaking their language but these memories they kept private. They did relate that other children had needles stuck through their tongues to suppress the language or being struck with an open hand drawing blood because they could not speak English.<sup>70</sup> Those punishments were medieval and abhorrent.

Elder #1 and the others have always had difficulty with translating Secwepemc concepts into English and *vice versa*, and it is a common experience for them to become quiet under questioning. This quietness at school may have been interpreted as being stubborn, stupid or rebellious which drew immediate and punishing repercussions from the nuns who were the teachers. Instead it was a survival technique to withdraw and reflect before providing a response. This survival technique leached into the interview process when the Elders were speaking of especially distressing memories where they had to collect themselves before they could continue; or if they were taking a moment to translate the interview question into *Secwepemctsin* before responding.

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<sup>69</sup> Elder #5 [E#5] Interview, July 14, 2009 at 5.

<sup>70</sup> My mother was first struck because she could not read the upside-down prayer book; and when another girl taught her to memorize the words she was stuck again for pretending she could speak English.

### **2.5(c) Children who were provided education and religious instruction at odds with what they had learned growing up on the land**

Catholic dogma wreaked havoc on the female transition from childhood to young womanhood, and marriage. The sex act was cast as a dirty thing by the nuns that only happened upon marriage and only to make babies in God's likeness. This was in sharp contrast to their grandmother's puberty ceremonies recognizing the woman's power to bring forth life. Elder #11 remembers

It was really sad because it was hush-hush and I was already in residential school. It wasn't a very good experience for me because I would have wanted at least my Dad to explain about periods but maybe he was too shy. It got me into a lot of trouble because it wasn't knowing. My older sister kind of explained to me but it was really vague. When I went to treatment and they showed pictures of how babies were made and born I wanted to crawl under the table. I was forty (40) years old and I didn't know exactly how babies were born.

The one nun did show us some papers on when your periods started and I didn't like it because it was something coming from a stranger, and it should have come from one of the parents. They made it sound like a dirty deal – a dirty business. It got me into a lot of trouble. ... Growing up I just learned all the derogatory terms – growing up as a young woman. I didn't accept the term "woman" until I was about in my fifties and it was only after several sexual abuse workshops did I start feeling comfortable as a healthy female.

I was closer to my Dad and by this time – and when they say it in Secwepemc – it didn't register what my Mom was trying to tell me. She did talk about it but I didn't know what she was talking about. I might have been able to ask my Dad more questions and I think by that time the impact of residential school I was more prone to listen to English rather than Secwepemc. Others just told us "you stay away from the boys" and I didn't know what they meant. I grew up in a male dominant world and I didn't have trouble with the boys.<sup>71</sup>

Elder #11 had always interacted with men and boys in the freedom of her home and was always given cues for proper behaviour. In Elder #1's case her grandmother recognized their age difference, and perhaps, the changing circumstances and said

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<sup>71</sup> Elder #11 [E#11] Interview, July 19, 2009 at 9.

[w]hen I was a teenager my grandmother told me my Aunt CX would talk to me of certain things and my other Aunt TTY would tell me a few other things. Aunt CX explained menstruating to me and my responsibilities and how I needed to take care of my body, my clothes. When I started to menstruate my grandmother told my Mom and she bought me my own commode. This may have been to do with women's powers.<sup>72</sup>

This gentle, non-threatening communal education among her elder aunts contrasts sharply with Elder #5's experience, and was out of the norm for this groups of Elders since neither the male or other female Elders (or even Junior Elders) were provided the "birds and bees" education because of the strict teachings of the church.<sup>73</sup> Nothing at the Mission prepared the children for a healthy sexual relationship.

The education or 'schooling' as some of the Elders called it was regimented and instructions in completing a task were to be followed to the exact. Failure to comprehend the texts or tasks brought on a torrent of criticism for an individual's stupidity and ignorance. This treatment was so unlike the experiential and observation methods taught at home, and the parental love expressed for a good attempt if a job wasn't completed well.

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<sup>72</sup> E#1, supra note 66 at 7.

<sup>73</sup> Haig-Brown, supra note 40 at 119. Haig-Brown wrote of the participants in her research experience going home after residential school and the influence on the church had on marriage and states "[t]he whole area of sexuality provided another focus for clashes. The children had been taught in school to de-emphasize sexuality. In traditional Shuswap life, it was viewed as a natural part of life." Haig-Brown goes on to quote Martha, who attended school for only three years and described her grandmother's teachings about sex:

When I was growing up and getting into womanhood, [Granny] told me .... 'You got a beautiful body you look after that body .... Don't abuse it.' She told me about the facts of life; she told me how to cleanse my body ...I'd look at myself and I'd say to myself' ...Granny always says my body is beautiful. Look after it with great respect.'

Whereas another of Haig-Brown's informants Anne who attended the school ten years later said

I was really scared....Everytime I went to the washroom...it's wrong. You better not touch yourself....if I looked at somebody.....lust, sex, and I got scared of those sexual feelings. And I didn't know how to handle them....

What really confused me was if intercourse was a sin, why are people born?....It took me a really long time to get over the fact that....I've sinned: I had a child

### 2.5(d) Children who experienced verbal, mental, physical and sexual abuse by Roman Catholic clergy who were overseeing their civilization and Christianizing

It was not uncommon for the Elders as children to receive discipline in the form of a stern lecture when they did something wrong; however, nothing prepared them for the corporal punishment at the Mission. And, since they rarely ever stayed over in another house at *T'exele* they never knew what it was like to be separated from their parents for any great length of time. Elder #3 still has nightmares about experience and when trying to respond to the question about stories she may have heard from her Elders meant to keep her safe she could only reply:

I don't remember too much because I ended up at the Mission ... and that was very foreign to me, very emotional. I was traumatized – it was like a dream to me, I remember some things, I'd black out. Sometimes I'll be there but sometimes I'm not. It's funny because it still happens – I will remember being there or not there. I still have dream of being in the basement (the playroom) and everybody is leaving but I'm stuck there. There would a bus and vehicles but I would be stuck in the playroom and everybody would be going but me. My parents would be drop me off that was really sad. My friend and I would have our beds close together and we'd sit there and cry at night, unpacking, and lonesome to go home. There was about fifty beds in the room. We were lucky to be able to have our beds together.

It was a like an out of body experience because I'd be looking down and could see myself sleeping in the bed. I experienced other children being tortured or punished. I would get punished too as a young teen getting into trouble. I'd witness other students getting strapped and punished. I'd get so lonesome for home. I ran away three times and I got brought back and punished. They would cut my hair real short like a boy and I had to wear a hankerchief and the boys would tease me. I'd get brought back – it was the priest who would bring me back and it was the nuns who would punish us. Because there was other kids who ran away and I heard of other kids dying in the winter when they tried to run away. One time I slept in the barn and I heard this airplane overhead and I got scared and thought they were looking for me. When I went to my Mom and Dad I begged them not to tell them I was there but they didn't have a choice. I guess they would have got punished and I had to go back.<sup>74</sup>

<sup>74</sup> Elder #3 [E#3] Interview, August 6, 2009 at 5. Elizabeth Furniss. *Victims of Benevolence: Discipline and Death at the Williams Lake Indian Residential School, 1891-1920*. (Williams Lake: Cariboo Tribal Council, 1992) This booklet was commissioned by the Cariboo Tribal Council (“CTC”) to draw together

How could the Elders and Junior Elders have known what experiencing and witnessing these forms of abuse was going to do to their children and grandchildren? Recounting her experience makes me full of wonder at the strength of the human spirit to survive such atrocities. Still, the preceding stories set the backdrop of further disintegration of family units as the young adults returned to *T'exelc* once their education was deemed complete. They returned as strangers to their parents, and their lifestyle which was once dependent on the seasonal rounds did not exist anymore. With their language, *Secwepemctsin* suppressed they could not talk about the violence they had witnessed and this silence helped suppress their emotions and memories.

With this research they have their voice and an opportunity to name their experience for what it was. In the act of story-telling these Elders and Junior Elders create a new map, referring back to their Secwepemc world. Their sorrow is still vivid and memories of their parents and their own acts of physical abuse, family violence, neglect and abandonment of their children, and drug and alcohol addictions must also be acknowledged to continue revitalizing and reviving their inherent responsibilities for the safety of their children.

When the Elder spoke about how they were taught about Secwepemc customs and practices they would describe the role of each family member and talk about the kind of teacher that person was. In relation to the parenting they received the Elders would distinguish between the parenting style of the parent who had gone to the Mission and the one parent who did not. In Elder #1's case her grandfather was extremely strict. It may have been that he had such a large family to provide for and the amount of work it took to take care of his family was stressful that contributed to his demeanour. It may be that his

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some general information on the history of the Williams Lake Indian Residential School. (This was another name of the St. Joseph's Indian Residential School). It was part of research to assess the long term psychological and social impacts of the residential in the CTC member communities. This particular research centred on the government investigations into the care of the students at the Mission; and focused on the death of a runaway boy, Duncan Sticks from Alkali Lake and the suicide in 1920 of a young boy from Canim Lake. Duncan Sticks had frozen to death trying to reach his home at Alkali Lake while the young boy from Canim Lake was one of a group of boys who joined in a suicide pact.

strict work ethic contributed to him being the successful rancher he was with a lot of stock, hayfields and gardens. Whatever the case a small child feels the difference and as Elder #1 remembered

We were not really allowed gifts from anyone other than our Mom or aunts or anybody else to accept gifts. And, it wasn't really gifts as they were mostly personal stuff – clothing and things like that. Uncle ZY could buy us gum, candy, chocolate bars and could stand up to my grandfather and say let those kids have them. We were not allowed to chew gum because we looked like a cow, I don't know if that was a residential school thing. He was the first in the family to go to residential school and some of those teachings come from residential school. He went until he was about fourteen (14) years old. He was born in 1880. My grandmother didn't go to residential school and there was a difference between my grandparents child rearing. She was the most gentle, soft person only to grandfather and it wasn't until later in life when she'd get really upset with him.<sup>75</sup>

Elder #1's grandmother's soft demeanour in parenting her extended to her marital relationship with her grandfather to model a relationship based on kindness and compassion.

In contrast there were parents who had begun to suffer the effects of alcohol addiction and the resulting family breakdown. Junior Elder #4's parents split up when he was in his early teens and as he reflected on his upbringing he stated

The type of parenting you get depends on the parenting your parents had and in our case it depended on residential school. The affection side of it wasn't there. Our Dad was mean and I don't remember him giving us a hug and I believe it was beaten out of him by residential school and he couldn't show it.<sup>76</sup>

The violence that was perpetrated against himself and his siblings he believed was a direct reflection of his parents and grandparents experience at residential school and

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<sup>75</sup> E#1, supra note 66 at 18.

<sup>76</sup> Junior Elder #4 [JE#4] Interview, July 11, 2009 at 3.

[i]n my case the discipline went over the edge and that goes back to residential school because it was the way they were disciplined at residential school.

My grandparents weren't as severe with the way they disciplined. My grandparents would give me a licking but not as hard as my Dad. My Mom would discipline but not the physical way my Dad would do it. My maternal grandfather went to residential school – he went to school half a day and worked for half a day – I think they got such good free labour they spent most of the time doing that and never got paid for their work or got an education. It was slave labour if you want to call it that. I can't remember my grandmother talking about residential school.<sup>77</sup>

Other fathers' Mission school experience was compounded by their service in World War II and the participation and witnessing of the slaughter. Elder #4 remembers when her father had come home from World War II he was an alcoholic upon his return. Both parents, unfortunately, succumbed to alcohol addiction and she believes

One reason for their drinking was maybe they felt they were unfit parents. They'd question 'why are you taking our children away' and I remember our Dad couldn't figure out why we went to the Mission.<sup>78</sup>

The children who felt abandoned and unprotected by their parents when they were brought to the Mission, left at the Mission, and in some cases, brought back after they had run away seemed to repeat the cycle of abuse. Elder #5 recognized his inability to properly parent his children and remembered of his parenting style:

Only the basic things are there. Of course the language is different and the teaching techniques are different. When the children came around my spouse and I got into the addictive behaviours. The grandparents would help look after them when I was working in construction or whatever. They were eventually adopted out into a local community. I lost them through my own negligence to my in-laws in that community. Another couple in that community were looking after them while they were going to school. That placement was a voluntary one as I was working out in the Chilcotin. Their maternal grandparents then took over from the mid-'60's to the mid-'70's. But, we eventually lost them because of our own

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<sup>77</sup> Ibid, JE#4 at 9.

<sup>78</sup> E#4, supra note 67 at 3.

addictions and they were later taken over by the Ministry of Children and Families.

My negligent behaviour contravened my traditional law. I was told by the Chief in that community I had abandoned the children and it was true.<sup>79</sup>

Elder #5 recognized that neglecting and abandoning his children went against the *St'exelcenc* morals and principles he was taught as a child, however, with attaining sobriety he is able to reconcile what he has done in the past and says

[d]espite my negligence there was some resolve to make things right and so now today we are really close. I'd say it found itself in some resolve, not fully, but the acknowledgement is there. The addictions were very destructive because there was twenty-five (25) years of that. I **really and momentarily feel** it what I have put my family through. (emphasis added)<sup>80</sup>

Elder #5 wanted me to understand the full impact of his last sentence because in his journey back to his Secwepemc ways has helped to work issues out with his ex-wife and children but he remembers daily and 'momentarily' the pain his addictive behaviour caused.

The sobriety movement within the Secwepemc Nation took root with the story of the Alkali Lake Indian Reserve now known as the *Esketenc First Nation*. In that story, Phyllis Chelsea and her husband Andy Chelsea decided to get sober after their young daughter refused to return to their home after another weekend of drinking. Their daughter wanted to live with her *Kye7e*, her grandmother, rather than live any longer with her parents' alcohol addiction. This young girl's actions spurred a sobriety movement that woke up the Secwepemc, other Indigenous Nations, and society, in general, to the devastating effects of alcohol addiction on Indian reserves throughout Canada. The Alkali Lake Indian Band produced a video "The Honour of All: The Story of Alkali

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<sup>79</sup> E#5, supra note 69 at 8.

<sup>80</sup> Ibid at 8-9 (emphasis added).

Lake” telling their story and the work involved in attaining sobriety after so many years of community disintegration.<sup>81</sup>

This sobriety movement permitted the doors to be opened on the verbal, psychological, physical and sexual abuse that happened in the residential schools across the country. In Williams Lake the Cariboo Tribal Council (“CTC”) started doing research to assess the damage from the Mission experience. CTC published a booklet on the death and discipline at the Mission, and produced a video which detailed the experiences of the various Chiefs of the CTC communities along with clips from the first residential school conference held in Vancouver, BC.<sup>82</sup> Out of this research and discussion charges of sexual assault were filed against the former Bishop O’Connor and other brothers who had worked at the Mission.

The sobriety movement contributed to the desire of the Elders and Junior Elders at *T’exelc* to get the help they needed to maintain sobriety and for the health and well-being of their families. Although the Elders and Junior Elders had continued fishing, hunting, berry-picking and other activities on the land they had experienced in their childhoods these traditional activities were the key for many to find spiritual and mental strength to maintain sobriety. These traditional activities were their cognitive life raft on their journey for individual healing from their traumatic experiences at the Mission. The story-telling through modern forms of communication like published books and videos is the modern form of the story-telling the Elders enjoyed in their childhood to teach them how to live as good people. I have witnessed the revival of Secwepemc culture which has incorporated cultures and spiritual practices from other Indigenous Nations. One may say the Secwepemc can never truly revive their culture, spirituality or governance in this manner; however, I see this practice as a holistic and organic method for the Secwepemc to use the ‘medicines’ inherent in cultural and spiritual practices to revive their culture, language and governing institutions. We can do this without the imposition of foreign government policy and legislation dictating how our goal ought to be achieved.

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<sup>81</sup> Alkali Lake Indian Band, *The Honour of All: the Story of Alkali Lake*, 1982.

<sup>82</sup> Beyond the Shadows, supra at note 58; Furniss supra at note 67.

The physical abuse, family violence, negligence and abandonment, and drug and alcohol addiction described above opened up the door to another form of institutionalization that also contributed to *T'exelc* family breakdown. The *Indian Act* was amended in 1951<sup>83</sup> to permit provincial laws of general application on reserve, and *T'exelc* children, along with Indigenous children across the country, were the recipients of services provided in their 'best interests' to protect them from their negligent and abusive parents.

## 2.6 British Columbia Child Welfare Legislation

In this section I will provide a summary of the history of child welfare, however, it is not my intent to dwell on the development of state child welfare in BC. In fact, none of my questions to the participants were designed or directly related state child welfare legislation. The questions were meant to derive the *St'exelcenc* laws around child safety as opposed to their interaction with provincial child welfare legislation. Rather, for the purpose of this thesis it is to speak to the trans-generational trauma created in concert with the land displacement and the residential school system, and the erosion of *St'exelcenc* child safety laws by provincial legislation. I want to speak to the trans-generational trauma because as *St'exelcenc* we are re-creating and resurrecting our governing and legal institutions as an act of healing from those traumas and to set 'things right' in our world.

Christopher Walmsley wrote that child welfare services in the late 19<sup>th</sup> century and early 20<sup>th</sup> century were provided mainly by charitable groups doing their Christian duty to take care of neglected children who may have or ended up in institutional care.<sup>84</sup> Because the

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<sup>83</sup> Indian Act, 1951, supra note 62.

<sup>84</sup> Christopher Walmsley, *The British Columbia Child Welfare Survey (1927): A Policy Narrative of Children's Needs* in Diane Purvey and Christopher Walmsley, eds., *Child and Family Welfare in British Columbia: A History* (Calgary: Detselig Enterprises, 2005) at 305; Leslie T. Foster and Brian Wharf, eds., *People, Politics, and Child Welfare in British Columbia* (Vancouver: UBC Press, 2007) at 251-265. Foster and Wharf provide an excellent summary of the 'Key Events in British Columbia Child

institutional care was funded primarily by donations, the standard of care became at best warehousing children. Concerns for the safety of children living in orphanages and the lack of standards of care led to a survey of child welfare services which transformed the institution based services for children into family-based foster care. The professionalization of child welfare along modern lines adopted by legislation and policy change also recognized the need to engage other experts in the health profession like physicians, psychiatrists and nutritionists.

Walmsley referred to this movement described by Strong-Boag as “one of the unprecedented assault by childcare experts upon women’s competence as mothers.”<sup>85</sup> The BC Child Welfare Survey conducted in 1927 did not tell the story of the social causes for children being in the care of orphanages like poverty, illnesses, or the loss of a parent nor did the survey consider the mentally challenged or aboriginal children.<sup>86</sup> The movement viewed the child as a commodity around which experts would provide professional services, although the greatest achievement of the movement was to abandon institutional care for children in favour of family-based foster care. It is not a long stretch to view this professionalized care as a major contributor to the ethnocentric standards for child safety during what has become known as the “Sixties Scoop”.

One of the worst displacements of Indigenous laws was the state adoption legislation, due to its severing the ties of the Indigenous children to their family, community and culture. This is in sharp contrast to what is known as ‘custom adoption’ and elaborated on further in chapter three. In a custom adoption the children generally lived with extended family or members within it community of birth, and they grew learning the language and culture. By the time the *Adoption Act*<sup>87</sup> was amended in 1935 “children were legally reconstituted as full substitutes for natural offspring” of adoptive parents and restrictive

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Welfare, 1863 to 2006 that have affected and influenced child welfare decisions and policy-making in this time period.

<sup>85</sup> Ibid at 321.

<sup>86</sup> Ibid at 322.

<sup>87</sup> RSBC 1935 An Act to Amend and Consolidate the Enactments Respecting the Adoption of Children.

measures to conceal the child's identity were firmly in place.<sup>88</sup> It became apparent post World War II that a high percentage of these 'disadvantaged' children were aboriginal but the sentiments were that "it was good to see the children being adopted by white foster parents".<sup>89</sup>

## 2.7 Historical Development of First Nations Child Welfare in British Columbia

The division of powers in the *Constitution Act* provides that the federal government has jurisdiction over 'Indians and Lands Reserved for Indians' while the province has jurisdiction over child welfare pursuant to s. 92(13).<sup>90</sup> The *Indian Act* does not specifically provide for the administration or authority for child welfare in regard to Indians. The province historically had no jurisdiction to provide child welfare service to Indians living on reserve until after World War II as stated by Patrick Johnson in his study of native children and child welfare system in Canada.<sup>91</sup> Johnson's research outlined the jurisdictional disputes between the federal and provincial government about who was responsible for delivering and paying for those services and the government response to this dilemma.

The Canadian Welfare Council and the Canadian Association of Social Workers submitted a joint brief to the Senate and House of Commons appointed to consider changes to the *Indian Act* in 1947 which noted:

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<sup>88</sup> Veronica Stong-Boag, *Interrupted Relations: The Adoption of Children in Twentieth-Century British Columbia* in Diane Purvey, and Christopher Walmsley, eds., *Child and Family Welfare in British Columbia: A History* (Calgary: Detselig Enterprises, 2005) at 140.

<sup>89</sup> *Ibid* at 141.

<sup>90</sup> R.S.C. 1867, s. 91(24)

<sup>91</sup> Patrick Johnson, *Native Children and the Child Welfare System* (Toronto: Canadian Council on Social Development in association with James Lorimer Publishers, 1983) at 3. [Johnson]

...the practice of adopting Indian children is loosely conceived and executed and is usually devoid of the careful legal and social protection afforded to white children,

and as wards of the federal government,

Indian children who are neglected lack the protection afforded under social legislation available to white children in the community. ...

The brief recommended extending health, welfare and education services to residents of reserves but also recommended against a federal system of services parallel to the province.<sup>92</sup>

The *Indian Act* in 1951 was amended to provide that provincial legislation of general application would apply unless those laws are inconsistent with federal legislation.<sup>93</sup> Thereafter, the provincial child welfare legislation, and its regulations applied to status Indians living on and off reserve. Johnson commented that while the amendments might have been made with the best intentions the devastating impact this had on Native People is well-documented. Johnson cited Dr. Chris Bagley, Burns professor of child welfare at the University of Calgary, who said

In our opinion ... separation from parents – even from supposedly ‘bad or ‘abusing’ parents – has profound, negative and sometimes disastrous psychological consequences for a child.

Johnson continued in his own words

If [Dr. Bagley’s] thesis is correct, more damage will have been done to Native children as a whole because a disproportionately larger number of them have been removed from their parents and families.

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<sup>92</sup> Ibid at 3.

<sup>93</sup> Indian Act, 1951, supra note 62.

The effects of apprehension on an individual Native child will often be much more traumatic than for his non-Native counterpart. Frequently, when the Native child is taken from his parents he is also removed from a tightly knit community of extended family members and neighbors, who may have provided some support. In addition, he is removed from a unique, distinctive and familiar culture. The Native child is placed in a position of triple jeopardy.<sup>94</sup>

Johnson's research revealed in 1955 there were 3,433 children in care, and of that number 29 children were of Indian ancestry.<sup>95</sup> The number of children in care of Indian ancestry had jumped to 1,446 by 1964.<sup>96</sup> This was a pattern experienced across Canada. An employee of the Ministry of Human Resources referred to this process as the "Sixties Scoop" and admitted "that provincial social workers would, quite literally, scoop children from reserves on the slightest pretext" but that

she and her colleagues sincerely believed that what they were doing was in the best interests of the children. They felt that the apprehension of Indian children from reserves would save them from the effects of crushing poverty, unsanitary health conditions poor housing and malnutrition, which were facts of life on many reserves.<sup>97</sup>

The long-term effect of the "Sixties Scoop" is recognized by First Nations as a continued act of genocide perpetuated by the federal and provincial government following the institutionalization of First Nations in residential schools across the country.<sup>98</sup> Following their lives in foster care or adoption to non-First Nation people many of the children of the "Sixties Scoop" became further institutionalized in the penal and mental institutions as they have been unable to cope with the degradation to their human psyche and separation from their people, land, culture, language and spirituality. But, as the Spallumcheen Indian Band has demonstrated in taking back the authority of the child welfare there was a way to stem the disappearance of children from their community.

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<sup>94</sup> Johnson, supra note 91 at 59

<sup>95</sup> Ibid at 23.

<sup>96</sup> Ibid at 23.

<sup>97</sup> Ibid at 23.

<sup>98</sup> RCAP supra note 6 at 9-52; AJI note 6 at <http://www.aji.mb.ca/volume/chapter14.htm#9> ; and Chrisjohn note 64.

## 2.8 ***Spallumcheen* By-Law**

The Spallumcheen Indian Band is an Indian Band with a current population of approximately 800 members. They are one of the seventeen (17) bands that belong to the Shuswap Nation. Their village is situated north of the small town of Enderby. When Wayne Christian was the Chief in 1980 the small community had all been drained of their children due to the “Sixties Scoop”. Chief Christian was himself a foster child, and knew from first-hand experience the trauma of being separated from his family, his home and his culture. He and his Council set out to take control over the welfare of their children, and made history being the only Indian Band in Canada to have jurisdiction in child welfare pursuant to the by-law sections of the *Indian Act*.

The Council initially had a verbal agreement with the local ministry office for the Band to participate in the planning for ***Spallumcheen*** children in care.<sup>99</sup> However, over time the Council decided on a more formalized agreement to exercise jurisdiction in the area of child welfare and set out to make it happen. Neither level of government was receptive to the idea of the ***Spallumcheen*** Indian Band taking control of child welfare, and this resulted in the coordination of the Indian Child Welfare Caravan. The Union of BC Indian Chiefs helped the ***Spallumcheen*** Band Council and their supporters organize a caravan which began in Prince George travelled to Williams Lake and Mount Currie, BC and merged with supporters from the Interior BC and Vancouver Island communities. The caravan march and demonstration in downtown Vancouver, BC ended with a camp out on the front lawn of Grace McCarthy, then the Minister of Social Services. Subsequent meetings with Ministry McCarthy culminated in an agreement whereby the province agreed the ***Spallumcheen*** would take control of child welfare for their band members.<sup>100</sup> Thereafter, ***Spallumcheen*** drafted a bylaw which was unanimously passed by the Band members at a General Band meeting, and unanimously passed by the Chief

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<sup>99</sup> Nancy Sandy, *Regionalization Paper* (Northern Authority for Families: May 4, 2007) at 7. [unpublished].

<sup>100</sup> Indian Child Welfare Caravan. <http://www.caravan.ubcic.ca/node21> Accessed on February 17, 2011.

and Council on June 3, 1980.<sup>101</sup> The bylaw was also written in the *Secwepemctsin* to capture the Band's determination to exercise their jurisdiction that comes from their status as a unique people with governing powers stemming from their land, culture and language.

