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Emerging Issues on Aboriginal Property Rights : Institutional Arrangement and Authority Formation in the Lil'wat Nation, Canada

by

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先住民の財産権問題

カナダ, リルワットネーションにおける土地制度と権限の形成

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Abstract

This study deals with the changing dynamics of land use systems in an aboriginal community of British Columbia, Canada, namely the Lil'wat Nation, by employing the concept of property as an analytical tool. The focus on the concept of property clarifies the role played by the authority and institutions as regulators and decision-making factors in land use management. The relationship between property and various transitions in aboriginal life constitutes the main contribution of this research project. The methodology used in this descriptive study is a combination of the participant-observer method and archival data collection. Issues around authority are discussed in terms of the power relationship between Canada and the Lil'wat Nation. Several historical events explain the way in which political and economic imperatives have shaped the relationship between them, and the internal power relationship within the aboriginal community. It is found that the rapid and important changes in the decision-making situation have significantly affected the land use projects on reserve grounds. Also, it is found that a number of governmental initiatives created and perpetuated a state of dependency and dissension among the aboriginal community. Because land use practices cannot be viewed in isolation, this study emphasizes the importance of political reform and sharing of authority.

Key Words : property rights, land use, aboriginal peoples, case study, British Columbia

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INTRODUCTION

Since the first white settlers and gold-seekers came to what is now called British Columbia (BC) about one and a half centuries ago, the history of the aboriginal peoples¹⁾ in BC has been particularly tumultuous. For the most part, the native people have suffered the effects of the Canadian policy of assimilation. The last few decades, however, have witnessed some positive changes in the relationship between the aboriginal peoples and the rest of Canada. Increased recognition has been given lately to the native people's struggle for self-determination. The major challenge facing the aboriginal peoples in BC appears to be that of finding the right strategy for ensuring a more favorable future.

The Canadian legal system is currently trying to interpret the aboriginal relationship to land. A report of the *Royal Commission on Aboriginal Peoples* (1995) recognizes that, contrary to the Western view of land tenure based on individual rights, the traditional aboriginal understanding of land tenure "is defined principally in terms of responsibilities that flow from that relationship and is best captured by the concept of stewardship." The arguments in the report, however, fall short of exploring the meaning of the aboriginal relationship to land in the contemporary context. Similar arguments have been made in the sphere of natural resources management (Berkes, 1984, 1987; Usher, 1984; Little Bear, 1986). According to those arguments, there is a strong hope for contemporary resources management practices to incorporate the aboriginal knowledge that has sustained the living resource base over extended periods of time. However, here again, the arguments tend to follow only philosophical lines, ignoring the reality of aboriginal people who have been subjected to the politics of assimilation and economic modernization. It is important to explore the aboriginal relationship to land as part of the reality of their life.²⁾

This descriptive study explores the issues surrounding land use and management in a particular aboriginal community, namely the Lil'wat Nation.³⁾ The Lil'wat Nation consists of about 1,000 people living on the reserves, a total area of about 2,700 hectares. All the reserves are located around Mount Currie in the Pemberton Valley, 100 miles north of Vancouver

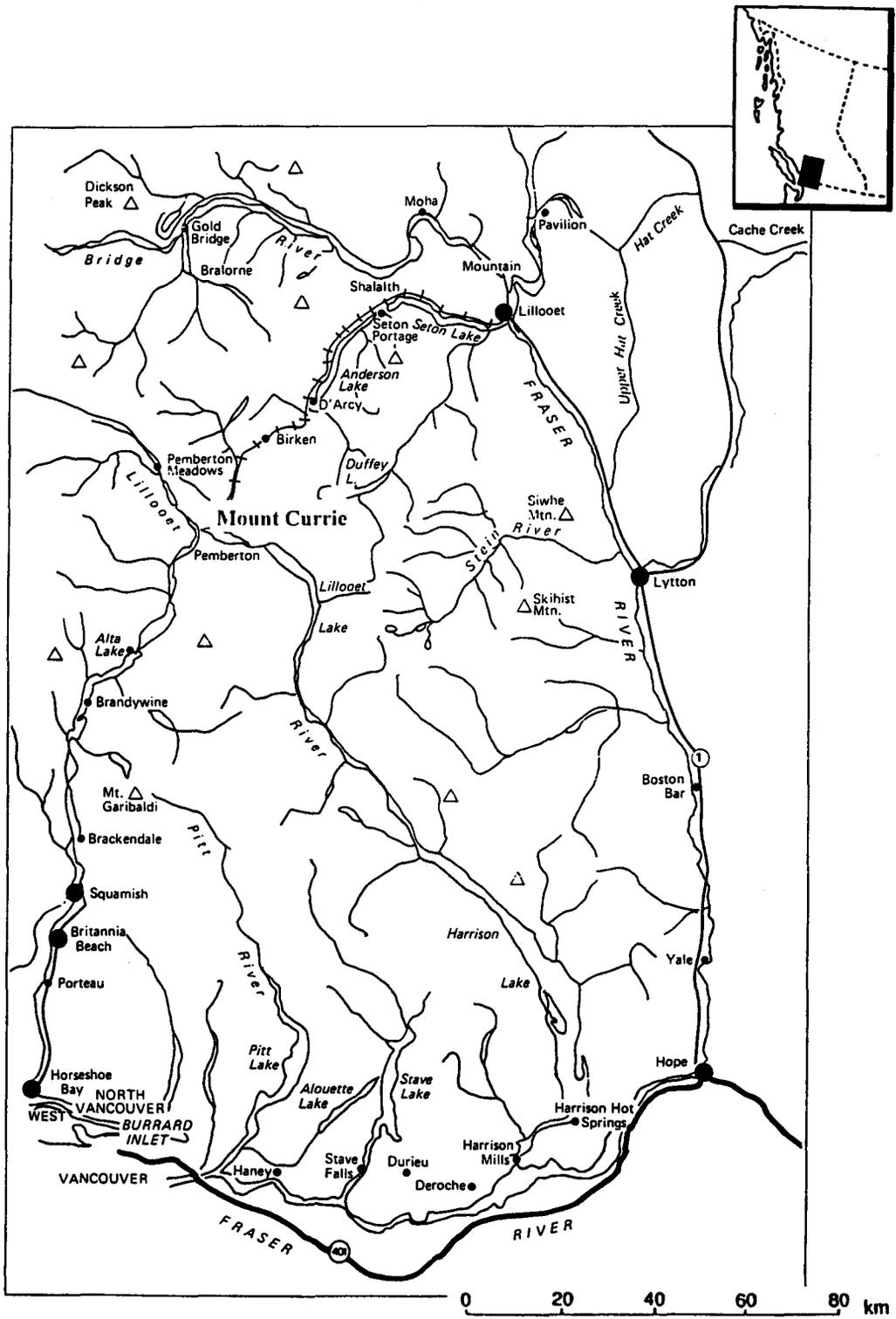


Figure 1 Mount Currie in the South West of BC

(Figure 1). This community was selected for this study because its people have used the land (traditional territory) extensively during their long history. Also, as this study focuses on *change*, the Lil'wat community was found to be a typical case of an aboriginal society connected to an urban centre by a highway and experiencing the rapid expansion of money economy over the last 50 years.

- 1) In this document, a number of terms are used to describe the original inhabitants of British Columbia: *aboriginal peoples*, *First Nations*, and *native peoples*. Similarly, the later settlers are referred to as non-aboriginal, European, Euro-Canadian, or White. These terms have been used interchangeably in public debates as well as academic circles, and none of them is intended to convey a pejorative meaning.
- 2) Images of Indians have been just about anything the non-Native culture has wanted them to be (Francis, 1992), as suggested by some Western accounts of native spirituality, such as the Gaia myth, or the medicine man. This romantic vision is largely the creation of the white people (Gill, 1990).
- 3) The Lil'wat Nation is a division of the Stl'atl'imx people all of whom speak the same language. The spelling *Lil'wat* is used to reflect the correct pronunciation in their language [li:l-uat]. Today's Lil'wat people are the inhabitants of the Mount Currie area.

CHAPTER ONE: RESEARCH OBJECTIVES AND METHODOLOGY

1.1. Research Objectives

The purpose of this study is to describe the changing dynamics of property systems with respect to both the reserve lands and the traditional territory of the Lil'wat Nation over the last 50 years (Prior to this period, various transition points in the development of property will be also presented). For this description, the concept of *property* is employed in order to highlight two sources of structural change: changes in institutional arrangements and changes in authority. This descriptive framework includes the examination of the larger issues concerning land management and social change in the Lil'wat Nation.

The following sections of this chapter explain the way in which the concept of property rights applies to the land use practices of the Lil'wat and place the concept of property against Lil'wat's historical context. The chapter then covers the two main sources of change in property rights: institutional changes and authority changes. This is followed by an account of the methodology used in this study.

1.2. Property Rights and the Lil'wat Nation - An Overview

Throughout their history, the Lil'wat people have set aside distinct areas on their traditional territory for different purposes and activities, such as fishing, grazing, hunting, or dwelling. Spiritual activities have always occupied an important place in the life of the Lil'wat community and special grounds on the traditional territory have been assigned for such ceremonial or meditative purposes. One day, a Lil'wat leader said: "Stein Valley is, in our tradition, a sacred spiritual ground. Our ancestors and many of my generation have trained themselves in the Valley to be strong men. Each one of them has spent many days alone in the Valley. At first, you've got to learn how to survive by yourself in the deep mountains. It was our custom

that you should stay there until you had a vision, or died. You know, once you had a vision, you could see the logic of universe. You could see who you are and why you are here now." These words attest to the importance of spirituality in the life of the Lil'wat people, as well as to a critical sense of control over the traditional territory. Today, the native people of the Lil'wat Nation seem to experience a profound sense of loss of control over their traditional territory. This section attempts to outline this situation from the perspective of property rights.

Among various meanings involved in the term *property*, the definition used in this study follows the one offered by Macpherson (1978): "to have a property is to have a right in the sense of an enforceable claim to some use or benefit of something, [...] property is a claim that will be enforced by society or the state, by custom or convention or law (p. 3)"¹⁾. This definition of property can be further articulated by Sumner's (1987) account concerning rights in general. Any right must contain a rule system in its structure. Based on Hohfeld's (1919) "fundamental legal conceptions", Sumner (1987) points out that a system of rules is constructed as a combination of: rules defining normative relations (*first-order*) and rules that operationalize those relations (*second-order*). The logical connections among the first-order normative relations can be essentially expressed by two normative positions: "X has a liberty with respect to Y to V" and "Y has a claim against X that X not V" (where X and Y are persons and V is some act). Similarly, the second-order relations are basically expressed as a set of opposite statements: "X has a power over Y to affect R" and "Y has an immunity against X's affecting R" (where R is some normative first-order relation). Therefore, embedded in the concept of property rights is this rule system including both first- and second-order relations.

Although rights always include claims in their structure, it is important to distinguish between *liberty-rights* and *claim-rights*. Wellman (1985) discussed those two kinds of rights by utilizing the distinction between the *core* of a right and its *periphery*. The core of a right defines both its content (what is this a right to) and its scope (subject and object: who holds the right against whom). A liberty-right is a right to do something or not as one pleases; at its core is liberty. A claim-right is a right that something be done by somebody else; at its core is a claim. The periphery of a right is composed of any further ingredients that enhance or protect its core. While a claim-right, having a claim at its core, may have no periphery, a liberty-right must have a periphery the ingredients of which will include a protective perimeter of claims, powers over both the core liberty and these protective claims, and immunities against the similar powers of others. All these ingredients at the core and the periphery of a right represent the *existence condition* for a right. A property right is a *liberty-right*, which must have a periphery. In other words, a rule system can generate property rights if it contains rules which can confer liberties, claims, duties (first-order), as well as powers, disabilities, liabilities, and immunities (second-order). All of this constitutes the *existence condition* of a property right. A property right becomes legal when it is accorded official recognition within a legal system, a rule system of some sovereign state, where legislative and adjudicative institutions function to create and apply the rule of the system. However, as long as the existence condition is fulfilled, any conventional system can confer a property right as well. Such systems need to have means of determining the content and scope of those rules as well as rules conferring powers. In general, the members of the group, collectively or individually, have certain powers if the members of the group generally accept that they do, thus, if they generally acknowledged and recognized the exercise of those powers.

In the case of the Lil'wat Nation, legends, myths, including symbolic characters in anecdotal stories, attest in their metaphorical way for the existence of traditional property rights before the Lil'wat people were contacted by the Europeans.²⁾ Apparent examples are stories of warfare with neighboring aboriginal nations over land, resources, and slaves. These stories can be seen as an expression of the core liberty component of a property right: Lil'wat's right over the traditional territory against other aboriginal groups. Also, such legends can reveal that the Lil'wat Nation had a set of protection measures (i.e., preparation for warfare) as the periphery component. For instance, a story concerning the last battle with Nlaka'pamux people shows the way in which the two groups settled conflicts (Bouchard & Kennedy, 1977). In the story, a group of young Nlaka'pamux people, lead by the Chief's son, raided Lil'wat in spite of the Chief's prohibitions. Eventually, most of the group were killed by the Lil'wat warriors and the few survivors were chased away. When those survivors returned to Nlaka'pamux, they found they themselves had to die because they had rebelled against their Chief. The severe punishment applied by the Nlaka'pamux Chief was intended to show their respect toward the Lil'wat as well as to sanction the border between them. All over the territory of the Lil'wat Nation numerous stories suggest the existence of internal property arrangements. For example, some stories explain the annual pattern of traditional resource use (including some products used as exchange objects with neighboring aboriginal communities), which may be an indication that various core liberties existed within the traditional territory. Other examples are: fishing sites used by certain family groups, or the above mentioned Stein Valley assigned as a spiritual ground.

As mentioned, in order to generate property rights, these internal property arrangements must contain a certain rule system. With respect to the spiritual ground, for example, at the core of the property right is the content: the use of the Valley as a spiritual ground. The extent to which this is an example of a liberty right may be arguable; however, people agreed to choose this site for their spiritual training. The subject is the Lil'wat community as a collective entity. The object may be someone in the community who is interested in using the Valley for other purposes, or some outsiders who may want to trespass the ground. At the periphery, the core must be protected by imposing a duty on the community members, in this case the duty to protect the site as a spiritual ground. When youngsters violate this rule, adults are responsible for teaching them the importance of the spiritual ground. The ground may be further protected by watchmen in charge of securing its borders. The important point is that these normative rules are supported by a certain power formed in the community. Some community members mentioned that the elders (leaders of family groups) and shamans had a significant degree of power over community affairs. Also, some stories imply that the internal power structure was supported by the Great Spirit whose will was conveyed through the legends or by the shaman, or the Little Man, another mythical figure. Whenever they faced important decisions, the elders got together to discuss the matter. During those meetings, legends were often invoked as they applied to the particular situation. Sometimes a shaman would join the meeting and assist the decision-making process. In this sense, elders, shamans, and mythical figures assumed the role of both legislative and adjudicative institutions. With the recognition of community members, they exercised power over the on-going rules. These layers of protection, recognized and respected by the members, prove the existence of a property structure with a defining core and a protective periphery. The distinctive characteristic of the *existence condition* of those property

rights is their underlying logic: (1) what it is for the community to exist, (2) what it is for the community to have rules, and (3) what it is for such rules to confer rights on those to whom they apply (Sumner, 1987). Clearly, the way in which this system of rules worked in the Lil'wat Nation was closely related to the beliefs and worldview of the people in the community. Symbolic expressions, such as songs, motifs, and stories, can be seen as indicators of the shared worldview among all community members. As Hallowell (1964) explains, "symbolic communication is the basis on which a common world of meanings and values is established and transmitted in human societies. Communication at this new level is a necessary condition for the operation of human societies in their characteristic form" (p. 455).

Obviously, the implications of the European contact for the native community were significant in terms of property rights. With the European domination, the very *existence condition* of the traditional property rights started to be threatened. While the native people may have continued to assert the core of the traditional property rights against the colonial government, they lost the protection measures that operate at its periphery. Instead, the property rights of the colonial government appear to prevail over the native people's rule system. By the same token, the colonial government needed to establish the *existence conditions* for its property rights, in consonance with its own legal system. The colonial government's assumption of property rights over the land represents the core liberty component. In order to secure these rights, the periphery component establishes protection and enforcement measures by legalizing and thus justifying the occupation of land. In the long-run, however, the way in which the colonial government has secured the core liberty has taken two forms: *segregation* and *assimilation* (Fisher, 1977). While the colonial government placed the native people within the bounds of reserve lands (*segregation*), the colonial government has tried to destroy the traditional belief systems in an attempt to incorporate the native population under its legal system (*assimilation*). This has been done through the introduction of a number of policies, such as prohibiting traditional ceremonial activities, Christening native children and educating them in residential schools, replacing their languages with English, introducing provisions for enfranchisement, and encouraging commodity production applicable to the capitalist economy.

Obviously, the legacy of the policy of assimilation is significant, especially for the formation of power in the Lil'wat Nation. Because the traditional formation of power has been shown to be closely related to the spiritual beliefs of the Lil'wat people, the assimilation process also targeted those traditional belief structures. To the extent to which a system of property rights has survived in the Lil'wat, it can be assumed that it has incorporated a number of extraneous elements. On the one hand, the process of power formation has been constantly challenged by the Canadian authority and this has led to the existence of a dual authority system. On the other hand, changes in the core liberty component have occurred due to various reasons: (1) a change in life style has promoted a new core liberty, (2) a traditional, or an innovative, core liberty has been suppressed by the Canadian authorities, and/or (3) a new core liberty has been imposed by the Canadian authorities or by the general political and economic trend. Besides, the content of some core liberties has remained unchanged. Among the factors responsible for the maintenance of certain core liberties are the inability and/or disinterest of Canadian authorities to control them, or, conversely, the Lil'wat's determination in maintaining those core liberties.

Currently, treaty negotiations are being scheduled in BC although the Lil'wat Nation is

rejecting the idea of an on-going treaty process. From the viewpoint of property rights, treaty negotiations are a recognition of the existence of core liberties for aboriginal property rights. Aboriginal rights were enshrined in the Constitution Act of 1982. The treaty negotiation process is concerned with establishing the content and object of core liberties, as well as the protection measures, including the formation of powers. Given this political trend towards reconciliation, treaty negotiations seem to provide the aboriginal peoples with an opportunity to attain their goal of self-determination. In reality, the Lil'wat people are divided in their opinion concerning treaty negotiation. Some think that treaty negotiation is the single option open to them, others are not willing to take part in the process. Some people invoke the non-negotiable power of a "Creator" who entrusted this land to them. For them, their activities on the land should not be subject to the Canadian legal system or formulated in terms of "aboriginal rights".