The federal government has refused to approve any further child welfare bylaws pursuant to s.81 of the *Indian Act*. The experience with the *Spallumcheen* bylaw was partially responsible for the creation of the First Nations Child and Family Service Program ("FNCFS") which is funded pursuant to National Program Directive 20-1.<sup>102</sup> The FNCFS policy goal was to assist in the development and establishment of First Nation child and family service agencies that provide culturally sensitive child and family services to First Nation people on reserve at a level comparable to services provided in similar circumstances. Bands or Tribal Councils must agree by band council resolution to create a delegated agency to provide services to their members.

The Band or Tribal Council create a society to deliver child welfare services which works toward receiving provincial delegation through a phased in process that starts with pre-planning and readiness for service delivery. When the society is declared ready then the society proceeds to negotiate a delegation enabling agreement followed by the delegation confirmation agreement confirming their status to provide services. Social workers are provided training for voluntary services, guardianship and child protection delegation that is based on provincial legislation and standards developed by the Ministry of Children and Family Services and the First Nations Delegated Agencies of BC prior to receiving the levels of delegation from voluntary care to protection.<sup>103</sup> The funding implications of Directive 20-1 has stymied First Nations delegated agencies in meeting the provincial

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<sup>101</sup> Spallumcheen Indian Band. A By-law for the Care of Our Children: Spallumcheen Indian Band By-law #3 – 1980. Enderby, British Columbia. The Spallumcheen Indian Band is now known as the *Splatsin First Nation*.

<sup>102</sup> Program Directive 20-1, supra note 28.

<sup>103</sup> *CFCSA*, supra note 17. FN Child and Family delegated agencies provide services guided by the Aboriginal Operational and Practice Standards and Indicators, developed jointly by the Directors of the First Nations Delegated Agencies and the Ministry of Children and Family Development.

mandate for child protection services, and many government reviews and sponsored research has not led to any changes to the outdated formula.<sup>104</sup>

## **2.9 Provincial Government and First Nations Child Welfare**

The themes that emerge in the history of FN child welfare and the provincial government relationship are the evolution of administrative, legislative and service delivery changes that are reflected in a series of plan reviews, legislative amendments, and inquiries that contain many recommendations for delivering services to First Nations. Despite this history of reviews, amendments, and inquiries First Nation delegated agencies encounter:

- continual jurisdictional challenge to service First Nations on and off reserve when the expectation of First Nations is provision of service wherever they might be in the province or country;
- lack funding for prevention services which ought to be provided if children are to safely remain in their family or community; and
- dismal statistics of First Nations children in care which has increased over the years to the point where nationally there are now more children in care than at the height of the residential school era.<sup>105</sup>

The quandary of the federal jurisdiction in the area of “Indians” and the refusal of federal and provincial government to relieve themselves of child welfare jurisdiction remain the impediment for First Nations to exercise the jurisdiction they envision for the care and control of child and family services.

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<sup>104</sup> NPR, supra note 6; Blackstock, supra note 7 at 8.

<sup>105</sup> Blackstock, supra note 7 at 8; These challenges were also my experience as the director for the Child and Family Service Program at Carrier Sekani Family Services.

In the decade after the federal government's White Paper Policy of 1969<sup>106</sup> there was major reluctance by First Nations to accept any form of delegated authority from federal or provincial level of government. This stemmed from their belief that First Nations have the inherent right to self-determination which incorporated the right to govern themselves according to their own governing systems and laws. However, they were convinced that delegation of provincial powers would be an 'interim step' to self government. There are now twenty-four First Nations delegated agencies in BC. The province has begun to fund research initiatives for First Nations to plan their children and family services with jurisdiction in mind.<sup>107</sup>

This jurisdiction quandary described above has created an impasse for governments (who claim to recognize and respect First Nations aspirations to revive their jurisdiction over child welfare), and the method by which government would relinquish their powers in this area. If anything the last century and a half of legislated violence against Indigenous Peoples in Canada via land theft, residential school and child welfare ought to teach us that one cannot replace the social structures of people like the Secwepemc with western forms of governing institutions. Those institutions are not superior to those of the Secwepemc nor are they in the 'best interest' of our children. There is another generation of traumatized people being created, and this challenge ought to be faced collectively to build the best possible solution. The idea that there is a jurisdictional space to be filled by Indigenous Nations is somewhat of a myth – because, it was never emptied to begin with, but rather covered over with state power. Indigenous Nations, like the Secwepemc Nation, can and must revive and revitalize their child welfare jurisdiction. The Secwepemc Creation Story has much to teach us about respecting one another and our abilities 'to put things right'.

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<sup>106</sup> Statement of the Government of Canada on Indian Policy 1969. [http://www.aic-inac.gc.ca/pr/lib/phi/hist/ws/cp1969\\_e.html](http://www.aic-inac.gc.ca/pr/lib/phi/hist/ws/cp1969_e.html). Accessed on October 15, 2010.

<sup>107</sup> Since the dismal failure of the attempted creation of Regional Aboriginal Authorities for child welfare the province has begun to fund First Nations projects like the *Stsmémelt* Project which is being conducted by the Shuswap Nation Tribal Council. This initiative is based on a Protocol Agreement of the 17 Secwepemc Bands to develop a nation-based approach to Secwepemc child welfare.

### Creation Story Lessons

After the mythological age where the transformers (who had characteristics of both men and animals) had created a world that was troubled with great winds, fires and floods the Old One sent Coyote to travel over the world to fix the things wrong with the earth.<sup>108</sup> Coyote was gifted with magical powers yet he was selfish, lazy, vain, and did many foolish and bad tricks. Coyote did many great things but he did not finish his work. So the Old One came back to ‘put things right’. The Old One is known to the Secwepemc as *Tqelt Kukwpi7*, the Creator, the highest Chief put us here on the land at *T'exelc*, gave us our *kelstin*, our pretty language – *Secwpepemsin*, fixed the landscape for us, put the rivers, lakes, and streams in their place, provided the resources on the land – the forest and vegetation, and gave us the animals, birds, and salmon. The *Tqelt Kukwpi7* taught us how to look after all of these gifts and taught us to respect and treat one another right.

The *Tqelt Kukwpi7* also gave us the laws, legal concepts and legal principles to keep order in our lives. Despite all these gifts the *St'exelcemic* were not prepared for the very powerful colonial transformers who were to come and steal our lands, crush our language, spirituality and culture, harm our children, and impose their laws, legal concepts, and legal principles on us.

The *St'exelcemic* and other Indigenous Nations share the world with these colonial transformers who continue to try and trick us into believing they can give us what the *Tqelt Kukwpi7* has already given us: the freedom of choice.

The *St'exelcemic* world has darkened considerably in our relations with these colonial transformers but the *Tqelt Kukwpi7* keeps giving us a new day, a new gift that comes with sunlight. The *Tqelt Kukwpi7* sends Secwepemc transformers as well – be they old or be they young – who have the power to help us ‘to put things right’.

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<sup>108</sup> Teit, supra note 10 at 595-597.

The *Tqelt Kukwpi7* made us strong, resilient, respectful, honourable, observant, *Qelmucw*, people, with the freedom of choice to take the best of the ‘other’ transformers’ world to transform our *St’excelcenc* world into one where we revive and revitalize all Secwepemc laws, and more particularly, the *St’excelcenc* law that kept our children safe.

This chapter told the *St’excelcenc* sorrow story and our strength to survive the destructive forces of the powerful transformers – in the next chapter the *St’excelcenc* will remember the gifts the *Tqelt Kukwpi7* originally gave us so we can build our house back up with a strong foundation. See [Appendix F](#) for *St’excelcenc* historical timeline.

## Chapter Three - Secwepemc Law

### 3.1 St'exelcemic Narrative of Laws, Customs and Traditions

A long time ago the brother chickadee was playing with his little sister and he got annoyed with her and hit her or yelled at her. So she went away into the forest, and you know, the animals and the birds talk in Shuswap. So, now when you go in the forest you can hear the little brother chickadee saying [participant whistled like a chickadee] and it sounds like *tsetsé7* (which means little sister in Shuswap). The moral of the story is 'be good to your littler sister' I guess.<sup>109</sup>

The story of the careless chickadee captures how the *St'exelcemic* passed on their law of caring for one another through story-telling. What is striking is that the story would be told in a gentle way as opposed to a harsh lecture which is closer to expounding what the law is around keeping one another safe. Of course a harsh lecture could be the necessary outcome; however, it was never the starting point in the traditional style of child-rearing among the *St'exelcemic*. This chapter will identify and record the *St'exelcemic* laws that kept children safe and families intact based on the stories and recollections of the Elders and Junior Elders. The *St'exelcemic* legal principles derived from these stories and recollections capture the essence of the laws for child safety and family unity that form the basis of the *St'exelcemic* legal order.

Beginning a journey one usually knows why one wants to take the trip, where one wants to go, what one will do upon arrival, and when one will leave on the journey. However, embarking on a philosophical journey in uncharted territory without a map (such as this one) may lead one to question their intellectual ability to complete the journey. This journey began with a clear vision. But, having a vision is not the same as accomplishing the mission. Being hungry and almost getting a vision is not the same as going to the mountain, fasting and achieving a vision. The purpose of this journey is to re-discover the *St'exelcemic* laws in relation to child safety. The *St'exelcemic* must go on this journey to recapture the laws that have lain dormant or laying under the current of the freshets.

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<sup>109</sup> E#11, supra, note 71 at 6.

The *St'exelceme* must go deep within themselves as human beings to draw on the knowledge transmitted to them by their Elders. What the *St'exelceme* must do is continue to transmit their knowledge. Now is the time that the *St'exelceme* must take this journey.

One must do the very best to translate the Secwepemc concepts without corrupting the deep meaning held in *Secwepemtsin* to responsibly pass on the knowledge. Whose responsibility is this translation and transmission? In *Secwepemtsin*, the word is all my *kw'séltkten*. This means all my relatives, all the living sources who have contributed to this text – Secwepemc and non-Secwepemc. We use our gifts, whether it is the Secwepemc knowledge of the seasonal rounds, the child-rearing practices, the stories of the communication between human and animal, the universal language of the land or the English knowledge of western law and social work, the English practice and theory, the English language and memories. The Elders and Junior Elders are the living sources of this journey and they provide the authority for what is Secwepemc law and legal order.

As the Elders and Junior Elders recollected being raised according to Secwepemc custom the following concepts and principles surfaced:

<ul style="list-style-type: none"> <li>• Structure</li> <li>• Observation</li> <li>• Discipline</li> <li>• Stories</li> <li>• Listening</li> </ul>	<ul style="list-style-type: none"> <li>• Respect</li> <li>• Sharing</li> <li>• Helping</li> <li>• Spirituality</li> <li>• Silence</li> </ul>
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The Secwepemc term *ctkwenme7iple7ten* captures the essence of these concepts and principles and it means law or rule. E#1 says it would be considered a 'higher law' like a

Constitution<sup>110</sup> and provided the breakdown of the translation as follows:

*c* – describes an action like going into something (in, or all over, or all around); it could be on the land, a place or a concept

*t* – on top of

*kwen* – choice/preference

*me7* – present tense

*iple7* – rule, law (root word)

*le7* – good

*iple7ten* – the handle of,

*ten* - implement(to put in practice) – place for

The translation in *Secwepemtsin* and English legal terminology, as directed by E#1, the term could be translated to mean “all the law, all the power one might have”. For example and the purpose of this thesis, to act on the *St'exelcemic* law with respect to child safety I would have to find out who is responsible for the child, what is the reason for the neglect or harm to the child, how the neglect or harm can be rectified, who can help the child, how can the solution be implemented and respected by everyone as the right thing to do. *Ctk'wenme7iple7ten* then can be recognized as the *St'exelcemic* (and Secwepemc) legal order and legal theory which we maintained to keep our children safe despite the intrusion and violation of colonial law.

In the last chapter of this thesis I will provide a comparative analysis of the *St'exelcemic* legal principles with state legal principles to demonstrate there are Indigenous legal orders. The *St'exelcemic* legal order has been practiced continuously since time immemorial, and contemporaneously. In the following section the above concepts and principles will be presented and analyzed to draw out the *St'exelcemic* laws with respect to child safety.<sup>111</sup>

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<sup>110</sup> This translation was provided in a follow-up interview with E#1 on May 22, 2011.

<sup>111</sup> John Borrows, (Kegeedonce), *Drawing Out Law: A Spirit's Guide* (Toronto: University of Toronto Press, 2010). I drew on this text for the symbolism inherent in Borrows' story-telling about the sources of law in the development of this chapter.

### 3.2 Family Units and Child Safety

There were initially seven (7) Elders selected for this project, however, due to illness or family commitments three were unable participate, and as a result four (4) Elders completed the interviews. Three (3) of those Elders were either custom adopted by grandparents, an aunt and uncle, or an unrelated family in another community. One Elder was raised by the birth parents. There were seven (7) Junior Elders interviewed and four (4) of them were custom adopted by grandparents and a couple selected by the birth mother. Participants' responsibilities towards their siblings depended upon whether they were an only child or had one other sibling to instances where the family was large in contrast to today's standards. Up until the mid-1960's the majority of the participants' families ranged in size from four to thirteen children up. After the 1970's family sizes began to decrease considerably so that most St'exelceme families have less than four children.

The majority of the participants were raised at *T'exelc*, while one was raised in another northern Secwepemc community, and another in a southern Secwepemc community. The participants are related to one of the seven (7) main family units. There was no detailed genealogy referred to in this study, other than the memories of the living sources – the Elders, who knew the inter-family connections, and my own knowledge of how everyone is inter-related. Although there are private genealogies prepared by some of the families, and some are kept on file with the Williams Lake Indian Band archives, they are held in confidence. I've respected this confidentiality as I understand compiling a genealogy is a great deal of work, and may be incomplete due to the amount of work it takes to comprise them. The compilation of a community genealogy of all the families would be a continuing project and the information documented in their compilation would be of great benefit to the resurrection of *St'exelceme* laws in every facet of our social organization.

The Elders, in particular, needed the time during the interview to situate themselves in their family unit, and then on the land before they described their lives. This is our civil

procedure in relating *St'exelcenc* law.<sup>112</sup> The Elders spoke of their roles and responsibilities within the family unit depending on where on the land they lived, and the kind of activity they were involved in on a daily and seasonal basis. The *St'exelcenc* in the 1940's to 1950's lived during the winter months in the main village of *T'exelc*, then in late June and early July they moved to their fishing camps on the Fraser River, and from there they returned to *T'exelc* to prepare for the haying season at their respective haying fields and meadows. The haying season lasted well into late September and early October before they returned again to *T'exelc* for the winter months.

This 'seasonal round' was very similar to the seasonal rounds that the *St'exelcenc* practiced prior to being settled on reserve lands with the exception of the haying season. As the Elders in this project became of school age and attended residential school their participation in the fishing and hunting camps and the haying season became time-limited. This impacted the family structure which was crucial to the *St'exelcenc* traditional economy.

### **3.3 Structure – Family, Home and Land**

Structure in this thesis relates to a time element: of days and seasons. Structure also relates to the routine nature of doing the same activities over and over again, so that they are ingrained in the mind as second nature. This is how customary and other law is formed and continues. This concept of structure is an important element in the development of *St'exelcenc* legal order because law requires structure and organization of the people creating the law, applying the law, and evolving the law as circumstances changed.

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<sup>112</sup> I recall one of the Elders at a natural resources meetings (when there was discussion around proposed development on *St'exelcenc* territory) asking "what is the process?" It was only when I began this research that I understood the depth of the question. She wanted to know more than the details of the decision-making process. She wanted to know: Where on the land? Whose territory would the proposed development happen upon? Would consultation happen with that family? What were the powers and authorities of all the people around the table? How would the current forestry legislation apply? What time of the year was the development to occur? What were the plans for protecting the ecosystem on that land? The answer to questions like these would help draw on her traditional knowledge to make proper decisions about the proposed development. It was not merely a question of providing responses to help the developer mitigate the damages to the environment.

Our laws value wise counsellors and decision-makers. Time often has a way of bringing to our attention those who are wise and those who are foolish. Those who are wise, and lived a respected life, would be consulted when problems arose that needed their guidance. The authority of Elders is an important aspect of our law. Each *T'exelc* family had a matriarch or patriarch who governed the conduct of their nuclear and extended family, depending on who was the dominant partner in the relationship. (It may be argued that the impacts of the residential school rendered Secwepemc society a matriarchal one, but further research would be needed to verify this idea). Among the people I interviewed, Elder #1's grandfather was certainly the patriarch of his extended family, but not all of his male children followed suit. His daughters were very strong-willed women and became the matriarchs. Her grandfather was widowed and he married a woman from another community. She helped him raise his eight (8) children, and then later custom adopted Elder #1 and her brother. This large family meant a lot of responsibility for the well-being of the whole family and Elder #1 said

We had four gardens, two potato gardens, two vegetable gardens and three cellars. My grandfather had eight children so if any of the family needed any food we always had plenty to share.<sup>113</sup>

Elder #1 continually emphasized the importance of sharing and helping each other. She focussed on the strength of the family unit, and stated “we were always a family and we did everything together as a family”.<sup>114</sup> Her early memories are of a very structured daily routine in which the family rose early and each member carried out their responsibilities. She stated “when I got up I lit my lamp and went and fed the horses. When I got home I washed up.”<sup>115</sup> She further states “we all set down for meals and we all had our responsibilities for that table”.<sup>116</sup> When her grandfather announced it was

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<sup>113</sup> E#1, supra note 66 at 3.

<sup>114</sup> Ibid at 2.

<sup>115</sup> Ibid at 18.

<sup>116</sup> Ibid at 2.

time to go to the river, to meadows or to town her grandmother, her and her younger brother each knew their responsibility to prepare for the trip.

Once they were at their destination they carried out their responsibilities. She recalled the men and boys did all the outside work and the women and girls carried out all the inside work. The men and boys fished, hunted, made wood, cut the hay, and made the implements needed for these activities. The women and girls prepared the fish and game, gathered and dried the berries and roots, and made the implements and containers for these activities. In a sense this was a true and equal partnership where the spouses respected and expected the work to be carried by their significant other as they observed their daily or seasonal routine. This shows how our laws were attentive to peoples' strength and abilities. People were not forced into pre-determined gender roles if there were reasons to change the way people related to one another.

### **3.4 Observation**

Laws were learned through observation. Thus, our 'law schools' were found wherever our peoples watch others to learn about their responsibilities. In this way, they would then know how to bring order to the world from what they learned. As such the purpose of observation was for an individual to gain knowledge of the world and how to do specific tasks. Prior to birth the women were instructed to eat well, rest and be active in order to help with the baby's birth. The mother or grandmother made each baby its own basket in which the baby would sleep until she was too big for the basket. The baby was tied securely into the basket so that it would be propped up or hung in a tree. This way the baby was able to observe her surroundings and watch the people and their actions while listening to their talk or singing. When the baby was outside her basket the mother securely wrapped the baby's arms down by her sides. This was not only to keep the baby warm in inclement weather but also to ensure the baby felt secure. As the baby grew bigger one arm was released to give her a bit of freedom of movement; and the then other arm would be released. The baby would be given a rattle to hold giving her the feeling of holding an object, moving it about and making noise.

Elder #11 spoke of the importance of the ‘basket teaching’ as it was taught to her and she passed it on to her daughter

The baby basket is really, really important. Nowadays the young mothers have a tendency to be too modern. My children weren’t brought up like that – when they were little babies their arms were wrapped in the blankets so they’ll always feel secure. You’ll notice the difference with those who haven’t been raised in a baby basket.<sup>117</sup>

Being secure leads to confidence in oneself and the boundaries one must operate within. Boundaries are an important element of law. People need to know the spheres they can properly act within to bring peace and order to a community. They also need to know how to appropriately test these boundaries, which is also a part of this teaching.

To assist in these goals when the child was beginning to walk and talk, there was someone (a grandparent, older siblings) always watching the child as she moved in her surroundings to keep her from harm. As the child moved about the parents observed her activities and became aware of her ‘gifts’ and began encouraging the child in her independence within boundaries depending on where on the land they were.

As the child grew they were given responsibilities commensurate with their abilities. They may start off by packing kindling for the fire which grew to carrying in bigger pieces of wood. Their water buckets would get bigger as the child grew. While there were clearly male and female roles and responsibilities in the household no child was discouraged from participating in an opposite gender role or responsibility. In fact, they were encouraged in the activity. For example, Elder # 1 remembered

As a teen I could drive the wagon and the slip when we were haying which was more responsibility. I wasn’t very good at it but I was encouraged to try it out. I was successful at some things and unsuccessful at others.<sup>118</sup>

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<sup>117</sup> E#11, supra note 71 at 5-6.

<sup>118</sup> E#1, supra note 66 at 10.

When the males were being taught to hunt they would start off being the packer – the one responsible to make sure all the implements were ready for the hunt – the ropes, the bags to carry the heart and liver. Out on the land they were taught to observe their surroundings – the habitat of the animals they were hunting. They gained the knowledge of the habits of the animals and what they ate, where they rested, where they drank. As their competence grew they were involved with each level of the hunt, from small animals like snaring rabbits, to big animals like the moose. As their participation increased so did their skills, for which they were recognized. JE# 4 carried on this practice and observed that

[g]oing back to my childhood I learned how to fish and hunt. When I went on those trips I was being taught by observation. I did that first with my sons and then now with my grandkids. I give them responsibilities like one gets the rope, one gets the bag for the heart and liver and now when we go hunt they automatically go get what they have to. They all have jobs when we gut and prepare the meat. Like the one time when my granddaughter, Vv1 got the knife and started taking the heart and the liver out of the guts and I thought to myself “there you go”. I didn’t have to tell her. I had just shown her before how to do it.<sup>119</sup>

The same teachings applied to fishing. Each person grew stronger as their load increased – as they packed salmon from the river to the camp, to actually dipping the net to catch the salmon. Children both male and female were brought out berry-picking so they got to know where to go to pick specific types of berries, they learned what was safe to eat and what was not safe to eat, they learned which plants were for medicinal purposes and which roots were for basket making. Junior Elder #4 said

I remember growing up that is how I learned it being down the river and watching and learning and observing when I was growing up. The simple things we learned by ourselves. That was the main reason our grandparents took us out on trips berry picking. We could eat berries all day, but we were being taught what to eat, what not to eat and we were being taught without knowing it.<sup>120</sup>

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<sup>119</sup> JE#4, supra note 76 at 5.

<sup>120</sup> Ibid at 6.

Children learned about the resources on the land through the family activity of gathering food for their livelihood and through those activities learned about the laws of the land.

Likewise the females took on additional responsibilities in the household, such as: sweeping floor or keeping the ground around the campsite clear, preparing the vegetables for the main meal, washing dishes and implements, packing all the knives and tools, blankets and clothing, packing up the chickens and camp food, and watching over their siblings. Small jobs around preparing meals grew until the young female could cook a whole meal on her own. They were instructed to watch as their Mother or grandmother cut the salmon, deer or moose for drying. The young female would start with the smaller pieces of fish or meat and graduate to the larger pieces. If she made a mistake during the process a kind grandmother would gently show her how to correct her mistake. The same applied to sewing – if she were to make a mistake she was instructed to take the piece apart and do it again until she got it right.<sup>121</sup> Like articling in a common law legal context, legal rules and procedures were taught by doing. Law is a practice, not just an idea, and thus it requires an apprenticeship-like opportunity to learn how to properly apply law in the real world.

The observation and listening skills lead to children becoming competent at a very young age. Elder #1 had many stories about the skills she acquired from her grandmother to preserve their food. She said

... Nothing had to be demonstrated anymore as I could cut and dry a deer and the same with the cleaning and cutting the salmon. I could do almost as much work as she did. Trying for perfection seemed to take forever for me to cut the salmon but she wasn't as critical. She praised me anyway and said "I'll do this and fix it up" – she praised me. I was able to prepare meals like soup and bannock with tea. I think I could prepare a meal by the time I was 13 or 14 years old and maybe even younger than that.<sup>122</sup>

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<sup>121</sup> This comment is based on personal experience with my grandmother in the early 1970's when I made my first pair of moccasins. She took one look at the sad boat shaped moccasin, smiled, and handed it back to me saying "you have to do this over again".

<sup>122</sup> E#1, supra note 66 at 10.

The perfection Elder #1 strove for closely resembles how law gets ‘perfected’ over time to meet the social and policy demands of a changing world. Law and legal practice is subject to revision and refinement. It can move with the times as people learn more about the world and what is required of them. In this example, her grandmother is the authority on how to properly prepare the salmon for drying. She knows it takes time to become experienced at preparing the salmon and acknowledges what has to be done to ‘fix’ it. In time Elder #1 would become competent and adept at preserving food necessary for family sustenance and be responsible to transmit her knowledge.

Observation is closely connected with listening since one required both skills to survive. In the area of child-rearing even if one did not have any siblings one could learn from observing an Aunt care for her children. For example, Elder#1 had only one younger sibling in the household and was never taught how to care for an infant yet, she says,

I used to watch Aunty KY and how she raised her babies, bath the babies, preparing the bath water, changing and washing the diapers, making formula, washing diapers. She demonstrated and I observed. Everyone in the family was responsible for those children. For them not to be around the horses, stoves, - it was common sense.<sup>123</sup>

On the other hand, Elder #4 became “everything to my brothers and sisters” and when she got married at twenty-four or twenty-five year old she had long before taken over that responsibility due to her parents’ inability to care for the family.<sup>124</sup> While watching over one’s siblings was an expectation this type of early parenting was not the norm. It is, however, a very strong example of becoming capable of applying the skills required of becoming a parent.

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<sup>123</sup> Ibid at 12.

<sup>124</sup> E#4, supra note 67 at 4.

### 3.5 Discipline and Boundaries

Discipline is an important part of the law. Discipline speaks to two things: one, the discipline required to learn and acquire a new skill to provide for oneself and family; and two, the discipline one would receive when crossing boundaries that were taboo.

Boundaries are a very important part of the law. People need to know when they are acting within proper spheres and when they are transgressing what is expected of them. They also need judgment to determine when it is appropriate to test, expand, or contract those boundaries. The child-rearing practice discussed in the previous section draws a visual picture of how one acquired skills related to one's age that carries on indefinitely through one's life. Discipline and clear physical and personal boundaries were values that were incorporated into the roles and responsibilities of the children as they grew into adulthood. The participants took pains to explain the nuances of discipline. For example, the kind of discipline to ensure your family had all the necessities of life in contrast to the discipline for correcting inappropriate or bad behaviour. Elder #1 recalls

In the meadows we had racks and racks of dry meat, sacks and sacks of dry meat. Back on the reserve in the winter time we stored all the dry meat, berries, we put everything away. All the potatoes and vegetables – everything that we gathered in the late summer and from the meadows we put in the cellar. We had so much food.