From the view point of property rights, one of the key issues is the way in which power is formed in the Lil'wat Nation. Internal power formation is related to the external power affecting the Lil'wat Nation. For the purpose of this study, while external power influences have been conceptualized under authority issues, internal power formation has been operationalized as institutional arrangements.

1.3. Issues around Authority

The state or societal authority endorses a property system (Macpherson, 1978). Authority is the source of power that enables the protection or alteration of a core liberty in a property right. However, in the history of Lil'wat, it is unclear to what extent Canadian authority has ruled over the Lil'wat people and their territory. Assuming that the Lil'wat Nation has retained its own property systems, the reciprocal influence between the Canadian and the aboriginal property systems remains an open question. In general, if two concurrent property systems operate under different authorities, the relationship between the two systems will fall under one of the following three types:

- a) *Independent*: One system is effective and self-sufficient without significant intervention from the other. The *independent* relationship appears when one authority is indifferent to the other (little competition), or when a balance of power is maintained.
- b) *Conflicting*: A conflict between diverging interests often leads to further conflict when one authority intends to achieve supremacy over the other. A *conflicting* relationship is a transitional relationship before a static phase. In this transitional relationship, both initiative and resistance can be seen, including warfare, diplomacy, and treaty-making.
- c) *Subordinate*: A frequent result of a conflict is the formation of a *subordinate* relationship, where one authority rules over the other. At this point, the authority in the oppressed party may no longer be able to function in a practical sense.³⁾

This study describes the formation of a dual authority system in the Lil'wat. The reciprocal exercise of power manifests itself in a series of events, of which four critical ones have been selected as anchors for tracing the changes in the power relationship between the two authority systems. Those events are: (1) the collapse of self-sufficient economy in the 1960s, (2) the radical movements in the 1970s, (3) the devolution process, introducing a bureaucratic structure in the community, and (4) the increased dependency on welfare.

The collapse of Lil'wat's self-sufficient economy is a common experience shared by the elders in the community. With respect to this period (late 1950s to early 1970s), the present

study has been structured around several research questions: What was the structure of Lil'wat's economy before 1960? How did the property system work?; How did Lil'wat's economy and the property system change after the early 1960s?

Then, the political movements in the 1970s, contributed significantly to the overall process of change. Those movements took the form of radical actions against the Canadian authority. Many Lil'wat people still recall those events as positive steps in the process of reclaiming the traditional authority. This period opened a new era in the history of the Lil'wat Nation. In this context, the present research also attempts to clarify some of the motivations behind the 1970s movements, as well as explore their effects on the property system.

As the movements phased out, many people seemed to start realizing the futility of the community-based political and economic activities. This process coincided with the devolution process by which part of administrative functions were transferred to the Lil'wat Nation. Furthermore, some elders pointed out that the conflict of interests within the band administration structure had created dissension among the Lil'wat people. The internal dissension can be scrutinized in terms of its determinants and its impact on property systems.

In addition, the dependency on welfare has increased in the community since the late-1960s. This is in part due to Canada's welfare state policy, by which public as well as state property has expanded in the form of social housing, health care, public education system, public parks, crown corporations, and so on. This policy has created a new and complex relationship between Canada and the Lil'wat Nation. While for some, the Canadian governments appeared to be a generous supporter, other native people have argued that Canada has been intentionally creating a state of dependency in order to undermine land claims issues which have a potentially larger impact than social welfare costs. It is, therefore, important to include dependency on welfare as a determiner of the power relationship between Canadian governments and the Lil'wat Nation.

1.4. Issues of Institutional Change

In any society, at any given time, property is determined by the purposes it serves. As Macpherson (1978) puts it, "a system of property rights is an instrument by which a society seeks to realize the purposes of its members, or some of the purposes of some of its members" (p. 13). Therefore, as conditions in society change, the goals of its members change as well, which leads to changes in property. Two rationales have been proposed in order to account for this fluctuating quality of property: (a) to maximize individual utilities, and (b) to facilitate a person or a group of people in power.⁹ Property rights are the social institutions that determine the allocation of decision-making authority, the economic actors, and the distribution of wealth in a society. Property can be divided into several regimes depending on who claims the right and who is excluded from the benefits.⁹ For example, McKean (1992) defined six kinds of property regimes:

- (1) *open-access* to which no one has rights and from which no potential user can be excluded (e.g. air);
- (2) *public property* held in trust for the public by the state, to which the general public often has access (e.g. public park);
- (3) *state property* that is essentially the exclusive property of government bodies, to which the general public does not have access (e.g. military base);
- (4) *joint owned private property* whose individual co-owners may sell their shares at will

- without consulting the other co-owner (e.g. condominium);
- (5) *communal property*, or jointly owned private property without unilaterally tradable shares (e.g. commons);
 - (6) *individually owned private property* whose individual owners generally have full and complete (fee-simple or freehold) ownership, except as attenuated by government regulation (e.g. private estate).

The structure of property regimes in a society characterizes the economic/political system of that society. For example, during the transition from feudalism to capitalism, private property expanded through privatization of communal and feudal lords' property. In the communism ideology, workers collectively represent the state, controlling the means of production including land and resources. In a welfare state that puts a high priority on social equality, unlimited appropriation of private property is restricted through the increment of state property and the redistribution of surplus by taxing and social spending. Responding to the various social demands ranging from social infrastructure to people's amenity, public property is allocated in the form of highways, schools, hospitals, public parks, and so on.⁶⁾

At a closer look, whatever the proclaimed state system is, local communities often retain their own *de facto* property systems that subsist against the proclaimed *de jure* state legal system. In the academic field of natural resource management, this has been a matter of debate. In many parts of the world, community-based *de facto* resource management has not only survived but worked effectively under various conditions (Berkes, 1989). Those communities usually have some abiding interest in survival, in cohesion, and in the benefits and costs attendant to a particular resource use regime (Bromley, 1990). Based on the investigation of hundreds of local communities in Japan, Kawashima et al. (1959) reported various *de facto* institutional arrangements working in those communities. Although, since the late 19th century, the Japanese government has been transferring the communal ownership of lands to state, public, and private ownership, community-based *de facto* land management has continued even on private and state lands. These communities could do so through the creation of institutions at various levels of land use and management and through applying creative income distribution methods. Remarkably, in this process, many such institutions were able to accommodate the inevitable expansion of individual material benefits, while maintaining the overall communal values. Two points can be learned from these examples in relation to the study of institutional changes in the Lil'wat Nation: (1) *de facto* property institutions may be observed at various levels of land use activities, and (2) the balance between community and individual benefits is a key factor in forming property institutions.

A property right consists of several levels of institutions and several property regimes can co-exist (Table 1). For example, while the right to timber on a piece of land can be held by individuals, the right to manage the same land can be held by a community. As such, some types of communal property can exist not only at the level of ownership but also at the levels of management or even access.

One important thing is that these distinctions are related to three levels of action: operational level, collective-choice level, constitutional level (Table 2). Operational activities are regulated by collective-choice rules which emerge from collective-choice activities. Constitutional rules are governed by constitutional activities. This implies a hierarchical relationship among rules and activities. For example, a decision about management or exclusion is a collective-

Table 1 Bundles of Rights Associated with Positions

	Owner	Proprietor	Claimant	Authorized User
<i>Access</i>	X	X	X	X
<i>Withdrawal</i>	X	X	X	X
<i>Management</i>	X	X	X	
<i>Exclusion</i>	X	X		
<i>Alienation</i>	X			

Source: Schlager and Ostrom (1992)

Where: *access* = the right to enter a defined physical property; *withdrawal* = the right to obtain the "products" of a resource; *management* = the right to regulate internal use patterns and transform the resource by making improvements; *exclusion* = the right to determine who will have an access right, and how that right may be transferred; *alienation* = the right to sell or lease either or both of the above collective choice rights

Table 2 Relationship Between Level of Action and Governing Rules

	Levels of Action	Governing Rules
<i>Access/ Withdrawal</i>	Operational Activities	Collective-Choice Rules
<i>Exclusion/ Management</i>	Collective-Choice Activities	Constitutional Rules
<i>Alienation</i>	Constitutional Activities	

choice activity which regulates the operational activities of authorized users through the intermediary of collective-choice rules (Kiser & Ostrom, 1982 ; Ostrom, 1990). For example, although the nominal ownership of reserve lands rests with the Crown, the Lil'wat has the power at the level of collective-choice and operational activities.

In general, an institutional change is a result of some form of social change, changes in the surrounding conditions, or the decision-making environment of a property system. Figure 2 illustrates the institutional changes in a property system, as they have been conceptualized in this study. Particular attention has been given to the balance between individual interests and the community's control over land use practices. From this interplay new property arrangements are shaped. Under the topic of institutional change, only the reserve land has been examined because this is currently the only place where the native community retains a certain degree of control over land use practices.

In order to capture *social change*, it may be useful to adopt some development theory assumptions. While most of the development studies have focused on Third World countries, their theoretical principles are highly relevant to development issues in the Lil'wat. According to So (1990), the current conceptions of development and social change have moved toward an integration of two competing approaches represented by the *modernization school* and the *dependency school*. The underlying principles that inform the current integrationist approach to development and social change provide a valuable supporting framework for exploring the process of social change in the Lil'wat Nation. Those principles are: Development and social change follow a multidirectional path; Tradition and modernity can coexist; Development and social change follow an idiosyncratic pattern, i.e., in keeping with concrete, local characteristics and specific

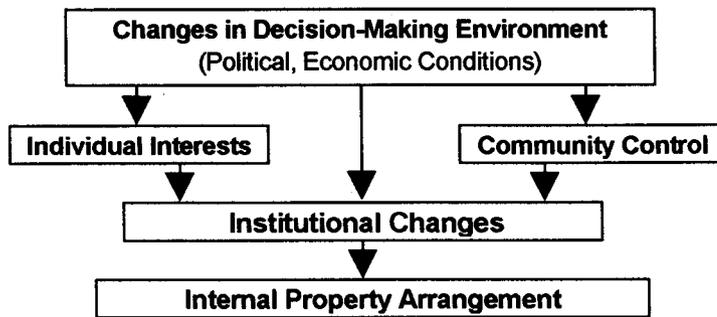


Figure 2 Institutional Change

historical determinants; Both internal factors (i.e., cultural values, social institutions, class conflicts) and external factors (i.e., history of colonialism, corporate control, the nature of the international system) contribute the social change. All of these principles of development and social change apply to the Lil'wat Nation, as can be illustrated by the following examples.

The principle of multidirectionality states that, in many developing countries, social change may not necessarily follow the Western model of development. Indeed, in the early 1970s, the Lil'wat established a community-controlled school system in which the Lil'wat language as well as Lil'wat's cultural heritage have been taught. The school has been offering grade 1 to 12 and adult education. Some elders became instructors in the school, teaching students not only language but also, for example, how to catch, cut, and cook salmon. The social change brought about by this educational establishment revitalized the traditional values, indigenous religion, and folk songs that had been nearly lost in the process of assimilation to the Canadian culture.

Contemporary life in the Lil'wat community shows many examples of the coexistence between tradition and modernity. Traditional deer hunting practices have integrated the use of four-wheel drive vehicles, binoculars, and rifles. Food products are stored in refrigerators or preserved through canning. Smoked salmon can now be stored for longer periods of time in vacuum-sealed packs. These modern preservation techniques have enabled the Lil'wat people to enjoy their traditional food all year round.

The recognition of the role played by idiosyncratic factors in the process of social change and development is highly relevant for the Lil'wat. Social structures in the Lil'wat have been shaped by its specific geographical location, historical events, and cultural heritage. For example, the charismatic personality and the political activity of George Manuel, an eminent native leader in the 1970s, played a major role in shaping the subsequent social and political movement in the Lil'wat Nation. Led by a group of people in the community, who called themselves Manuelists, the Lil'wat Nation took a number of militant actions in their fight for self-determination. Also, this radical strategy later became a source of dissension among community members. All of this can be viewed as examples of local factors, specific to the Lil'wat Nation, that have shaped the course of social change in that community.

The interplay between external forces and internal determinants has been seen to direct social change in the Lil'wat. For example, in the 1950s and 1960s, corporate interests in the forest industry became active on the traditional territory. Forest companies created a large labor market for the Lil'wat. Eventually, as timber resources depleted, corporate interests began to

withdraw. At the same time, the Canadian welfare policy expanded, resulting in Lil'wat's economic dependency on the federal government. The Lil'wat Nation's struggle for self-determination can be seen as the internal response to the external assimilation pressure.

1.5. Methodology

This is a pioneering study of the land use practices by an aboriginal community in BC. Most of the information regarding the object of this study was unknown before the research was started. In this sense, the present study is an in-depth descriptive case-study of the Lil'wat Nation. Traditionally, case study designs have been employed for descriptive purposes. However, as Yin (1994) pointed out, case studies can serve both a descriptive and/or an explanatory purpose. While the main goal of this research is a descriptive one, the conceptual framework used in this study (i.e., *property rights* as analytical tool and the distinction between *institutional changes* and *authority issues*) transforms the description into an explanatory vehicle. In fact, case studies are the preferred strategy when "how" or "why" questions are being posed, when the investigator has little control over events, and when the focus is on a contemporary phenomenon within some real-life context (Yin, 1994). For these reasons, the case-study format has been considered appropriate for this research project.

The holistic methodology has been used in combination with the participant-observer method and archival data collection. According to the holistic methodology, this study has followed a systematic form of storytelling that Kaplan (1964) calls a *pattern model*. This is a mode of explanation in the sense that an event or action is explained by identifying its place in a pattern that characterizes the on-going process of change within the whole system. Reality is defined as the sum of continuous changes in every aspect of human and non-human activities. While absolute completeness of description is impossible to attain, a story can provide a wealth of information that is subjectively meaningful for the lived experience of the informants. According to Diesing (1971), holistic explanations in social sciences have proven to be a very effective approach. Through the participant-observer method, the individuality of a particular system is emphasized. A researcher develops his/her ideas while being "socialized" in the system. In the course of the socialization process, the researcher is able to access information directly and to construct tentative hypotheses (interpretations) about parts of that system. Data are continuously reevaluated by means of contextual validation until the saturation point is reached, i.e., no disconfirming data are being encountered. Final evidence in support of a hypothesis must come from replication studies.

The participant-observer method was employed during the "socialization" process and initial hypotheses were developed (*stage 1*). In this stage of the research, this researcher was able to have many informal consultations with Lil'wat community members. The informants offered numerous stories and explanations concerning land use practices, community affairs, life-style accounts, and so on. Then, the researcher corroborated these stories with a systematic examination of archival information, namely band records and minutes of meetings kept with the Mount Currie Indian Band Office. This information was used for validation, revision, or to discard unconfirmed hypotheses (*stage 2*). In that way, this researcher has used two convergent sources of evidence in data collection. In addition, copies of the research document were circulated among some of the important informants who participated in this research. Their endorsement of the descriptive accuracy of the document served as a further cross-validation of this

study.

In practice, this researcher initially contacted the Mount Currie Indian Band, as a representation of the Lil'wat Nation. The letter of introduction (included herewith as *Appendix 1*), dated November 27, 1993, spelled out the purpose and nature of this research. In response to that letter, the researcher was invited to a band council meeting on January 31, 1994, where he was given an opportunity to explain the logistics of this research project to the chief and councilors of the Band and was given permission to conduct the research on their reserves. Also, by that time, the researcher was informed that a certain Nelson family in the community could provide accommodation for the duration of the field research. For over eight months, from March to November 1994, this researcher was fully engaged in the participant-observer stage of this project. Part of the research conducted in that period occurred in the band office, where this researcher spent a number of days that cumulated to a total of three months. A typical research day at the band office would start at nine o'clock in the morning and would end at four o'clock in the afternoon. While at the band office, this researcher was allowed to use a desk, to attend some meetings, and to access band records including minutes of meetings kept with the band office. During that same period of time, important information was also gathered through conversations with a number of councilors and other band members. For the rest of the time, this researcher participated in the daily activities of the Nelson family, their relatives and friends. Those activities included hunting, fishing, berry-picking, ranching, farming, house construction, and other recreational activities. The purpose of this full participation was to get a vivid sense of the lived experience of Lil'wat community members as they conducted their daily activities. For example, in spring, this researcher joined the activities of the stock holders, such as repairing the fences around the communal grazing fields. Picking soap berries is a common activity in the vicinity of the Bridge River watershed. A full day's work by six adult community members would fill a van of soap berries; the berries would then be squeezed into juice, which would be preserved and used all year round. This researcher accompanied those community members in all of those activities on a number of occasions. Trout fishing goes on during the whole year. Again, this researcher often accompanied the fishermen in their activities. The Lillooet Lake and the Birkenhead River are the main places for trout fishing. Spring Salmon, Sockeye Salmon and Coho Salmon come upstream at different times during the year according to their seasonal spawning patterns. Especially in summer time, people set up camps around the Lillooet Lake for Sockeye Salmon. Some people go over the Fraser River near the mouth of the Bridge River. The Nelson family spent a month in a camp set up on a certain rock along the Fraser River. This researcher helped them cut fish and prepare wind-dry salmon. Hunting activities increase in late summer. Hunters can shoot deer on their reserve lands, but they usually go to higher elevations west of the Lillooet Lake or to the mountain ridges east of the Duffy Lake. This researcher also participated in those hunting activities on several occasions. During the clear-sky, cool nights, this researcher would often join the Nelson family, as they spent many hours gathered around a fire, talking about various topics of interest for them from spirituality to politics, from education to personal relationships. During all this time, this researcher was able to connect with many community members, band officers, councilors, elders, fishermen, active hunters, etc. The material provided by these informants represented valuable data for this descriptive study.

The issue of the validity and reliability of any research is of paramount importance and

partly rests upon the accuracy of the data collected and the appropriateness of the design format. As has been mentioned, this study employs a holistic methodology that combines the participant-observer method with archival data collection. A number of hypotheses about the property system are to develop during the participant-observer stage and scrutinize through the archival research. By their very nature, the findings presented in this study are open and tentative. Future studies, using different methodologies, could increase the validity of these findings through triangulation. For instance, a future quantitative method (such as a survey) could provide statistically significant descriptions of the same aboriginal community.

The next question that needs to be addressed is whether the findings can be generalized to other communities. The case study format does not lend itself to statistical generalization, but rather to what Yin (1994) called 'analytical generalization'. By this in-depth analysis, using multiple sources of evidence, this author has attempted to provide a practical application of the concept of property right to land use practices in the Lil'wat community. By following the same methodology used in this study, future qualitative research can focus on other native communities in Canada, thus testing the 'analytical generalizability' of the findings of this study.

A third limitation of this study has to do with the gaps in the archival records kept by the Office of the Chief and Council of the Mount Currie Indian Band. In the case of lost or non-existent historical records, this researcher has relied on repeated anecdotal evidence provided by various community members in the form of stories, recollections, or personal accounts. Those findings, however, could not be subjected to convergent validity checks and have only been mentioned as tentative descriptions. In addition, this researcher was restricted from accessing any information stored with the Department of Indian Affairs (DIA) or other governmental institutions, based on the Information Act, which prevents non-Canadian citizens from accessing certain governmental information. As such, potentially relevant information filed with that office could not be included in this research.

- 1) Macpherson's definition of property discards some of the common usages of property, such as 'property is thing' and 'property is private ownership'. One implication of this definition of property, as an enforceable claim, is that it requires somebody to enforce it. Evidently, property is a relationship among persons. More specifically, this definition of property delineates inclusion and exclusion criteria; in other words, when somebody exercises a property right, others are excluded from it. Furthermore, institutions (e.g., custom, convention, law) regulate the exercise of property rights. Since institutions are under state (society) authority, property also becomes a political phenomenon.
- 2) The formation of traditional property systems in the Lil'wat Nation falls beyond the focus of this research project. Obviously, it is important to reconstruct the traditional property systems by accumulating evidence relevant to the core-liberty component (what is this a right to, and who held the right against whom) and the periphery component (power formation) of property rights. Analyzing the oral tradition is a viable research direction. The formation of power, for example, may be understood by investigating how people have constructed their belief system. Their beliefs are symbolically expressed in such stories as "The Flood" that brought the "animal-people" and the "transformers" to Lil'wat. The role of the "Great Spirit" may be important in this regard.
- 3) In the history of the relationship between the white and aboriginal peoples, the 19th century

fur-trade period offers a typical example of an *Independent* relationship. The conventional assumption is that, a subordinate relationship was formed around the beginning of this century through the adoption of some legal instruments such as Indian Act. Recently, however, the Canadian policy of assimilation has been discouraged, which led to a growing trend in favor of aboriginal peoples. Also, there has been an increase in the awareness of aboriginal rights. A number of confrontations over land and resources have recently brought the issue of aboriginal authority to the forefront. In some aboriginal communities, traditional authority structures still prevail. All of this seems to indicate that the Canadian authority, through its legal instruments, did not extinguish the aboriginal traditions and that some of the Canadian statutes promoting a subordinate relationship are now outdated.

- 4) Knight (1992) explored several classical and contemporary accounts of institutional change. He claimed that the concept of social institutions as instances of the coordination-for-collective-benefits came from David Hume, Adam Smith, and Herbert Spencer. In contrast, some theorists like Karl Marx and Max Weber indicated that social institutions can be explained in terms of their beneficial effects on particular segments of the community, focusing on the conflict of interests inherent in distributional questions.
- 5) With respect to the property rights involved in natural resources, since Hardin (1968) presented the "tragedy of commons", many scholars have been researching, both theoretically and empirically, the relationship between the types of property rights and natural resources management. That initiative was taken by members of the International Association for the Study of Common Property (IASCP) (Berkes, 1989; Berkes, et al., 1989; Bromley, 1990; Christopher & Bromley, 1989; Ostrom, et al., 1988).
- 6) With the development of service and information industries, various property forms have evolved, affecting both aboriginal and non-aboriginal peoples. The object of property has extended to include *cultural property* (artifacts, rituals, stories, songs, designs, etc.). With this extension, a new source of conflict emerged; as the capitalist economy encroached upon aboriginal cultural symbols, native people responded by reclaiming their rights over their own cultural heritage. This relatively recent development has added another facet to the conflictual relationship between the two groups.

CHAPTER TWO: HISTORICAL BACKGROUND

2.1. Aboriginal Land Question in British Columbia

In the history of BC, a fur-trading period (from the late 18 to the mid-19th century) marked the beginning of the relationship between the aboriginal peoples and the Europeans. This period has been characterized as a period of co-operation and it was a time of sharing a mutually beneficial economic system (Fisher, 1992)¹⁾. However, the following settlement period²⁾ was disruptive because it introduced major cultural changes so rapidly that the aboriginal peoples began to lose control over important areas of their traditional life. Especially after Governor Douglas concluded a number of treaties with the aboriginal peoples in the 1850s,³⁾ native peoples have been banished from their lands without any treaties although this process took a complex way⁴⁾. For example, in a series of proclamations from 1858 to 1864, in which settlers were allowed to pre-empt unoccupied, unsurveyed land⁵⁾, native peoples also could start pre-empting, especially in the Lower Fraser Valley (Tennant, 1990). However, this provision did not last long.

The *Colonial Land Ordinance of 1870* prohibited any aboriginal peoples from claiming their right of land pre-emption⁶⁾ (Mathias & Yabsley, 1991). By the end of last century, the basic configuration of relationships between Canada, BC, and the aboriginal peoples had been established within a statutory framework, such as the Indian Act.⁷⁾ The reserve system was introduced⁸⁾ to keep the aboriginal peoples in secluded areas.⁹⁾

At the beginning of this century, there were many movements among aboriginal peoples to form intertribal organizations to reclaim their land ownership and to object to the size and location of reserves (Tennant, 1990). In 1906, for example, some representatives of the Coastal and Interior Salish groups went to London, bringing their complaints to an unsuccessful meeting with King Edward VII. Opposing the aboriginal peoples' claim-related activities, Canada introduced even harsher policies on the aboriginal peoples in order to silence them. This sequence of political events lead to the revision of the Indian Act of 1927, which outlawed receipt of money by any person from any aboriginal peoples for any claim-related activity. In addition, the *Special Joint Committee of the Senate and the House of Commons* brought about the denial of aboriginal title (Sanders, 1986). By that time, valuable portions of reserves had been cut off by the McKenna-McBride Reserve Commission.¹⁰⁾ Implementation of the recommendation made by the McKenna-McBride commission was authorized by the *British Columbia Indian Lands Settlement Act* of 1920. The Act ordered reductions or cutoffs to be effected without surrendering the land, thus overriding the Indian Act provisions. In the 1951 revision, the Indian Act removed the prohibitions against claim-related activities. Tennant (1990) explained three reasons for that change: 1) federal officials assumed Indians had realized the futility of pursuing the land claims; 2) the officials wanted to remove a potential cause of embarrassment in the liberal post-war international climate of racial tolerance; 3) the Judicial Committee of Privy Council had ceased to be Canada's highest appeal court in 1949 so that there was now no danger from the judicial committee should the Indians go to court. However, the federal government did not negotiate any treaties with the aboriginal peoples until 1974. In the 1969 White Paper on Indian Policy, which is often regarded as adding the finishing touches to Canadian assimilation policies, Canada advocated "to change long-standing policies which separated Indian people from Canadian society and thereby denied them equal opportunity" (Minister of Indian Affairs and Northern Development, 1969), but it virtually ignored the significance of claims and treaties.¹¹⁾

The last few decades have witnessed a redefinition of the relationship between aboriginal peoples and Canada. The issue was brought to a head by the 1973 Calder Case, in which the judges of the Supreme Court of Canada were evenly split on the issue of the continued existence of aboriginal title. The result was a federal policy statement advocating that the federal government could consider two broad categories of native claims: "comprehensive" and "specific". Comprehensive claims were identified as claims based on the traditional native occupancy of lands not previously dealt with by treaties or other means. Specific claims were defined as those which occurred where an existing act, agreement, or treaty had been allegedly violated. By 1988 in BC, 18 comprehensive claims had been accepted for negotiation and three claims had been placed under review by the federal government. The total claim area, which was accepted, or under review by 1988, comprised a land mass roughly equal to that of the entire province including overlaps between some of the claims (Cassidy & Dale 1988). Significant progress has also been seen in the legal sphere. For example, Canada's 1982 Constitution stipulates in Section 35 (1) that "the existing aboriginal and treaty rights of the aboriginal people of Canada are

hereby recognized and affirmed," although the contents of aboriginal rights are still ambiguous even after the *Sparrow*¹²⁾ case in 1990 and the *Delgamuukw* case¹³⁾ of the BC Court of Appeal in 1993.

However, the negotiation of comprehensive claims has not advanced. With respect to comprehensive claims in BC, only the Nisga's have ever been at a negotiating table with Canada during the last 20 years. Until 1992, the BC government denied the aboriginal title. The argument was that aboriginal title did not exist, or, if it did exist it must have been extinguished, and, if it had not been extinguished, it must fall under federal responsibility pursuant to the *Terms of the Union* and the *Constitution Act of 1867* (Montgomery, 1987). The BC government, therefore, insisted that Canada bear the burden of the cost of such settlements, and if Canada sought the assistance of the BC government through the contribution of lands and resources, it was the responsibility of Canada to propose to BC how the Province and the third parties would be compensated for any lands and resources that might be made available (Tennant, 1990). Also, the BC Courts supported the government's stance on land claims. In the case of *Delgamuukw v. The Queen, 1991*, which is one of the latest land claim cases in BC, the Gitksan and Wet'suwet'en people claimed "ownership and control" over approximately 5,000,000 hectares in North Western BC on the Upper Skeena and Bulkley Rivers.¹⁴⁾ This case was important because fundamental social and cultural values of the aboriginal people were on trial virtually for the first time in the history of BC. In this case, the Chief Justice turned down the plaintiff's claims on the ground that the Royal Proclamation of 1763 did not apply to British Columbia, and that, therefore, according to common law, whether or not aboriginal title exists depends on aboriginal occupation and use of land from the earliest times, and on the continuation of such occupation and use of land after the European settlement. The Chief Justice went on to state that the "aboriginal interests" had never included ownership of or jurisdiction over the identified territory (Cassidy, 1992; Mills, 1994). Although in 1993 the BC Court of Appeal reversed this decision and recognized aboriginal rights as unextinguished, those rights were narrowly defined. As such, commercial practices (mining, commercial fishing, commercial logging, and other European influences), which had originated with the arrival of the colonial authority, were not considered aboriginal rights.

Since the late 1980s, any changes to the policy of the BC government on the aboriginal peoples have occurred mainly because of the pressure from aboriginal peoples against the complacency of the federal comprehensive policy. In 1989, the Premier of British Columbia, recognizing that "Aboriginal Peoples are experiencing many difficulties within the province," created the Premier's Council on Native Affairs, which was to make recommendations on provincial policies affecting aboriginal peoples (Premier's Council on Native Affairs, 1990). In 1990, a number of aboriginal communities chose direct forms of political action (typically in the form of road or rail blockades) to both support the activities of the Mohawk at Oka in Quebec and to draw attention to their own cause. These events led the Premier's Council on Native Affairs to recommend that the government of BC "move quickly to establish a specific process by which aboriginal claims may be received and placed on the negotiating table." At the same time, with the New Democratic Party in power, the political climate in BC became favorable to aboriginal rights. In 1992, in the speech from the throne, the BC government finally and formally recognized aboriginal title, and also the inherent right of aboriginal peoples to self-government. Then, the federal government, the BC government, and the aboriginal peoples representatives

(the First Nations Summit) signed an agreement to establish the BC Treaty Commission (BCTC) meant to facilitate the treaty negotiation process. The BC treaty process was to include aboriginal self-government as well as land claims settlements.¹⁵⁾ In 1993, the federal and the BC governments signed the *Memorandum of Understanding* on sharing the costs of negotiations and settlements. The BC Treaty Commission Act was passed by Parliament in 1995 and proclaimed by provincial and federal governments and First Nations Summit resolution in 1996.

2.2. Lil'wat's Property System before the European Contact

The Lil'wat Nation and ten other Nations comprise the Lillooet linguistic group or Stl'atl'imx, a part of the Interior Salish language family. In the beginning of this century, Hill-Tout (1905) mentioned more than 30 villages as settlement sites of Stl'atl'imx. Today, only 11 communities remain as a result of Canadian amalgamation policy. Each community is now being referred to as a "Band" (Indian Act), or "Nation" (aboriginal use). As such, the Lil'wat Nation is also known as the Mount Currie Indian Band.

Throughout Lil'wat's territory, there are places which have special indigenous names. With the help of their elders, Baptiste Ritchie and Charlie Mack, some people of the Lil'wat Nation, have mapped some of these place names within the territory. The place names are the words used by their ancestors, and passed down from one generation to another. In the *sh-KOqual* (the history passed down from the elders), a number of such place names are mentioned. This history reveals that the inhabitants used names for the various areas within the traditional land long before white settlers came into the area. Some of the names stand for physical entities, such as a lake. Others show details such as a footprint in a rock. The place names reflect their use of the land over the generations, from time immemorial.

It is considered that the territory was maintained as common hunting and gathering grounds. Teit (1906) reported frequent warfare with neighbouring tribes over the land and resources. Even between the divisions of Stl'atl'imx, there were strict customs governing the territory. For example, Teit (1906) reported that: "Some of the Lower Lillooet [including today's Lil'wat Nation] who were on good terms with the Lower Fraser tribes were allowed to cross the Fraser River and hunt elk on its south side; but, if strange Lillooet attempted to hunt there, they were driven off or killed (p. 227)." Within a boundary, there were established property systems. With respect to fishing activities, The right to fish at places where large and important fish-weirs were located, was considered the property of the clan¹⁶⁾ that erected the weir every year (Teit, 1906). The Lower Lillooet erected at such places post or poles carved and painted to represent the totem of the clan to which they belonged. Sometimes, instead of posts, a suitable tree was carved and painted. Also, hunting and root-digging grounds, and trails were the common property of the tribe. All the large berry-patches were under the supervision of the clan chiefs. When the first berries were about ready to pick, each chief gave notice to his people (Teit, 1906).

In an ethnographic study reconstructing prehistoric land use in the Upper Lillooet area, Alexander (1992) pointed out the importance of hunting and plant gathering for the people as a supplement to salmon fishing which was likely to fluctuate on a yearly basis. People had semi-sedentary villages at the water sites, from which they traveled for game and plant. In the winter time, they stayed in the village or a basecamp to trap game. In the rest of the year, they used the mountain areas in the following way:

In mid-May small family groups began making short trips into the mountains, hunting and plant gathering as they followed the deer and ripening plants up the slope. In June and early July many of the plants were in their prime, and short trip to the Alpine areas to harvest them and to hunt deer were more frequent. [...] Late July and early August were primarily devoted to salmon fishing and mountains were largely abandoned until the end of the salmon runs in mid- August or early September. Deer hunting was most intense immediately following the salmon fishing when almost all families moved up to the mountains and camped in large groups for up to one or two weeks. The intensity and duration of any hunt was dependent on the number of salmon caught prior to the hunt. Hunting by men could have continued into October and early November (pp. 101-106).

According to Hayden (1992), some important issues in cultural ecology, such as the formation of trade relationship, property rights, and social inequality, certainly correlate with the scarcity or uneven and fluctuating availability of resources. In the case of the Stl'atl'imx people, some plant resources, such as cedar-bark, saskatoon, black huckleberry, seeds of Indian-celery, and fiber from Indian hemp gained the status of exchange commodities because of the uneven growing patterns between divisions.¹⁷² According to Teit (1906),

the Lillooet were great traders, and transported many products of the interior to the coasts, and *vice versa*. They also did considerable trading among themselves. The Lower Lillooet sometimes went to Anderson Lake, where they traded with the Lake band and also picked service-berries [saskatoon]. Occasionally the Lake people went to Pemberton. As a rule, however, large numbers of the Lower Lillooet went with the Lake band right to the Fraser River, where every August and September a great deal of trading was carried on along the river between Lillooet and Fountain, [...] The product disposed of by the Lower Lillooet to the Upper bands were dentalia and other shells; dyed and undyed cedar-bark, yew-wood, and also sometimes vine-maple and yellow-cedar or cypress wood, for the manufacture of bows; black-tail deer-skins, hazel-nuts, dried huckleberries, goat-hair, blankets, fish-oil [oolichan oil], and sometimes slaves from coast. They received in exchange dentalia, bark of hemp, bark twine and rope, dried salmon, *Erythronium grandiflorum*, var. *minor* [avalanche lily corm] and other kinds of roots, dried service-berries [saskatoon], soap-berries, and other berries, cherries, dried meat and fat, and dressed skins (p. 231-32).

From this description, it could be said that some shells like dentalia played the role of money as well as the means to transform surplus into a kind of prestige, which brought about the formation of social inequality. In fact, Alexander (1992) offered some insights into the formation of social inequality, and the establishment of 'ownership' over resources in the Fraser River Band. In the original land use in mountain areas, each band had its habitual hunting and trapping grounds near its home; but those grounds were considered the common property of the entire tribe. Hunting at specific locations was regulated by individual hunting stewards who inherited their position and whose families habitually used those locations. However, they did not 'own' the land and they allowed other people's access to their area. This situation had gradually changed as Alexander (1992) mentioned: "Starting in 1800, some Salish bands, including Pavilion, adopted some social practices from the coastal tribes that resulted in changes in the ownership practices. With the creation of clans and an hereditary nobility, hunting territories, root-digging grounds, berrying resorts, and Montane basecamps became the common property of the nobility of the band (p. 143-44)".

2.3. Consequences of European Contact

Changes in the Lil'wat people's way of life were brought about by the European contact in the 19th century. In the beginning, changes resulted from the indirect impact of European traders when frequent exchanges started between the Interior and the Coastal peoples. Many coastal people became middle-men, seeking profits from the fur trade with the interior peoples. Some agricultural practices were also brought in from the coast. As early as 1859 potato farming was being adopted by the people of Lil'wat (Palmer, 1859). Also, some social practices from the coastal tribes were adopted by some bands, which resulted in changes in ownership practices.

Europeans' first exploration of the southern part of BC's interior was in 1808 by Simon Fraser (Lamb, 1960) of the North West Company pushing westward in search of new trade routes. He followed the Fraser River down to the sea establishing several forts as trading centers. It is presumed that, by the middle of last century, European goods such as guns, axes, cloths, beads had been popularized among the aboriginal peoples. As Fisher (1992) described, however, there were no apparent modifications of the native culture during this period: "The Indians still to a large extent controlled both the trade and their culture, and European traders did not attempt any major interference with their way of life" (p. 24). The influence of the fur brigades on the Lil'wat might have been even smaller because there was no permanent trading post in the district and the Lil'wat was out of the main trading routes.