In the winter time we had to make sure we had wood supply. My grandfather continued to hunt and he would drag some big trees down to be cut. He made sure the horses and cows were fed. There was lots and lots of work. My grandmother did all her hides, soaked, scraped, and my brother and I had our chores we had to do to help her. We took our turns and scraped the hides, oil the hides, washing with Sunlight soap – the hides making them nice, soft and clean. I get all happy when I see Sunlight soap because it reminds me of that time. We washed and cleaned – our little hands were busy – oiling the hides then putting them again in warm soapy water. We helped cut the lacing for the frame. We took part in everything. It wasn't like this your job and this is my job.<sup>125</sup>

The second discipline relates to the social control mechanisms for conduct and behaviour. In order for law to be effective a society requires ways to facilitate social control. This

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<sup>125</sup> E#1, supra note 66 at 4-5.

discipline could entail a story meant to correct a child's behaviour, a lecture relating to dangerous behaviour, or it could extend to a willow switching for repetitive or fearless misconduct like playing with fire or near dangerous water, to banishment for offenses of a sexual nature, or trouble-making that brought disrepute and disrespect upon one's family or village, to stealing another's spouse. These 'remedies' were calibrated on a sliding scale, and would be applied as the circumstances warranted. Some of the laws related to social control and remedies were learned from the world around us.

For example, Elder #11 remembers hearing the story of the swallow to teach children the value of gathering enough food and preparing for the winter months:

The people or the animals were telling the swallow "it's going to be winter pretty soon you better get ready". The swallow would say "I know, I know". Someone else would come along and remind the swallow "you better do something" and the swallow would say "I know, I know". So the people or the animals quit telling the swallow what to do – pretty soon the swallow was dead on the ground.<sup>126</sup>

This story highlights the consequence of failing to follow certain laws. This Elder's former husband would chide her whenever she procrastinated about some chore saying "I know, I know" and tell her "*tsut te sullnentkwe*", so said the swallow.

Junior Elder #4 recalled the responsibilities he had as a child at the river camp

Down there you were given responsibility and had to take care of it. The division of work was split up and you understood your responsibility but if you didn't do it you got a lecture.<sup>127</sup>

This type of discipline is a reminder of the power of parental authority. Authority is an important aspect of law. In many cases our extended families might be the source of enforcement of individual duty. In addition, a higher authority could be engaged in enforcing the laws, such as the sparrow or person losing their life for not following the

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<sup>126</sup> E#11, supra note 71 at 5.

<sup>127</sup> JE#4, supra note 76 at 4.

law. The sparrow story is a reminder that something could take your life for transgressing the power of nature. Appeals for proper behaviour came from the parental authority, and if broken, then the appeal went to the next level which may or may not be the final authority.

Discipline was also never just for discipline's sake but done with a long-term goal in mind of building one's character. In this sense the law was teleological – it had an end goal in mind, the development of good people. As Junior Elder #2 recollects

I only slept at P1's or O1 and O2's house. When we were fishing and hunting I was not allowed to wander because it was the men who went fishing down the river. I remember having to be beside my mom all the time. That is the difference between the culture then and now – where a child was taught how to cope and it not the same now.<sup>128</sup>

Discipline as a coping mechanism taught one to operate within certain rules of conduct to be safe and be disciplined in one's behaviour.

Parents or older siblings were quick to discipline inappropriate behaviour lest it continue unabated as Elder #5 states

What I heard back there was some older ones saying to each other of younger ones “you will get after them if they behave too roughly”. I found some strictness back then when they really got after the kids as opposed to what I see today. They were right on top of it – they were harder terms, straight forward with the kids and quick to confront the behavior, to correct it; “correct you, tell you right now, get after them right away” as soon as something happened – quick.

...

The parents' authority didn't diminish as you were growing up. They kept abreast of the development of each and every child. This is my estimation – somebody might do better but don't know, better you – always heard it and can still hear in Secwepemc “always listen” and very often heard

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<sup>128</sup> JE #2, supra note 11 at 5.

“always watch the older ones and what they’re doing” it was the learning process.<sup>129</sup>

Quickness to confront unruly conduct meant protection for the child and retaining harmony within the family structure. Law has to be administered at the appropriate times. If our civil procedures were not drawn upon in a timely fashion this could violate a person’s due process.

Laws also included provisions related to land use, as an element of its discipline. Children were expected to stay within their nuclear families homes and camps out on the land. They never ventured into other people’s homes and never went anywhere unless permission was granted. Elder #1 remembers her grandparents were quite adamant about the boundaries of herself and her younger brother:

We had a boundary, a very strict boundary which was around the house, the horse barn, the cow barn or the hayfields wherever we were. We were not allowed to go swimming by ourselves and my grandmother always came along with us. If we went fishing we were always accompanied by my grandfather or Uncle WY. We were never allowed to go by ourselves. Of course, sometimes I managed to sneak away. But, they were very strict with us.<sup>130</sup>

Being respectful of boundaries let children know they were under the watchful eye of an adult or adults. Since everyone knew which family the child belonged a communal responsibility was exercised to keep children safe. Discipline through story-telling was another gentle method of keeping a young child on track through praise and mentorship.

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<sup>129</sup> E#5, supra note 69 at 2-3.

<sup>130</sup> E#1, supra note 66 at 6.

### 3.6 Stories

Law is also embedded in stories. Like common law cases, they could communicate appropriate and inappropriate behaviour. Stories could also record punishments, or chronicle when mercy or justice was extended or retracted. Our stories accomplished these purposes, and so much more. The stories were also told for entertainment, intellectual and life lessons. They were used in place of stern lecture to impress the *St'exelcenc* belief system on young children. Stories were also told of messages one received from the animals. The consequences of not listening to the message usually meant death of oneself or of a close relative. Stories were also used to teach one how to interpret communication from the fish, animals, birds, insects and the elements to predict what might be in store. If one was taught well as JE#7 believes one learned to respect the messages from the animals and

[i]f you are not well-rounded it dwindles away. A lot of our culture has been lost but I pay attention to it. Like if the coyotes are howling in the middle of the day in February I don't worry about it because they are mating then. But, if it was now [mid-July] I'd tell my kids to watch out – it could be a close friend.<sup>131</sup>

Children were encouraged to see beyond the story itself and extract lessons that would help them develop their intellect as a *Qelmuw*, as a human being. For instance, Elder #5 stated

... I heard them talking about the owl and be careful of what is in the dark. Listen to what the owls are saying in the sense of what could be in the darkness. Fear itself has a reason as a self-protection mechanism. It is quite natural if you don't fear you don't know what could happen consequently.<sup>132</sup>

Personal and community boundaries were in place for a reason and if they are not abided by then a person could bring harm to themselves or others. For instance, a young child could accidentally hurt themselves in the dark or someone could get hurt looking for the

<sup>131</sup> Junior Elder #7 [JE#7] Interview, July 18, 2009 at 2.

<sup>132</sup> E#5, supra note 69 at 3.

young child. These boundaries are in place to keep order in the village and to protect each from harm. When a young child didn't receive this discipline they could potentially come to harm themselves or others and psychologically these stories are meant as a mechanism to protect one-self.

In essence, these lessons are lessons about how one nurtures oneself – you must rest your mind for the next day. As I said, our law was teleological – goal oriented – it was taught to live. It was to be lived to allow us to develop better character. These lessons permitted a time for reflection just before sleep time and the stories became impressed in their subconscious. Silence permitted one time to reflect, to rest, to quiet the mind. The end of the day and arrival of darkness signalled it was time to stop one's activity, lie down and rest while listening to the bed time stories. The night time was for sleep and one was cautioned to put their house in order before bedtime, the food was cleared away, everything was put in its place lest the spirits come and take one into the spirit world while they lay sleeping. Silence also permitted one to hear more clearly the messages being communicated. If one were to be talking all the time then one may not hear; on the other hand, if one were a good storyteller, then it was good to listen rather than be bothersome.

All participants were told stories that taught them how to keep safe. Our laws are directed towards safety. A well-ordered and peaceful society is concerned with the physical well-being of its members, especially its children. For instance, the stories of the "sasquatch" or the "Big Man" were told to encourage the children to stay within the confines of the village. Stories about the bats grabbing them by the hair and taking them away were to encourage the children to come inside before it got dark. They also heard stories of the owl coming to take you away if you were not inside before it got dark outside. These stories may not sound like law to some trained in the common law; however, we must remember that Secwepemc laws have their own unique form, structure and purposes. They are the products of our own cultural ideas and practices.

There were dire consequences if one did not listen to what they were told and spoke when one should have kept quiet as indicated in the following story told to Junior Elder #4 by his grandfather

The turtle wanted to get to a place but it was too far. The geese said to the turtle “we’ll take you there” and they put a stick between them in their mouths. The geese told the turtle “but, there is one thing, you can’t talk” and the turtle agreed, but as soon as they got in the air the turtle started to talk and he fell to earth.<sup>133</sup>

His conclusion from this story was the stories were told and retold to teach life lessons until the lesson became a part of your mind. But, as a young child he remembered thinking “you expect us to believe that stuff old man?” and now as adult he appreciates the moral of the story. The stories taught children listening skills as well as a deeper understanding of the values that came from the stories.

### **3.7 Listening**

To learn Secwepemc law one has to listen. In an oral tradition listening skills are the means of gaining and passing on knowledge. Listening not only to what one is being told, but also listening for the underlying message obtained from an instruction or story. Listening well, and learning the nuances of what was being told, could help a person develop the power of interpreting what they heard. Listening helped one memorize and imprint in their brains the knowledge they needed for the task at hand. Hearing is distinct from the art of listening since actions flowed from an ability to critically analyze a troubling situation. When one listened they learned to respect the authority of the speaker for the knowledge that was being transmitted. Not listening and hearing could lead to negative consequences such as the demise of poor turtle in the above story or ruining a food supply because one did not follow all the preparation of dried salmon, for instance.

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<sup>133</sup> JE#4, supra note 76 at 4.

One not only listened to the voice of their parents or Elders but to observe the sounds and activity of the birds, insects, and animals. You had to observe the elements like rain and wind to predict a successful hunt. This could help in understanding the weather, or could greatly assist someone in interpreting messages of impending death. Elder #1 became overwhelmed by the amount of information and said

We were taught so many things like how to predict when the salmon were coming you would look on a cherry tree there is a kind of a nut you break open and there would be little pink worms in there and if there were only a few the run would be weak but if there was lots then there would be a good healthy salmon run; the weather – an incredible amount of stuff, the lightning flashes would mean either lots or a small run. With the weather you look out on the trees and if no frost on trees you know it will be warm. If the smoke from the fire goes straight up it will be cold. The way animals act – a lot to do with that. If the cattle seem to want to cling together it would be cold. When you shoot a moose or deer and cut open you could tell by whatever was there. There are lots of signals. When the bees would hibernate if they go in the ground means it will be cold and if the hives are high there will be deep snow. Then the bees – the hornets have one way of acting and the yellow jackets have another way as signals they used to read. With the different birds, I don't know the difference between birds but whatever song they sang my grandmother would say "oh this is what is going to happen". Robins – when they were really singing – you'd have to give them heck if they were predicting rain and tell them to be quiet.<sup>134</sup>

When one's sense of listening and observing was keenly developed one learned to communicate telepathically with nature and the supernatural – from one mind to another without the need for words. Listening meant hearing and acting on what one heard or seen, and in some instances, communication without speaking was so keen that "[w]e talked so much with our thoughts it was as if we were speaking".<sup>135</sup>

Listening and singing with reverence, as in the death songs in tribute of the life journeying to the spirit world, exemplifies the *St'exelcenc* belief of how all life is related and the importance of 'hearing and seeing' one another. These communication skills

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<sup>134</sup> E#1, supra note 66 at 16.

<sup>135</sup> Junior Elder #1 [JE#1] Interview, July 11, 2009 at 11.

were important for the development and evolution of Secwepemc law over the generations and as circumstances changed.

### 3.8 Messages

Many messages about the law were learning through observation, discipline, storytelling and observation. The coyote and the owl were considered messengers of ill health or death and when they spoke to individuals who did not pay heed they did so to their own or their families peril. Elder #1 remembered

The coyotes and owls – they talk to one another – when old AX died we were at the meadow. At the time granny and I went to the washroom and there were owls up on the roost talking to each other. My grandmother said “they told me” and then she told my grandfather. The old people didn’t sleep – they kind of rested but because of the anticipation of what was going to happen they had a restless sleep. We had a peephole in the wall and we had to keep an eye because there was someone going to come up to tell us the news. Pretty soon old DGX came up and said old AX had burned to death. We got ready to come back down right away. When my grandfather lost one of his daughters he was out towards Rim Rock getting wood, way past there, and for some reason he stopped and he heard a coyote bark or howl and he got really angry with it and told it to shut up. He said “I should have come home then but I made wood then came home and when I got home my little girl was dead”. Those messages I believe in. He thought he should have shot the coyote at the time as well and maybe his daughter wouldn’t have died.<sup>136</sup>

When the coyote or the owl spoke to an individual it was a warning to be careful lest something bad happen, or it could be an inevitable message as in the case of Junior Elder #1

The owls were the messengers for death and it is so true. Like when it was time to take my first husband to the hospital there were two owls which came and sat on our deck and looked right at him. We both knew – it was too hard to talk about and we knew it was the signal.<sup>137</sup>

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<sup>136</sup> E#1, supra note 66 at 17.

<sup>137</sup> JE#1, supra note 133 at 7.

Junior Elder #7's grandmother was a visionary and when she had her dreams she would say "look out, don't fool around something is going to happen" and "she was very strict about the 'messages' and she'd say "you guys don't do anything".<sup>138</sup>

Learning to listen to the messages translated – whether through another person or the natural world – demands a deep held respect for what is being transmitted. This is another way of learning law, that is cumulative and depends on practicing the other aspects of law discussed this chapter. The participants generally spoke of their stages of life in relation to their accumulated knowledge of living a good life and where it would lead. In particular, Elder #5 stated

I got to where I am today because I "listened". I wouldn't be here if I didn't listen. I see the difference between those who are here physically but not here because they may not be listening. Something stuck to me because I listened all those years and think of all those years when I didn't listen. The stages of life are like a full circle – participant drew a circle in the air – and concluded it makes more sense to listen to your fellow native rather than the *seme7e* [white man]. ...

From an early part of their upbringing kids were held close to principle – 'hear it' 'always obey' [said in Secwepemtsin] 'don't talk back to them' 'don't question' – it was very constant what I heard growing up – 'listen'. It wasn't a big deal after you grew up when you always have been told to listen. Nowadays it's taken as a correction. [Participant said his prayer in Secwepemtsin – *TqeltKukwpi7* [Creator or highest authority] listen he hears you now] held close too principle was a very constant for me. From around the 40's when I started to notice this in 42 I was about 4 years old then – things were more sedate then now – people moving slowly – not only in physical movement – take it easy go slow – sometimes hear in prayer 'take your time about things – to listen'; 'words would talk straight – tell the truth. They were quick to tell you when you were coming to a non-truth quick to tell you to talk straight to the younger ones and to the teens. [*Tecwelekwe*] – tell the truth – it is the same back there as it is today.<sup>139</sup>

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<sup>138</sup> JE#7, supra note 131 at 2.

<sup>139</sup> E#5, supra note 69 at 8-9.

Elder #5 went on to speak of ‘listening’ as a principle for guiding one’s conduct through abiding by the authority of the speaker and telling the truth. He remembered his parents and older siblings saying:

Talk straight about something, talk the truth about something. The older ones talked that way to one another and it wasn’t only to the younger ones. It seems closer to principle then you would nowadays. They carried their lesson into later days when they would listen.<sup>140</sup>

The principle of listening ties in with deliberation. To deliberate before one speaks and being fully conscious of how one’s actions will resonate today and for the future. This *St’excelcenc* concept relates to making a decision with thoughtful deliberation based on truth-telling.

### **3.9 Respect**

Respect has many connotations and is the major element in the development, sustaining and evolution of *St’excelcenc* laws. If laws are not respected by enough people society can fall apart. In our law respect begins with respect for one self, and the talents of each other. Respect then extends to others in the personal space and property. It grows to embrace respect for parents and their authority, and expands to include Elders and leadership and the authority their roles carry. Finally, respect eventually comes to embrace the ancestors. With this fullness respect enables us to treasure the lessons they left behind, as JE#4 says,

There were a lot of lines you couldn’t cross. Respect was one, respect for your Elders, respect the authority of the leadership. Disrespect was out of bounds and you paid more than once for it if the person you disrespected would have the authority to discipline then it would be your parents who would be next to discipline you. Anything that caused harm to the community would be disallowed. There was a line you couldn’t cross.

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<sup>140</sup> Ibid at 10.

Today there is a lot of disrespect – and that was one of the higher taboos.<sup>141</sup>

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The repetitiveness of being taught and it didn't take much to know you went over the line. If you got a look you either had to correct it or not do it. You wouldn't have the same respect if it was beaten into you – you wouldn't have that respect as if you were taught it in a repetitive way – traditional – old way of banishment practice was something people were really afraid of and how they kept themselves in line in the community. You can repair what you have done but you can't do it overnight you have to work your way back into the family circle.<sup>142</sup>

Respect for another's powers as a healer, doctor or spiritual person whether they be male or female was very important, and Elder #1 remembered that

[e]ach healer had their special skill in each area, and if my grandmother, for instance couldn't help then they would be sent there. Specialities with plants, with coughs, and with skin problems – are some examples. Granny talked of other people who used pitch medicine from the trees that were hit by lightning but we never used it.<sup>143</sup>

Her grandmother was very knowledgeable about her culture, practiced it and transmitted it at every opportunity. She would be described in Secwepemetsin as “*tselexemwilcem re swe7es*” meaning she was really knowledgeable about our ways. And sometimes when

[s]he started to talk like that my grandfather would tease and really perform his duties according to tradition.<sup>144</sup>

However, he would perform his duties respectfully so as not to mock her authority. Marital status was respected and demonstrated even by the woman's father who would not enter her home while the husband was not at home.<sup>145</sup>

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<sup>141</sup> JE#4, supra note 76 at 6

<sup>142</sup> Ibid at 9.

<sup>143</sup> E#1, supra note 66 at 16.

<sup>144</sup> Ibid at 16.

<sup>145</sup> Ibid at 7.

One respected not only the personal space of others, but also the boundaries of their berry-picking spots, the fishing sites and the territories they hunted. This shows how our laws had strong resource and land-use implications. People, in fact, often obtained their names from the description of the land they lived upon. This shows how it was the people who were attached to the land as opposed to the other way around.<sup>146</sup> It was who was connected to certain areas of land, which determined who had the right to utilize the resources, and the authority to preserve and manage those resources. This respect for boundaries extended to the powers of the land and elements. Children learned very young to respect the power of the river as a giver of life and sustenance to its power to take one's life if it was treated with disrespect. JE# 4 remembered

[t]here were areas of grave danger where you couldn't play around and the river and be stupid. For example, like you were kept away or were prevented from going to the river – like if you disrespected the river the river would actually take you. There were stories of the salmon but I can't remember them but I remember being told at the river. You had to show respect or you would have bad luck getting your supply.<sup>147</sup>

This is a prime example of natural law and man-made law – if one disrespected the river the salmon would not be plentiful; and if one disrespected instructions about how to conduct oneself at the river, then someone of authority could withhold the privilege of fishing.

The same respect was paid to fire as it could provide warmth and cook one's food and as JE#1 said

I wasn't allowed to play with fire and that was a given. We needed the fire to warm the house and to cook. It was something recognized that we were not to play with fire. I was taught how to make kindling. It was survival and not to waste matches. It was a waste if you had to use more than one match when you made a fire.<sup>148</sup>

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<sup>146</sup> This information came out at the focus group held in September 24, 2009. .

<sup>147</sup> JE#4, supra note 76 at 4.

<sup>148</sup> JE#1, supra note 135 at 8.

Fire could take one's life if one did not take the time to keep it within its boundaries. Fire could take away acres of resources one depended upon for their livelihood if one disrespected the power of natural law.

One had to respect the spiritual places of each other like the sweat houses. Each family had their spot where their sweat house was built and the women and men bathed separately.<sup>149</sup> One never entered the sweat house of a *t'ekwile*, Indian doctor. Entering another's space, home, camp without permission was one of the greatest taboos as it was a sign of disrespect.

Young girls who had begun menstruating were not permitted to touch the mens' tools or walk over their heads. Elder #1 recalled

We had our own cups, plates and when I started menstruating I had my own commode. I washed in my own tub where I rinsed my own personal belonging so they wouldn't get mixed up with my grandfather's personal belongings. There were restrictions around men like I couldn't walk right in front of them (its called *tewéxmen* meaning do not step over their legs). I had to walk way around them. If Uncle WX was laying on the floor or ground I had to walk a ways from his head especially when I was menstruating. I couldn't share my things with others like food or water, but if my grandfather said here *sté7ce* (meaning drink in Secwepemtsin) then I could drink. We only went if we were invited to others house. ...<sup>150</sup>

These customs reflect the young girl's status changing as she grew into a young woman. You could say that she started becoming the owner of personal property like her commode and clothing. She must learn the value of the 'thing' as hers and her ownership over it. In another sense her womanhood changes her status as a sexual being and the personal boundaries that had to be respected between woman and man in the village for social harmony. She was being taught to also respect the status of other citizens and her

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<sup>149</sup> E#1, supra note 66 at 9.

<sup>150</sup> Ibid at 7.

own power as the giver of life. Elder #1 spoke of this power and how this power could alter or affect the man's ability to provide for his family and said:

If I was menstruating I couldn't walk where they put the fish in where the branches lay – as a matter of fact no one did. They were cultural things my grandmother taught us even when I was not menstruating I wasn't allowed to touch the men's tools. The men had a big responsibility to look after the family and they needed those things the way I look at it.<sup>151</sup>

### 3.10 Sharing

Law not only separates through boundaries, by parceling out personal ownership and responsibility, law also has a collective aspect. Law is also directed towards sharing, where people's lives can overlap and harmonize with one another without violating boundaries. Sharing kept the community, family and individuals sustained with food and spirituality. The consequences of not sharing meant one might not have luck in the hunt or with their life. One shared their food, their knowledge, their stories, their home, their work, and moments together in sadness and happiness. One gained much respect through their generosity, whether it was giving sustenance or sharing the workload to obtain sustenance. These principles JE#4 remembered as the

.... roles and responsibilities [we] were taught via repetition and we learned that way and it became automatic in later years as you grew. Respect and harmony was a big part of culture because without it you didn't survive. If you didn't live up to your roles and responsibility there would be severe consequences for that – not only for yourself but for your whole community. It was people looking after people. Sharing was a big part of the culture. Labour, the distribution of labour was shared, the hunting and fishing.<sup>152</sup>

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<sup>151</sup> E#1, supra note 66 at 8.

<sup>152</sup> JE#4, supra note 76 at 8.

### 3.11 Medicine, Environment and Spirituality

Although discipline and sharing was taught to children in terms of providing for ones' family and conducting oneself appropriately, the discipline taught around medicine and spirituality was equally important for the safety and well-being of children. There was a kind of legal accreditation that could come into play with certain medicinal and spiritual practices. Both male and female could become healers and they could specialize in certain areas. If the healer could not heal the ailment then the person was referred to the *t'ekwiltc* (Indian doctor). Elder #1 recalls

There was a lot of responsibility around medicine men, around health and you had to take care otherwise you would have to be brought to a medicine man. Once when I was sick out at fish camp, I don't know what happened, but DX came and I was laid out in the tent and he started working on my stomach. Maybe it was due to eating too much salmon. He closed the tent door and worked on me. He blew on me and that was one of the treatments I got and used to scare the hell out of me after that because I didn't want to be sick. Everyone knew when one medicine man would come around and everybody that needed to go to the medicine person – he would be at T1 and T2's house for a few days.

When people got sick there were healers you could count on and medicine men only came for specific situations. Maybe it was to break a lengthy sickness that the healers couldn't make better or it was recommended by the healer that you see a medicine men.<sup>153</sup>

Medicines could be concocted out of plants, roots, berries or pitch, for instance, but the main medicine was a diet rich in natural foods to keep one healthy and free of sickness, and clear water.

Another form of medicine is known as 'bad medicine'. This could take the form of a spell cast on one to bring harm or bad luck. This would be akin to one trying to circumvent the law to one's own benefit at the expense of another's rights. For example, this 'bad medicine' could be practiced in the area of human relations where a man might

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<sup>153</sup> E#1, supra note 66 at 16.

have been fixated on a woman and wanted that woman for his wife. He would obtain the help of an Indian doctor who practiced ‘bad medicine’ to bring the woman to him. Once she was in a relationship with him she could not leave as long as the medicine was powerful. Only when the ‘bad medicine’ was removed could she free herself.<sup>154</sup> In this instance, it was through the power of ‘bad medicine’ she entered the marriage as opposed to a ‘good’ arrangement or by consent. The practice of ‘bad medicine’ like the practice of bad law engenders distrust where the transgression may mean disbarment from the practice of law in the case of a practicing lawyer. All societies have good laws and bad laws the goal of a wise practitioner is to ensure that society is ordered in accordance with its highest and best rules.

For instance, to promote good laws, children were expected to conduct themselves in a respectful manner around Elders and medicine people, and there was a protective mechanism built into that respect. As Elder #11 said

When we walk in front of our Elders we were always told never to stop over an Elders’ feet – that was a bad thing. It was disrespectful and bad manners, but it was especially bad for women who were menstruating because they could get hurt. This was because people could practice bad medicine – they could get hit with bad medicine if they walked over the Elders feet or close in front of them.<sup>155</sup>

...

Whenever we went where there was older men around I had to go sit behind my Dad. My Dad was a medicine person and wherever he’d do work he would make me sit behind him with my back against his back. He helped a lot of women during the birthing process and if they were having a hard time he would help my Mom. Nine times out of ten they weren’t taken to the hospital in those days. If they were hemorrhaging he’d go over and work on them and they would stop. There were others on the reserve who practiced medicine and they were pretty powerful.

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<sup>154</sup> This is a story known in the village of *T'exelc* about one of the grandmothers who married a man with these powers. To maintain control over her he kept the medicine in his vest pocket. She discovered the medicine and burned it breaking his hold over her and he was very angry.