1827 seems to be the year in which Hudson's Bay men first penetrated the Birkenhead River area, reaching the Lil'wat Nation. They were searching for a safe route to bypass the lower Fraser canyons. The first account of any exploration through the district comes from the journal of A.C. Anderson in 1846. He wrote about a Lillooet Village (today's Lil'wat Nation) in an entry dated May 21, 1846 as follows (Edwards, 1978):

Upon arriving at Lillooet, we found a channel some 50 yards wide, lying between us and a village, seated upon a low grassy island of considerable extent. Similar meadows exist in different directions around, affording excellent pasture. The natives whom I saw, amounting in all to about 50 men, with women and children in proportion, were suffering from want of provisions, and therefore unable to supply us any. They described the dearth, to the state of water which impedes the usual fishing. The inhabitants are very miserably clad, and exhibit every symptom of abject poverty. They possess however, some very good cedar canoes, made after the model of those seen on the coast. After parleying, I succeeded in having a couple of these, together with the necessary conductors (p. 72-73).

Anderson was a Hudson's Bay man who established the route from Lillooet to Fort Langley through Pemberton Meadow. Contrary to his expectation that the route would facilitate fur brigades, it became essential in the gold rush of 1858. During the next 10 years, thousands of gold seekers were passing by the Lil'wat Nation. Governor Douglas described the beginning of the road in his letter to England (Harris, 1977):

We have commenced the work of improving internal communications of the country. [...] a party of 500 men is now engaged in opening a road into upper Fraser's River by the valley of Harrison's River. A sternwheel steam vessel is now running to the upper extremity of Harrison's Lake from where we have been cutting a road through the forest on the left bank of Harrison's River and Lillooet Lake to connect Anderson's Lake. Total distance between those two points is about 80 miles of land carriage over a generally level country. The men employed in that important enterprise are gold miners, composed of many nations, British

subjects, Americans, French, Germans, Danes, Africans and Chinese who volunteered their services immediately on our wish to open a practicable route into the interior of the Fraser River District being made public (p. 13).

In 1860, a dam was built across the outlet at the lower end of Tenasse Lake, a small lake adjacent to the lower end of the Lillooet Lake, in order to raise the water and enable the steamboats to move easily as they were negotiating the rapids between the two lakes (Downton, 1921). In this period, many Lil'wat people were hired to transfer the stacks of freight from shore to ship and back to shore. More importantly, gold seekers left behind a legacy of disease and death in the area. Although the exact number of casualties from infections is unknown, some Lil'wat elders say more than two thirds of the native population died in this period.

The route to the gold fields also opened a way for farmers to reach the Pemberton Meadow above Lillooet Lake. The incentive was the temporary high prices of vegetables to supply prospectors. Pre-emption of the land in this area was among the first recorded after the 1860 *Pre-Emption Proclamation* in BC. The first and second pre-emptions recorded by P. Smith and J. Show together with W. Jones's pre-empted ground account make up for some 740 acres, which later became a part of the Indian Reserves. In 1880, the McClaren Ross Company decided to build a railway from Squamish to Daisy Lake, which produced the anticipation that Pemberton Meadow would be "filled up soon" and stimulated both land and timber speculations. In 1890, throughout the Meadow, close to 5,000 acres were bought by speculators. As for settlers, in 1890 and 1891, 23 individuals, some in partnerships, applied for 33 parcels along the Lillooet River. However, not until 1914 did a train run into the Meadow. Many settlers had left the Meadow by that time.

According to a description dated March 1882, by Peter O'Reilly, an Indian Reserve Commissioner, the life of the Lil'wat people was more or less isolated. He reported that the Pemberton Indians numbered 203, "54 men, 49 women, and 110 Children, the proportion of children to adults being nearly double the general average among Indians." He also said of the Pemberton Indians that they were: "an industrious and peaceable people; being isolated from the white population they have no opportunity of obtaining spirituous liquors and they gain their living by their natural resources. Their fisheries are their principal means of support, which they supplement by hunting, trapping and mining." However, these long-standing activity patterns had been mostly replaced by western ones by the end of the 19th century. In fact, even in Teit's observations in the early 1900s, traditional systems had largely changed. For example, with respect to native dwellings, Teit (1906) mentioned that: "Both the plank houses and the underground houses have now gone completely out of use, their places being taken by lumber and log cabins built after the manner of whites (p. 214)." Concerning food resources, Teit (1906) said that: "At the present day a considerable part of the food-supply consists of potatoes, corn, squash, turnips, etc., raised on reserves; and flour, rice, sugar, tea, etc., obtained from the whites (p. 223)." Early settlers in Pemberton Meadows employed natives for agricultural work such as planting and picking up potatoes. Also, native people traded apples, greengages, huckleberries, baskets, salmon and venison, for butter, bacon, beef and vegetable, and they loaned some teams of horses to the settlers. Native people were raising fine crops and cultivating fruit such as plums, cherries, apples and currants on their reserve lands (Decker et. al, 1977). Their life in this period can be traced from a record of the McKenna-McBride Royal Commission (1916):

IGNATIUS JACOB IS CALLED AND SWORN (Witness here hands in exhibits containing the following information). Population 315; that is, reserve No. 1, 2 and 3; children of school age 92, male and female; reservation acreage 5,780 of which 1,780 is bottomland; 570 1/2 acres is under cultivation the rest being under water; 4,000 acres of valuable timber and good timber on the hills of which 1,640 acres only merchantable are under timber limits held under the North Pacific Lumber Company; livestock horses 189, between No. 1, 2, and 3 Reserves; cattle 160 between No. 1, 2 and 3 reserves; hogs 148, between No. 1, 2 and 3 reserves; hay average annually in all 459 tons in No. 1, 2 and 3 reserves; fruit trees 1,872 in mostly plums, apples, cherries and pears; poultry all kinds.

From this description, it is presumed that, in this period, the number of families was well under 100.¹⁸⁾ Agriculture with livestock became popular among the people of Lil'wat. By the turn of this century, they seemed to cultivate most arable lands on reserves. Probably many people combined agriculture with other traditional occupations like fishing, hunting, and gathering. So called "family lands" on reserves were probably established by this time. The development of agriculture on reserve lands must have influenced the resource use patterns in the traditional territory, thus, the property system as a whole.

With respect to the formation of reserve lands, parts of their reserves were first allotted in 1881 when many speculators were starting to buy the lands on Pemberton Meadow.¹⁹⁾ Also, some 800 acres of church lands were taken over in 1905 to be a part of reserve. Details about those reserves in 1913 are provided in Table 3 extracted from the "Schedule of Indian Reserves in the Dominion" (DIA, 1913). Not without significance is the way in which the Canadian authority dealt with the land and resources of the Lil'wat Nation. When the colony of BC entered Confederation in 1871, almost all the provincial lands fell under the ownership of provincial Crown. By the beginning of this century, the large portion of the Pemberton Meadow and adjacent areas, a part of the traditional territory of the Lil'wat Nation, was pre-empted. Timber resources had been granted to a number of private companies.²⁰⁾ In the beginning of this century (1905-1907), a feverish speculative boom, known as "timber staking" occurred. The number of

Table 3 Reserves for Pemberton Indian Band in 1913

Name	Where Situated	Acreage	Remarks
1 Pemberton meadows	at the upper end of the lower Pemberton meadows	188.50	Allotted by Comm'r. O'Reilly, Sept. 6, 1881, Surveyed 1882, Approved, June 4, 1884
2	on the upper Pemberton meadows between the north and south branches of the Lillooet Rivers	105.00	same as above
3	on the lower Pemberton meadows between the north and south branches of the Lillooet rivers	909.50	same as above
4 Ne-such Lokla	on the Birkenhead river, about seven miles from reserve No. 1	19.50	same as above
5 Grave-yard	near the 20 mile house at the foot of Pemberton lake, on Mr. J. Smith's pre-emption claim	1.40	Allotted by O'Reilly Sept. 6, 1881. Surveyed 1882, Approved June 4, 1884. The exclusive right of fishing in the Lillooet river from the foot of Pemberton lake 1/2 mile down stream is reserved for these Indians.
6	on left bank of Birkenhead river, N. of reserve No. 3	4,000.00	The North Pacific Lumber Co. have the right of cutting timber on 1,640 acres lot 236, group, 1 for 21 years from April 1, 1903. Allotted by Comm'r Vowell June 15, 1904, Surveyed by D.J.F.Ritchie, D. and P.L.S., 1905, Approved Feb. 21 1906
7	same as above	320.00	Allotted by chief Comm'r of Lands and Works, It was previously known as B. Smith's pre-emption
8	L.99 G.I.L.98 G.I.	813.00	Purchased by Dominion Govt. on 4th Nov., 1905 from Bishop Dontenwill, consists of lot 99, group 1, containing 287 acres, east portion of lot 98, containing 320 acres and west portion of lot 98 containing 206 acres

Source: Schedule of Indian Reserves in the Dominion, 1913 (Department of Indian Affairs)

timber licenses abruptly increased in BC at that time (Pearse, 1992). As mentioned earlier, the forest lands adjacent to the Pemberton Meadow had already been the object of speculation in 1890s, and this tendency had continued after that. Although there is not much evidence on this issue, it can be assumed that the timber licenses in this period covered most of the accessible forested lands in the traditional territory of the Lil'wat Nation. In fact, as shown in the Table 3, even on a part of reserve lands (#6), a cutting permit had been assigned to a forest company.

With respect to fishing practices, Ware (1983) summarized the governmental regulations with special emphasis on the Fraser River prior to the 1940s: *Pre-1858*: Indian control of land and resources, no restrictions on Indian participation in commercial fisheries, *1858-1880s*: non-regulation of BC Indian fisheries, *1880s-1894*: first attempt to separate Indian participation in the commercial fisheries from "food fishing", first regulatory clauses in Fisheries Act and BC regulations, early attempts to "administer" fishing laws against Indians, *1894-1914*: significant regulation and restrictions of Indian "food fishing", offensive launched on weirs and fish dams, a "permit system" established, though haphazardly enforced, *1914-1922*: intensified attack on Indian fisheries; attempt to abolish all nets, then attempts at total prohibition of Fraser River Indian fishing, *1923-1930s*: beginning of the contemporary "Food Fish Permit" system.

Early this century, the Fisheries Department set up a hatchery on the Birkenhead River adjacent to the reserve. The Department took salmon eggs from the Chilliwack/Cultus Lake to populate the Birkenhead and other rivers. Eggs could hatch in this manner, but few or no fry could live and return to spawn. The people of the Lil'wat Nation quickly realized the damage being done by the hatchery. Chief James of Lil'wat Nation testified against the operations of the hatchery, where a 1924 fiasco wiped out over 60% of the eggs extracted from that year's run (Ware, 1983). Prior to this time, he also led a protest in a dispute over spear fishing in the Birkenhead (Ware, 1983). Overall, there were some restrictions against native fishing activities, and there were governmental initiatives to manage salmon resources although the Lil'wat people protested against them.

With respect to hunting practices, on the other hand, the level of governmental regulations over native hunting was much more relaxed than that of fishing activities in this period. This may be because salmon had higher commercial value than game animals. Also, the habitats of each game animal are more difficult to trace, compared to salmon which is caught at specific locations. In other words, more power over local affairs would be required in order for governments to regulate native people's hunting activities. It is unlikely that this happened in the remote areas in those days. Confrontation between Lil'wat Nations and Canadian governments over animal resources started much later. There are, however, anecdotes of some internal arrangements concerning hunting practices in those days. According to some elders, people began using family traplines sometime in the 19th century by importing the idea from other tribal groups. The system of trapline was unknown to the Lil'wat Nation before. The trapline brought a major change in terms of property rights on the traditional territory. Its main purpose was to access and control the population of fur-bearing animals in order to exchange them for commodities or money without depleting the animal resource. This is an example of adaptation of traditional activities to the money economy.

Overall, it is difficult to assess property in terms of the way Canadian authorities dealt with the local native population during this period (i.e. from the gold rush era to 1940s).

Apparently, the Crown Land system was established, and pre-empted lands were given away. Settlers were acquiring large portion of Pemberton Meadow. Some regulations in fisheries were established. However, with respect to fishing and hunting practices, it is not easy to specify the extent to which governmental regulations imposed upon local activities. In fact, some elders in the Lil'wat Nation recall that there were no restrictions whatsoever concerning fishing and hunting practices prior to the 1960s. It may be reasonable to assume that, during this period, people continued fishing and hunting in their own way, to a certain degree, as an integral part of their life.

In spite of the fact that the Lil'wat people retained some independence in fishing and hunting activities, it should be noted that they did not simply accept their situation once Canadian governments started to undermine the aboriginal authority system. As mentioned earlier, some aboriginal peoples in BC rose against Canadian policies in the early years of this century. The Lil'wat Nation people were also among those who expressed their inherited right to the land. The following is the "Declaration of the Lillooet Tribe" of 1911 signed by 12 chiefs in Stl'atl'imx (Drake-Terry, 1989):

We speak the truth, and we speak for our whole tribe, numbering about 1400 people at the present time. We claim that we are the rightful owners of our tribal territory, and everything pertaining thereto. We have always lived in our country; at no time have we ever deserted it, or left it to others. We have retained it from the invasion of the other tribes at the cost of our blood. Our ancestors were in possession of our country centuries before the whites came. It is the same as yesterday when the latter came, and like the day before when the first fur trader came. We are aware the BC government claims our country, like all other Indian territories in BC; but we deny their right to it. We never gave it or sold it to them. They certainly never got the title to the country from us, neither by agreement nor conquest, and more other than us could have any right to give them title. In early days we considered white chiefs like a superior race that never lied nor stole, and always act wisely, and honorably. We expected they would lay claim to what belonged to themselves only. In these considerations we have been mistaken, and gradually have learned how cunning, cruel, untruthful, and thieving some of them can be. We have felt keenly the stealing of our lands by the BC government, but we could never learn how to get redress. We felt helpless and dejected; but lately we begin to hope. We think that perhaps after all we may get redress from the greater white chiefs away in the King's country, or in Ottawa. It seemed to us all white chiefs and governments were against us, but now we commence to think we may get a measure of justice. [...] chiefs of all the Lillooet bands resolved as follows; First - That we join the other Interior tribes affiliated within the Indian Rights Association of the Coast. Second - That we stand with them in the demand for their rights, and the settlement of the Indian land question. Third - That we agree unanimously with them in all the eight articles of their Declaration, as made at Spences Bridge, July, 1910 (pp. 268-269).

In the early 20th century, the policy of assimilation was already in progress in the Lil'wat Nation. By the year 1900, a Roman Catholic church was built in the center of the community and most native people became Christians although some people were actively against the church and the propagation of its message. For example, some people remember an anecdote of late Charlie Mack, a respected Lil'wat elder, who accused a church bishop by saying, "You hold a bible with one hand and steal our lands with the other." The bishop got angry and cast him

out by calling him a 'coyote' meaning a kind of trickster or heathen. Also, by this time, many children were taken to residential schools. One of the oldest examples that this researcher was told is that of a 21 year Lil'wat woman who got out of a residential school in 1907 after 17 years of schooling. Children were separated and taken to different residential schools, such as those in Williams Lake, Kamloops, Sechelt, Port Alberni, and Mission. Although a day school opened on reserve in 1939 with one classroom, many children were taken to the other residential schools until the 1960s.²¹⁾

In Pemberton Meadows, many settlers arrived after the railway construction in 1914. According to a census in 1933 conducted by the Board of Trade Statistics, there were 700 whites settling at the Meadows, which was twice the native population of 350 in the Meadow (Decker, et al., 1977). Approximately, 25,000 acres were privately owned and cultivated for root vegetables (mainly potato) and hay. Also, 2,000 head of cattle and 500 head of horses were raised. There were eight sawmills in the Meadows shipping 2,000 poles and 26,500 ties (in 1930). The influx of settlers that started in the 1920s and 1930s brought opportunities for seasonal work for the native people. Also, many natives were working in the bush as hand-loggers. Besides working in the Meadows, some people were going outside to work. In the summer time, special railroad fares were offered to native workers enabling them to travel to the Fraser Valley and Washington for hop-picking and fruit harvesting (Decker, et al., 1977). In the same period, the money economy was gradually introduced into the native community. The first store in the community since the gold rush period was built by Bill Kiltz of the Lillooet Lake Trading Company in 1923. The first native store, owned by a certain Williams family, started to operate in the 1930s. The logging industry started expanding in the 1940s and became the largest industry in the Meadows. Although native people had kept their traditional ways along with subsistence agriculture by this time, their life had been largely modified by white settlers with the introduction of the money economy.

- 1) However, some commentators, such as Boyd (1994), pointed out the devastating effects of epidemics. They argued that, since the late 18th century, epidemics, especially smallpox, ravaged the native communities in the Pacific North West, although the exact rate of depopulation is unknown.
- 2) This period started with the establishment of the colonial government of the Vancouver Island in 1849 and of the Mainland in 1858. In 1866, the two colonies united into the colony of British Columbia. British Columbia joined the Canadian Confederation in 1871.
- 3) Between 1850 and 1854, Douglas signed 14 treaties with the aboriginal peoples communities on Vancouver Island, often obtaining the land for a few cents an acre or a few blankets per acre. As part of these treaties, Douglas established several small reserves. Besides, the other treaty (Treaty No. 8) was signed in BC in 1899 by the federal government covering the Peace River east to the Rocky Mountains and northern Alberta.
- 4) Governor Douglas's policy on the Indian land question, especially on reserve allocation, is often considered reasonable because, initially, he allowed for unlimited reserve land allocation for aboriginal peoples. His position, however, changed after 1854. According to Tennant (1990), the central elements in Douglas's land policy after 1854 were: (1) his de facto denial of aboriginal title except on a part of Vancouver Island, (2) his granting of only small reserves (no more than ten acres per family), and (3) his defense and encouragement of Indian land pre-emption.
- 5) On the Island a married couple was allowed 200 acres and 10 more for each child; on the

Mainland a person could pre-empt 160 acres and buy adjoining land at twenty-five pence an acre.

- 6) The Colonial Land Ordinance of 1870 stated in section 3: "From and after the date of proclamation in this Colony of Her Majesty's assent to this Ordinance, any male person being a British Subject, of the age of eighteen years or over, may acquire the right to pre-empt any tract of unoccupied, unsurveyed, and unreserved Crown Lands (not being an Indian settlement) not exceeding three hundred and twenty acres in extent in that portion of the Colony situate to the northward and eastward of the Cascade or Coast Range of Mountains, and one hundred and sixty acres in extent in the rest of the colony. Provided that such right of pre-emption shall not be held to extend to any of the Aborigines of this Continent, except to such as shall have obtained the Governor's special permission in writing to that effect."
- 7) The Indian Act was first promulgated in 1876 and has been amended often since then. According to Getty and Lussier (1983), the purpose of the Act, as of all legislations concerning the aboriginal peoples, was to assimilate the native people into the Canadian mainstream. For example, section 3 of the Indian Act of 1880 stipulates that: "Every Indian or other person who engages in or assists in celebrating the Indian festival known as the "Potlatch" or in the Indian dance known as the "Tamanawas" is guilty of a misdemeanor, and shall be liable to imprisonment for a term of not more than six nor less than two months in any gaol or other place of confinement; and any Indian or other person who encourages, directly or indirectly, an Indian or Indians to get up such festival or dance, or to celebrate the same, or who shall assist in the celebration of the same is guilty of a like offense, and shall be liable to the same punishment."
- 8) According to the Land Claims Research Centre (1974), four periods can be identified in the history of the Indian reserve system in BC: 1850-1871: Various land policies were implemented under colonial BC, including Vancouver Island Treaties, Douglas' reserve policy (1850 - 1863), and Trutch's policy (1863-1871). Douglas's reserve policy, which allowed Indians to select the size and location of reserve areas, was dramatically reversed by Trutch, a head of the colonial Department of Land and Works. Trutch initiated a policy of reduction of Douglas' reserves, and of reluctance to allocate additional reserves; 1871-1912: Despite continued encroachment by non-aboriginal settlers onto Indian lands, BC ignored the reserve policy of the federal government (80 acres per family). BC claimed that 10 acres per family was enough. The Indian Commissioner I.W. Powell said, "If there has not been an Indian war, it is not because there has been no injustice to the Indians, but because the Indians have not been sufficiently united." The Indian Reserve Commission (1876-1910) was set up by the Federal-Provincial agreement of 1875 to allot and survey Indian reserves. The agreement provided that no basis of acreage be fixed, and the province preserved its right to disallow any reserve that the Indian Reserve Commission allotted. Often the reserves laid out for a band were significantly less than the claims the band had made; 1912 - 1916: While the Mckenna-McBride Commission operated, facing the impasse between the provincial and federal governments over the Indian land question, BC passed a law giving itself the authority to "grant, convey, quit claim, sell or dispose of, on such terms as may be deemed advisable, the interest of the Province, reversionary or otherwise, in any Indian Reserve, or any portion thereof (Section 127, Chapter 129, Revised Statutes of BC, 1911)." This was contrary to the Indian Act and an open challenge to the federal government. The Mckenna-McBride Agreement was reached in 1912, which gave the Royal Commission the power to recommend the reduction and additional allotments of reserve lands (Mckenna was a Special Commissioner appointed by the federal government, and McBride was the Premier of BC from 1903 to 1915); 1924 - : There have been various ways in which governments take away parts of reserve lands since 1924. For example,

the Scott-Cathcart Agreement of 1929, accompanied by the federal order in council No. 208 in 1930 and the provincial order in council No. 1151 in 1930, reconveyed the Railway Belt to the province except for the Indian Reserves located in those areas. Finally, in 1938, the provincial order in council No. 1036 officially transferred the title to all Indian reserve lands outside the Railway Belt from the province to the federal government. Reserve acreages were often reduced in the schedules attached to the Scott-Cathcart Agreement or to the provincial order in council No. 1036 from what was allotted by the Indian Reserve Commission or the McKenna-McBride Commission. Also, the order in council No. 1036 includes a provision to take reserve lands for pipelines, hydrolines, and so on.

- 9) Knight (1978) shows a different picture about aboriginal peoples in this period. According to him, by the end of last century, aboriginal peoples in some regions had become more intimately and permanently involved in industrial wage work than many Euro-Canadians.
- 10) According to Tennant (1990), the McKenna-McBride commission recommended that the total area of reserves in BC be increased from 713,699 to 753,859 acres (47,058 acres be cut off and 87,291 acres be added). However, this added land was valued at about 5.1 dollars an acre, while cut-off land was appraised between 21.2 to 26.5 dollars an acre. Cut-off land was "almost entirely land regarded as highly desirable by white farmers, ranchers, developers, speculators, and municipal officials" (Tennant, 1990, p. 98).
- 11) The 1969 White Paper intended the shift of Indian policy from assimilation to integration. The Canadian governments have tried to eliminate 'Indian problem' by eliminating the Indian way of life through education and training. Assimilation was a policy intended to preserve Indians as individuals by destroying them as a people' (Francis, 1992, p. 201). This process may be also regarded as integration.
- 12) The Sparrow case (R. v. Sparrow [1990] 1S.C.R. 1075) was the first implementation of Section 35(1) of the Constitution Act of 1982. By this decision, the Court recognized Section 35(1) included the aboriginal right to fish for nourishment, social, and ceremonial purposes, thus overriding the Federal Fisheries Act provisions.
- 13) After the 1991 McEachern decision in the BC Supreme Court (see the next footnote), the Gitksan and the Wet'suwet'en First Nations took their case to the BC Court of Appeal, which reversed much of the earlier McEachern decision and ruled that the Gitksan and Wet'suwet'en First Nations do have "unextinguished non-exclusive aboriginal rights, other than the right of ownership." In this decision, Mr. Justice Macfarlane made the following comments which imply the nature and the extent of aboriginal rights: (1) They are rights which are integral to the distinctive culture of an aboriginal society. The nature and content of the right, and the area within which the right was exercised are questions of fact; (2) A practice which had not been integral to the organized society and its distinctive culture, but which became prevalent as a result of European influences would not qualify for protection as an aboriginal right.
- 14) The plaintiffs challenged the legal judgment by arguing that: (a) they owned the claimed territory (the "Territory"); (b) they were entitled to govern the Territory according to aboriginal laws which were paramount to the law of British Columbia; (c) alternately, they had unspecified aboriginal rights to use the Territory; (d) damages for the loss of all lands and resources transferred to third parties or for the resources removed from the Territory since the establishment of the Colony; and (e) costs (Cassidy, 1992, p. 21).
- 15) Some commentators, such as Smith (1995), argue that the notion of aboriginal title has been rejected by the Canadian courts, as in the Delgamuukw case in the BC Court of Appeal, and there has been no legal basis for treaty negotiations that include land and resources as well as jurisdictional matters. The BCTC, however, takes the position that no court has yet described the specifics of the aboriginal title in BC; the concept of aboriginal title falls between

'ownership' in the conventional sense and non-exclusive aboriginal rights to engage in particular activities. The BCTC understands that the courts had confirmed that aboriginal rights still exist in BC, that these rights are unique and unlike conventional property rights, and that the rights are constitutionally entrenched so that neither the federal nor provincial government can interfere with them without following a strict constitutional standard. In turn, the BCTC recognizes that there can be no certainty about the nature and extent of the Crown's title to land and resources, except through a process of negotiation designed to reconcile the respective rights of the Crown and First Nations'. The BCTC interprets the decision of the BC Court of Appeal and makes some recommendations. Since the BC Court of Appeal denied the notion of 'blanket' extinguishment, the First Nations should attempt to establish the specifics of the aboriginal title through negotiations with the federal and provincial governments. "Treaty making is the best way to respect Indian rights" (BCTC, 1996).

- 16) Teit (1906) used the term "clan", but a more appropriate term would be "lineage" or "extended family" in today's sociological terminology. According to Teit (1906), among the people of the Lil'wat Nation, there were six "clans": wolf, Hailo'laux (beings half human, half fish), owl, Sa'inux (beings half human, half fish), Swan, and Rainbow Trout. Membership in the clan descended along both the male and female lines. In the case of mixed marriages, a man could not become a member of his wife's clan, or vice versa; but the children were considered members of both clans. In addition, with respect to the decision-making system in the Lil'wat Nation, some people are currently advocating a revival of the clan system under the name of "family head system".
- 17) Besides the exchange value, the relationship between natural resources and human activities is another important topic. For example, Turner (1988) uses the Index of Cultural Significance, an index that measures the cultural importance of each plant species based on the "uses" ("quality", "intensity", and "exclusivity") of that given species.
- 18) In 1923, 273 people with 75 households were on the record as band members. The distribution of age and sex is shown.

Population by Age and Sex for the Pemberton Band in 1923

Age	0-9	10-19	20-29	30-39	40-49	50-59	60-69	70-79	80+	Total
Male	35	35	24	18	14	3	8	5	5	147
Female	34	25	23	11	11	6	5	5	6	126
Total	69	60	47	29	25	9	13	10	11	273

Source: Census - Pemberton Band of Indians of 1923, Indian Affairs

- 19) During 1850 to 1863, Governor Douglas had a reserve policy allowing Indians to select reserve areas. However, the federal government did not assume responsibility for Indian lands until 1871. Much of the information on those reserves in Douglas's period has been lost. In the case of Lil'wat Nation, many people insist that they used to have reserves in their traditional territory. No official document has supported these claims.
- 20) According to Pearse (1992), around this period, BC granted the lands, including timbering rights, to private sectors. Then, the government adopted a policy initiating the separation of rights to land from rights to timber, and restricting the alienation of title over forest lands.
- 21) According to Fisher (1977), Roman Catholic missionaries spread out from southern Vancouver Island over the Mainland during the 1860s, converting and 'civilizing' the Indians. Especially, St. Mary's mission, established in 1861 in today's city of Mission, became an important center for disseminating Roman Catholicism among the Salish Peoples. In 1868, St. Mary's Mission became a boarding school.

CHAPTER THREE: RESERVE SYSTEM AND PROPERTY RIGHTS

3.1. Outline of the Mount Currie Reserves

Currently, there are a total of ten reserves which belong to the Mount Currie Indian Band (Lil'wat Nation). These reserves are located in the Pemberton Valley, 100 miles north of Vancouver. All the reserves are located within the traditional territory of the Lil'wat people. As mentioned, these reserves were formed around the turn of this century. Table 4 is a list of reserve areas.¹⁾

Table 4 The Mount Currie Indian Reserve Lands

name	number	acres	hectares
Pemberton	1	188.5	76.15
Mount Currie	2	105.0	42.42
Nesuch	3	999.5	403.78
Lokla	4	13.5	5.45
Graveyard	5	1.4	0.58
Mount Currie	6	4,000.0	1,616.00
Mount Currie	7	320.0	129.28
Mount Currie	8	81.3	328.45
Mount Currie	9	3.7	1.49
Mount Currie	10	74.3	30.02
Total		6,818.9	2,633.62

Source: Mount Currie Reserve Lands - Land Use Plan 1982

The structure of the Lil'wat population is heavily skewed towards the younger generation. The "Land Use Plan" of 1982 estimated a 2% annual growth factor for the following 10 years. Indeed, rapid population growth occurred. Table 5 shows the on- and off-reserve population distribution by age and sex in 1983. There are several records concerning the population of the Lil'wat Nation in the past. For example, a record of the Royal Commission mentioned a population of 315 living on the reserves in 1915. In 1923, a census of the Indian Affairs showed 273 people. A 1933 census conducted by the Board of Trade Statistics showed 350 people as the native population in the Pemberton Meadow. The Pemberton Valley Land Utilization Survey of 1951 stated that the Pemberton band of Indians consisted of about 85 families, totaling some 450 people. A band minute dated 1975 showed an on-reserve Band population of 800. As of 1995,

Table 5 Registered Indian Population by Age, Sex and Residence in 1983

Age	On-Reserve			Off-Reserve			Total		
	M	F	T	M	F	T	M	F	T
0-9	97	88	185	30	40	70	127	128	255
10-19	107	96	203	59	49	108	166	145	311
20-29	104	99	203	30	32	62	134	131	265
30-39	61	46	107	18	41	59	79	87	166
40-49	35	22	57	12	12	24	47	34	81
50-59	26	15	41	2	7	9	28	22	50
60-69	8	6	14	4	2	6	12	8	20
70-79	7	5	12	1	2	3	8	7	15
80+	4	3	7	1	0	1	5	3	8
Total	449	380	829	157	185	324	607	565	1,172

Source: Statistics Canada

N.B.: M, F, and T stand for male, female and total respectively.

1,515 people were registered Indians belonging to the Lil'wat Nation, out of which 1,053 were living on reserve. Besides natural growth, some political initiatives have been responsible for this significant population increase. The Canadian amalgamation policy, which went into effect in the 1940s, regrouped scattered village sites into larger administrative units. In addition, in 1983, Bill C-31 brought about more inclusive criteria for band membership.

3.2. Indian Reserves in the Canadian Legal System

The Indian Reserve system is a creation of the Indian Act. Three points should be recognized with respect to the Indian Reserve system in Canada: (1) paternal relationship, (2) conflict between individual and collective interests, and (3) enduring customs.

(1) *Paternal Relationship*: The Constitution Act (1867) gave the federal government exclusive authority over the Indian Reserves. The Indian Act defines a reserve as a "tract of land, the legal title to which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of a band." The Department of Indian Affairs (DIA) exercise certain authorities concerning the management of reserves including: managing reserve lands for the use and benefit of Indian Bands; administering the land interests of individual band members; granting land interest to non-band members; authorizing land use and transfers of land for public purpose; supervising the surrender and designation of reserve lands; and authorizing band management of reserve land. These provisions of the Indian Act are the reflection of a paternal relationship between Canada and aboriginal peoples. One of the contradictory points is that the Act does not recognize the bands' ability to administer their reserve lands. Especially, the Act does not recognize the bands as having proprietary interests in their own reserves. A band cannot independently grant interests in lands, dispose of lands, or manage reserve lands. This also means that any land use activities by individual band members are encumbered by these provisions of the Act (DIAND, 1990).

(2) *Conflict between individual and collective interests*: The notion of collectivity clearly illustrates the prominent feature of the First Nation's traditional relationship to the land. The provisions of the Indian Act undermined this distinctive aspect of the aboriginal peoples. The introduction of a *certificate of possession*, a pseudo-private ownership, is a typical example. The system was created to recognize individual land holdings on reserves. Nevertheless, an individual band member cannot 'own' the land as a 'fee-simple' holding. The problem becomes eminent when an individual band member intends to set up a business on the reserve lands. The *Certificate of Possession* enables an individual band member to use his/her land for mortgage purposes. Subject to approval by the Band Council, a *ministerial guarantee* must be obtained. According to this system, if the business fails, the DIA pays the price from the band funds. The band is often reluctant to take this kind of risk to support individual entrepreneurs. Also, there is the fear that such a business failure may lead to land alienation. In any case, those who intend to start a business using the lands are often trapped between the individual and collective interests on the reserve. The majority of the First Nation people will agree to have a certain form of land holdings that is lawfully recognized in order to protect the individual interests in the lands. On the other hand, many people do not agree with the certificate of possession because it emphasizes individuality to the detriment of the collective use and benefit on reserve lands.

(3) *Enduring Customs*: Although the introduction of the certificate of possession is an example

of the policy of assimilation, in many aboriginal peoples, including the Lil'wat Nation, the certificate of possession has not been generalized. In most cases, a system of dual authority (i.e., certificate of possession, customary laws) operates. With respect to land management practices, it is often the case that a band acts in accordance with its own customary law. In the Lil'wat Nation, indeed, the history of *de facto* land use shows that the band, as a governing body, has had certain authority over the management of reserve lands based on customs. Also, some family groups have exclusive customary rights over their family grounds.

In general, reserve management can be characterized by the conflict between *individual interests and community control*. Individual interests are represented by: the Canadian reserve politics (e.g., certificate of possession), and economic development on and off reserve that inevitably promotes entrepreneurial interests. On the other hand, some customary activities may protect collective interests by not only preserving old customs, but also creating new rules (norms). New rules may be created out of customary decision-making. As such, many initiatives both from the band and family groups often aim at community control over evolving individual interests. Then, a question is: *Can a compromise be reached such that it could accommodate both individual interests and collective interests in the community?* The following sections explore the history of land use on reserve, focusing on the relationship between the band and its members. The key issue to be explored is the evolution of traditional customs given the current reserve system.

3.3. The Band's Role in Land Management

3.3.1. Land Holding System

The band represents the customary administrative authority over the reserve lands. The exercise of this administrative authority can be explored in terms of the system of land holding and land exchange. The band itself holds most of the reserve lands as band lands. Conceptually speaking, originally, all the lands were band lands (tribal property). Some groups and individuals started to occupy a portion of the lands for specific purposes. With respect to the function of band lands, they have incorporated various systems within themselves. As will be mentioned later, one of the uses on band lands was communal use (e.g., firewood production) which is open to every band member. In this case, each band member assumes management responsibility (e.g., avoid depletion). Band lands have recently included public parks. This is a public property where everybody has access and the band assumes management responsibility. Furthermore, the band has developed some woodlots and forests reserved for commercial purposes. These land use strategies are similar to the those typical of state property. The band, by contract, allows specific individuals and companies to access the resources. Management responsibility belongs to the band. In theory, with this type of land management, the band can develop land use strategies in order to enhance community control by addressing: Who is actually allowed the access (e.g., band members or outside companies)? How does a contract on band lands relate to other sectors in the community (e.g., provisions for value-added products)? and How does the band use income generated from a contract (e.g., provisions for collective benefits)?

Currently, other than band lands, there are those lands that belong to individual band members. They are not, however, free from the administrative power of the band. They comprise: (1) pasture lands, (2) family lands, (3) lands cleared by individuals, and (4) housing lots. For each form of land holdings, an explanation is given to clarify the way in which customary laws

work.

(1) *Pasture Lands*: Certain portions of the reserve lands have been managed as a common pasture land. For example, large portions on Reserves #3 and #4 have been used for this purpose. In a sense, they are still a part of the band lands to be used only by stock holders. Around 20 people (households), who are stock holders, formed a stockmen's committee and managed the pasture lands (800130, 800115)²⁾ The maintenance of the fence around the pasture lands is the main activity of the committee (570809). Occasionally, people have asked for permission to cut hay from the pasture lands. The band is the authority to grant requests (740506). This is a communal use of lands where users have a management authority.