<sup>155</sup> E#11, supra note 71 at 4.

I don't remember them going to the mountain but they were expected to behave in a certain way. I really believe it was a gift because not just anybody could do that.<sup>156</sup>

While some may doubt the veracity of communication between man and animal or man and bird the Secwepemcs' belief system was so strong there was a spiritual or supernatural quality about their beliefs as witnessed in the following story told by Elder #11:

If my Dad was out hunting and an owl came and told him a story about someone dying or getting hurt he would get the skull of a grouse and spin it around, and say some kind of chant in Secwepemc. He'd ask the grouse what direction the sad story was and the nose would point towards Sugar Cane, or Dog Creek (or wherever) and right away they'd send the runners, and somebody from that community would run and they'd meet half way. They always knew the meeting place and meet each other half way.<sup>157</sup>

Elder #11 didn't understand how the runners from the other villages knew to meet the messengers – they just did. The importance of paying attention to ones' environment and the messages one receives could not be denied.

Respect for oneself, the Elders, the medicine people, the elements and the importance of ceremony to respect all forms of life is demonstrated by Elder #11, who recalls the death of her dog,

[w]hen I was little I cut off [the dog's] hair, and I guess you're not supposed to do that to that kind of dog (he was like a sheepdog), and [the dog] died. So my uncle went into the forest at a beautiful spot and he dug a grave for [the dog]. He told me to go get flowers and berries and told me to put it in the grave and he buried him like that. He made a big ceremony out of it for me. He was a beautiful man. He told me to go and get some more berries and flowers and put it on top of [the dog's] grave. He let me cry for a bit and then he took me back to the camp. I was so blessed with wonderful parents and a wonderful uncle.<sup>158</sup>

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<sup>156</sup> Ibid at 7.

<sup>157</sup> Ibid at 7.

<sup>158</sup> Ibid at 3.

Her uncle's actions taught her respect for the contribution this dog made to keep her safe and protected on the land, to transport her in the deep snow, to keep her company and comfort her. Elder #11 insists that the importance of ceremony is missing in our contemporary lives and is one of the reasons our family units have become weakened.

Other aspects of medicine the *St'exelceme* practiced was meant to prepare the child be of good character and to prepare them to be good providers for their families along with the hunting and gathering skills taught out on the land and waters. Elder #11 also recalled her daughter wanting to change the destiny of her other children after her son had been 'medicined' by her uncle with a piece of beaver pelt tied to his wrist to make him busy all the time so, she says,

... I told her to take her belly button and put it under a spruce tree and she'll be a leader. Some mothers put the belly button on an ant pile and their babies will always be busy.<sup>159</sup>

Elder #1 recalls her neighbour wanting to do this with her son, as follows,

Our neighbor T1 wanted to medicine him to make him a good picker, hard worker, for a specialty kind of job but my grandmother said no because he would have to live up to it and he would have a hard life.

You can medicine them with berry juice to make them a hard worker or put their belly button in an ant pile so they would be busy all the time. Or you could give them certain foods – those are a few examples. If you wanted you could put the chokecherry juice and paint their faces with the juice. It is the same with going into another territory they would paint their face for protection.<sup>160</sup>

The refusal by Elder #1's grandmother for her great-grandson's treatment may have been recognition of the changing times or it could have been because her husband was recognized for his gift as council to the hereditary chief. As we know 'gifts' are in some

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<sup>159</sup> Ibid at 5.

<sup>160</sup> E#1, supra note 66 at 15.

ways a burden when one is being called upon to do their work. Her grandmother was many times in the position of having to remind her husband of his commitment when he did not feel like fulfilling his responsibility. Her grandmother would say *Tseq'yet te me7 sxilem* – it is as you have said now you will do as you promised. *Ta7 me7 te7 stsot* – You cannot back down from your word.

The Elders and Junior Elders training in their young years have crystallized in their respective roles they exercise in their families and the village. Each of their gifts are reflected in their characters today as:

*Tselxemwílcem re swe7es*: he or she is knowledgeable of our ways.

*Tselcemú(y)istes wenecwem sélksts*: one who really knows his or her work.

*Wenécwem ne ttextén(s)*: one with exceptional skills; or gifted with understanding unusual concepts in an almost supernatural way.

*Ne skúwetems te swe7es*: one who knows his ways.

*Seckwnémstens*: he or she has cultural practices.

*Cku'tens ne Secwepemc*: born a Secwepemc.

*Cku'ten*: hereditary blood

*Stwetíl'e*: adopted out of the community.

*Xepqenwens re swe7es*: he or she obtained or learned knowledge

*Re newi7 tselxem u7wistc te Secwepemc k*: you remember you are Secwepemc.

*sxexe7s ne swe7es*: he or she is intelligent (**nb**: too praiseworthy and would not normally be used by Secwepemc to describe oneself or others).

These gifts exemplify the principles and concepts of structure, observation, discipline, stories, listening, respect, sharing, helping, spirituality and silence. These gifts are so vital to the construction of *St'exelceme law*. These gifts are the precedents I am relying upon to call forth the *St'exelceme* laws from their histories. They are recounted to form a new memory in the minds of the *stsmémelt* (the children). The gifts are also a reflection of each individual's level of understanding of *St'exelceme* law, not unlike attaining a Bachelor of Law and Masters of Law degree. The Elders and Junior Elders stories are a living testament to the power of how the *St'exelceme* utilized their laws to maintain our legal order in the face of colonialism. We have relied upon these laws for generations to survive the imposition of non-Secwepemc law-making in the social, political, legal and economic aspects of their lives.

The next section on 'Indian' adoption or custom adoption incorporates all the principles of caring for one another, helping each other, keeping children safe and making decisions for their future care. The practice of custom adoption is succinct evidence of *St'exelceme* exercise of their jurisdiction in the area of child safety.

### **3.12 Custom Adoption**

#### **3.12(a) Responsibility for children**

The old adage of "it takes a community to raise a child" is an appropriate description of child-rearing at *T'exelc*. For example, JE#4 said "[i]t didn't stop with the extended family but it was the responsibility of the whole community."<sup>161</sup> Our laws were taught and lived to advance this goal. The foundation for child safety applied whether it was an older sibling caring for a younger sibling or a community member disciplining the behaviour of a young child as Elder #5 said

I could hear it in Secwepemc and it means "looking after yourself and look after one another" – your little younger sibling [*Yetsansta*] We would break up fights where there was normal childhood fights. *Knucwentwecw*

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<sup>161</sup> JE#4, supra note 76 at 8.

– just look after little brother or sister – heard that in Secwepemc – not only heard in your family but other families you associated within their family. “Always behave” *le sweckwe* – “don’t hurt one another”.<sup>162</sup>

To be disciplined meant one was being watched and cared for. JE#2 also remembered as children “[w]e used to play in the middle of the reserve and that was sort of a discipline – the whole community was watching us.”<sup>163</sup>

JE #4 distinguished the difference between babysitting as opposed to family obligation and it was:

... an unwritten rule where the older ones had to look after the younger ones. For example, if one needed a diaper change you would do it or if the younger ones were hungry it was common sense to feed them. It was a family obligation actually that was impressed on you as you went on in life. The older ones had the lead responsibility but the younger ones had to do their own part too. It went all the way down the line with the youngest one – and all the older ones had responsibility to ensure the younger ones didn’t come to harm. ... **It was automatic when you took your younger siblings out the natural protection of the parents you were actually taking on the responsibility to ensure younger ones were safe.**<sup>164</sup>

JE #4 emphasized the importance of this principle as a reminder of one’s obligation to protect one’s siblings (or others children) and to keep them safe until their eventual return to their home and parents. This principle is reflected in contemporary words in provincial child welfare legislation such as child protection, guardianship and is evident of *St’excelcenc* practice of child safety.

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<sup>162</sup> E#5, supra note 69 at 2.

<sup>163</sup> JE#2, supra, note 126 at 7. My cousin, David Pop from *Xatsull* (“Soda Creek”) told me a story about a time when there were no little children in his village because they were all at residential school. He said a young woman who was living in the city came home for a visit and brought her little girl home to *Xatsull* with her. One morning she let the little girl play out in front of the house. David said “all the Elders come out onto their front porch just to watch this little girl playing because they had missed the sound and laughter of little children.” This heart-wrenching story speaks to the strength of Secwepemc law – it could be disrupted by outside forces, but the people will take it up when the responsibility appears again. This story also points to the importance of doing Secwepemc child safety law research in each of our villages. David also recalled all the children playing in the middle of the reserve during the summer time and when one was called in for lunch all the children went to that house and were fed.

<sup>164</sup> JE#4, supra note 76 at 3 (emphasis added).

As the Elders and Junior Elders recounted their personal histories it became very apparent the responsibility for raising children was historically one of community, as well as, an immediate family responsibility. This value was most significantly evidenced in the practices commonly known as “Indian adoption” or “custom adoption”. The participants used either term to reflect their experience.

Besides the safety of children or desire for children custom adoption was also a means of protecting the lineage of family and hereditary governance. This was illustrated in the case of James Louie, the adopted son of Chief Baptiste William. Chief Atrion ‘Tillion’ William succeeded Chief Baptiste William as the oldest son when the former passed on. When Tillion passed on his brother Eugene Jack did not want to succeed him as hereditary chief so James Louie, the adopted son became the hereditary chief.<sup>165</sup> Custom adoption was the law that ensured hereditary governance continued. All the participants were of the opinion that once one was adopted, one was ‘family’. There was no distinction between adoption and natural birth or even the adopted one belonged to another Indigenous Nation or non-Indigenous Nation. One acquired the birth rights of the natural children. In some cases this carried with it great stature as a hereditary chief or as belonging to a hereditary lineage. Among the participants it was also their consensus that being adopted by custom meant the privilege of learning *Secwepemctsin* and the culture. Those fortunate participants are now using their knowledge to educate future *St’excelceme* in the ways children are kept safe, honoured and protected.

Based on the data gathered “Indian adoption” or “custom adoption” is recognized by the *St’excelceme* as taking place in the following situations:

- 1) As part of custom where the oldest grandchild(ren) are given over to the grandparents to raise;
- 2) Due to marital breakdown;
- 3) Where a couple is unable to conceive naturally;

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<sup>165</sup> Author Unknown, supra, note 27.

- 4) Where the child is being neglected by their birth parent(s) and a family member intervenes and 'takes' the child to the grandparents to raise;
- 5) Where a young mother is instructed by the birth father to give up the child;
- 6) Where a child has been abandoned; or
- 7) Where the birth parents are unable to provide for the child.

These laws will now be presented as follows:

### **3.12(b) Custom adoption by grandparents**

At times grandparents would be called upon to take over the care-giving for children during a marital breakdown which would become a custom adoption by consent. Elder #1 said

As a child because of family breakdown or unstable part of family relationship my father left my mother (and there were two older children other than myself) I was left with my paternal grandparents.

My father was also adopted. My mother placed me with my grandfather and grandmother at a very early age. I am unsure if I was two days old, two weeks old or two months old, I am not absolutely sure. After some period when my mother and father re-established themselves in a good way of life, or whether they got back together or not I am unsure, but my grandfather asked my mother if I could continue living with them so I take this as Indian adoption. So I never did go back again with my parents.<sup>166</sup>

On the one hand, this tradition was important for the care-giving of the grandparents in their older years, but it was also an important component in maintaining the traditional economy of family where younger and stronger people were needed to help with the hard work. This participant maintained contact with her birth parents on a regular, if not, daily basis. She also knew who her siblings were, although her interaction with them was limited due to her lifestyle with her grandparents, initially, but later on as a result of being enrolled at the Mission. Although Elder #1 came to know the circumstances of her adoption later in life she felt abandoned and this feeling is common among the adoptees.

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<sup>166</sup> E#1, supra note 66 at 1.

### 3.12(c) Custom adoption due to marital breakdown

In another example of marital breakdown the mother of Junior Elder #6 came from *T'exelc* while her father came from a southern Secwepemc community. They separated and her birth mother left her and her two siblings with the father. He passed on when she was four years old and

We were kind of in limbo there for awhile before my grandparents took us in. ... My father was married to 2X for awhile and they had us for awhile and she wasn't a great step-mother. We weren't taken care of - in a sense it was total freedom - there was lots of drinking and we were hungry a lot. So we just dug up whatever we could as little kids. ... Our aunts and uncles were asked if they could take us and they had families of their own so our grandparents decided to.<sup>167</sup>

Junior Elder #6 has also come to terms with her custom adoption and the life-skills she learned as, she said,

My Mom and Dad were pretty good and there were many years I didn't really like what I remembered - I had a lot of resentment for my birth mother not being there until up to my early thirties (30's) before I finally forgave her. ... Looking back at the time I thought "what ugly grandparents making us work hard" - but, now I look back at all I learned - I learned to work hard, and whatever I had I worked for and I never asked them for money. I spent thirteen (13) years of my life with them and they were strict, and it felt like I was in jail. When I graduated I went out into the real world, but with all the things they taught me I was able to do it - my cupboards were always full.<sup>168</sup>

She recalls that her Aunt 3B would come and visit and they would have a big picnic. Her older brother also visited with her and her two younger siblings. This family connection and interaction was a common occurrence with each of the participants who were custom adopted.

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<sup>167</sup> Junior Elder #6 [JE#6] Interview, September 27, 2009 at 1.

<sup>168</sup> Ibid at 2-4.

### 3.12(d) Where a couple is unable to conceive naturally

For Elder #4 her custom adoption lapsed upon the death of her adoptive parents and she was returned to her birth parents. This led her on a lifelong journey of becoming a parent to her siblings and coming home to her birthplace. As she said,

I spent about ten (10) years with my Aunt and Uncle. I don't remember how that happened, but I remember after the war my Dad came back I was five (5) years old. He came to my aunt's house to pick me up and I didn't want anything to do with him. I wanted to stay with my Uncle and Aunt. I kind of remembered I didn't want to go home because there was this stranger. My Mom was eight (8) months pregnant and he didn't come back until I was five (5) years old and I didn't really know him. So, maybe they thought it was better for my Uncle and Aunt to keep me because they didn't have any children of their own and they were happy to have me. ... I left for the Mission when I was seven (7) years old and I stayed with my Uncle and Aunt until then. ... My Uncle passed away when I was at the Mission in a car accident. A cattle truck dragged him. I don't know how my Aunt died. In those days they wouldn't let you go to the funeral and we never had the closure with family when they died. I remember crying when I couldn't go to the funeral. I don't know what happened at my Aunt's funeral. I had a hard time to adjust when I went back to my Mom and Dad's.<sup>169</sup>

Elder# 4 effectively became the mother for her siblings due to her parents' alcohol abuse in her early teens. Her memories of this time period are very heartbreaking and she explained

That is why I came home here [to *T'exelc*] to make a full circle. I always planned to come back here to make it better. The memories are very painful and it was the alcoholism that did it.<sup>170</sup>

In effect Elder #4 is acting according to precedent where she returns home to 'put things right' based on Secwepemc cultural values with respect to family unity.

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<sup>169</sup> E#4 supra note 67 at 1, 2, 5

<sup>170</sup> Ibid at 3.

### 3.12(e) Where the child has been neglected

An example of a custom adoption which was involuntary in that the birth parents were negligent in caring for their child is recalled in the case of JE #2 who said

My custom adoption occurred at four months. My Uncle X1 was working at the Mission at the time . . . . My Uncle X1 went to visit my parents and I was left all alone in the house. So, my Uncle X1 took me and told my parents “you are not getting this baby back ever” and that is how my grandparents, A1 and A2, ended up taking me and it became a permanent adoption. . . . My mother and father had another child who had died as a result of their drinking. My birth mother moved away to the city and I only seen her twice in my life after she moved. My dad visited a lot but never tried taking me back. I lived with my grandparents until they passed away when I was in my teens. I had already stayed with Y1 on occasion as they were our next door neighbors and my grandmother had asked her to take care of me when she passed on.<sup>171</sup>

Her uncle’s actions were akin to a contemporary removal under the *Child, Family and Community Services Act* for the best interests of the child. Her birth parents acknowledged *St’excelceme* tradition and respected his removal of the child and the eventual custom adoption by the grandparents. This example is significant because JE#1’s grandmother made a guardianship agreement for her granddaughter with someone she trusted. As a result she would be able to continue caring for Junior Elder #1 in the event of her death. The actions of her uncle and grandmother are a true exercise of ‘jurisdiction’ in the area of child safety.

In another example of neglect, Elder #5 had no qualms about his transgressions and the eventual removal of his children as he recalled “[m]y negligent behavior contravened my traditional law.” When Elder #5 attained sobriety he resolved to do right by his children to make amends for his past conduct based on the *St’excelceme* morals and principles he was taught.<sup>172</sup> His example is a recognition there has always been a *St’excelceme* method of correcting behaviour and one can ‘put things right’ when one’s actions acknowledge

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<sup>171</sup> JE#2, supra note 126 at 1.

<sup>172</sup> E#5, supra note 69 at 8.

the truth-telling of one's own conduct. The *St'exelceme* law also recognizes his responsibilities as a parent to care and provide for his children.

### **3.12(f) Where a young mother is instructed to give up the child by the birth father**

Elder #11 spoke openly and honestly about the unusual circumstances of her custom adoption and stated:

I was born in the ... hospital and raised at ... until I was six (6) months old and then I was custom adopted by AI and AII from another [Northern Secwepemc] reserve. Mine was probably one of the last true traditional custom adoptions where two beautiful horses, new tack and a new wagon were given to my birth parents when I was given over to my adoptive family. It really bothered me for years but then I began to think about it it was pretty neat. Why my custom adoption happened was my Mother made a mistake ... . That information I got from two (2) Elders... . I had heard about it growing up and didn't really think about it as I was growing up, and it was like "big deal" and I didn't see anything wrong with it.

So I thought I better look into it while those Elders were still alive because I knew they would tell me the truth.<sup>173</sup>

Her adoption may be interpreted as a means to correct a taboo and an arrangement made to correct inappropriate conduct. She was adopted out of the community to address the original misconduct and this caused considerable turmoil that took E#11 many years to internalize and comprehend. She also knew the Elders would 'tell me the truth' and she could rely upon their memory to provide an accurate record of her birth history.

She recounts that it was many years before she was able to pinpoint the unsettling feeling that stagnated within her. She said,

It didn't register with me until I was about sixteen (16) years old that I had family when someone pointed her to me at the Mission and told me that was my [birth] Mom. One time we went to the mission and they introduced me to my birth sisters. I was really confused because I didn't really think about it. They always told me I had another family but I never

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<sup>173</sup> E#11, supra note 71 at 1.

really thought about it. A couple of times we came to visit with my birth parents. In my lifetime when it started really registering was at treatment that my biggest issue was “rejection”. I ran around the building telling people I found a word that was so big and I was running around looking for my counsellor and the other one pulled me in to talk about it. I was laughing one minute and crying my heart out the next. It was so big – it was what the psychologists call a teachable moment.<sup>174</sup>

Whether the circumstances of their custom adoption was prescribed by tradition or negative circumstances, this feeling of rejection and abandonment was a familiar feeling that participants struggled to comprehend. At the same time they also felt blessed to have been custom adopted once they came to terms with it.

### **3.12(g)Where a child has been abandoned**

As Junior Elder #1 so eloquently stated

It was told to me that XY was my real Mom. She ran away when she was young.

I was raised by my grandmother at first and then given over to my great-aunt. In our house there was my grandmother and grandfather, my great-aunt who helped raise me... .

As I got older I got to understand how lucky I was to be chosen to be raised by [my great-aunt]. And, I ask “why was I chosen, why me to be this lucky”. She was so close to God.<sup>175</sup>

In this example, there was no question that JE#1’s great aunt would take over and raise her, and is another example of jurisdiction being exercised in the best interests of the child.

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<sup>174</sup> Ibid at 9-10.

<sup>175</sup> JE#1, supra note 113 at 1, 10

### 3.12(h) Where the birth parents are unable to provide for the child

When Junior Elder #3 investigated her custom adoption she found her birth parents were unable to care for her due to economic circumstances and stated:

F and GH used to be friends with IJ and K and kind of kept in close contact if they needed anything they were always there. My birth mother asked F if she wanted me. I asked my [adoptive] Mom who wanted me and she said GH wanted you. I question who wanted me? My older sister told me it was because my birth mother said [my parents] couldn't afford to keep me. My older sister said she used to send money to [them] so she wouldn't do that and when she got home from working somewhere I was gone. I recall living with IJ and K but I don't remember how or moving to F and GH's.<sup>176</sup>

Making the decision to give up Junior Elder #3 must have been a difficult one. Nevertheless her birth mother must have had the best interests of Junior Elder #3 in mind, as she turned her over to a couple who she thought was in a better position to care for her child.

Custom adoption legal principles demonstrate a structure to take care of children in any instances of family dynamics: to provide old age security, maintenance of traditional economy, acts of surrogacy, apprehension for safety, and provision for the child through guardianship agreements. Of the four (4) Elders interviewed two (2) of their adopted parents had also raised other children who were not theirs by birth. Of the seven (7) Junior Elders interviewed five (5) of their adopted parents raised children not theirs by birth. The children adopted came not only from *T'exelc*, but also came from the Carrier and T'silhoqotin Nations, and in one family, his parents had adopted a non-Indigenous boy. Junior Elder #7 recalls the young man who was adopted into his family and how this young man had never forgotten he grew up with the guys from the rez.<sup>177</sup>

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<sup>176</sup> Junior Elder #3 [JE#3] Interview, May 27, 2009 at 1.

<sup>177</sup> This information was divulged by JE#7 at the Focus Group held in September 24, 2009.

Custom adoption legal principles can be used for the future care of our family units which will be discussed in the chapter on the revival of *St'exelceme* child welfare jurisdiction. The next chapter will describe the sources of *St'exelceme* law to put it into western legal concepts to draw parallels between different legal orders.

## Chapter Four

### St'exelcenc Legal Theory

#### 4.1 What is Secwepemc and St'exelcenc Law? What is Secwepemc and St'exelcenc Legal Theory?

My Kye7e taught me a lot about medicines and how to treat people, how to listen to them when they talk to you. ... She said “you laugh when they laugh, and you cry when they cry”. ... My Kye7e also told me to always share the best of what I had in my house with people who visited. And, she said, “when you don't have food or drink, then you tell them a story because there might come a time when they don't have anything. But, they will always have your story to remember, to help through the rough times, to make them feel better”.<sup>178</sup>

At first glance this story may seem like any grandmother teaching her grandson about the importance of being a good person. But the underlying message is about true empathy for another person, to see that other person as someone with feelings, dreams and who has a place in life. *St'exelcenc* law is like that and this thesis has been about how we fit in this place called Canada. Law is how we make rules based on how we would like to be treated, how we can think, theorize how certain things must be in order to ‘put things right’. The third chapter of this thesis set out the *St'exelcenc* legal concepts and principles derived from the Elders and Junior Elders stories about how their lives were arranged to in live in a lawful society.

This chapter will outline the sources of *St'exelcenc* laws and demonstrate how they embody legal concepts that are captured in the Secwepemc term *ctkwenme7iple7ten* translated as “all the law, all the power one might have”.<sup>179</sup> I will provide examples of how the *St'exelcenc* legal concepts and principles are practiced contemporaneously in our Band government system. They are found in *Indian Act* band council resolutions,

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<sup>178</sup> This story was told to me by my son who consented to its use. He spent a lot time with her while I was away working and in her later years he helped look after her as her health declined.

<sup>179</sup> E#1, May 20, 2011, supra note 110.

and legal instruments of the dominant legal system. They can be used to extend the powers of *St'exelceme* law. I will conclude the chapter with a case study to demonstrate how the common law, civil law, and *St'exelceme* law can work together to develop a model for child safety. The Elders and Junior Elders recommendations will provide the framework from which to build upon *St'exelceme* child safety procedures, policy, legislation and regulation.

Responding to the questions about what is *St'exelceme* law and theory requires in part a deep, deep understanding of *Secwepemctsin*, the Secwepemc language. I am not a fluent speaker nor am I even a conversationalist since my comprehension is limited to isolated words and phrases – not a few but also not a dictionary full. This challenge of answering intellectual and theoretical questions stated in English requires several translations to a non-Secwepemc speaker such as myself. My Indigenous language is in my head and comes out at the most opportune times as when I look at the moon and remember *megcen*. The soft glow of the moon blesses me with the words imprinted a long time ago through the words of my relatives, my *kw'séltkten*. I am one of those whose words are quieted.

First, in understanding our community's Indigenous legal traditions, the question of Secwepemc law is translated into western concepts of law, based on my law school training. Second, questions about our law are asked and then translated from the Secwepemc – not in *Secwepemctsin*, but in relation to concepts and thinking. Two things follow from this approach: first, there are as many definitions of law in English as there are English words and another writer will debate the fullness of the definition; and second, the translation into a Secwepemc concept contains the concept but not the original language that describes the concept.<sup>180</sup> The latter leads to another question 'can one not speak *Secwepemctsin* but still describe, define and relate the Secwepemc concepts'? Can one fully capture the essence of the Secwepemc law if one is not a *Secwepemctsin* speaker? Alternatively, can a *Secwepemctsin* speaker translate the

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<sup>180</sup> E#1, May 20, 2011 supra note 110. The translation of a Secwepemc word like *ctkwenme7iple7ten* could take a full day to break down into its component parts to arrive at the depth and literal meaning of the word.

essence of Secwepemc law into a western law concept? This may be an old debate yet it is one that needs to be considered in the quest to transmit Secwepemc legal oral tradition.

The gifts transmitted to me by the Elders in this project go back as far as the 1800's. I have been immersed in the memories of the grandmothers and grandfathers as I have developed this research project. While these individuals were not first-hand witnesses to the events told to them, they are very reliable legal story-tellers in our tradition. They relate accounts that reach back to the 1800's and, as such, they witnessed these events as pictures painted by story-tellers of the previous generation. These mental pictures provided a map for them to conduct themselves according to the oral tradition transmitted. They provide answers to question about what one does when faced with the catastrophe of multiple deaths from small-pox. They know what one does in preparation for the birth of a child. They know how to celebrate a successful hunt. They have expertise about what to do when the actions of another threaten the survival of the group. As a result of these stories they know what one does when the safety of a child or children is at stake. The map found in these stories played like a movie reel for these Elders. For example, a memory provided an answer for JE#1 who recalled her Mom teaching her how to cook:

[my Mom] said “just watch me and that is how you learn”. When I was with my husband I couldn't cook and then I thought how Mom did it and it was like a big picture. How she laid it out, how she cooked in order peeling the potatoes and so on. Before I switched on that mental picture I had nothing.<sup>181</sup>

So, the question can be asked and answered in English and Secwepemc. Law is encoded in these memories and brings forth the words and actions that guide our everyday relations in our family, and in our village. The consequences for not abiding by those words or actions would bring disharmony in our family, and in our village. Thus, someone with authority must be able to ‘put things right’.

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<sup>181</sup> JE#1, *supra*, note 135 at 10.

Elders are one of these sources. The stories can bring harmony to our relationships when we get out of balance. While this chapter also explores other ways that authority can put things right, Elders remain at the heart of this process of Secwepemc regulation and dispute resolution. Secwepemc law is orally transmitted in the form of stories, conversations, lectures or instruction. Elder #5, a profound *St'exelcemic* theorist, captures the essence of transmission as an 'ancestral imprint'. This was expressed to me by other Elders in this research in the following way: 'it was told to you so many times that it became a part of you'. While everyone in the village may have had the authority to discipline children in the village, for instance, an Elder as the leading authority often initiates an action. A parent may be the end of the line for a misbehaving child, while an Elder may have been the one to issue the instruction to save a child from abandonment. Similarly, leaders may determine a hunt according to the preservation of hunting areas for the benefit of the village members, even though they may not be the ones doing the actual hunting.

Since *T'exelc* children started attending the Mission the practice and transmission of *St'exelcemic* law has eroded. It has taken on aspects of church law, and been influenced through inter-marriage by the customs, traditions and practices of other Indigenous Nations. Many legal traditions in the world are also of mixed nature. The common law has been influenced by civil law; Islamic and Christian legal traditions have been intermingled with state law in many regions of the world. It is rare if not impossible in the world to find pure legal traditions, untouched by other systems. The *St'exelcemic* legal principles have become clouded with European concepts, practice and law. This can create cultural confusion about what is and isn't Secwepemc. Instructions that were once provided only in *Secwepemctsin* were sharply replaced by the English language. The legal principles were often negatively influenced by residential school, and other government interventions through health services, education and *Indian Act* institutions.

For some people observation of *St'exelcemic* law became aligned with a strict observation of Catholic religious symbols, sacraments and holy days. For these people respect was redirected towards authority figures like the priest, Indian agent and police. For many

*St'exelcenc* practitioners listening was redirected to sounds other than those in the natural world. Unfortunately, in too many cases the once restrained discipline of our law took on an abusive quality; and other principles like sharing and helping were almost replaced by qualities of materialism and greed. But we survived. Though we are recovering from these changes many problems remain. Telling stories was too often replaced with silence about the atrocities we suffered. Not only did the *St'exelcenc* keep their stories of horrific abuse to themselves they also began to lose their *keltstin*, the pretty language as Elder #5 has called *Secwepemctsin*.

The changes we have experienced have often been harsh. Colonialism has generally not been helpful to us. Questions therefore arise about how we regenerate our law when it has been subject to many harmful influences. How do we undo the decades of colonist pathology to arrive back at the essence of being Secwepemc? I have been asked by my thesis supervisor and others: Is there even such thing as an essence to being Secwepemc? Cultures always change, but I want to make sure that such change does not pass along the worst practices that were brought to us by Christianity and colonialism. Therefore, I ask myself: Can we evolve without relying on external definitions to determine our identities? How do we arrive at a place where we place more importance on who we are, what our systems of law and governance are, and take control of the inter-relatedness that is necessary to be Secwepemc in the 21<sup>st</sup> century? I believe that talking about Secwepemc beliefs is the starting point to revive a Secwepemc theory of governance and law. This is the main point of this thesis.

Creating an Indigenous legal theory is much like the creation of space for American Indian philosophy, which has begun in the United States. Vine Deloria, Jr. asks:

What then are the necessary requirements or ideological context in which an American Indian philosophy can be created? First in consideration must be the deeply held belief that there is something of value in any tribal tradition that transcends mere belief and ethnic pride. Instead of developing an idea of cultural movement that has primitive at one end of the spectrum and modern at the other, great care must be taken to identify

tribal societies and Western thinking as being different in their approach to the world but equal in their conclusions about the world.<sup>182</sup>

I take this quote to mean that although Secwepemc cultural beliefs, for example, might be different from ‘others’, our laws can be considered equal to them. While our understandings about the law may sometimes be inconsistent with other’s ideas, and while our world views may sometimes be opposed, we can still have equally valid conclusions about how to live well in the world. **St’excelceme** cultural beliefs are not frozen in the past. Current practices don’t need to replicate the space of our ancestral practices. Our laws should not solely be viewed from an archaeological or anthropological microscope. Our law can be interpreted today through oral evidence, as a modern form of a practice.<sup>183</sup> Our laws are living legal traditions that can answer the complex, interconnected problems we encounter in the world today.

This is a view of the world Indigenous Nations that was held when they entered treaties. John Borrows’ holistic interpretation of the two row wampum belt and the symbolism which recognizes the inter-connectedness of land, water, animals, birds and peoples meant a “citizenship that encourages autonomy while unifying and connecting us to one another and the lands we rely on”.<sup>184</sup> The treaty instruments that Borrows describe are like state law, which cannot be read in isolation of each other. We need Indigenous laws to interpret the original agreements. The grave injustices Secwepemc and other Indigenous Nations have endured do not get erased by a judicial decision confirming or denying that a right exists. However, the general framework definition of an aboriginal right leaves the door open for the parties to make something of the relationship that is there despite the injustices.

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<sup>182</sup> Vine Deloria, Jr., “Philosophy And The Tribal Peoples” in Anne Waters, ed. *American Indian Thought* (USA: Blackwell Publishing Ltd., 2004) at 5.

<sup>183</sup> *R. v. Van der Peet*, [1996] 2 S.C.R. 507 which holds the Aboriginal rights recognized by subsection 35(1) relate to practices, customs or traditions integral to the distinctive culture of Aboriginal peoples.

<sup>184</sup> Borrows, John. *Recovering Canada: The Resurgence of Indigenous Law* (Toronto: University of Toronto Press, 2007) chapter 6 at page 149-150.

And much like Borrows, who speaks of looking to the landscape to see what the laws are in the land – we must look to the land as our mother – to guide us in our conduct in how we relate to one another. These lessons can help us to create space for an Indigenous legal order, a third order of government, an Indigenous legal theory or philosophy.<sup>185</sup> The waters, for instance, don't have a conception of man-made boundaries as it flows or thunders by. These waters feed the surrounding plants. They nourish many species. They hold the fish which feed the people, despite their so-called racial categories. Water teaches us much about our law; they provide a healing energy to the universe.

People shift – just like the landscape. The land's movements have much to teach us how to live, to shape and shift in response to larger forces. We have many alternatives about how we adapt ourselves to the changes around us. We can choose to make incremental laws based on aboriginal rights. We can also have conversations that recognize the individuality and legitimacy of another legal order, or third order of government. We can do more to develop an Indigenous legal theory and make room for the exercise of rights to permit an expansion or inclusion of the 'others' worldview. Alternatively, Secwepemc can speak of their own theories as truth, in themselves, rather than comparing or contrasting them with other theories to define their legitimacy. We can do this for our ancestors and those Elders who still (today) find it necessary to ask permission to get a drink of water at a meeting because their inherent authority has been degraded by years of colonization.<sup>186</sup>

Secwepemc do not have to make up what they believe their traditional practices might have been. They do not have to feel inferior because of their lack of traditional knowledge. Rather, they need to recognize that, like mother earth, the *St'exelceme* change from outside forces that are sometimes not within our control. Practices today

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<sup>185</sup> Borrows, supra note 184 at 29- 55. Borrows speaks to the inclusion of Indigenous knowledge about the land which can contribute to environmental changes that will result from development.

<sup>186</sup>This comment is based on my personal experience as a Chief where one Elder, in particular, repeatedly sought permission to act on her desire for food or drink at treaty meetings. This was at first endearing, then confounding, and then enraging as I realized that in my role as the Chief I had the authority like the priest or the Indian Agent to deny her request.

might be a corrupt interpretation of what might have been, or they might be a reinterpretation of how the *St'exelceme* must live in this world today. This is OK. We are strong people living in a complex world. We do not have to feel threatened because of past colonial abuses. We are survivors. In fact, we will thrive. We can chart our own future in good ways. *St'exelceme* can chose to view the words of Chief Justice Lamer who said "Lets face it. We are all here to stay".<sup>187</sup> We can take those words as a threat to our autonomy or we can respect the limitations of court decision-making. We can recognize our inherent responsibility to make space for each other in an 'honourable' way that isn't dependent on an elusive moral and fictional prerogative.<sup>188</sup> In short, we can live well if we live by our highest and best laws: *St'exelceme* and the common law.

In particular, this thesis has focused on the importance of *St'exelceme* family law for creating a brighter future. These laws have changed over time, and will change in the future. For example, if we go back to the child-rearing practices the Elders described, there are obviously aspects of those practices which have significantly evolved over time. This does not mean those practices are not a part of Secwepemc practice, custom and tradition because they have evolved to what they are today. For instance, my grandson is part Secwepemc and Cree on his mothers' side and *T'silhqot'in* on his fathers' side. The *T'silhqot'in* bury the umbilical cord beneath moose or deer tracks so that the child will become a good hunter. Does it mean that the cultural practices with respect to the umbilical cord from the neighbouring *T'silhqot'in* Nation become incorporated as part of Secwepemc practices, custom and tradition with intermarriage. How does that custom and the Secwepemc custom change the way my grandson will interpret his worldview? Will it depend on the land in which he lives? Will it depend on the dominance of one custom over the other? Can the Secwepemc and the *T'silhqot'in* custom of burying the

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<sup>187</sup> *Delgamuukw v. British Columbia*, [1998] 1 C.N.L.R. 14 (S.C.C.) at 86.

<sup>188</sup> *Delgamuukw*, supra at note 174; *Mikisew First Nation v. Canada (Minister of Canadian Heritage)*, [2005] 3 S.C.R. 388; and *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511 which hold that consultation principles with respect to potential infringement of aboriginal rights are based on the honour of the Crown. I propose there is no 'honour of the Crown' in British Columbia where the Crown has not acquired valid title based on the common law principles of conquest, cessation or consent.

umbilical cord be equated by examining other rituals which demonstrate similarity? For example, some Secwepemc bury the umbilical cord under an ant hill so that the child will become a hard and tireless worker, and the *T'silhqot'in* also bury the umbilical cord under something other than moose or deer tracks to symbolize the future character of the child. Is this equation symbolic of the adaptation of Secwepemc laws to a changing environment or inter-Nation relationships?

This internal quandary plays out against the larger picture of the external imposition of state law in British Columbia which recognized but did not value the customary laws of the Indigenous Peoples.<sup>189</sup> Legal myths were developed based on legal principles that have as their foundation the superiority of one race of people over another. These laws are harmful and must be rejected. Indigenous Nations like the Secwepemc, who are reviving their nationhood, ought to withdraw from laws based on colonial racism and discrimination. We must take the time to carefully define who we are. We must define ourselves according to our own concepts of law and governance.

Dale Turner has written that it is the responsibility of 'word warriors' to describe and create Indigenous legal theory. Many of these people, from Indigenous Nations, have been trained in the dominant legal system to create the discourse and the space for our laws. These word warriors, he posits, must rely on the Indigenous legal philosophers within their communities to provide the traditional legal knowledge.<sup>190</sup> There are six Indigenous lawyers from the northern Secwepemc territory. Four of them live and work outside of their communities in areas of the law which are not currently about reviving Secwepemc legal orders. Secwepemc Elders by definition are getting younger. *Secwepemctsin* is not the first language but it is being revived in the homes and schools. Cultural practices like the puberty ceremonies, vision quests and sweat baths are becoming common place. Some families speak the language and practice their cultural

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<sup>189</sup> While custom adoption in British Columbia was held to be an aboriginal right in *Casimel v. Insurance Corp. Of British Columbia*, [1994] 2 C.N.L.R. 22 (BCCA) the aboriginal right would still in a case of conflict be subject to the 'integral part of their distinctive culture' test in *Van der Peet* in each individual case. This test is problematic where Eurocentric values are placed on the definition of aboriginal rights.

<sup>190</sup> Turner, *supra* at note 17 at 71-93.

and spiritual beliefs more than others. While other families are lost in the cycle of violence perpetuated by the state and its institutions and is relived over and over again until one person takes personal responsibility to change the situation. In this context I ask myself: What, then, is my responsibility as a Secwepemc woman trained in the laws and institutions of the state? How can I best utilize my skills to advance the revival of Secwepemc child welfare jurisdiction?

This responsibility at *T'exelc* is a shared one. It starts from the individual, and passes to the couple, to the family, and to the community. When all these elements are intertwined the people within this sphere are never alone and never act alone. Looking at the protection and safety of *T'exelc* children and youth from a resource point of view is another way of understanding how healthy and unified families keeps our village and nation healthy and united. Within each *T'exelc* family the individual can draw upon many gifts and resources – each woman blessed to give birth has many opportunities to transfer her knowledge about the birth process onto other women. Each mother can pass on their knowledge of what they have learned in parenting their child to other women. As they do so, the cycle continues. Such women become one of the most powerful resources within the *T'exelc* – a resource to draw upon when there are challenges with the protection and safety of children and youth.

*T'exelc* resources contain the expertise and knowledge from which jurisdiction is revived in a way the *St'exelcemic* can understand. The knowledge of their own history and their own way of raising children must be understood to form the basis of *St'exelcemic* culture, values and tradition. The *St'exelcemic* can legitimize their understanding of child safety. They can do so without embracing the ideological teachings of Indian agents, nurses and priests. *St'exelcemic* can value themselves as human beings with human rights. The *St'exelcemic* need no longer mire themselves in their oppressive history. We do not have to stay stuck in denial. We do not have to remain in paralyzed fear. We can mobilize our own selves and move forward.

Thus, as we do so another question arises – do we need to engage in the legal and political discourses of the state? In writing this thesis, I am using an educational institution. In so doing, I am engaging the legal and political realms of the state. Yet I am doing this as a tool to teach ‘others’ that, while Secwepemc laws might have been suppressed they are alive! – My main interest is with the internal revitalization of *T’exelc* pride of our rich heritage. My goal is to help *St’exelcenc* recognize our own laws. We have been using them despite the intrusion of state law. My objective is to open up the discussion within *T’exelc* about: how we have practiced these laws, how they are being practiced today, and how we can continue practicing them within the reality of today. I am addressing how we use our own laws to heal from horrific injustice of cultural and political genocide. It is important to me that we treat each other with respect, that we observe each other’s circumstances, that we listen to each other’s stories, and that we help one another re-structure our lives and our stories. I am writing in this way to encourage us to be as Junior Elder #1 said “[the] *Qelmucw uwi* – a princely people – the real ones – we are the princely people, the real ones”.<sup>191</sup> It is also important to me that we recognize all our *kw’séltkten*. This is what my mother passed on to me – to respect each other as human beings.

I also know this thesis will generate discussion within education institutions and the legal and political realms of the state. This discussion is an important one. My dream is for the Indigenous Peoples of Canada to establish a third order of government in which all aspects of their social organization are recognized. In attaining this dream I also realize that discussions and agreements must happen between the state and the Indigenous Peoples. These are needed to build a third order of government which is built on the principles spoken of in the Royal Commission Aboriginal Peoples: mutual recognition, mutual respect, mutual sharing, and mutual responsibility.<sup>192</sup>

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<sup>191</sup> JE#1, supra note 135 at 12.

<sup>192</sup> *Report of the Royal Commission on Aboriginal Peoples: Chapter 16-The Principles of a Renewed Relationship*.  
[http://www.collectionscanada.gc.ca/webarchives/20071211052632/http://www.ainc.inac.gc.ca/ch/rcap/sg/s\\_g57\\_e.html](http://www.collectionscanada.gc.ca/webarchives/20071211052632/http://www.ainc.inac.gc.ca/ch/rcap/sg/s_g57_e.html). Accessed on May 17, 2011.

When I speak of *T'exelc* healing I also speak of the healing that needs to take place with the state. Change needs to take place within the bureaucracies which implement Canadian laws, regulations and policies. Without going through a grieving process of its own, no state or its bureaucracies can divest itself of disrespectful and unlawful ways of control. I say this because I know the loss of power and control engenders a grieving process of its own. I also know that laws, regulations and policies can be established by the highest authorities of the state to recognize the rights of Indigenous children. For instance, without the will of the bureaucrats our laws won't be implemented to the extent they should be. This is evidenced in the internal dysfunction of the Ministry of Children and Families and the changes they wish to make for the safety and well-being of children. Ignorance based on the moral superiority should no longer be the basis for state law-making and story-telling in this country.

It is not my intent to have the *St'exelceme* law used to articulate the content of section 35 of the *Constitution Act*. I do not want precedent to be established on ethnocentric interpretations or ill-defined notions of what Indigenous rights are. In my work with child safety committees in villages throughout the northwest British Columbia, I witness the grandmothers (and sometimes grandfathers) exercising the jurisdiction they say they have for the safety of the children. They do not look to provincial child welfare legislation to determine how to do their work – they make decisions like they have always done in the past. My recommendation to them has been that, while it is important to know what the provincial laws and standards say, it is more important for them to make their decisions based on their knowledge of their community and families. This is good law. When communities make their decisions on sound practices that can stand the test of provincial law and regulation, in my view these decisions are based on the inherent jurisdiction communities have always had. Communities know the history of the families, their genealogies, the resources they have within community, and they make decisions with respect for the children at risk.

I recognize and respect the 'gifts' of those individuals who can and do engage the state legal and political institutions to advance Indigenous rights and to work towards building

a mutual beneficial relationship. In my various roles in life I have been and am one of those individuals. However, with this thesis I have found my mission is to work within our community to revitalize our laws, customs and traditions. I look at this work as going to war – you put those at the front lines who can do that work and you keep people at the home-front to exercise the inherent jurisdiction.<sup>193</sup> While I agree it is important to have the discussion in the legal and political realms of state, I believe it is more important for this work to happen internally. It should be done by the citizens of the Secwepemc Nation to live again as independent people. It is as Elder #5 describes his early life and residential school to married life fraught with addictions. He said:

I call that my interlude. My intervening years are the years spent in the Secwepemc culture and then moving into the residential school system; my interlude was when I was married and going through my addictive phase, and now I am in my independent phase. Just like you went through the stages as you were coming up and as things evolved. Presently, I feel more controlled, I have my independence and freedom.<sup>194</sup>

He described his life as coming back full circle again finding his independence in practicing his culture and in *Secwepemctsin*, the *keltsin*, the pretty language. This is the process I am suggesting we should take. This is the purpose of my thesis.

Elder #5 is the theorist of this project because he is *Wenecwem ne txextén(s)* – he is one with exceptional skills or gifted with unusual concepts of Secwepemc lifestyle. He would never describe himself as this because that is not a Secwepemc value, to praise one-self too highly. So, he is *Ne skuwetems te swe7es* – one who knows his ways. Along with the other Elders, he is the authority for saying how one learned and then transmitted the Secwepemc laws – to listen deeply to the language to get at the core concept of the knowledge being transmitted. He is what one would call a ‘deep thinker’ and one who would seek to identify the laws in their special spaces.

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<sup>193</sup> Turner, supra at note 18 at 71-93. I acknowledge the work of Turner for the development of my thoughts on Indigenous People creating an intellectual community to engage in the legal and political discourses of the state.

<sup>194</sup> E#5, supra note 69 at 9.

## 4.2 Sources of St'exelceme Law

John Borrows in his seminal book *Canada's Indigenous Constitution* describes the sources of Indigenous legal traditions as stemming from sacred law, natural law, deliberative law, positivistic law, and customary law.<sup>195</sup> All these aspects of law are recognized as creating law in the dominant legal systems. In the *St'exelceme* case, laws are sacred because they stem from the Creator – the *Tqelk Kukwpi*<sup>7</sup>. They are relayed in the Secwepemc creation story, and there are ancient teachings that have withstood the test of time as relayed in the Elders and Junior Elder stories. In the Secwepemc Creation story when the Old One has sent Coyote to travel over the world and ‘put it to rights’ the people on earth had the character of both man and animal. Many of the animals, birds and fishes did not exist, nor did the trees, plants and berries. There was also great trouble with great winds, fires and foods. Coyote had many gifts. He could demonstrate that he had great knowledge and cunning, yet he also proves himself to be selfish, lazy and does many bad tricks.

Although he did many great things to benefit the people, and did away with the bad things, he left much of his work undone. Of the many good things Coyote did, the best was his introduction of the salmon into the rivers. He made the best fishing places. He created the seasons, day and night and then left *Secwepemc'ulucw*, Secwepemc land, when it was time for him to leave. In this story, Coyote is the Old One's agent who has been authorized to travel to the world to fix what is wrong on earth. This authorization implies that there is a right and a wrong and Old One has the authority to give the instruction to right the wrongs. Like some agents Coyote has the gifts to complete some tasks, and not others. In doing his work he is able to develop the beginning of a foundation to build upon.

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<sup>195</sup> Borrows, John, *Canada's Indigenous Constitution* (Toronto: Toronto University Press, 2010) at 28-38. I relied solely on Borrows work for this section on the sources of Indigenous law to derive the *St'exelceme* law from the oral histories of the Elders and Junior Elders.

This developing foundation is like precedent in law. The basic principles are there to be further developed as the law emerges from changing circumstances. These changing circumstances are brought about by Old One, who travels to the earth and completes the work that Coyote had left undone. Old One made the transformations he thought necessary – like flattening the land in some places, and raising it in other places. The Old One made lakes where it was dry, and made it dry where there was too much water; he added the sun and moon and put them in their proper places; and made the rain and snow fall in their proper seasons. He regulated the winds by telling them from which direction to flow and when to be calm. He put trout in the lakes and streams and told the salmon to ascend the rivers. He made many new kinds of trees, bushes and plants in the places they needed to grow. He introduced new kinds of animal and told them to multiply. He told the people to respect the animals and to use them properly. The Old One created these rules and norms to guide the *St'exelcenc* how to live with the world and overcome conflict, and they contain the instructions about how all beings should relate to specific territories, how they should relate to each other, and respect one another. These are some of the sources of our sacred law. This is work we must undertake, to make the world better, according the laws we learn from our Elders and the world around us.

### **4.3 Natural Law**

With the foundation put in place by Coyote and Old One, the *St'exelcenc* learned to find and develop law from their observations of the physical world around them – looking at how each part relates to the other. From these observations we developed rules and regulations. We have conflict resolution that is literally drawn from and written on the land. The rules and regulations around resource management, for instance, are dependent on the resource within a specific area, and the abundance of the resource when the *St'exelcenc* determined where on the territory their hunt would take place. Family law is also written on the land.

We have the divorce story of *Tsmut*, the majestic one sits on the east side of the Fraser River and *Tsmum te*, the small one sits on the west side of the Fraser River. The story is

of these two mountains who were man and wife. This couple had continually argued until one day the river came and separated them. Now, they can be seen living on opposite sides of the Fraser River, along Highway 20 heading west about 30 miles out of Williams Lake. This tells us much about our family law because they could not live peacefully together as husband and wife. The mountains are visible reminders to the *St'exelcenc* of the work they must do as spouses in order to remain a family, lest they become separated.<sup>196</sup> The river made the decision to separate them because of they were unable to speak and treat one another respectfully.

#### 4.4 Deliberative Law

Borrows spoke of an especially broad source of Indigenous legal tradition that is formed through processes of persuasion, deliberation, council and discussion – through people talking to one another.<sup>197</sup> Elder #1 especially spoke of this when she referred to her grandfather meeting and advising the hereditary chief. When he would be reluctant to live up to the responsibilities he agreed to his wife, she would say to him: *Tseq'yet te me7 scilem* – it is as you have said now you will do as you promised. *Ta7 me7 te7 stsot* – you cannot back down from your word.

This means that a decision was made by the council and that everyone counted on its being carried out. Should the decision(s) be violated or required revision then changes could be made with another council, but not by one person alone, who would void all or part of the initial agreement.

In a much broader sense the laws as determined were not static and they could be updated to remain relevant in the contemporary world. The example of Elder #1's decision to withhold his permission for her arranged marriage is one of changing the family law to fit with the circumstances of the times. Her grandfather could see that changes to their

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<sup>196</sup> This story was told to me many years ago by my elder sister as we travelled on Highway 20 along the Fraser River and passed by the mountains.

<sup>197</sup> Borrows, supra note 195 at 35.

traditional lifestyle, brought about by federal and provincial laws, were heavily impacting his family unit. I would imagine that he had decided that his daughters could possibly have a choice about their future spouses. While this departed from him and his wife having the sole decision-making power about her marital status, he had the authority to change the law in our communities changing circumstances. His decision is also about repealing laws which no longer fit within their society, which opened the door for regulating the future conduct of the *St'exelcenc*.

#### 4.5 Positivistic Law

Another source of Indigenous legal traditions, identified by Borrows, are the 'proclamations, rules, regulations, codes, teachings and axioms that are regarded as binding or regulating people's behaviour made by such people as hereditary chiefs, clan mothers, headmen, sachems or band leaders'.<sup>198</sup> He states these laws may be regarded as positivistic because they rely more on the authority of those who issued them rather than on the notion of creation, nature or community deliberation.<sup>199</sup> For the *St'exelcenc*, the heads of the family (or one with the authority as an elder sibling) were the ones in the position to issue these kinds of proclamations because they had the authority to make them happen. They did this, not so much in an authoritarian manner, but based on the respect they commanded as the head of the family or elder sibling. The placement of children, who were removed by aunts or uncles in the custom adoption, are examples in this research. The grandparents who custom adopted these children implemented these decisions. The birth parents accepted these decisions and did not interfere with the parental responsibility exercised by the adoptive parents. The practice and process of custom adoption were based on proclamations and help to establish healthy patterns over time.

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<sup>198</sup> Borrows, supra note 195 at 47.

<sup>199</sup> Ibid at 47.

#### 4.6 Custom Law

Borrows defines custom law as ‘those practices developed through repetitive patterns of social interactions that are accepted as binding on those who participate in them’.<sup>200</sup> The patterns of keeping children safe in the village are one such example. In a sense the people are saying to each other this is what we do and how we protect one another. It is the unspoken communication described by Junior Elder #1 as she talked of the teachings about looking after the animals, the gardens, and each other when she said “[w]e talked so much with our thoughts it was as if we were speaking”.<sup>201</sup>

#### 4.7 St’excelcenc Law Interrupted

As much as it is easy to identify which areas *St’excelcenc* law fit into the sources of Indigenous legal traditions, it is as easy for ‘others’ to refer to factors such as

- family dysfunction
- drug and alcohol addiction
- authoritarian style of discipline
- lack of emotion and demonstrating emotion
- loss of language and culture
- lack of spirituality; and
- lack of responsibility for family

These categories are often called forth as proof of a lawless *St’excelcenc* society. Other evidence is found in the reports of the British Columbia Representative of Children and

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<sup>200</sup> Ibid at 51.