(2) *Family Lands*: Family lands are the lands belonging to certain family groups. Generally, these lands were cleared prior to the 1940s for agricultural purposes. Some family lands could be traced back before the reserve system was introduced last century. Those lands became family lands because they were handed down within a certain family group. The management of family land falls under the responsibility of a family group, as is the case with any individual land holding. When it comes to the transfer of lands, however, there is a difference between family lands and individual lands. Apparently, the band can exercise its authority at the stage of land transfer, including the fact that the band can cancel individual rights over a piece of land reclaiming it as a band holding. Family lands are the exception: the band cannot take over the family lands even when those lands are unused: "Concerning the lands that have grown into brush from neglect of owner, the Council can confiscate them, but only land that was issued by the Council to a band member. The Council cannot take land that is owned by a family and has been handed down to another member of the family. (660412)" On the other hand, without the band's approval, the family lands cannot be alienated to someone who is not a member of that family group.

(3) *Lands Cleared By Individuals*: Some individual band members have acquired lands through clearing band lands. This type of land acquisition was practiced mostly before the 1970s for the purpose of opening individual farming grounds. For example, this procedure of acquiring land through clearing can be seen in minute 580502: "The council resolved that H. Ram³⁾ be granted the land on I.R. #2 which he cleared and is using for farm purposes. And that Mr. Jones (Indian Agent) is to go ahead and measure and make a map of this piece of land, which H. Ram wants to claim." The condition attached to this type of land acquisition is that nobody else should be claiming the same land. But this has often been a source of dispute because a period of several decades with no written record was enough to bring about confusion with respect to the original holder of a piece of land. Therefore, one of the band's tasks has been to confirm the holder of a previously cleared land. Consequently, especially in the 1970s, many people requested that the band be the sole authority over land transactions and keep the land register record. Even once a band member has acquired lands through clearing, the band still has a certain power over those holdings as seen in minute 660412 where the band retrieved lands that have stayed unused for a long time. On the other hand, the band also protects those holdings. For example, in reference to a piece of land belonging to a band member who had been away from the community (living in USA), the band discussed that the land should be kept under cultivation by other band members until the original holder returned (600411). Also, the band respects a will when people die (650412) and checks to see if an individual had land holdings when he/she died (571106, 600109). Until 1976, there was no explicit limitation concerning the area

that one might acquire. However, due to population growth, especially among young couples, the band started to worry about the possible shortage of lands in the future which led to setting up certain limitations: "A lot of young people who are going to ask for land and so that the Band Council should begin planning. Clear away from the river so that there will be a river front for others. Limit the acreage to 3 acres. Each person asking for new land should be limited to 3 acres to begin with and each should have a water frontage. If he needs more, he can clean up some more but it should be used. (760408)" Also, in the 1970s, the band started using some form of land planning. For example, the band proposed to set aside some areas for recreational purposes: "Aides Lake to be a recreation area. Swimming area. A park for ourselves. Possibility of a ski-hill there too. Maybe put the Rodeo Ground there. [...] We resolve that Aides Lake is for a Recreation Area where no development is allowed in 5 years (760129)".

(4) *Housing Lots*: Another way to acquire individual land holdings is through the allotment of housing lots by the band. In some old houses (some were constructed in the last century), the band had to confirm land holdings to avoid the confusion among the people (521215, 550108, 570526, 600109, 650412, 650513). When a housing lot becomes vacant, or when the band develops new housing lots, the band assigns them to band members. A person who is given a lot becomes the lot holder although the holder has to pay mortgage to the band when the band provides a house to him/her in addition to a lot (610227). Basically, the band gives housing sites to people whenever they need them. In the 1950s, 60s, and 70s, because there was not a constant demand for housing, the band provided houses mostly on a one-by-one basis (541204, 560906, 590919, 600411, 651012, 720502, 770530, 791122). When the demand exceeded available housing, the band sometimes demonstrates its power over the rights of band members to holding lots. For example, minute 541204 reads: "A. Anderson and O. Regan, both young married band members wished lots while some members hold lots that are never used. D. Mead, a councilor, is going to contact the present owners of these lots and try to obtain releases from them, so that lots may be allotted to persons in immediate need of places to build homes." The band also gets involved in the consultation process as seen in minute 561028: "House #64 was for M. Dixon. But as O. Dye is a new man here without a home. The council asked M. Dixon to give a consent that O. Dye would take over lot #64." Typically, when the demand for housing exceeds the number of lots available, the band sets up a priority list. Such lists were in use in the 1950s, as seen in minute 570526. In the 1970s, the use of such lists is also seen in a minute from the 1970s (720502). In fact, since a new housing site was developed in the 1980s, most allotment has been done through the priority list. As other customary practices in which the band has shown its power, in 1965, the band reclaimed some old housing lots as seen in minute 650615, thus exercising its discretion power: "We decide that the three small lots that were destroyed by fire be divided into two bigger lots. These three lots belong to: F. Bell, M. Jordan, and I. Anderson. We will offer them \$50 for their lots. Then, these lots would be turned over to Band Lots." A similar example is seen in minute 710312: "G. Sharp agreed to let the portion of land go if we agreed to give him a house next year." Some lots were swapped between lot holders with the band's recognition (650412).

3.3.2. Exchange of Land Holdings

By the 1950s, the land holders had been allowed to sell the lot to any band members although such cases were rare. The power of the band to administer land exchange has increased

since the late 1950s. It may be assumed that the band has had to regulate the exchange and transfer of lands because the people started to regard their holdings as a money source. In fact, records of land exchange in the 1950s are hard to find in the minutes. Land exchange increased after the late 1960s. In this period of time, many land exchanges had occurred between band members without the band's recognition. The band bought back some lands upon the request from the land holders (760916). In only few cases did the band adopt the transaction style of issuing a bill of sale and having a witness confirm the exchange (720502). Usually, land exchange was performed as a casual transaction between the parties. In order to regulate these transactions, a price for the sale of land was considered (771216). The argument behind it was that the band, in fact, could not trace back the land holdings which generated grievance among band members. Here is a typical example of a land dispute described in a letter exchanged between two band members (810914):

Dear N. Regan: I have been concerned about my property given by my father R. Vicker. I am going to explain how I own the section and why I wish to protect my right to the property. [...] The log house in which you live belonged to J. Miller who acquired this through her family. When she passed it on, the next of kin was D. Gray who sold it to Mrs. C. Grant. She may have left it to her children but that was only the log house, not including the property. [...] This log house originally belonged to R. Vicker's mother who traded it with B. Easton with some chickens. There was never any question about the land, for it remained R. Vicker's property. Only the log house was traded. I want you to know that you are encroaching upon my property and would like to clear up with the council before you begin clearing my section. L. Miller.

With respect to the process of exchange, there was some degree of confusions even among the band councilors: "*Councilor S. Tester*: Any individual who wants to sell land, that's up to him. *Councilor Y. Vicker*: That's not true. Was on who owns land. It is their business who owns land, but it has to go through here when they sell. *Councilor F. Regan*: Whoever is buying the land, it has to go out in the newsletter to see if there are any grievances. (770312)" In this period of time, people shared the idea that written regulations about land holdings and exchange were needed (740715). In addition, a more serious problem was that some band members sold the land to non-band members. Although the legal title over reserve lands belongs to the Crown and no piece of land can be sold or leased without surrender, *de facto* exchanges were often seen with non-First Nation people (800130). Confusion and conflict became the driving force towards establishing clear written regulations concerning land. Here is an example of a discussion around this topic:

We should have policies how people get land. We should confirm whether land was inherited. Should stop people selling land under the influence of alcohol. Authorize council. How are we going to keep track of all this - by lots or by people? All sale of land should come through the band office. Write up proper agreement of sale. There should be two councilors instead of one. Notify people right away that Council will not recognize sales if not done through here. Put it in the newsletter or at the Post Office (771216).

All these arguments converged into the attempt to implement the Lil'wat Land Law.

3.3.3. Lil'wat Land Law

In the band general assembly on July 14, 1982, people discussed about land institutions over

reserves. The same meeting proposed the establishment of the 'Land Use Plan' and a mapping system of reserve lands. Four years later, the Mt. Currie Land Management Board was established in 1986 in order to regulate land use on reserve. The main objective of the board was to identify individual land 'owners' on reserve (840626, 860218). One initiative of the Land Management Board was to establish the Lil'wat community's own land law. The draft of the law is attached in *Appendix 2*. The main purpose of the proposed Lil'wat Land Law is to formalize existing implicit land laws on the reserve lands. Then, the law defines some agencies that are to regulate all land-related matters on reserve. The Band Council is assigned the highest authority and its function will be assisted by the Land Management Board, Land Management Portfolio and Land Registrar. The power of the Lil'wat Land Law is intended to supersede the Indian Act provisions; it clearly states that the *certificate of possession* is subject to the authority of this law. With respect to internal relations, the law makes it clear that the Council retains its ability to overrule any matters initiated by individuals concerning land use activities. While it carefully sorts out the Council's relationship with 'Family', the law also establishes a mechanism for conflict resolution over land-related matters. Unfortunately, so far, the law has not been passed by the general assembly, the highest decision-making body of the Lil'wat Nation. Among the reasons for this delay were the very land disputes that initiated the process in the first place. Also, unless these laws are guaranteed not only by the people of Lil'wat but also by the Canadian legal system, the effort involved in establishing this law is bound to meet with failure. This is particularly important when people start up a business or a land development project by borrowing money from non-First Nations' lending institutions.⁹⁾

3.3.4. Community Planning

What has been presented is an attempt to accommodate individual interests in reserve lands within a collective framework. The band is supposed to perform as an administrator of individual and collective benefits. By using community-planning, the band exercises this role in a controlling fashion. The people of Lil'wat started discussing about a new school and community site in the 1970s as they considered hiring a community planner (750617). One of the reasons for the band's moving into this direction was the rapid increase in population and a fear of flooding (760408). In 1976, at a council meeting (760927), some councilors stated that: "Choosing site for the new school is complicated. If we want a sewage system, have to subdivide. Have to think about water, electricity. The community has to be around the school. We should get somebody to work on this Preliminary Plan Study, who is not associated with DIA." As the project evolved, the band created a Land Use Plan (820714) and a mapping system (820714). According to the Land Use Plan, the reserve was to

Table 6 - Land Use Plan - Schedule of Approximate Areas

<i>Zone</i>	<i>Hectares</i>
Agriculture Reserve	820.0
Management Forest	398.0
Environmental Zone	188.0
Range	552.0
Secondary Forest/Range/Open Space	540.0
Temporary Forest	64.0
Wildlife Reserve	56.0
Watershed Zone	96.0
Commercial Campsite Area	4.0
Rodeo - Showground	5.0
Picnic Site	2.5
Xit'olacw (new town site)	60.0
Residential Area	7.5
Commercial	1.5
Industrial	4.0
Gravel Reserve	36.0
Community Facilities	2.5
Band Summer Campsite	5.0
Total	2,740.0

Source: Mount Currie Reserve Lands - Land Use Plan 1982

be divided into several zones as shown in Table 6. After several options were investigated, a new site called Xit'olacw was chosen. Finally, the new and big community project started in the early 1980s. The project has provided Lil'wat people with modern facilities. However, there were negative aspects involved in this project. One problem is that this project was supported by crown corporations (e.g., Canadian Mortgage and Housing Corporation) and large amount of money was invested.⁵⁾ This project created a short-term boom, which discouraged the small scale business initiatives that had been growing around 1980. Another problem is that the new housing project actually trapped the native people into a state of economic dependency. Furthermore, since this project, the band has become a central job provider. As such, these large projects became a source of conflict within the community.

3.4. Canadian Policy and Traditional Customs

3.4.1. Certificate of Possession

The endorsement of individual land holdings without written documentation had been a customary practice until the 1950s. Then, the *certificate of possession* was introduced, which did not, however, entirely replace the traditional system of land holdings. Currently, they are co-existing. Even the land holdings registered under the *certificate of possession* are not free from the administrative power of the band. The certificate of possession was widely recognized by band members after the mid-1950s. In minute 570122, Mr. W. A. Anderson (Indian Agent) introduced the subject of Land Reclamation by pointing out several 'facts': "No money will be required; A large sum of money would be spent on improving the land; No steps are taken unless the majority of the band agreed; Two years after a band member first receive a he highest decision-making body of the Lil'wat Nation. Among the reasons for this delay were the very land disputes that initiated the process in the first place. Also, unless these laws are guaranteed not only by the people of Lil'wat but also by nd; No steps are taken unless the majority of the band agreed; Two years after a band member first receive a *ticket of occupation*, he would be given a *ticket of possession*⁶⁾; and The money received from the lease would go into a trust account for the band. Obviously, the purpose of Land Reclamation, the essence of which is the introduction of the certificate of possession, was to make the individual rights over a piece of reserve land more compatible with the Canadian system. This is an important step in case the band members want to improve the value of their land as a private property in the market economy. However, although one could acquire the certificate, there are other restrictions that prevent an individual from becoming a proprietor. As such, it is uncertain whether the certificate of possession was really intended to help the band members. Also, there seemed to be a philosophy in the government that any communal activities among the aboriginal peoples were harmful to the capitalist doctrine. The introduction of the certificate was considered a attempt to enforce the government doctrine. Furthermore, it seems reasonable to assume that the governmental policy intended to alienate lands from reserves. In fact, the people were suspicious about the governmental initiative to introduce the certificate. For example, in 1961, there was a proposal that the reserve be surveyed and divided into 10 acre blocks to be assigned to people so that they could start farming (610213). The people did not agree with the proposition because they were afraid that such survey may lead to the alienation of lands.

3.4.2. Land Lease as Canadian Policy

From the 1950s to the early 1970s, the DIA repeatedly recommended that the band surrender lands and lease them.⁷ The implications of land leasing generate controversy. On the one hand, it is important for the community to facilitate economic development. On the other hand, many people share the idea that land leasing may lead to a permanent loss of their lands. Among many cases of land lease proposals, a proposal of surrendering reserve lands was subjected to a general vote twice. According to minute 57125, the DIA superintendent, visited the band and discussed the issue of leasing reserve lands:

The superintendent explained the meaning of the surrender; that it was for leasing purposes and people could expect to benefit from a local labor market, as well as the land rentals. [...] The Superintendent proceeded immediately with the matter of taking the surrender of the 531 acre on the Reserve. B. Victor was officially sworn to act as interpreter. Considerable discussion took place and various members of the Council and persons from the floor asked questions. [...] the Superintendent read out the surrender documents which were interpreted by B. Victor in full and at great length. The Superintendent asked each individual voting member to come forward to the head table and state his or her wish, either for or against the surrendering the land for leasing purposes. On the conclusion it was found that out of total of 85 voting members some 62 were in favor and 23 were against the surrender. The Superintendent explained that there were some 265 voting membership, and inasmuch as only 85 had attended this meeting, it would be necessary to call another meeting in the near future. The finding of the two meetings would then decide whether the surrender could be approved by the Department.

A second meeting was held on this matter as described in 580420:

In connection with the surrender and the leasing of 531.9 acres, Superintendent Letcher asked if there were any questions. B. Victor asked if a lease holder could claim the land. Letcher answered no, and said the only possible way that the Indian could lose any land was by selling only. Chief Gabriel asked if we could kick out lease holders in the event of an argument over the land. The answer was "No" as long as they were not breaking the law. [...] Superintendent Letcher then asked if everyone was ready to vote - they all answered yes. Everyone lined up, came to the booth one at a time and cast their vote. Out of 124 total vote: Against the surrender 99, For the surrender 25.

There was another leasing proposition initiated by the DIA. Minute 600124 reads:

Indian Agent explained the meaning of the land surrender: it is for leasing purposes; it would promote cultivation, provide work for the people, and generate around \$5,000/year. In a discussion, some felt that they don't want to give up their parcels of land. Others felt that having this land survey into sections would make farm management easily handled. [...] F. Oliver, a councilor, requested that the Council take control over land matters and operate a band farm. [...] The matter was tabled after a very lively discussion.

Yet another case followed suit five years later, as "Assistant Indian Agent brought up subject on land lease proposal of the Mr. Rice of Oregon (650513)." Also, land lease proposals from individuals off reserve were often brought forward. For example, R. Young asked permission from the band to lease lands in order to grow mint. The band rejected the request (660324). In 1972, a land exchange was proposed by the DIA superintendent for forestry purposes. Minute 720706 reads: "DIA Superintendent wanted to see timber sustain yield system on reserve lands

and recommended the band to exchange of 1,000 acres for 10,000 acres from province develop land. He said Indians wouldn't lose any rights on exchange of land." In a similar way, in the 1970s, some corporations were interested in doing business on reserve (710104, 720104, 740514, 740826). One of those was Whistler Frozen Foods (740514) wishing to lease lands to plant corn, carrots and potatoes. A personnel of this company said: "We are looking at the possibility of about 2,000 acres on a long term basis, about a 30 year lease. [...] We could offer employment in processing and management. The Band members would develop and grow produce for the facility. We would buy the produce and guarantee a percentage of 2/3 of the Indian people employed in the project. There would be 32 male and 32 female all year round employed in the project. There would be a supervisor whoever applies for the job. [...] Mt. Currie could participate by developing their own lands. (740514)

However, the band did not introduce all these land lease proposals and projects. Further, by way of the Band Council Resolution (BCR) the band decided to reject all projects under corporate interests outside of the reserve (740912).

3.5. Chronological Account of Property System and Economic Activities on Reserve

3.5.1. Timber Sale on Reserve

From the viewpoint of property rights, the way in which the band utilizes timber resources on reserve provides some insight into the property relationship among the band, band members, and companies outside the reserve. Timber practices on the reserve during the last 50 years can be conceptually grouped into three types: (1) self-sufficient logging; (2) small-scale logging; and (3) corporate logging.

(1) *Self-Sufficient Logging by Band Members*: These are very small logging operations that many people are engaged in, in order to supply wooden materials for their own households and family members (kin group). The wooden materials include firewood and poles for sheds, crafts, etc. There have not been strict regulations over resource users for this type of timber resources because the amount of timber people consumed was small enough not to jeopardize timber resources. And, in many cases, dead trees, including drift woods, were used for those purposes. This type of logging has certainly been practiced throughout the last 50 years (maybe throughout history). In property terms, this is a typical form of communal property. With this type of timber use, the band has the responsibility to exclude non-band members. On the other hand, band members are expected to be responsible for not depleting this resource and ensuring an easy access to it.