<sup>201</sup> JE#1, supra, note 135 at 11.

Youth which speak to the number of aboriginal children dying while in foster care.<sup>202</sup>

There are many reasons to critique such lists, not just because it is a sad state of affairs that these aboriginal children die at the hands of incompetent foster parents, (who haven't been properly monitored by the Ministry of Children and Family Development) but we can also regret the fact they are in care in the first place. The fatal consequence becomes overshadowed by the fact these aboriginal children's parents cannot care for them as dutiful parents due to significant stresses they experience. That poverty, homelessness, lack of education and unemployment are major factors for the aboriginal child being taken into care also doesn't factor in the 'others' opinion, and it is the stereotypical view of these drunken dependent Indians that emerges.

Recent media coverage of the exorbitant salaries some Band councils pay themselves further adds to the negative portrayal of Indigenous peoples. This wrongly raises doubts about Indigenous peoples' ability to govern themselves. This is especially likely to occur if people were to only read and believe these one-sided stories. A comprehensive review of Indigenous peoples' history in Canada and other commonwealth countries would definitely open the eyes of those who questioned Indigenous law and governance. If a local media contributor visited *T'exelc* he would most certainly find truth to some the negative descriptions of the *St'exelcenc*. He would also find a family history, in every household, of children who were physically, mentally or sexually abused at the Mission. He would learn about the sexual predator who wormed his way into the Elders hearts at *T'exelc* after he said mass on Sunday. He did this so that he could prey on the young girls after they fed him a fine lunch. He would find the *Indian Act*, which governs every aspect of *St'exelcenc* lives, has replaced the hereditary governance. It has diminished the traditional economy that kept them self-sufficient.

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<sup>202</sup> Representative of Children and Youth of British Columbia, *Amanda, Savannah, Rowen and Serena: From Loss to Learning*, April 2008; *Fragile Lives, Fragmented Systems: Strengthening Supports for Vulnerable Infants – Aggregate Review of 21 Infant Deaths*, January 2011. <http://www.rcybc.ca/Contents/Publications/Report.asp>. In addition the Representative of Children and Youth has published ten Injuries and Deaths Review and Investigation updates of children receiving reviewable [government] services since November, 2007.

Much has been stolen from the *St'exelcemic* by settlers who used legal instruments to steal our lands. This all occurred because the Sovereign exercising jurisdiction did not have the power to implement or resource the sovereignty they claimed. A visitor would also find *St'exelcemic* spirituality and culture, which taught them to respect all living things, was replaced with religious dogma that had no connection to the spirit of nature. He might record that the *St'exelcemic* by involuntarily silencing *keltsin*, their pretty language, they protected their children from abuse of a medieval and immoral nature at the Mission and now the language is threatened by extinction. This media person would also find the *St'exelcemic* practicing their laws in contemporary ways to respond to the challenge of governing their village under the *Indian Act*. He would find the expectation, from the citizens, that the Band Council will ensure that the community is safe, protected and prosperous.

#### **4.8 Contemporary *St'exelcemic* Law**

When I was the elected Chief of *T'exelc* there were four Councillors. In our council meetings we established the practice of debating an issue to ensure we looked at the issue from all perspectives. After all the Councillors contributed their point of view, I would summarize their comments and then add what I thought. In some cases, the issue would be debated again; however, if we had truly debated the issue from all perspectives consensus would be certain. Sometimes, our opinion diverged enough that a vote would have to be called to make the decision. One of the initial challenges our Council encountered was making decision based on fact, as opposed to information based on rumour. In retrospect, there was an expectation that the information received on a particular issue was true. But, as parents we know the humiliation of only listening to our child's version of the story when we go to the principal's office only to learn our child left out a couple of important details. As a Council it was our job to listen and really hear what was being said to make the right decisions. We used deliberation in our law making, just as I described above.

I was Chief at the time of the Gustafsen Lake blockade which generated a lot of public controversy, and more importantly for the villages affected, much internal dissension. General band meetings and treaty meetings were forcefully disrupted by several young men with the loudest voices and ability to intimidate. At the time it seemed these young men opposed everything that did not coincide with their opinion. Some of their points were valid; however, many were not. Their desire was for the Council and the people to hear and act only on their opinion. Of course, this was unacceptable to the majority since their opinions mattered as well. This did not accord with our way of practicing law.

The general band meetings were held in the gymnasium. The tables were set in a big circle with Council members sitting together. People from family groups would also sit together. A chairperson kept order in the meetings and recognized each of the speakers in turn. On occasions where there was a contentious issue each person was called upon to provide their point of view. This structure did not work when the loudest voices were intent on disrupting the meeting. Their intimidating behaviour caused bigger fights with those at the meeting who were strong enough to oppose their views; however, it silenced those who were afraid of conflict and confrontation. It came to the point where people did not want to attend general band meetings, staff did not want to participate, and Council members dreaded having to be accountable in such an atmosphere.

These young men did not seem to care that their intimidating tactics were disrespectful to the Elders, to the guests in the meeting, to the people in general. Their actions demonstrated the disrespect they had for themselves. When it became clear that the people were being re-traumatized by the behaviour, especially the Elders, we knew it was time to set some new rules in place that could carry authority. We thus used our own laws to regulate behaviour in the community and resolve these disputes. We sought to reinforce our laws by also applying the laws of the state. We focused on a few of the young men had participated in taking over the band office and ransacking it during their occupation. The Council at the time obtained a court order to remove the young men. Still they continued with their intimidating behaviour, and engendered a dislike for their tactics and disrespectful behaviour towards them by other band members. Band

employees were intimidated in their work place as demands for services, demands to use office equipment and office space to photocopy their propaganda, and demands to use band vehicles continued.

In the midst of all this anger and frustration band members and Band Council were forced to go within themselves to explore the ways to make things better. We needed to go deeper within our own legal traditions. Accountability and transparency for band government activity was made through band newsletters and updates, quarterly financial reports sent to each house-hold, and an annual general meeting where the audit, department and band corporate reports were delivered. The Council approved a one page summary of the rights of the band members to services, and their right of appeal if service was denied which was posted in the band office. However, the main solution was the legal instruments available through the dominant legal system to curtail abusive behaviour.

Anyone disrupting band business in the band office was given three warnings to leave and, if they refused, the RCMP was called to remove them. Again, we were applying our own laws, and harmonizing them with the criminal law of the Canadian state. At general band meetings the chairperson kept order, and if a person refused to be called to order, then the meeting was shut down. Family representative meetings were called to provide information and obtain feedback from people. The Elders Council, which had been formed at the beginning of my term, continued with their meetings and providing advice to the Band Council. It was a difficult time as it seemed if the Council made a decision approved by the majority it was always opposed by these few members. And, even when a band resolution was put to a vote by the majority, directing Council to do certain things, these young men would accuse the Council of changing the wording. It was a no-win situation.

The authority of the Band Council to make binding decisions was respected in the end, but it did not mean that everyone had respect for how situations were handled. It did not mean everyone respected the Band Council. The *St'exelceme* legal principles evident in

the calls for respectful behaviour might have been overshadowed but they did not lose their power. A fiction the members came to believe was that it was the Band Council's responsibility to look after all the *St'exelceme* lands. This came to a head during one of our own blockades to stop logging in an ecologically sensitive moose hunting area. Meaningful participation from the band members happened as a result of a reminder that each of the families had their fishing and hunting territories for which they were responsible to protect. This family responsibility had not only disintegrated with respect to the land but also within the sphere of responsibility for the safety of family members.

In one particular instance, family members and interested band members met with Band Council to discuss the possible banishment of a young man whose violence escalated with each new offense. The offenses were against family and anyone else he chose to target in his explosive episodes. Their pain and fear were expressed, acknowledged and used to develop a band council resolution that did banish the young man, but with the recognition that he would have to do the work set out in the resolution to find his way back into the community. The banishment was not the first or only remedy in this situation since this young man was offered assistance to obtain treatment for the historical abuses he had endured. Unfortunately, the young man has yet to find it in himself to address the pain others have caused him without hurting back in response. Some band members might still view the resolution as an abuse of power. But, what of those who were the victims of this individual's violence? This young man has the power whether he believes it or not to make changes in his life.

The band council resolution, an instrument of the *Indian Act*, was used to extend the *St'exelceme* law of banishment with the RMCP powers to implement the band council resolution for the safety of children and families at *T'exelc*. This remedy has not always been available due to the RCMP reluctance to become involved in band politics. And, in some instances, the family violence and alcohol addiction precluded the services of the RCMP when the parties to an incident did not or refused to file a police report. Nevertheless, we continue to innovate and develop our laws in ways that meet the issues at hand.

#### 4.9 Custom Adoption Interrupted

This research heavily relied on examples of *St'exelcenc* custom adoption and did not provide any examples of adoptions under the provincial adoption legislation. There is also no thorough comparative analysis on the interaction of provincial adoption legislation against custom adoption practiced by the *St'exelcenc*, and the experience of those adopted under either practice. This was an intentional decision to stay with the *St'exelcenc* custom adoption which delineated how the practice was used to keep children safe. Nevertheless, it must be acknowledged that this safety mechanism, of custom adoption, did not always work. We have law because we are not perfect. We keep trying to refine our laws to meet the many challenges we face. The fact that law is not always successful does not mean that we do not have law. However, we do have reason to reflect on those occasions when our law has not helped us as we hoped.

For example, Junior Elder #5 provided an example of custom adoption which was challenged by the birth mother when her son was in his early teens and the result for him was horrific physical abuse. She recalls

I really didn't understand until my cousin, Osx came to pick up my little brother, Aa. When Pe7e Ii1 told Mom to go and get him from the hospital – as old as she was – she had to do it. Sometimes the man makes the decision. It's the same with my older brother L1 now. ...

I didn't really understand or know there was a *seme7e* way of adopting. When Aa's birth mother Osx came and tried to get him back because Mom never adopted him. There was a meeting at the band office. She said it was because she didn't adopt him the government way. Aunt Tsx was really sick with pneumonia at the time so it was agreed that Mom would take him. Aunt Tsx also said she was drinking heavily at the time. She did come once with the idea of taking him but she seen how bonded he was with us and let him stay. She said she couldn't take him. And when Aa left with Osx for a visit he was supposed to come back that fall but Osx never brought him back. Mom was so upset and cried for him and said "I wonder where that boy is?"

When Osx did finally bring him back he visited with Mom and Osx came to try and get him back but he ran away. He ran away and hid in the woods and hid on her, and made a camp. My niece and nephew were

bringing food to him. My older sister found out that her children were feeding Aa, and she brought him back to Osx. Things were supposedly going good but Aa got a beating and was burned on the face with the stove lid. My older brother, L1 went and beat up his stepfather. They told him they were going to call the cops on him and he told them he would tell the cops they beat Aa and burned his face. That night they went away again. I later talked to Aa about why he went back and he said he went back to protect my Mom.<sup>203</sup>

Osx obviously did not abide by *St'exelceme* law by first abandoning her baby at the hospital and then by challenging the authority of JE#5's grandfather to issue the order to rescue the child. Osx attempted to use the *Indian Act* governing system through the Band Council to overturn the decision and garner support to take the child back. When that failed she took the teen on the pretext of a summer visit but thereafter refused to relinquish him back to JE#5's mother who had raised him. The teen's attempt to return to the only home he had known was discouraged by his birth mother and stepfather who beat him into submission. The teen became lost not to the provincial child welfare system but to his birth mother's care. Misguided attempts by JE#5's brother to protect their younger brother did not resolve the issue, but perhaps, exacerbated it by convincing the teen the only way to protect his adopted mother was to stay away.

This incident occurred when the village of *T'exelc* was in the throes of alcohol addiction in the mid-1970's. But, slowly members like some of the Elder participants quit drinking and began their lifelong healing journeys from the abuses of the past. All the Elders who participated in this project are drug and alcohol free; and of the seven (7) Junior Elders who participated in this project five (5) are drug and alcohol free. The Elders work daily to undo the harm they have done to their families while they were heavily involved in their addictions. They have found refuge in practicing their culture out on the land fishing, hunting, berry picking, and medicine gathering, making birch bark baskets, pine needle baskets, dance regalia, relearning or teaching *Secwepemctsin*, organizing social events at *T'exelc*, and teaching the young people what they know. The Junior Elders have recognized the authoritarian style parenting has taken them away from the

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<sup>203</sup> Junior Elder #5 [JE#5] Interview, July 11, 2009 at 11-15.

traditional *St'exelceme* parenting some of them received from their grandparents. They wish to do differently and believe their participation in this research will benefit future generations.

One example of a family's desire to exercise their child safety jurisdiction as a family is featured in the Jessie's Story [Appendix "E"](#) to demonstrate the revival of *St'exelceme* law is in progress. The names of the participants have been fictionalized to protect their identities, however, the story is known to me personally and I have taken measures to ensure the accuracy of its contents with the mother involved.

This case study demonstrates one family's exercise of their jurisdiction with respect to the safety of their children. This model could be utilized for the revival of Secwepemc jurisdiction for child welfare in a way that is not reliant on the dominant legal system and regulation but on the strength of family.

In this story the parents were willing to do what was necessary to regain custody of their children. In other instances, issues like the following may be involved and require more resources than a family could supply:

- one or both parents may disagree with moving out as part of the agreement
- spousal abuse may be the underlying issue and require more support for the abused partner
- caregivers other than family may have to move in with the children
- one or both parents may be unable to provide maintenance
- one or both parents may want more access
- family commitment may be a challenge

The agency and/or Band social services would be necessary to assist the parties or as a last resort the children may be placed in care.

For the future development of child and family services the Elders and Junior Elders recommend they be based on the *St'exelcemic* legal principles and concepts for child safety. Their recommendation comes from their life experience as parents, grandparents, employees in various social sectors, and most importantly, with the intention that Secwepemc law, custom and values form the foundation of the service. The Elders and Junior Elders also recognize that some laws like the *St'exelcemic* practice of placing eldest grandchildren with the grandparents, became the practice of 'dumping' their children because parents do not want the child-rearing responsibility. They envision traditional parenting being taught to young parents, activities consistent with each age group and gender for all seasons and stages of life. And as important, that we all act on the jurisdiction we hold as individuals, family and community with the knowledge the *St'exelcemic* laws have been suppressed or corrupted - they still exist!

### **Conclusion**

I wrote this thesis with the view that a Secwepemc legal order exists. My goal in this research was to identify, record and apply *St'exelcemic* laws, customs and traditions in the area of child safety in the village of the Williams Lake Indian Band. I stated the objectives of the research are to utilize the Secwepemc laws, customs, and traditions to revive the jurisdiction in one area of self-governance that contributes to the foundation of a strong, healthy and progressive Secwepemc Nation. I chose child safety as the unit of social relations because children and family are the foundation upon which to revive Secwepemc nationhood. I envisioned this research may also assist in the future development of legislation which is the foundation upon which to develop children and family services. In my opinion Secwepemc child safety legislation must be based upon Secwepemc laws, customs, traditions for the Secwepemc to truly exercise self-government and attain self-determination. My position is also that the Secwepemc must revive their legal system by defining their laws, customs, and traditions internally in all areas of their social relations, and more specifically, in the area of child welfare

I took an interdisciplinary approach which integrates law and social work because both disciplines have a primary role in the historical development of child welfare as it relates to Indigenous children in BC and Canada. This interdisciplinary approach brought together content, concepts and approaches from law and child welfare as it relates to the *St'exelcemic* of the Secwepemc Nation. I included a comparative aspect to demonstrate why the Secwepemc must articulate their laws, customs and traditions. In essence, they have relied upon these laws for generations to survive the imposition of non-Secwepemc law-making in the social, political, legal and economic aspects of their lives.

This thesis was not a comprehensive review of case law nor a detailed study of social work practice and theory rather this thesis was meant explore how customary law can be utilized to revive the inherent jurisdiction of the individual, family, community and nation in the area of child safety at *T'exelc*.

I started by utilizing *St'exelcemic* custom to demonstrate a unique *St'exelcemic* methodology. This exercise was very important as I am writing this thesis on the basis that a Secwepemc legal order exists and with it concepts and principles that guide my research and writing. I also drew comparisons between the human research ethical guidelines of the University of Victoria and *St'exelcemic* protocol to demonstrate the similarities for carrying out research in a respectful manner. I chose to abide by *St'exelcemic* protocol within my community and to guide me in this work while respecting the rigours of research methods of University of Victoria.

I interviewed *T'exelc* Elders and Junior Elders to compile the data for this research. They are the 'living sources' of *St'exelcemic* law. I used their stories and voice and research findings to support my view that revival of self-governance in the area of child welfare is the key to the revival of Secwepemc nationhood. I relied on the Secwepemc Creation Story to tell the story of how our world came to be. I only wanted to use colonial history, legislation and policy for context. It was more important for me to transmit the knowledge about the *St'exelcemic* history and laws, to tell the story of how the *St'exelcemic* came to be at *Texelc*, their difficult journey as landless people in their

territory; the violations they experienced, and their tenacious hold on their cultural and spiritual beliefs. The stories of Coyote and Old One, of settlers and colonizers, of missionaries and child welfare specialists create the foundation from which the *St'exelcemic* can revive and recreate the Secwepemc Nation.

I went back to the laws within the Creation Story to see how they intertwined with *St'exelcemic* history to reclaim not only the rights we have as Indigenous peoples, but also the responsibilities that were stolen from us in the guise of the best interests of our children. These legal extractions will lay another foundation for the retelling and reclaiming of our child safety laws. I identified and recorded the *St'exelcemic* laws that kept children safe and families intact based on the stories and recollections of the Elders and Junior Elders. The *St'exelcemic* legal principles were derived from those stories and recollections capture the essence of the laws for child safety and family unity that form the basis of the *St'exelcemic* legal order.

In this work I recognized that one must do the very best to translate the Secwepemc concepts without corrupting the deep meaning held in *Secwepemtsin* to responsibly pass on the knowledge. I questioned my ability to do this translation because I am not a fluent speaker but concluded as an Elder once told me I am between these two worlds and we can help each other express what needs to be transmitted. An important aspect of reviving and revitalizing Secwepemc law is to continue this research analyzing the literal meaning behind Secwepemc words to build on the findings in this thesis.

In this journey I have learned the following:

- as *St'exelcemic* law is formed and developed structure and organization was required for the creation of, application and evolution as circumstances prescribe.
- *St'exelcemic* law valued wise counsellors and decision-makers who would be consulted when problems arose that needed their guidance.

- *St'exelcenc* law was administered at the appropriate times. If our civil procedures were not drawn upon in a timely fashion this could violate a person's due process.
- *St'exelcenc* law was teleological – goal oriented – it was taught and lived to allow the development of good people.
- *St'exelcenc* child safety law was a communal responsibility as well as individual responsibility exercised to keep children safe.
- *St'exelcenc* law was learned through observation.
- Security in *St'exelcenc* law lead to confidence within oneself and the boundaries one must operate within to bring peace and order to our community.
- Boundaries and discipline are important elements of *St'exelcenc* law. People need to know when they are acting within proper spheres and when they are transgressing what is expected of them.
- As in western law there was a kind of legal accreditation that could come into play with certain medicinal and spiritual practices. The practice of 'bad medicine' like the practice of bad law engenders distrust where the transgression may mean, in contemporary sense, disbarment from the practice of law in the case of a practicing lawyer. This would be akin to one trying to circumvent the law to one's own benefit at the expense of another's rights.
- Authority is an important aspect of *St'exelcenc* law and discipline was a reminder of the power of authority. Remedies were calibrated on a sliding scale, and would be applied as the circumstances warranted. For example, banishment was a last resort for inappropriate behaviour, and notice was first provided by different people with different levels of authority to correct the person's behaviour.
- *St'exelcenc* law is also embedded in stories. Like common law cases, they could communicate appropriate and inappropriate behaviour. Stories could also record punishments, or chronicle when mercy or justice was extended or retracted. Story-telling was an important aspect of *St'exelcenc* law and a gentle method of keeping a young child on track through praise and mentorship, and developing their intellect as a *Qelmucw*, as a human being

- *St'exelcemic* laws have their own unique form, structure and purposes. To learn Secwepemc law one has to listen. In an oral tradition listening skills are the means of gaining and passing on knowledge. Listening also develops respect for the authority of the speaker for the knowledge that was being transmitted.
- Communication skills were important for the development and evolution of *St'exelcemic* law over the generations and as circumstances changed. Learning to listen to the messages translated – whether through another person or the natural world – demands a deep held respect for what is being transmitted. This is another way of learning law, that is cumulative and depends on practicing the other aspects of law
- *St'exelcemic* law is deliberative in the sense that decision-making was based thoughtful deliberation – on truth-telling.
- Respect has many connotations and is the major element in the development, sustaining and evolution of *St'exelcemic* laws. If laws are not respected by enough people society can fall apart. *St'exelcemic* law begins with respect for one self, and the talents of each other, for others in the personal space and property, for parents and their authority, for Elders and leadership and the authority their roles carry, and the ancestors for the lessons they left behind
- *St'exelcemic* law relates to the status as a holder of rights and responsibilities. For instance, womanhood changes a young girl's status as a sexual being and the personal boundaries that had to be respected between woman and man in the village for social harmony.
- *St'exelcemic* law not only separates through boundaries, by parceling out personal ownership and responsibility, law also has a collective aspect. Law is also directed towards sharing, where people lives can overlap and harmonize with one another without violating boundaries. Sharing kept the community, family and individuals sustained with food and spirituality.

This knowledge capture the essence of *St'exelcemic* child safety laws and the legal order they maintained to keep their children safe despite the intrusion and violation of colonial law on *St'exelcemic* law, customs and traditions.

The practice of custom adoption is succinct evidence of *St'exelcemic* exercise of our jurisdiction in the area of child safety and occurred in the following situations:

- as part of custom where the oldest grandchild(ren) are given over to the grandparents to raise;
- due to marital breakdown;
- where a couple is unable to conceive naturally;
- where the child is being neglected by their birth parent(s) and a family member intervenes and 'takes' the child to the grandparents to raise;
- where a young mother is instructed by the birth father to give up the child;
- where a child has been abandoned; or
- where the birth parents are unable to provide for the child.

Besides the safety of children or desire for children custom adoption was also a means of protecting the lineage of family and hereditary governance – as in the case of the adoption of James Louie when Eugene Jack did not want succeed Chief Atrian 'Tillion' Willam, his brother as hereditary chief. One acquired the birth rights of the natural children which in some cases carried with it great stature as a hereditary chief or as belonging to a hereditary lineage. The Elders and Junior Elders believed custom adoption meant the privilege of learning *Sewepemtsin* and the deeply held cultural and spiritual beliefs transmitted to them by their grandparents. The Elders and Junior Elders are now using their knowledge to educate future *St'exelcemic* in the ways children are kept safe, honoured and protected.

I have learned much about *St'exelcemic* law and their source in the translation of *ctkwenme7iple7ten*. Based on this knowledge – I provided examples of how *St'exelcemic* law was practiced contemporaneously in our Band government system using the *Indian Act* band council resolution, and legal instruments of the dominant legal system to extend the powers of *St'exelcemic* law. I provided a case study to demonstrate

how the common law, civil law, and *St'exelceme* law can work together to develop a model for child safety.

The *Kye7e* in the story at the beginning of this chapter was teaching her grandson how to be an intellect – to look behind the meaning of a story, a law, to theorize about his place and ‘other’s in his world. *St'exelceme* law is like that and this thesis has been about how we fit in this place called Canada. Law is how we make rules based on how we would like to be treated, how we can think, theorize how certain things must be in order to ‘put things right’. The oral histories of the *St'exelceme* Elders and Junior Elders are the legal precedents from which to revive and revitalize *St'exelceme* child safety laws, and to further entrench a Secwepemc legal order in ‘Canada’s Indigenous Constitution’.

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## INTERVIEWS AND OTHER COMMUNICATIONS

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Interview of Junior Elder #2, July 15, 2009

Interview of Junior Elder #3, May 27, 2009

Interview of Junior Elder #4, July 11, 2009

Interview of Junior Elder #5, July 3, 2009

Interview of Junior Elder #6, September 27, 2009

Interview of Junior Elder #7, July 18, 2009

### **COMMISSION TRANSCRIPTS**

Indian Claims Commission, Transcripts of Williams Lake Elders Interviews conducted by Jean William, 1972-1974, 1978 and 1994-1995, Exhibit 12d, namely: Transcript of Clothilde Thomas, Exhibit 12d; and Transcript of Lily Alphonse,, Exhibit 12d.

Indian Claims Commission, Transcript of Proceedings, June 18, 2003; Charlie Gilbert, Witness for the Williams Lake Indian Band, Exhibit 5a.

## Appendix A – Questionnaires

### Appendix A-1 – Focus Group Questionnaire

#### Reviving Secwepemc Child Welfare Jurisdiction

##### Focus Group Questions

**Central Question:** What are the traditions, laws and customs of the Secwepemc with respect to child welfare?

1. Who was responsible for teaching new parents their parenting responsibilities and what were they taught?
2. What were the individual family roles in taking care of children?
3. Were there traditional life skills taught to children that were meant to keep them safe?
4. What were the stories told in the community to help keep children safe?
5. What do you remember about community member responsibilities for child safety?
6. Why and under what circumstances would a community member intervene if a child or children were at risk?
7. How would community members exercise these responsibilities?
8. When children may have been at risk in the community was there any specific person or persons who would ensure their safety?
9. What was involved in taking care of a child or children who were at risk?
10. Were children ever taken out of the community for their safety and placed in another community? If so, then under what circumstances would this happen and for how long?

**Concluding Question:** How would the child welfare jurisdiction be exercised by the Secwepemc in the community of the Williams Lake Indian Band in terms of family responsibility and self-government considering our past experience and what we need for the future?

**Appendix A-2 Individual Interview Questionnaire****Reviving Secwepemc Child Welfare Jurisdiction****Individual Interview Questionnaire**

**Central Question:** What are the traditions, laws and customs of the Secwepemc with respect to child welfare?

1. Tell me about your family history in regard to the primary people who took care of you.
2. What were your responsibilities, if any, towards your siblings?
3. What were some of the stories told to you as a child which were meant as life lessons to keep you safe?
4. What, if any, were the restrictions on you as a child growing up in the community?
5. How were you prepared for each stage of your life as you progressed from childhood to puberty to adulthood?
6. How would this have been different for your sibling of the opposite gender?
7. Was there someone else in your extended family or in the community who would have some responsibility for your care when your parents weren't around?
8. What are some of the parenting skills that were taught to you that has carried forth in your own parenthood?
9. What are some of Secwepemc customs and practices of raising children that were taught to you?
10. Who taught you these Secwepemc customs and practices?

**Concluding Question:** How do you see child welfare jurisdiction exercised by the Secwepemc in the community of the Williams Lake Indian Band in terms of family responsibility and self-government considering our past experience and what we need for the future?

## Appendix B – Consent Forms

### Appendix B-1 Participant Consent Form – Junior Elder

**Participant Consent Form**  
**REVIVING SECWEPEMC CHILD WELFARE JURISDICTION**  
**Secwepemc Junior Elder**

You are being invited to participate in a study entitled Reviving Secwepemc Child Welfare Jurisdiction that is being conducted by Nancy Sandy. Ms. Sandy is a graduate student in the Faculty of Law at the University of Victoria. You may contact her if you have further questions at (250) 305-5307 and by electronic mail at [arron7@telus.net](mailto:arron7@telus.net). As a graduate student, I am required to conduct research as part of the requirement for a masters degree in law. The research is being conducted under the supervision of Professor John Borrows and Professor [second supervisor to be determined]. You may contact Professor Borrows at (250) 721-8167 and by electronic mail at [jborrow@uvic.ca](mailto:jborrow@uvic.ca).

#### **1. Research Project Purpose and Objective**

The purpose of the research project is to develop a model for the revival of the Secwepemc child welfare jurisdiction based on their traditions, laws and customs by examining the historical practices and standards used in raising children in a safe environment. The purpose for this research is to assist in the nation-building from within the Secwepemc community as opposed to rebuilding from the outside which is based on the provincial child welfare delegation model. The main objective is to define the one area of Secwepemc self-governance that forms the foundation of a healthy and progressive nation. The central question will be “what are the traditions, laws and customs of the Secwepemc with respect to child welfare.

#### **2. Importance of this Research Project**

Research of this type is important because the federal First Nations Child and Family Services policy and the provincial child welfare delegation model have resulted in the numbers of children in care that is [twice] the number of children in residential school at the height of operation. Despite the best efforts put forth by both levels of government and the First Nation and Aboriginal child and family service agencies the services have not resulted less First Nations and Aboriginal children in care. This research will rely on the Secwepemc traditions, laws and customs to revive the familial responsibilities that is the heart of self-government.

#### **3. Your Participation**

You are being asked to participate in this study because as a Secwepemc Junior Elder you have been raised by your grandparents according to Secwepemc tradition, law and custom, and have had Secwepemc child-rearing practices and customs transmitted to you by your grandparents. Or you have knowledge of the delegation models of First Nation child welfare in addition to the knowledge of Secwepemc child-rearing practices and customs. As a fluent [or semi-fluent speaker] of the Secwepemc language you will through your participation uncover the traditions, laws and custom inherent in the

language. In effect, you are the knowledge keepers of the Band and can transmit your knowledge in your roles as grandmothers, grandfathers, mothers, fathers, aunts, uncles, sisters and brothers.

#### **4. Research Methodology**

If you agree to voluntarily participate in this research, the your participation will include a personal interview process anticipated to last between one and three hours with a follow up interview to confirm content of the data.

You will also participate in a focus group process is anticipated to last three to five hours depending. There will one or two focus groups (depending on whether all questions are completed) to obtain the data; and one follow up session to confirm the content of the data.

Participants will receive \$30.00 for the one on one interview and \$50.00 for the focus group session.

#### **5. Potential Inconvenience And Risks In Participating In This Research**

Participation in this research may cause some inconvenience to you including time away from personal and employment responsibilities.

There are some potential risks to you by participating in this research and they include

- embarrassment caused by questions in the interview process or focus group process due to your own personal history with respect to child safety in your own families;
- fatigue or stress in the interview process or focus group process due to the personal nature of your recalling traditions, laws and customs based on your life experiences;
- emotional or psychological discomfort in the interview process or focus group process due to the personal nature of your recalling traditions, laws and customs based on your life experiences.

#### **6. Plan To Alleviate Potential Risks**

To prevent or alleviate these risks the following steps will be taken:

The interview and focus group structure will be agreed upon prior to starting the process: start and end time, break and refreshment time, closing and debriefing.

Individual and focus group processes will be opened and closed with a traditional ceremony acceptable to the participants.

Pre-meetings to review the questionnaires will be conducted to alleviate the discomfort or to assist the participants in making the decision to participate.

If the participant becomes embarrassed during the interview or focus group process the primary researcher will acknowledge the embarrassment, make apologies, and revise the query to stop the embarrassment. If the participant(s) is/are becoming fatigued or stressed during the interview or focus group process is starting the participant(s) will be

given a break or preference to end the session and reschedule to a time acceptable to the participant(s). If the participant(s) experience emotional or psychological discomfort during the interview or group process the discomfort will be acknowledged, the participant(s) will be given time to verbalize their discomfort and preference for continuing with the session or rescheduling to a time acceptable to the participant(s).

Opening and closing ceremonies in the Williams Lake Indian Band community are the traditional way of knowing one is opening yourself to an experience whether it is a meeting of the citizens, a ceremonial practice, or participation in a project like this one. The closing ceremony is an acknowledgment that the session is at an end, the information divulged in the session is confidential unless otherwise stated, and with an understanding of whom to contact if any further debriefing is required. You will be encouraged to call upon the primary researcher and upon one another if you wish to discuss the personal emotional outcome of any session. You will always have the right to withdraw from participating in the research project.

The debriefing may include closing comments, healing circles, sweat lodge ceremony, prayer circles, and access and use of health counselors, and will be agreed upon before the individual or focus group sessions begin.

Participants will be provided with the name and phone number for counselors at the Three Corners' Health Services Society ("TCHSS") should they feel the need to personally debrief an interview or group session. As a part of your consent to participate in the project each participant will be requested to name an Elder or Spiritual Leader whom they may wish to contact for a traditional debriefing session in the event they require such services.

Your participation in this research project is completely voluntary, You may withdraw at any time without any consequence or explanation.

Should you disclose a child-safety issue I am bound by law to report the information to the appropriate authorities.

There is a limit to confidentiality due to the size of the community and the sample size of participants, therefore, complete confidentiality cannot be guaranteed. Pseudonyms and codes to protect identifying information will be used in the data. During the focus group process the you will be reminded at the opening and the closing of the session the importance of confidentiality and the potential consequences of a breach.

## **7. Potential Benefits Of Participating In This Research**

The potential benefits of your participation in this research include:

- grasping the undeniable amount of knowledge you retain which is of considerable benefit to the research project;

- the self-esteem gained in knowing your knowledge will be used in reviving the Secwepemc child welfare jurisdiction specifically, and rebuilding the Secwepemc nation, generally; and
- personal recognition for participating in the research project.

The potential benefits for the state of knowledge is that the Secwepemc traditions, customs and laws with respect to child safety will be recorded for the benefit and history of the Bands' citizens and the Secwepemc Nation.

The data will be archived in the Williams Lake Indian Band archives with restricted access. The data will be stripped of identifying information such as names of participants and codes will be utilized in place of names. The data may be used by myself, as the primary researcher, or other researchers in the future.

## **8. Compensation In Form Of An Honorarium**

As a way to compensate you for any inconvenience related to your participation you will be given an honorarium. It is important for you to know that it is unethical to provide undue compensation or inducements to research participants and, if you agree to be a participant in this study, this form of compensation to you must not be coercive. However, if the offer of an honorarium goes against your Secwepemc values, then you may decline the offer and the funds will be contributed to the expenses of completing this project. If you would not otherwise choose to participate if the compensation was not offered, then you should decline.

## **9. Voluntary Participation And Withdrawal**

Your participation in this research must be completely voluntary. If you do decide to participate, then you may withdraw at any time without any consequences or any explanation. If you do withdraw from the study your individual interview data will be shredded and any electronic copy of the data will be deleted. The information you provide in the group process will be used in a summary form with no identifying information.

## **10. Power Imbalance In Research Relationship**

The researcher may have a relationship to potential participants as a relative in the extended family or as a former Chief of the Williams Lake Indian Band. To help prevent this relationship from influencing your decision to participate, the following steps to prevent coercion have been taken:

- acknowledgment of the power-over position the primary researcher retains with participants who are relatives and/or Elders
- acknowledgment the primary researcher will respect the confidentiality, their withholding of information that may be harmful to others, your request I refrain from advancing questions or continuation of interviews upon your instruction, and if necessary acceptance of your withdrawal from participation in the research.

### **11. Continuing Consent To Participate**

To make sure that you continue to consent to participate in this research I will prior to each individual interview or focus group ask if you wish to continue to participate in this research.

### **12. Anonymity and Confidentiality**

In terms of protecting your anonymity names of the individual participants will not be used in the research project. Pseudonyms will be used for all participants and changing identifying information and features will be utilized where it is clear that confidentiality might be breached. Codes will be used for each individual in both the individual interview process and the group process.

Due to the size of the community and the sample size of participants complete confidentiality cannot be guaranteed, however, confidentiality and the confidentiality of the data will be protected by reminder at the opening and the closing of the session the importance of confidentiality and the potential consequences of a breach, and the data collected will be kept securely stored.

### **13. Other Planned Uses For And Sharing This Research**

Other planned uses and sharing of this data include oral presentations to the:

- research group,
- the citizens of the Williams Lake Indian Band,
- to the citizens of the member Bands of the Shuswap Nation upon request; and
- potentially publishing an article, chapter or book.

A copy of the primary researchers' masters' thesis will be provided to each of the participants, the Williams Lake Indian Band, and to the Northern Shuswap Tribal Council.

### **14. Storage And Archival Of This Research**

Data from this research will be securely stored for five years and archived in the Williams Lake Indian Band archives with restricted access.

In addition to being able to contact the researcher and the supervisor at the above phone numbers you may verify the ethical approval of this research or raise any concerns you

might have by contacting the Human Research Ethics Office at (250) 472-4545 at the University of Victoria at (250) 472-4362.

Other individuals that may be contacted regard this study include Professor Cathy Richardson, School of Social Work, University of Victoria at [cathyr@uvic.ca](mailto:cathyr@uvic.ca) or at (250) 472-4632..

Your signature below indicates that you understand the above conditions of participation in this study and that you have had the opportunity to have your questions answered by the researcher.

\_\_\_\_\_  
\_\_\_\_\_  
Name of Participant                      Signature of Participant                      Date

\_\_\_\_\_  
\_\_\_\_\_  
Name of Researcher                      Signature of Researcher                      Date

***A copy of this consent will be left with you, and a copy will be taken by the researcher.***

## Appendix B-2 Participant Consent Form - Elder

### Participant Consent Form

#### REVIVING SECWPEPMC CHILD WELFARE JURISDICTION

You are being invited to participate in a study entitled Reviving Secwepemc Child Welfare Jurisdiction that is being conducted by Nancy Sandy. Ms. Sandy is a graduate student in the Faculty of Law at the University of Victoria. You may contact her if you have further questions at (250) 305-5307 and by electronic mail at [nsandy@shaw.ca](mailto:nsandy@shaw.ca).

As a graduate student, I am required to conduct research as part of the requirement for a masters degree in law. The research is being conducted under the supervision of Professor John Borrows and Professor \_\_\_\_\_. You may contact Professor Borrows at (250) 721-8167 and by electronic mail at [jborrows@uvic.ca](mailto:jborrows@uvic.ca).

#### 1. Research Project Purpose and Objective

The purpose of the research project is to develop a model for the revival of the Secwepemc child welfare jurisdiction based on their traditions, laws and customs by examining the historical practices and standards used in raising children in a safe environment. The purpose for this research is to assist in the nation-building from within the Secwepemc community as opposed to rebuilding from the outside which is based on the provincial child welfare delegation model. The main objective is to define the one area of Secwepemc self-governance that forms the foundation of a healthy and progressive nation. The central question will be “what are the traditions, laws and customs of the Secwepemc with respect to child welfare.

#### 2. Importance of this Research Project

Research of this type is important because the federal First Nations Child and Family Services policy and the provincial child welfare delegation model have resulted in the numbers of children in care that is [twice] the number of children in residential school at the height of operation. Despite the best efforts put forth by both levels of government and the First Nation and Aboriginal child and family service agencies the services have not resulted less First Nations and Aboriginal children in care. This research will rely on the Secwepemc traditions, laws and customs to revive the familial responsibilities that is the heart of self-government.

#### 3. Your Participation

You are being asked to participate in this study because as an Elder you are the language and knowledge carrier and the last generation to have been considered for arranged marriages, and experienced the seasonal rounds traditional Secwepemc lifestyle. The interruption of this custom and traditional lifestyle is a result of the residential school system and its impacts on the personal lives of the Bands’ citizens. As a fluent [or semi-fluent speaker] of the Secwepemc language you will through your participation uncover the traditions, laws and custom inherent in the language. In effect, you are the knowledge keepers of the Band and can transmit your knowledge in your role as grandmother, grandfather, mother, father, aunt, uncle, sister and brother.

As a Secwepemc Junior Elder you have been raised by your grandparents according to Secwepemc tradition, law and custom, and have had Secwepemc child-rearing practices and customs transmitted to you by your grandparents. As a fluent [or semi-fluent speaker] of the Secwepemc language you will through your participation uncover the traditions, laws and custom inherent in the language. In effect, you are the knowledge keepers of the Band and can transmit your knowledge in your roles as grandmothers, grandfathers, mothers, fathers, aunts, uncles, sisters and brothers.

#### **4. Research Methodology**

If you agree to voluntarily participate in this research, the your participation will include a personal interview process anticipated to last between one and three hours with a follow up interview to confirm content of the data.

You will also participate in a focus group process is anticipated to last three to five hours depending. There will one or two focus groups (depending on whether all questions are completed) to obtain the data; and one follow up session to confirm the content of the data.

#### **5. Potential Inconvenience And Risks In Participating In This Research**

Participation in this research may cause some inconvenience to you including time away from personal and employment responsibilities.

There are some potential risks to you by participating in this research and they include

- embarrassment caused by questions in the interview process or focus group process due to your own personal history with respect to child safety in your own families;
- fatigue or stress in the interview process or focus group process due to the personal nature of your recalling traditions, laws and customs based on your life experiences;
- emotional or psychological discomfort in the interview process or focus group process due to the personal nature of your recalling traditions, laws and customs based on your life experiences.

#### **6. Plan To Alleviate Potential Risks**

To prevent or alleviate these risks the following steps will be taken:

The interview and focus group structure will be agreed upon prior to starting the process: start and end time, break and refreshment time, closing and debriefing.

Individual and focus group processes will be opened and closed with a traditional ceremony acceptable to the participants.

Pre-meetings to review the questionnaires will be conducted to alleviate the discomfort or to assist the participants in making the decision to participate.

If the participant becomes embarrassed during the interview or focus group process the primary researcher will acknowledge the embarrassment, make apologies, and revise the query to stop the embarrassment. If the participant(s) is/are becoming fatigued or stressed during the interview or focus group process is starting the participant(s) will be given a break or preference to end the session and reschedule to a time acceptable to the

participant(s). If the participant(s) experience emotional or psychological discomfort during the interview or group process the discomfort will be acknowledged, the participant(s) will be given time to verbalize their discomfort and preference for continuing with the session or rescheduling to a time acceptable to the participant(s).

Opening and closing ceremonies in the Williams Lake Indian Band community are the traditional way of knowing one is opening yourself to an experience whether it is a meeting of the citizens, a ceremonial practice, or participation in a project like this one. The closing ceremony is an acknowledgment that the session is at an end, the information divulged in the session is confidential unless otherwise stated, and with an understanding of whom to contact if any further debriefing is required. You will be encouraged to call upon the primary researcher and upon one another if you wish to discuss the personal emotional outcome of any session. You will always have the right to withdraw from participating in the research project.

The debriefing may include closing comments, healing circles, sweat lodge ceremony, prayer circles, and access and use of health counselors, and will be agreed upon before the individual or focus group sessions begin.

### **7. Potential Benefits Of Participating In This Research**

The potential benefits of your participation in this research include:

- grasping the undeniable amount of knowledge you retain which is of considerable benefit to the research project;
- the self-esteem gained in knowing your knowledge will be used in reviving the Secwepemc child welfare jurisdiction specifically, and rebuilding the Secwepemc nation, generally; and
- personal recognition for participating in the research project.

The potential benefits for the state of knowledge is that the Secwepemce traditions, customs and laws with respect to child safety will be recorded for the benefit and history of the Bands' citizens and the Secwepemc Nation.

### **8. Compensation In Form Of An Honorarium**

As a way to compensate you for any inconvenience related to your participation you will be given an honorarium. It is important for you to know that it is unethical to provide undue compensation or inducements to research participants and, if you agree to be a participant in this study, this form of compensation to you must not be coercive. However, if the offer of an honorarium goes against your Secwepemc values, then you may decline the offer and the funds will be contributed to the expenses of completing this project. If you would not otherwise choose to participate if the compensation was not offered, then you should decline.

## **9. Voluntary Participation And Withdrawal**

Your participation in this research must be completely voluntary. If you do decide to participate, then you may withdraw at any time without any consequences or any explanation. If you do withdraw from the study your individual interview data will be shredded and any electronic copy of the data will be deleted. The information you provide in the group process will be used in a summary form with no identifying information.

## **10. Power Imbalance In Research Relationship**

The researcher may have a relationship to potential participants as a relative in the extended family or as a former Chief of the Williams Lake Indian Band. To help prevent this relationship from influencing your decision to participate, the following steps to prevent coercion have been taken:

- acknowledgment of the power-over position the primary researcher retains with participants who are relatives and/or Elders
- acknowledgment the primary researcher will respect the confidentiality, their withholding of information that may be harmful to others, your request I refrain from advancing questions or continuation of interviews upon your instruction, and if necessary acceptance of your withdrawal from participation in the research.

## **11. Continuing Consent To Participate**

To make sure that you continue to consent to participate in this research I will prior to each individual interview or focus group ask if you wish to continue to participate in this research.

## **12. Anonymity and Confidentiality**

In terms of protecting your anonymity names of the individual participants will not be used in the research project. Pseudonyms will be used for all participants and changing identifying information and features will be utilized where it is clear that confidentiality might be breached. Codes will be used for each individual in both the individual interview process and the group process.

Due to the size of the community and the sample size of participants complete confidentiality cannot be guaranteed, however, confidentiality and the confidentiality of the data will be protected by reminder at the opening and the closing of the session the importance of confidentiality and the potential consequences of a breach, and the data collected will be kept securely stored.

## **13. Other Planned Uses For And Sharing This Research**

Other planned uses and sharing of this data include oral presentations to the:

- research group,
- the citizens of the Williams Lake Indian Band,
- to the citizens of the member Bands of the Shuswap Nation upon request; and
- potentially publishing an article, chapter or book.

A copy of the primary researchers' masters' thesis will be provided to each of the participants, the Williams Lake Indian Band, and to the Northern Shuswap Tribal Council.

#### **14. Storage And Archival Of This Research**

Data from this research will be securely stored for five years and archived in the Williams Lake Indian Band archives with restricted access.

In addition to being able to contact the researcher and the supervisor at the above phone numbers you may verify the ethical approval of this research or raise any concerns you might have by contacting the Associate Vice-President, Research at the University of Victoria at (250) 472-4362.

Other individuals that may be contacted regard this study include

\_\_\_\_\_.

Your signature below indicates that you understand the above conditions of participation in this study and that you have had the opportunity to have your questions answered by the researcher.

\_\_\_\_\_

\_\_\_\_\_

Name of Participant

Signature of Participant

Date

\_\_\_\_\_

\_\_\_\_\_

Name of Researcher

Signature of Researcher

Date

*A copy of this consent will be left with you, and a copy will be taken by the researcher.*

## **Appendix B-3 Summary of Research Project Consent Form**

### **Reviving Secwepemc Child Welfare Jurisdiction**

#### **Summary of Research Project**

##### **1. Purpose and Objective**

- develop a model of Secwepemc child welfare jurisdiction based on Secwepemc laws;
- assist in rebuilding our Nation from within our community;
- use our own model instead of the provincial laws and delegation model; and
- define one area of our self-governance that will form the foundation for a healthy and progressive nation;

**Central Question:** What are the Secwepemc traditions, laws and customs to keep children safe?

##### **2. Importance of Research Project**

- more FN children in care than at the height of the operation of residential schools;
- the number of FN children in care are not decreasing; and the
- need for Secwepemc to exercise their inherent jurisdiction to revive the familial responsibilities that is the heart of our self-government.

##### **3. Your Participation**

- your participation is voluntary and you may withdraw at any time without consequence or explanation;
- as an Elder (or Junior Elder) you have the language and the knowledge;
- as an Elder you are the last generation of the Secwepemc at T'exelc to experience the seasonal rounds of traditional Secwepemc lifestyle, and to have been considered for arranged marriages;
- as a fluent or semi-fluent speaker you will help uncover the Secwepemc laws in the area of child safety; and
- your knowledge needs to be transmitted for future generations.

##### **4. Method of Research**

- agreeing to participate in personal interviews with follow-up to confirm your information;
- focus groups; and
- honorarium as long as not doing it just for the money.

##### **5. Potential Inconveniences and Risks in Participating**

- time away from personal responsibilities;
- you may tire easily or experience stress during interview or focus group; and
- you may experience emotional or psychological discomfort due to your recall of history.

## **6. Plan to Alleviate Inconvenience or Potential Risk**

- we will agree upon interview or focus group structure before starting the process i.e., start and end time, breaks, refreshments, closing and debriefing
- open and close with traditional ceremony;
- pre-meeting to review questionnaires before interview or focus groups;
- acknowledging embarrassment caused by a question, apologize and rephrase question to stop embarrassment;
- have a break when you are tired;
- if you experience emotional or psychological discomfort it will be acknowledged and you will be given time to speak about your discomfort; and the opportunity to stop the process and begin again when you are ready;
- you will be encouraged to call upon a support person or the researcher to debrief when the need arises;
- you will be given contact numbers for Three Corners counselors;
- you will be asked to provide the name of another support person, an Elder or Spiritual Leader whom you may wish to contact for a traditional debriefing;
- a reminder you may withdraw without consequence or explanation
- as the primary research I am required by law to report to the appropriate authorities should you disclose any child safety issues; and
- given the size of the community there is a limit to confidentiality that can be provided
- pseudonyms and codes for confidentiality unless you consent to release of your name in the thesis

## **7. Potential Benefits of Participation**

- understanding the importance of your knowledge and the benefit to this research and future generations;
- self-esteem gained in knowing your knowledge contributed to reviving the Secwepemc inherent child welfare jurisdiction;
- personal recognition for participation in the project;
- the research will be recorded for the benefit of T'xelc and the Secwepemc Nation;
- information will be stored in safe place with restricted access; and
- use of information for future research by myself or other researchers.

## **8. Compensation**

- honorarium is paid for any inconvenience related to your participation
- honorarium must not be used to coerce you into participating
- if accepting an honorarium goes against your Secwepemc values you may decline the offer and the funds will go towards expenses of completing research i.e., refreshments, ceremony
- if you are only participating for the honorarium then you should decline the offer to participate.

## **9. Voluntary Participation and Withdrawal**

- participation is voluntary;
- you may withdraw at anytime without consequence or explanation;
- if you withdraw your individual information will be shredded and any electronic data will be deleted; and
- if you withdraw after a focus group has been conducted your information will be used in a summary form without any identifying information

## **10. Power Imbalance**

- the primary researcher as a relative or former Chief and acknowledgment of position;
- provide relative opportunity to have another person conduct the research;
- respect for confidentiality and your wish to withhold information harmful or embarrassing to others;
- respecting your wish to stop the question or interview; and
- if necessary your withdrawal from participation.

## **11. Continuing to Consent to Participate**

- confirm your participation before each interview or focus group

## **12. Anonymity and Confidentiality**

- use of pseudonyms and codes;
- change in identifying information;
- complete confidentiality cannot be guaranteed; and
- data will be kept securely stored.

## **13. Other Planned Uses for Research Information**

- oral presentations to research group, Band, Secwepemc Band upon request; and
- potential publication as an article, chapter or book.

## **14. Storage and Archival**

- securely stored for five years; and
- archived in Band archives with restricted access.

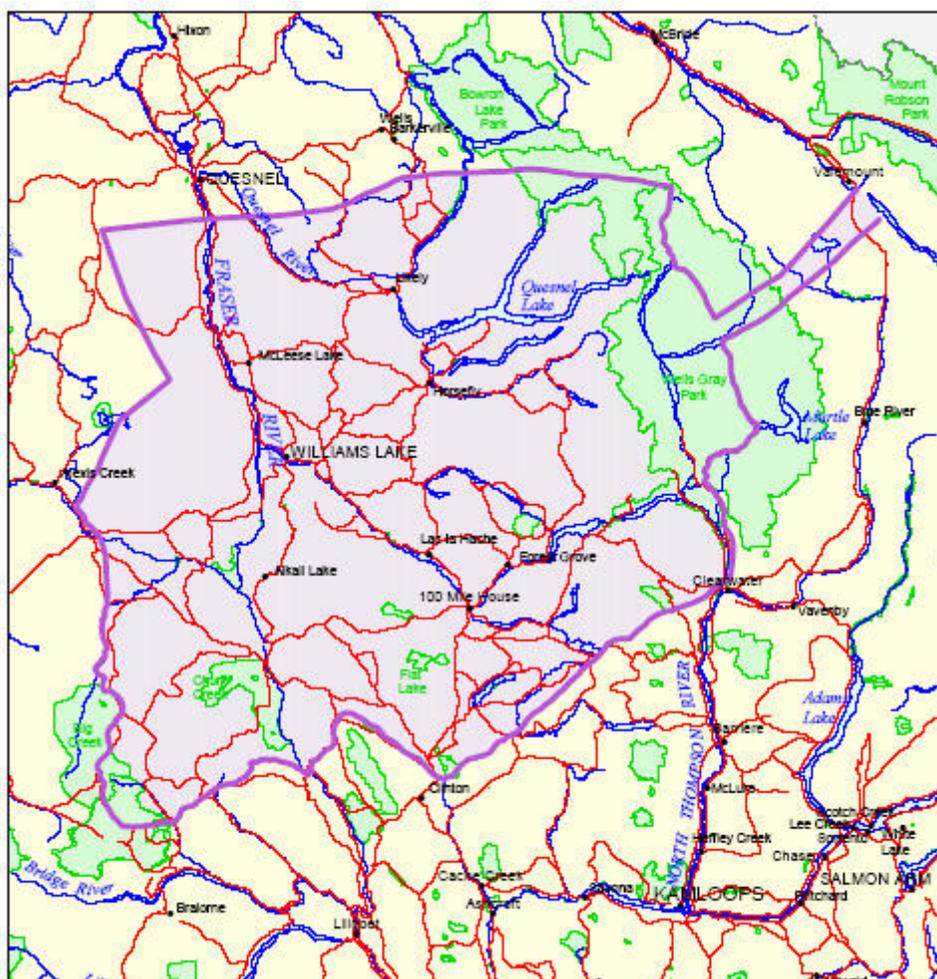
**Contact Information if you have concerns with respect to research project.**

## Appendix C – Maps

### Appendix C-1 Secwepemc'ulucw

#### SECWPEMUL'ECW

Seen below is our traditional territory. It officially spans 5,300,000 hectares (53,000 square kilometers or 20,463.4 square miles). However, TUS research has implied that the number may be as much as 5,600,000 hectares.