(2) *Small-Scale Logging by Band Members*: This type of logging includes all small-scale logging practiced by band members for exchange purposes. As the money economy had already permeated the economic structures of the Lil'wat people by 1950, timber resources on the reserve would also be used for exchange purposes by this time. However, this type of small-scale logging mainly served to support the domestic economy of band members. By the early 1960s, the dominant use of small scale logging was tie cutting practiced by many band members. The ties were to be sold to the P.G.E. Railway. Tie cutting was considered important winter work. A store in the community provided food and other necessities to band members through 'tie credits'. Those credits could be used based on an agreement among the band, the community store, and the P.G.E. Railway. The P.G.E. paid for those credits to the store after ties were provided from band members. Minute 541204 provides some details:

Whatever number of ties P.G.E. Railway wished us to cut, Indians would get full price. The arrangements for the contract with P.G.E. have already completed so that as soon as the man started on his ties, the store would issue credit week by week, in correspondence to the number of ties cut. The store would receive payment direct from the P.G.E. [...] Indian Agency Assistant stated that arrangements were fairly complete whereby a floater contract could be had with the P.G.E from 1,000 to 2,000 hewn ties. As it was known that many people of the Reserve did not have enough Unemployment Insurance to last through the winter, there would be a number of families who would be in financial difficulties before the spring work commenced. People need money for food.

The tie cutting in this period was relatively extensive. For example, H. Anderson was allowed to cut 1,000 hewn ties in 1954 (541204). Also, F. G. Oliver was allowed to cut 500 railway ties in 1955. On the other hand, the band had collected stumpage for the tie cutting by the band members. For example, the band collected the stumpage at a rate of 12 cents per tie (550108). The same rate was used in 1960 when the band gave J. Miller a permit for tie cutting on reserve #10 (600229). Other than tie cutting, some people had started small-scale logging in this period. For example, P. Smith was allowed to cut one carload of fir piling at the rate of .02 cent per lin ft. directly across from the Pemberton I.R. #10 (550320). A problem arose when band members started pole cutting without approval from the band administration. The band decided that pole cutting permits would have to fall under the jurisdiction of the Chief and Council (570809). Other examples of small-scale logging are seen in 600229, 611113, 650615, 660815. These logging activities were more or less within personal needs and the sales were often very small. For example, minute 660324 reads: "A timber permit be granted to L. Regan to log one carload of cedar poles to be sold to Mr. Collins of Pemberton. Stumpage to be collected at the rate of 3 cent per lineal foot. This is considered as welfare measure to help this family." It can be seen that although this small-scale logging may have been a starting point for commercial activities, the timber permits issued to band members in those days were few in number and this type of logging was regarded as a small social assistance to one's domestic economy.

(3) *Commercial Logging*: Apart from logging shown in a court case about W. Thompson's timber dues during the 1920s (711121, 720215, 720502, 721014), no record can be found concerning commercial logging before the 1950s. Incentives for selling out timber resources from reserve lands can be identified in the mid 1950s as the band decided to sell all marketable timber on the north-east side of the BC Electric Railway right of way (550514). Prior to this decision, the band decided to accept the Indian Timber regulation in the Indian Act authorizing the Department to dispose of the said timber through public advertising (550108, 550306). This was the starting point for the band's practice of selling out the timber on their reserve. The band gave timber licenses to companies outside of the reserve (580420). However, it is in the mid-1960s that some companies started relatively large-scale and consistent logging on reserves. One of those companies was Cascade Fir Product as attested by minute 660412. Although the band opened its timber resources to outside interests, there was some hesitation in the beginning and the band had a provision of conservation. The band often rejected requests from companies to log on reserve, as was the case with Chris Carson Logging Co. (681105). Also, in 1965, in response to the request from Tyee Forest Product to log cedar on reserve, the band rejected it on the grounds that there was not enough cedar to sell on reserve (650513, 650615). This shows that the band protected resources from over-exploitation at least until 1965, although it later decided

to sell out cedar and other resources. In the 1970s, some Lil'wat people assumed the role of middlemen, buying timber on reserves for outside companies. From the viewpoint of the companies, to have such middlemen in the community was a much easier way of acquiring timber from the reserve. The companies encouraged those individuals to make contracts with the band and used the results of their labor. Mainly four people worked for outside companies. Those companies were: Canadian Forest Product, B & I Forest Product, and North Inlet (740506). Two of those middlemen later created their own logging company. In this period, timber sales were under the control of the companies. In 1971 the band started to build up a timber fund to facilitate the band economy (740527), although the project was not successful. The band's effort to regain control over timber sales by increasing the stumpage rate from \$5.00 to \$10.00 per 1,000 feet in 1974 (740506) was overturned in the next year, when the rate decreased from \$10.00 to \$6.00. The changing market conditions were blamed for the decrease (750217). Although since the 1960s the band had taken some action towards reforestation (651012, 730620, 816205), the tendency towards forest resource depletion did not stop. In the 1980s, due to the depletion of timber resources, most companies lost interest in timber on reserve. When timber resources became dangerously scarce, some people started criticizing the limited access to the benefits from the band property (841024). By 1985, a proper forestry management plan was not developed and forest resources were virtually depleted.

3.5.2. Sawmill Construction

With respect to the use of timber resources on reserve, it is important to see the degree to which the band and band members were involved in the process of resource marketing. During the time when commercial logging prevailed on reserve, the band was considering having their own sawmill in order to derive additional value from their own resources. An attempt to acquire a sawmill in 1950s failed partially because the money collected for purchasing the mill was missing (570302, 591110). In the 1950s, there was only a small sawmill owned by R. Anderson, a band member (541204) and the band helped him run the operation. When some band members tried to acquire sawmill in 1960s, the band searched loan for them (601214, 611113). During the 1970s, the band was eager to establish its own sawmill for economic development. Once the band considered building a paper mill (711016). There was an opportunity to take over the operation of Evans Product Sawmill in Pemberton. Unfortunately, the band did not have enough timber to run the mill. Minute 751030 states: "Push hard for the Evans Products mill. Mr. Grey is interested in a possible joint venture contract. Proceed with the acquisition of the Evance Products. [...] But without cutting rights for the supply of logs, no use buying the mill. Duffy Lake is under McMillan & Bloedell. That's all our timber." In 1976, the band bought a smaller sawmill: "To get the timber, set a meeting with Canadian Forest Product [which has cutting right on reserves]. Start with a feasibility study on how much and where the trees are coming from. So much redtapes on Crown lands. (760217)." In 1979, the band decided to sell the sawmill for \$5,000 and buy a second sawmill, later called Lil'wat Sawmill. Again, there was not enough timber to run the mill (790218). With the operation of the Lil'wat Sawmill, the band tried to provide jobs for band members. The band made a resolution stating that "we get incentive money for Social Assistance recipients to work at the mill" (790218). But that never happened and the sawmill itself did not run well. In fact, the Lil'wat Sawmill had difficulties in keeping up with the fuel cost of \$50 minimum a day. The Lil'wat Sawmill was relocated to a

place on I.R. #6 (810623, 810707). For this relocation, H. Grant, a band member, took the initiative of opening the Lil'wat Sawmill Co. (810623, 810707). In order to help the sawmill operation, the band tried to find a demand for lumber in the community, such as house construction projects and rodeo ground facilities (830428). Also, the band made a resolution stating that "the DIA contribute \$15,000 towards the purchase of a used skidder, \$20,000 towards the purchase of flat bed lumber truck, and \$6,000 to purchase a sawdust conveyer for our sawmill (850117)." However, the management of the sawmill was not going well as there was a proposal to sell out the mill in 1986 (860304).

3.5.3. Farming on Reserve

By the 1960s, farming was the main land use activity. The councilors calculated the requirements of seeds, fertilizers, drainage, stock and equipment for the next season and asked the DIA to provide them (541204, 600123, 610213). There were two conflicting views about the farm operations on about 600 acres of land that could be used as agricultural fields.

One way was a sort of communal farming, as seen in minute 600124 where a councilor requested that the band council control the reserve lands and operate a band farm. This idea led to a communal seed farm (Clover Timothy) in the late 1960s (660324), and another farm project at the Band's initiative in the early 1970s. Although these projects were short-lived, similar ideas have been brought up from time to time to the present. For example, the band intended to start a cattle ranch by leasing lands from individual holders (730212). In 1975, the Band opened a community garden where ploughed portions of land were offered to unemployed band members (750609). In the case of a band initiative for farming in the 1970s, the band decided to conduct a farm operation by itself to grow potatoes, strawberries and barley on the band lands. In this operation, the band helped potato diggers with providing a loan so that they could survive until the potato digging season commenced.

Another way was to provide individual incentives for farming by dividing the lands into 10 acre lots. However, the concept of individual farming never reached the point of dividing band lands into lots. Probably because the proposition of dividing the lands into blocks was related to the surrender and land lease issues at that time, the majority of people did not want to take the risk involved in that option (600124). In fact, during the 1960s and 70s, the federal Agriculture Rural Development Act, which was supposed to provide funds to help agricultural operations, actually put the emphasis on a direction that had the potential of alienating reserve lands through land survey, surrender, and land lease (720201).

In any case, agricultural activities, once the main activities in the community, had shrunk dramatically by the late-1960s. Many band initiatives mentioned above were in a sense efforts to stop such a decline. In 1981, only one-tenth of the arable land was used for agriculture and lands were deteriorating (810602). It is difficult to specify the reason for this decline in farming practices. Some people, like former Chief B. Victor, blame welfare: "Long time ago when social assistance came here, we did not want it. The government think that all we can do is live on welfare, that we can't do anything else, and that we are helpless so just keep giving us more welfare each year (810602)."

3.6. Controversial Issues

A number of controversial issues concerning land use on reserve may be of particular

interest for further research. They will be mentioned briefly in this section.

(1) *Dyking*: Cooperation between Lil'wat Nation and Pemberton, a neighbouring town, was required for the management of the Lillooet River and Birkenhead River watershed. There has been a constant fear of floods in the Pemberton Meadow. In 1946, the Prairie Farm Rehabilitation program (PFR) was introduced, which resulted in lowering the level of Lillooet Lake. In 1970, the reserve lands were included in the Pemberton Valley Dyking District (700203). Some controversy arose between the Lil'wat Nation and Pemberton when the federal and provincial governments initiated a dyking project. The disagreements centred around allocation of funds and construction planning (731009, 761122). Later, as a part of a devolution process, the Dyking Commission was created in order to be responsible for river banks and road maintenance (810511, 810423). Funds allocation by the committee became a seed of conflict within the Lil'wat Nation.

(2) *Dispute over Timber on #6 and #7 Reserve*: Originally, a cutting permit on reserve #6 was given to the North Pacific Lumber Co. in 1903, before the reserve was assigned to the band. Following a history of subsequent take-overs by various companies, currently Canadian Forest Product owns the timber rights along with other contracts on I.R. #6 and #7. Because both the initial cutting permit and several renewed contracts are old, there had been some dispute over the effect of those contracts. The disputes have led to the band's decision to go to court (660412, 740508, 750715).

(3) *Highway Dispute*: A portion of Highway #99 passes through the reserve. The right to the road has been under dispute between the band and the BC Highway Department since the early 1970s. Minute 730405 states: "the request should be made to Minister of Highways that the Dept. of Highway has trespassed on the reserve and unlawfully removed gravel from the reserve". In 1990, the people of Lil'wat Nation blocked the road in order to support the Mohawk people at Oka. Also, this blockade brought to the forefront the highway issue and Lil'wat sovereignty.

(4) *Dispute over Accretion Area*: During the gold rush era, a dam was constructed near the lower part of Lillooet Lake so that steamboats could climb up the rapids. This dam, however, caused the a reduction in the size of the flat area of Pemberton Valley. The Prairie Farm Rehabilitation program (PFR), removed the dam and lowered the lake level. As a result, some flat areas were re-created in the reserve. When the reserve lands were assigned to the Lil'wat people, the waters of Lillooet Lake were at a high level. After the water level lowered, BC government argued that the accretion area created by the PFR belonged to the provincial Crown. The dispute still continues today.

1) According to Mt. Currie Land Use Plan 1982, the climate of the area is within the transition zone from coastal marine to interior due to the effects of elevation, distance from the Pacific Ocean, and the surrounding mountain ranges of the Coast Mountains. The recorded annual mean temperature at Pemberton Meadow is 7.2 degrees Celsius with a mean daily mid-summer temperature of 17.2 degrees Celsius. The average freeze free period at Pemberton Meadows is reported to be 150 days. Mean precipitation from October 1st to April 30th is reported at 1024 mm and 187 mm during the May to September. The vegetation of the reserve area is considered to belong to the Interior Douglas-fir biogeoclimatic zone characterized by Douglas-fir (*Pseudotsuga menziesii*), ponderosa pine (*P. ponderosa*), western white pine (*P. monticola*), white spruce (*P. glauca*), western larch (*L. occidentalis*) and western redcedar (*Thuja plicata*), often accompanied by trembling aspen (*P. tremuloides*), black cottonwood (*P.*

balsamifera), Rocky Mountain maple (*A. glabrum*) and common paper birch (*B. papyrifera*). More specifically, in the reserve area, black cottonwoods are predominant in the valley bottoms and on the lower slopes of the valley sides, while Douglas-fir dominates the well drained slopes. In addition, western redcedar, western hemlock (*Tsuga heterophylla*), paper birch and some stands of red alder (*Alnus rubra*) are found.

- 2) Hereafter, all quotations from band minutes are followed by a six digit number, in brackets, representing the date on which the minute was written. For example, 850416 means April 16th, 1985. The minutes since the late 1940s are stored in the band office (the minutes before that time were lost in a fire). Some minutes are type-written, others are hand-written. While some dialogues are written in great detail accompanied by letters and materials relevant to the agenda under discussion, other entries provide only a summary of the discussion. Most minutes were written only for recording purposes; however, some were written in order to be send to the DIA office (typically until the early 1960s). After 1966, the minutes have been recorded by band councilors and band secretaries. Until 1966, the minutes were recorded by a resident Assistant Indian Superintendent who had lived in the community for about 20 years before he committed suicide. While he was an employee with the DIA office, he may not have been just a typical administrative clerk; some elders seem to recall that he did not demonstrate any 'paternalistic' attitude, but rather referred to him as a 'good guy.' However, this researcher does not have any information as to the extent to which his personality may have affected the content or the accuracy of the band minutes he recorded.
- 3) To protect Individual confidentiality, fictitious names will be used hereafter.
- 4) The BC treaty-making process may offer a set of legal arrangements to support a kind of land law like the Lil'wat Land Law as far as it regulates internal matters. Unfortunately, the Lil'wat Nation is rejecting the treaty-making process based on their own belief. It may not be appreciated that the treaty-making is the only route to accommodate these internal laws. It is important for the both levels of government to offer an appropriate legal measures to facilitate internal laws especially for those aboriginal peoples which are outside the BC treaty process.
- 5) Since 1977, the CMHC has become a partner of the DIA in providing low-cost loans to improve reserve housing. CMHC (1987) reported its own financial commitment was about \$1 billion between 1977-1987.
- 6) 'Ticket of occupation' and 'ticket of possession' are the older terms for the current 'certificate of occupation' and 'certificate of possession' respectively.
- 7) It may be worth noticing that Mr. Anfield, a district Superintendent of the Indian Affairs, let Musqueam Indian Band in Vancouver surrender about 162 acres of its reserve land to lease to the Shaughnessy Heights Golf Club in 1957. This event lead to *Guerin v. The Queen* (1984), a landmark court case, which developed the concept of the fiduciary relationship between the Crown and the Indians.

CHAPTER FOUR: CHANGES IN AUTHORITY OVER PROPERTY: CHRONOLOGICAL ACCOUNT OF THE EXERCISE OF POWER

This chapter describes authority issues over land and resources by dividing the 50 year interval into three periods: (1) oppression period (late 1940s - 1960s),¹⁾ (2) internal cooperation period (1970s), and (3) internal conflict period (1980s - present).²⁾

4.1. The Oppression Period

4.1.1. Relationships Between Canada and the Band

The *Oppression Period* designates a particular kind of relationship between the Lil'wat and Canadian authorities. Although some highly restrictive items in the Indian Act were removed in 1951, the old pattern of oppression remained and a paternal relationship between Canada and the band continued beyond that date.³⁾ This paternal relationship was made obvious when band members sang "Oh Canada" and "God Save the Queen" at a welcome ceremony for government officials on a visit to the community (571215). Until 1966, an Assistant Superintendent from the Department of Indian Affairs (DIA) used to reside in the community. He attended every meeting and directed the band council. Any arguments in the council were reported to the DIA through him. The following letter from the Superintendent to the Assistant Superintendent shows the degree to which the DIA directed the band:

I am glad to note that the Council appears to be functioning well. May I ask you to remind the Council that this office must have written council minutes sent here. We do not want a record of the discussions held, but a factual report on date, time and place of meetings, those present, and the agenda with resolutions and specific acts done by the Council. The minutes should be signed by the Secretary and Subsequent members, showing the confirmation and adoption of these minutes by resolution. All resolutions dealt with by Council must show as items of business and should be attached to the minutes with your report on same, with your comments and recommendations if indicated (541204).

The decision-making process was supervised by the DIA down to the smallest details: DIA allowed the band to get a cut-off saw (501014); DIA allowed the band to exchange a bull with the other band (550329); DIA allowed the band to get salt for salting fish (570809); DIA allowed the band to repair water pump (570623); DIA provided cows called 'government cows' for propagation purposes (650325) [throughout 1960s]; DIA allowed the band to borrow outboard motors (720706); DIA instructed garbage collection (711121).

Until 1951 when the Indian Act was revised, claim-related activities, including fund-raising and meetings, had been prohibited. Even after the revision, due to the long time suppression, claim-related political activities were not very active especially in the southern interior of BC. In fact, in the early 1950s, the knowledge of aboriginal rights was not shared among the band members. Although minute 570623 shows a band member advocated for the rights of aboriginal peoples, such political speeches were rare in those days and not well organized. After an aboriginal conference held in Vancouver in 1957, some political issues were shared among the aboriginal peoples. Yet, issues such as aboriginal rights and land claims were not shared among them. According to minute 570707, the agenda put forward at the Vancouver conference was: All Indians should be given the Federal vote; Band Councils should have the right to levy local taxes on residence and property owners; Indians should not pay provincial taxes no matter where they live; Indian probate courts should be composed of Indian members; Indian officers should be used to police on Indian reserves; Stipendiary magistrates should be replaced with circuit magistrates; Bands should set up corporations to handle band rights and funds. At this point, the aboriginal peoples' main concern was to attain a level of civil rights that the rest of society was enjoying. At the same time, the aboriginal peoples wanted to maintain their distinctive status in the Canadian system. Also, they wanted the band council to have stronger power over their own affairs. It was in the late 1950s that some leaders from the Interior began to

organize political groups focusing on land claims. For example, the Aboriginal Native Rights Committee of the Interior Tribes of British Columbia was formed in 1958 by George Manuel and others. This trend in southern BC reached a peak with the formation of the Union of BC Indian Chiefs (UBCIC) in 1969 when the federal White Paper was announced (Tennant, 1990). These political trends toward aboriginal rights stimulated the people of the Lil'wat Nation.