## Appendix C-2 Teit's Map of Shuswap Territory

45°

TEIT, THE SHUSWAP.

the Carrier they are called "Ætna," and by the Chilcotin "Ænnai," which in each case means "foreigner."<sup>1</sup>

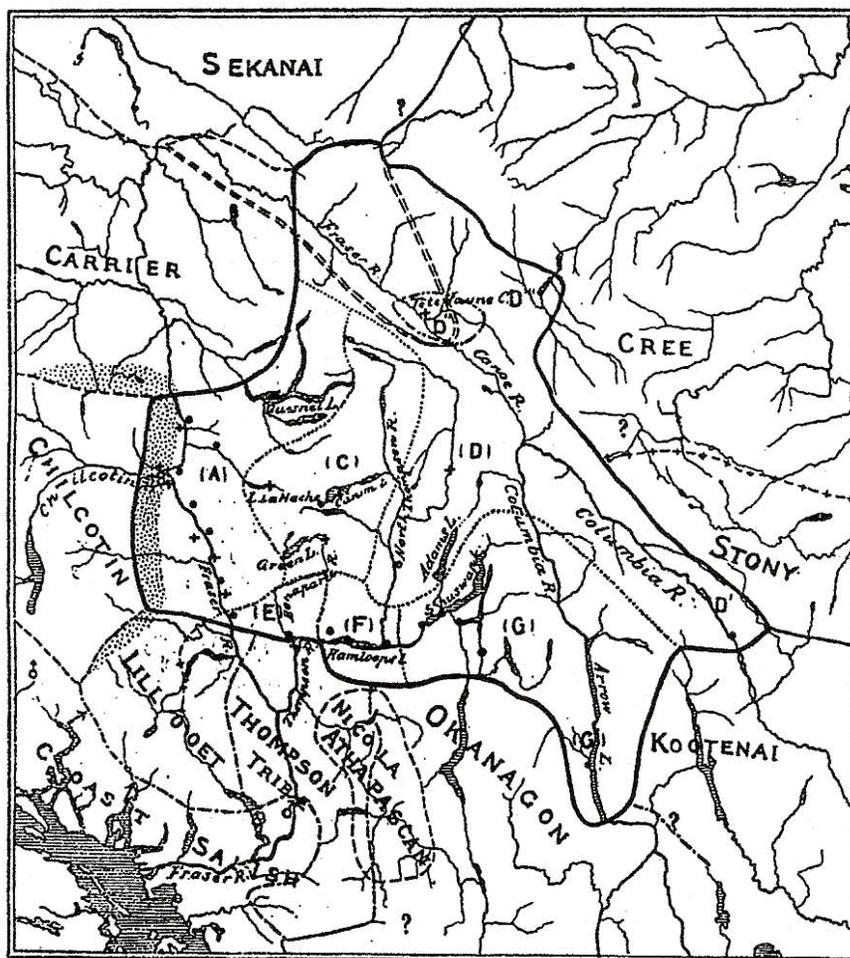


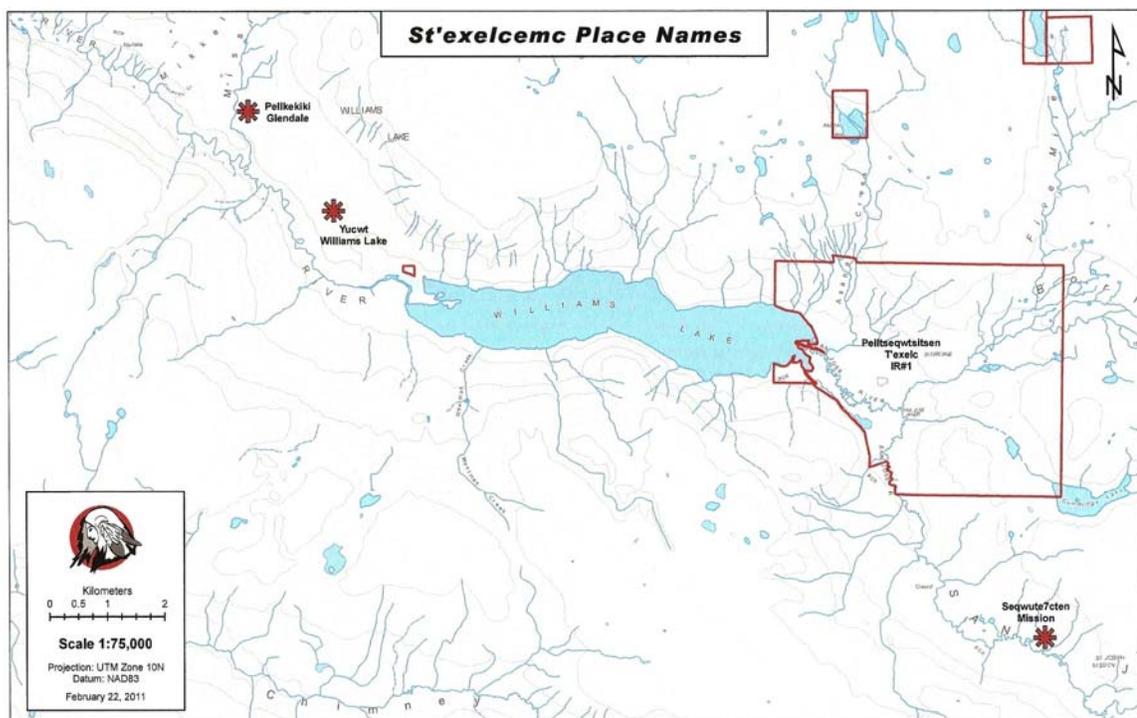
Fig. 199. Map showing the Shuswap Territory.

- |   |   |                           |
|---|---|---------------------------|
| A, Fraser River Division.   | D', Kinbasket.                              | F, Kamloops Division.     |
| B, Cañon Division, territory now largely occupied by the Chilcotin. | D'', Former territory of the Iroquois Band. | G, Shuswap Lake Division. |
| C, Lake Division.   | D''', Shuswap, Cree, and Iroquois mixed.    | G', Arrow Lake Band.      |
| D, North Thompson Division.   | E, Bonaparte Division.                      | ●, Villages.              |
|   |   | + , Former villages.      |

Dotted area, territory recently occupied by the Chilcotin. Area at head of Fraser River, enclosed by broken double lines, temporarily occupied by the Sekanai.

<sup>1</sup> See A. G. Morice, Who are the Atnas? (American Antiquarian).

Appendix C-3 WLIB Map with Place Names



## Appendix D - Invitations to Participate in Interviews

### Appendix D-1 Letter of Invitation to Participate in Interviews

[DATE]

[Name and Address of Participant]

#### **Re: Masters' Thesis – Reviving Secwepemc Jurisdiction In Child Welfare**

Dear Ms/Mr. \_\_\_\_\_:

I am currently enrolled as a graduate student in the Faculty of Law at the University of Victoria, and I am writing to respectfully request your participation in the research required for the completion of my masters' degree in law. I have chosen as my topic First Nations child welfare, and will be centering the research in our home community, and have titled my thesis "Reviving Secwepemc Jurisdiction in Child Welfare".

You are being asked to participate in this study because as a Secwepemc Junior Elder you have been raised by your grandparents according to Secwepemc tradition, law and custom, and have had Secwepemc child-rearing practices and customs transmitted to you by your grandparents. You may also have knowledge of the delegation models of First Nation child welfare in addition to the knowledge of Secwepemc child-rearing practices and customs. As a fluent [or semi-fluent speaker] of the Secwepemc language you will through your participation uncover the traditions, laws and custom inherent in the language. In effect, you are one of the knowledge keepers of the Band and can transmit your knowledge in your roles as grandmother, [grandfather], mother, [father], aunt, [uncle], sister or [brother].

I am attaching the Participant Consent Form for your information which contains the details of the research. I will follow up this letter with a telephone call which can be arranged for your convenience to review the form and answer any questions you may have. You may contact me at (250) 590-6510 or by electronic mail at [nsandy@shaw.ca](mailto:nsandy@shaw.ca). Thank you for your consideration and I look forward to us working together.

Sincerely,

Nancy Sandy

**Appendix D-2 Invitation to Participate Telephone Script****Invitation to Participate  
Telephone Script**

Hello, this is Nancy Sandy.

I am currently enrolled as a graduate student in the Faculty of Law at the University of Victoria, and I am writing to respectfully request your participation in the research required for the completion of my masters' degree in law. I have chosen as my topic First Nations child welfare, and will be centering the research in our home community, and have titled my thesis "Reviving Secwepemc Jurisdiction in Child Welfare".

I will be happy to answer any question(s) you may have about the research at any time during our conversation. I can also respond to any concern(s) you may have about your participation or the research.

I am calling to invite you to participate in this research because as a Secwepemc Junior Elder you have been raised by your grandparents according to Secwepemc tradition, law and custom. You also have had Secwepemc child-rearing practices and customs transmitted to you by your grandparents. I understand you have knowledge of the delegation models of First Nation child welfare in addition to the knowledge of Secwepemc child-rearing practices and customs. As a fluent [or semi-fluent speaker] of the Secwepemc language you will through your participation uncover the traditions, laws and custom inherent in the language. In effect, you are one of the knowledge keepers of the Band and can transmit your knowledge in your roles as grandmother, [grandfather], mother, [father], aunt, [uncle], sister or [brother].

I will be sending the Consent to Participate Form to participate in the research project to you by mail (electronic mail if you have an e-mail address). The Consent Form contains the details of the research and I would like you to review it in considering your desire to participate. I will follow up this conversation with another call which can be arranged for your convenience to review the form and answer any questions you may have.

You may contact me at (250) 590-6510 or by electronic mail at [nsandy@shaw.ca](mailto:nsandy@shaw.ca). Thank you for your consideration and I look forward to us working together.

Do you have any question or concerns?

What is the best method of contacting you and forwarding the Consent Form?

Thank you for your time and I look forward to us working together.

Have a good day.

## Appendix E Jessie's Story – A Case Study

Jessie has two children, a son, Alex who is five years old, and a daughter, Margee, who is eight years old. Jessie lived in a common-law relationship with Samuel. She is Secwepemc and he is Sauleau. They live on-reserve where he works in forestry and she dabbles in seasonal forestry work. They experience difficulties in their marital relationship related to their addictions. The police have been called due to family violence that erupts when their addictive behaviour becomes uncontrollable. The children have been removed on a couple of occasions for their safety. The children return home where things go well for a time and then spiral again.

Jessie's Aunt Rosa received a telephone call reporting the children had been left with Samuel who is very inebriated and Jessie was not home. Rosa decided to take the children out of the home, and call her older sister, Emma for advice. Emma stated that this had happened enough times now for a family intervention so that Jessie understands everyone is watching and willing to help. A family meeting is called to discuss the situation and come up with a plan. Family members who have regular interaction with Jessie agree to attend the meeting. They also agree to attend because of their love for Jessie and her family and to volunteer their assistance.

This intervention has many strands to the story from all of the participant's perspectives as to their role in the event. Jessie was born to Louise and taken out of her care by Larrissa, her older sister when she was a year old. Louise has had a troubled and abusive history which she continually fights to overcome. Jessie's grandmother raised her until she reached eight years old. Emma then raised Jessie until she decided to return to Louise. Rosa's situation was somewhat complicated by the fact she is a social worker with the children and family delegated agency which provided the potential for a perceived conflict of interest or an act of nepotism. Rosa knows the agency will not become involved if the family comes up with a plan for the children. Her experience as a social worker provided her with much evidence of the negative aspects children who enter the foster care system endure when other appropriate plans of care could be put in place that provide the children with safety and stability.

Jessie's extended family are residential school survivors and some of them have been on healing journeys since they entered drug and alcohol treatment centres. They all work at breaking the cycle of violence that has permeated their families. Emma has witnessed how the court system becomes a mud flinging fest in child welfare cases. Indigenous parents either fight against each other to prove who is the most incompetent or they fight the Ministry of Children and Family Development ("the ministry") and end up jumping through a myriad of hoops to get their children back. In many cases their fight against the ministry is unsuccessful.

Larrissa is the oldest of Jessie's aunts and her personal history of residential school

has created a lifelong fear of conflict and confrontation. Younger cousins have full time employment and families of their own to care for, and feel helpless when they see Jessie give in to her addictions. Samuel chose not to attend the meeting. His decision may be interpreted in a number of ways: one, his acceptance could mean his respect for the way this family makes decisions and his expectation of fairness, two, it could mean he was too ashamed or angry to attend the meeting; three, he may have felt the balance of power was against him, or it could have also been acknowledgement of his failure as a parent due to his addictive behaviours.

This case also has many positive strands to it as well. Jessie's initial removal by Larrissa was done in accordance with Secwepemc values of keeping children safe (as did Rosa's actions). While Louise may have not been in agreement with the removal she also knew she was not in a position to care for Jessie because of her personal troubles. So the initial placement was accepted and the grandmother became the mother. The grandmother had always taken care of and raised other people's children, housed women in abusive relationships, and took in people suffering from addictions. Jessie status as Louise's daughter changed from being the niece to Rosa, Emma and Larrissa to being their sister.

Emma took over Jessie's care when her mother was no longer able to care for her. This arrangement was agreed upon by her mother, Louise, and the Band Council. Their decision to use the Band Council's authority may be seen as abiding by powers exercised under the Indian Act or as utilizing a legal instrument to vary and extend St'exelcemic law in a contemporaneous way. No one recognized this at the time, but after years of reflection that is what it is. Emma's extended family is a strong family unit who help each other out.

The meeting was held at Rosa's house and she set the parameters of how the meeting would be conducted as follows:

- Everyone would have an opportunity to speak uninterrupted, and since the issue was about Jessie's parenting responsibilities she would speak last in order to hear from each member of the family;
- Each person was to speak only about the issue at hand, its impact on each of them individually and as family;
- Each person was to speak respectfully;
- Each person would have an opportunity to contribute their thoughts on a resolution; and finally,
- An agreement for the care of Margee and Alex based on the discussion would be written in a formal document.

The circle was started with a prayer in Secwepemctsin which was translated into

English. The person who wanted to speak first held a rock in her hand until she indicated she was finished speaking by handing the rock to person next to her. The rock was handed round the circle in a clockwise fashion which reflects how the Secwepemc follow the seasons and the time of day. Margee was asked if she wanted to speak and she talked about the fears of living with her parents when they drank. She also spoke of how it was when they didn't drink.

When everyone had finished speaking Jessie told the family that although Samuel chose not to attend he was willing to go along with the family decision. She informed him she would not speak on his behalf. There was no question of his love for Margee and Alex and his commitment to financially support the children. Jessie spoke of her life due to the circumstances of her removal from her mother and then her grandmother, then to live with Emma. Jessie said she understood Emma's intention was to keep her safe, and could imagine what her life might have turned out to be if she had not gone to live with Emma outside the community. She finished by saying to Emma "I don't mean to say I am not thankful for what you have done for me, but I want to say that I never wanted to be with you. I wanted to stay with Mom [her grandmother]". Emma spoke of the challenges her and Samuel's addictions contributed to their ability to care for their children.

Emma said she understood the strength it took to say those words based on her understanding of children being taken from their parents when all they want is their parents. Other family members expressed their love for Jessie and acknowledged the strength it took for her to attend the meeting. They all told her they knew she loved her children and expressed fears about what could possibly happen to the children while she and Samuel were drinking.

After a break the circle reconvened Emma spoke to what would have happened to the children had the agency removed the children so that all participants understood the gravity of the situation from the agency's perspective. In this instance, because of the prior history the children would have been removed and placed in foster care while the court process took place for the agency to prove the children were in need of protection. While it is true the children would have most likely been placed with family the truth is they would still have been removed. Family members contributed what they thought the resolution could be, and how they could help. Rosa took Margee out of the room to have a discussion with her about what she thought should happen. This discussion kept going until:

- There was clarity and consensus as to what the plan of care would be for the children;
- The role each participant would have in taking care of the children;
- The understanding the parents were going to have to leave the home and do certain things before they could move back in with the children;

- The plans for age-appropriate counselling for the children;
- The access and maintenance for the children; and
- A three month time-frame for the family agreement with the possibility of an extension if necessary.

Margee's contribution formed a part of the agreement. The plan of care was signed by both parents and the primary caregivers with a copy going to each of them. Minutes of the meeting were distributed to everyone who attended the meeting. Monthly meetings were set to review the parents and children's progress and to revise the plan of care, if necessary. When the time came closer to the end of the agreement a meeting was held in confidence with Margee to determine if the parents could return home at the expiry of the agreement. The child's wishes were respected and the parents return was delayed.

This was not an easy process for several reasons:

- The cycle of intervention necessary for the safety of children carried into the next generation due to addictive behaviour;
- Issues about the generational traumas of residential school were revealed which may have been difficult for some participants to hear;
- Strong opinions and family dynamics provide an opportunity for misguided enabling behaviour and/or misplaced judgment;
- People impacted by the intervention were free to withdraw themselves, and
- After the initial plan written or verbal updates about the plan of care for the children were not provided to all of the participants.

In this arrangement a decision was made to remove the parents from the family home as opposed to the children because the family decided it was better for the children to stay in their familiar surroundings. It was also the parents' behaviours causing the problem not the children and they should not bear the burden of living outside the home.

Larrissa lived in the home with Margee and Alex from 6 pm Sunday to 9 am Saturday when Jessie's younger sister would take over for the weekend. The children stayed with family agreeing to provide respite on appointed weekends to permit the routine of sleepovers with young cousins. Transportation to and from the children's appointments were provided by those with vehicles. Jessie was permitted regular supervised access to the children and attended the house to help with cooking the meals for the children two nights a week. She also began therapy and life-skills training. Samuel called the children every night. Jessie's younger sister took over the

care of the children from Larrissa as a primary caregiver mid-way through the agreement until the parents moved back home. Jessie and Samuel have since separated. Jessie has been able to live a stable life with some missteps and has the continued support of her family.

## Appendix F Reviving Secwepemc Child Welfare Jurisdiction – Timeline

1700

1763: Royal Proclamation
1793: Alexander MacKenzie meets Secwepemc on the banks of the Fraser River. Secwepemc territory was 180,000 square kilometres

1800

1808: Simon Fraser being the first white person on record with contact with Secwepemc
1812 Ft Kamloops established
1821 Ft Alexandria established
1842: Chief William allowed a church to be built on T'exelc territory at Fr. Modeste Demers request.
1849 Colonial Government recognizes Indian interest in land, i.e., Vancouver Island treaties
1858-1864: Cariboo Gold Rush.
1860 – 1862: Young Chief William
1860: Colonial Proclamation 15 (150), January 4, 1860
1860: Pre-emptions ousting T'exelc from their villages: Dunceralt 4/28/60; Telfer 4/28/60; Davidson 12/--/60; Grandidier 01/20/80; Pinchbeck bought out preemptions
1861, May: Salmon run failure
1861: Pre-emption Consolidation Act, August 27, 1861
1862: Chief William burial
1862-1897 – Chief William, peacemaker; buried in <i>Pellkekiki</i> /Glendale
1862: Highway from lower mainland to Cariboo completed.
1862-63: Smallpox epidemic which decimated Canon division
1864: Sir Joseph A.Trutch appointed Chief Commissioner of Lands and Works
1864: Chilcotin War – response to trespass
1865: Land Ordinance, April 11, 1865
1866: S'txelcemic permitted to live on land at the Mission
1867: Roman Catholic priests continue pre-empting and purchasing land to build Mission and farm

**1800**  
**Cont'd**

1867: <i>British North America Act</i> -creates Dominion of Canada
1867: <i>Indian Graves Ordinance Act, 1867, SBC c 5</i>
1876: <i>Indian Act</i> consolidated
1871 <i>Land Act</i> prohibits pre-emption by Indians.
1875 <i>Land Act</i> 4/22/75 required pre-empter to swear affidavit that lands were not an Indian settlement
1875: Joint Reserve Commission visit the Secwepemc
1877 Another smallpox epidemic
1878: Joint Reserve Commission disbanded; federal Commissioner GM Sproat carries on
1879 Laing-Meason letter re no lands for WL Indians
1879: Chief William letter to British Daily Colonist, November 7 (after another salmon run failure)
1881: Williams Lake Indian Reserves established – O'Reilly; 10 yrs after letter from Nind, Gold Commissioner to Charles Good; 21 yrs after pre-emptions
1884-1888 Chief Tomahusket-William Laing Meason, Ind Agent Appointed 2 <sup>nd</sup> Chief at request of tribe because of internal conflict over trade with whites
1884: Potlatch made illegal
1891: St. Joseph's Residential School established by agreement between federal government and Oblates of Mary Immaculate; 119 yrs ago
Seasonal rounds curtailed due to settlement and requirement to enter St. Joseph's Residential School
1893: Duncan Sticks born at Esket
1894: Indian Act amendment to force attendance at residential school (fines & imprisonment); 113 yrs ago
1895 Sugar Cane Church built; Ol' Joe and Cecile Bob god-parents of bell; 115 yrs ago
1896: Sisters of St. Ann followed by Sisters of Child Jesus as instructors for the girls at the Mission
1897-1917 Chief Baptiste William
1897 Boas/Teit Ethnography Reports. Dawson, Notes on Shuswap
1899 Department of Indian Affairs Investigation at Mission.

**1900**

Residential School education and church law change Secwepemc thought patterns to English
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1900  
Cont'd

1902: Duncan Sticks dies by roadside; DIA investigation @ Mission.
1910: Memorial to Prime Minister Wilfrid Laurier
1912: McKenna McBride Commission; adjust to reserve lands
1914: Chief William appears before McKenna-McBride Commission requesting more land-after settlement at Sugar Cane
1916 Feb 28 McKenna McBride Minutes of Decision
1918-1927 Chief Tillion William (Church law evident in his leadership); Eugene Jack Williams did not want to become Chief
1915 First World War
1920 Suicide pact at Mission-one boy dies, no coroners report; parents not notified.
1923 July 26 Province OIC PC 911 transferring 15 Indian Reserves to fed's- reductions, cut-offs, additions – IR 1-15 confirmed for Williams Lake Indian Band
1924 July 19 Fed OIC #12073 confirmation of WL IR 1-15
1926: Allied Tribes of BC – formed to promote land claims
1927-1928 Chief Ol' Nelson
1927: <i>Indian Act</i> amended to make it illegal to gather for land claims
1928-1958 Chief James Louie
1928: McBride McKenna Commission Minutes of Decision – reserve cont'd
1930: residential school
1938: BC OIC #1036 IR 1-6, 15 transferred; 7-014 graveyards were deleted and Crown Grant owners refuse to sell the un-surveyed burial grounds

1940

Mid-1940's: Elder research participants entering St. Joseph's Residential School
Elders research participate in seasonal rounds but limited by land encroachment and residential school; effects family structures, traditional economy, transmission of culture and language
Everything as a family changes with residential school for the children were not there for three seasons which interrupted all the learning and teaching the children had always been subjected to by their parents and siblings.
1945: World War II – fathers of some research participants went to War
Parents stop teaching their children <i>Secwepemtsin</i> to protect them from abuse by priests and nuns

1950

1951: <i>Indian Act</i> amended to incorporate provincial laws
Mid-1950's: Elder research participants refuse to enter into arranged marriages (or consent withheld)
St'exelceme work on local ranches which become 'pioneer' land holdings
Federal OIC 1036 IR 1 – 6 and 15 transferred but not gravesites 7-14 because they there were on land pre-empted or purchased and the government did not want to purchase back for the Band
1956: First group of <i>St'exelceme</i> attend post secondary institutions
1958-1962 Chief Felix Bob

1960-1980

1962-1973 Chief George Abby
1960's: Alcohol permitted on reserve
Some participants entering work force outside of territory
Sixties Scoop and its impacts
1960's to mid-1960's: Junior Elders research participate in seasonal rounds that is more limited then that practiced by the Elders
1960's: <i>St'exelceme</i> babies being adopted out because born illegitimate and against Roman Catholic beliefs
1965: Integration of St'exelceme children into public schools
1966-67: Hawthorn Report
1968: National Indian Brotherhood founded
1969: Union of BC Indian Chiefs founded
1981: St. Joseph's Residential School closed.
1981: Shuswap Nation Tribal Council founded
1982: Secwepemc Declaration signed by 17 Chiefs to preserve and enhance Secwepemc culture and language
1984: Last Indian residential school closes.
Alcoholism prevalent, reliance on government funding entrenched
1982: Patriation of <i>Constitution Act, 1867</i>
Mid-1980's: Fetal Alcohol Syndrome becoming recognized
1983: Penner Report – Special Committee on Indian Self Government
Late-1980's: sexual abuse charges against members of the Anglican & Roman Catholic churches.
1985: Secwepemc Political Accord reaffirming Secwepemc sovereignty and the traditional inter-band support system

1990-  
2000

1987: Secwepemc Chiefs reaffirm Memorial to Prime Minister Wilfrid Laurier
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Beginning 1990: recognition of babies being born addicted to drugs
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1991: Oblates of Mary Immaculate Apology.
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1996: <i>Knucwentwecw</i> Society incorporated
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1995: T'exelc enters BC Treaty Process
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**Note:** Multiple sources were used to create this timeline to guide and focus the writing of chapter two. Furniss, supra note 63, ICC, supra, note 8; Mickenberg, supra note 42 ; Teit, supra note 10 and Whitehead, supra note 60;