4.1.2. Economic Activities

The Pacific Great Eastern Railway reached from Squamish to Pemberton in 1914, which attracted some farm settlers. However, as a means of transportation, the train in those days was slow (at most 25 miles/hour) and unreliable, and many troubles were reported (Decker, et al., 1977). In general, the Pemberton Meadow remained isolated until 1960, when Highway 99 was opened between Vancouver and Pemberton Meadow. Prior to this time, electricity came to the Lil'wat Nation in 1954, and running water was introduced about the same time (Decker, et al., 1977). Technological development altered many aspects of the people's economic activities as well as their way of life in general. Among the settlers in Pemberton Meadow, the seed potato was favored from the 1940s through to the 1960s. They usually raised cattle and horses. The following are approximate volumes of commodities shipped from Pemberton and the estimated livestock population in 1950 (Faulknor, 1951): *commodities shipped*-table potatoes 854tons, seed potatoes 329tons, turnips 135ton, carrot 1.5tons, hay 5cars; *livestock raised*-beef cattle 250, dairy cattle 120, horses 50, hogs 25, poultry 700. The area of agricultural fields in Pemberton Meadow had been extended in the 1940s owing to the Prairie Farm Rehabilitation Act (PFR) of 1946, which resulted in the Lillooet River being lowered by nearly 15 feet.

Agriculture in the Lil'wat communities was also promising. Owing to the increase of reserve lands by the PFR, Pemberton certified seed potatoes started to be cultivated on the Indian Reserve of Lil'wat. However, as mass production, using many kinds of machinery, became a common trend among the settlers in the 1950s and the 1960s, it became difficult for the farmers in the Lil'wat to obtain the necessary capital to compete with the settlers. Native people's inclusion and alienation process in a local agricultural market started in the 1940s when the settlers needed larger crews for their early mechanization in potato farming. Those machines include tractor and the Wacker, an early type of digger which threw the potatoes out sideways. Many people in the Lil'wat Nation were hired as potato diggers by the settlers. Later, as the mechanization advanced, the Lil'wat potato diggers hired by settlers were gradually replaced by machines, including sorting machines and trucks. According to Decker et al. (1977), trends in capital intensive agriculture led to the concentration of fields in the hands of fewer and fewer people. Some people became part-time farmers while taking other part-time jobs in the forest industries, with the government, or the railway company. While some settlers adapted to this situation, others moved out of the Meadow (Decker, et al., 1977). Unlike the settlers, the majority of the Lil'wat people stayed in the community regardless of how successful or unsuccessful they were in their jobs.

With respect to the logging industry in the Pemberton Meadow, logging operations in the 1940s were restricted to one small sawmill, one horse logging outfit, and pole cutting (Decker, et al., 1977). Faulknor (1951) describes the state of timber production in the Pemberton area in the late 1940s: "There is one small sawmill in the Valley with an annual lumber production of 200,000 F.B.M., and a shingle mill producing about 800,000 feet of shingles yearly. A small

lumber and planing mill near Creekside cuts about 500,000 feet of ties and lumber in the same period. An extensive new operation of Fleetwood Logging Company on Lillooet Lake is expected to ship 15,000,000 F.B.M. per year when it assumes full production (p. 11)." Starting with the early 1950s, logging became the centre of industrial activities in the region. Decker et al. (1977) mentioned that "the arrival of the Fleetwood Logging Company around 1950 signaled the start of bigtime logging in Pemberton." Along with tens of small operators, some larger logging companies operated in the area throughout 1950s and 1960s, which attracted hundreds of workers from the outside. Between 1951 and 1966, the population of Pemberton increased from 250 to 768 (Decker, et al., 1977). The logging industries hired most workers in Pemberton. More than a hundred workers in the Lil'wat Nation were also hired as loggers. In fact, Fleetwood Logging built camps around the Indian reserves, such as Mosquito Lake and Ure Creek, where many native people were hired.

Having a life based on wage labor, many people had to give up the traditional life style. Family traplines registered under the BC government (541204) were mostly abandoned by the end of 1950s. Agriculture on reserves started to decay in the 1960s, when people found that farming was less amenable to commercialization. Even farming for subsistence purposes was abandoned. Unfortunately, the boom in the forest industry did not last long. By 1970, most native loggers were out of work. Once they found themselves unemployed, most people chose not to return to the traditional way of life, but rather to stay as welfare recipients. Only fishing and deer hunting have been practiced, largely as subsistence economic activities.

4.1.3. Band Finance

The system of social assistance has good and bad aspects. The principal reason behind it is to help the needy. However, according to some commentators, even from the ranks of the aboriginal people, it may have the negative effect of keeping the welfare recipients trapped in a vicious circle of deprivation and dependency.

Band budgets in the 1950s to the early-1960s were in the \$2,000 to \$7,000 range per year, of which the main portions were set aside for social assistance in the form of food, clothing and fuel (560220). The recipients were strictly scrutinized by the band as seen in minute 580105: "we should provide welfare for food relief to Mrs. A. Miller because her husband is deceased and she has seven children," and "A Regan should be given food and wood ratio because her husband is in jail." The nature of social assistance changed significantly during the 1960s and the 1970s.

Beginning with the 1960s, the band started to set aside jobs for relief recipients. For example, minute 611113 attests: "Some of the men receiving relief should be put to dig a ditch along the new race track." Minute 711121 shows that the band provided Winter Work Project (\$ 100 each) for welfare recipients. Starting around 1965, the DIA would send welfare money directly to the recipient. This meant that the band lost its control over welfare money (650325). The dependency on welfare became the pivotal aspect of the band's economy.

In a larger context, as Canada started to move toward a welfare state, Canadian governments certainly supported the people of Lil'wat by allocating social funds through various channels (e.g. community development). In the long-run, however, this political direction has created the economic dependency in the native community, affecting the power formation in the DIA-Lil'wat relationship as well as internal power structure. Budget management has been used as a means

of control by the DIA. While the funds direct the band, the band has been given a small room for a discretion (e.g., determining job contractors). which also became a source of grievance among the community members. This structure constructed around the governmental funds has become a typical example of the relationship among DIA, band, and individual band members.

4.2. The Internal Cooperation Period

4.2.1. Awareness of Land Rights

In 1969, the federal White Paper was issued, which aimed at eliminating all aboriginal peoples' issues from the Canadian political agenda, including land claims (Tennant, 1990). In response, some inter-tribal organizations were formed in BC, which made aboriginal peoples politically active. A conference held in Kamloops in the same year gathered together many aboriginal peoples in BC, and proposed the formation of the Union of BC Indian Chiefs (UBCIC) (McFarlane, 1993). Its purpose was to follow up on all land claims in the province of BC. Sometimes staffs from the UBCIC visited the community and provided band members with information, such as land claims booklets (710715).

Consequently, the Lil'wat people's awareness of land rights advanced even further during this period of time. Minute 740524 attests: "with these land claims, we need to ask for support of our own people and of our non-Indian friends, and we should not be too harsh when speaking to our non-Indian friends about this" In short, land claims became a realistic target in the minds of the Lil'wat people and careful consideration was now given to choosing the best strategy for advancing their cause. Also, the Lil'wat initiated their own movements toward land claims in the early 1970s. In 1972, for example, some Lil'wat members formed a delegation to bring forward their land claims before Ottawa. At the same time, the Lil'wat Nation became a member of the Lillooet Tribal Council, which was formed from the Stl'atl'imx people and included 12 Band Councils. The revival of tribal groups was the political trend among the aboriginal peoples in BC during this period. The purpose was to remove the barriers between bands that the Indian Act had generated and to have a central body representing the Stl'atl'imx people's land claims.

In the band meetings, Lil'wat's interventions around land claims and aboriginal rights became much more focused than they were in the past. For example, people made concrete proposals about how to proceed with their land claims, such as councilor J. Alford's intervention: "How are we going to settle on claims? Got to get ready; get map and boundaries. Timber, what kind of settlement do we want on that? Indians should have timber rights. BC is ours, not going to settle for anything less. We are going to claim all of BC that has no treaties. Draft up a proposal. We will go to any lengths to get this settled (750517)." The band reached a Band Council Resolution (BCR), dated May 29, 1975, stating their determination to pursue aboriginal rights over their territory.

4.2.2. Conflicts over Hunting and Fishing Rights

The government's position toward the aboriginal peoples did not change much during the period under investigation. Since the 1950s, government officials visited the band and offered hunting permits. One official mentioned that the permit system came into effect and became enforceable in 1965 (841114), although the band had ignored it. In any case, the government's intention was to place native hunting under government regulation. But the people rejected the

idea of the permits. Several meetings were held around the issue of hunting permits, as attested in minutes 570707, 570817, 570923, 750123, and 841114. Beginning in the early 1970s, the people insisted on a '30-mile radius' as the area where the exclusive hunting rights belonged to the Lil'wat: "We can say we don't want any restrictions within 30-mile radius. [...] We can keep our hunting cabins in shape, so other people know we are using it. They see it all wrecked. They will just say 'Oh, nobody is living there' and move in. That is Indian game ground (751020)." This '30-mile radius' soon became a standard value of aboriginal rights with the Lil'wat Nation (820714, 840110). Entering the 1970s, the tension between the Lil'wat and governments grew concerning fish and animals as seen in an incident in 1976: "I shot a moose at Pool Creek. Today the cop and game warden came and took the hide and meat. Now, I have to go to court. I put the hide on our clothe line. They must have seen it. If I knew we were not supposed to hunt moose, I would not have hung the hide on the line (760129)." These incidents also represented an opportunity for the band to set its own regulations over hunting, as recorded in minute 760129: "Should make a law for our hunting. We don't like what some of our people are doing. Should limit them. They shoot 2-3 does within 2 weeks. They exchange for booze. [...] We should get a watchman to look after all this. We have to make laws of our own, just for our own good."

While the band had rejected any permit system on fishing and hunting, the band had to accept the quota system introduced in the mid-1970s. In 1975, the federal Fishery set fishing days (four days a week) as well as quotas for each salmon species. Such regulations, however, were not fully understood by the people. In 1976, due to the drastic decrease in salmon resources, the government introduced a more restrictive quota system (760301). Although the majority of the Lil'wat people did not believe in governmental initiatives concerning fish and wildlife, they accepted the quota system without much opposition: "The food fish quota for sockeye to be taken from Lillooet Lake in 1976 will be 14,000 fish; The food fish quota for spring salmon to be taken from Lillooet lake prior to August 1, 1976 will be 25 fish; The food fish quota for Coho to be taken from Lillooet Lake in 1976 will be 3,000 fish." In 1978, the quota for Spring Salmon was still 25 a year. During the 1980s, a new governmental initiative to introduce fishing licenses was backed by the P. H. Pearse Royal Commission. But the band rejected it by saying that "we don't sign the Indian Food License presented by Fisheries and we make our own by-laws and issue our own Fishing License for the Lil'wat Nation" (810602). In 1985, as part of the effort to regulate their own fishing activities, the band hired two band members. They were going to patrol and protect the traditional fishing ground (850908). However, the governmental power has been the overwhelming authority over fishing rights, as revealed in a court case in 1986 where two band members were charged with a fishing violation (860205).

4.2.3. The 1975 Incident

The conflicts over fishing rights intensified in the 1970s. A symbolic incident which occurred in 1975 further raised people's awareness of aboriginal rights. The incident occurred at the shore of the Lillooet Lake, a traditional fishing ground, where some federal fish wardens cut up several nets belonging to the elders of the Lil'wat Nation. After the incident, the band held an emergency meeting on 750529 with government officials, including L. Freeman from the DIA and B. Lawrence from the Provincial Fish and Wildlife Department:

Chief: "Why we are having this meeting is in regard to the fishing. The old timer's fish nets were cut up. Very disappointed what the fish warden did down the lake." *L. Freeman:* "The

notice applies to all species of salmon. Fishing is from 6 p.m. Wednesday to 6 p.m. Sunday of each week." *Chief*: This meeting is about Spring Salmon. When the old timers take the nets out there, they are lucky to catch one or two fish a week. It is our right to catch fish..." *S. P. (councilor)*: I have been fishing all my life. There was never a time when the fish warden bother the Indians, never mentioned about a permit. I don't believe in permits. That's how I make a living, all my life, by fishing and hunting. ..." *L. Freeman*: "Indian rights to take fish for food is second only to conservation." *B. Lawrence*: "I am not the fish warden in question. I am from the provincial, and it is the Federal Fish and Wildlife branch that is responsible for removing the nets. ..." *D. M. (band member)*: "Do you people condone this type of action? Old ladies are still trying to retrieve their nets. ..." *L. Freeman*: We do not condone this action. I understand that the net were removed and put on the shore line." *G. P. (councilor)*: "It should be made public who cut the nets. ..." *L. Freeman*: "I am still unsure of who is responsible. I will accept the responsibility at this time." *V. S. (councilor)*: "Do you believe that one of your employees has cut nets of our people." *L. Freeman*: "I believe something occurred. I recognize it. I will write to the Chief after an investigation is done." *V. S. (councilor)*: "We should take this to higher levels. We are not getting anywhere with these officials." *L. Freeman*: "I can't say I'm leaving very happy, particularly because we are not welcome in your area because of this incident that has occurred. Investigation will be carried out. We don't condone this situation. I acknowledge the problems. I do hope that we will be invited to come here again...[after officials left, people continued the discussion.] *R. D. (councilor)*: "I want everybody to fish anytime they feel like it. It is our rights." *R. J. (band member)*: "We don't sell our fish, when we fish, we put away for us to eat. I think the commercial fisherman should fish four days a week, not us. They are making money, not us. We fish for a living. ..." *G. A. (visitor)*: I consider myself a member of American Indian Movement. I'm concerned about fishing and hunting rights. This has being getting out of hand all over. I have been traveling all across Canada. For our ancestors, the only fish warden was Great Spirit. We were here first, we are here now, and we will be here when the rest of the world is gone. DIA, I'm not your Indian any more. We can live our own way." *G. W. (councilor)*: "I believe in aboriginal rights. I already know they are going to ask us to get permits. They are going to ask us to go by the laws of White man. We don't believe in White man's law. I will not condone what has happened here. They follow government policies." *F. W. (councilor)*: "I think that too long we have been silent. Too long our people have been dying off." Whereas our fathers and their fathers before them have enjoyed the right to hunt and fish at their discretion and according to their conscience. And whereas Indians have not been a party to federal or provincial statutes regarding fish and wildlife. Be it therefore resolved that any actions taken by federal or provincial officials shall be opposed in whatever manner we deem necessary, until our aboriginal rights and the Land Question is settled.

This incident revealed the grievances existing among band members. Some people proposed to freeze the traditional territory. Some days later, the band invited George Manuel, who was a very influential person, to lead the band against the DIA and mainstream Canada. In another band meeting George Manuel advocated that Canada was still using a policy of assimilation toward the aboriginal peoples. In his mind, the band council was simply being used as an extension of the DIA. He said that: "Principle motives of government is to assimilate the Indian. Well, the reason is simple. They stole your land, all your resources. [...] With respect to

funding, we have seen over the past 30 years Indian funds from the DIA increased from less than \$50 million to \$500 million. The greater the increase of the funds, the poorer the Indians have gotten over the past years. One of the biggest problem is that Indians have become big business to the white people. We become business just like animals are to farmers.(750602).” Backed by such arguments, the Lil’wat Nation was able to adopt a more radical position. Another similar incident happened within a month, which ignited the native people’s anger and led to the road blockade and the refusal of governmental funds. Detail of the blockade process have been recorded in minute 750610:

Chief: “You all know what happened this morning. The Fisheries Department went down the lake and seized more nets from our band members. What do you feel?” *D. W. (band member)* : “From now on, there’s nobody going to deprive us of our livelihood. Have American Indian Movement. Train our own people how to control our demonstrations.” *W. J. (band member)* : We found a brochure being posted by BC Forest Service. They have without our consent invited the public out here. We are got to stop this. ...” *A. R. (band member)*: “I would like to make a motion that the American Indian Movement help to control the Lillooet Lake Road Blockade.”

The native people set up a road blockade within a few days after this meeting. They expressed their purposes for the action as follows: To protect hereditary fishing and hunting grounds; To prevent trespass on the band’s road to Lillooet Lake; To protect timber rights within the 30 mile radius; To prevent government’s land lease within the 30 mile radius; To claim compensation for resources taken from our land; and mainly, To make the federal government to recognize the Land Claims issue.

During the road block, people were considering the rejection of all governmental funds. And they finally decided to do so. This was actually in response to the UBCIC meeting held in Chilliwack prior to this time, in which the UBCIC had decided to reject all federal and provincial funds including welfare money. Obviously, the native people had to find ways to survive without government money. One proposition was to start farming on the reserve. Minute 750609 reads: “We have rejected funds. We are all for the rejection. We should have a big garden for the people. It is not too late to make a big garden. Lots of the young people have been thinking about it. The old people are gardening. We can just learn by watching them. All people unemployed and dependable should go into gardening. [...] We should get together, plough up the field, start developing to feed our people. We can start a co-op. Sell potatoes. We want everyone to participate in the planting.” In contrast, there was some opposition as illustrated by the councilor’s remarks: “we have got the people who don’t want gardening and they are just going to suffer.” Another problem was to convince the welfare recipients who now formed the majority in the band. Also, medical care was a problem as medical insurance is essential for some band members. Besides, it was reported that an ambulance driver refused to take a patient from the Lil’wat community as a result of the racial tension created by the road blockade. By this time, after the UBCIC decided to reject governmental funds in Chilliwack, many Salish bands which had agreed to UBCIC’s decision changed their minds. Minute 750611 shows that: “25 bands have accepted the funds. Mostly from Fraser East. Fountain Band accepted their Capital money - housing. [...] Masqueam accepted a 12% increase. Gayle Sparrow explained why they accepted, because they were living in the city, and could not possibly live without these funds. 90% are still rejecting funds.” One month later, the band decided to accept a portion of welfare

funds. One reason was the dishonest strategy adopted by the DIA toward the Lil'wat Nation. At the beginning of the rejection, DIA officials said that "the Band can't reject welfare because it is every individual's right (750710)." Some officials have been reported to visit each family and persuade people into accepting welfare. But later, when the most needy band members called to the DIA office with their welfare slips, the DIA officials did not accept those slips saying "We want a Band Resolution stating that the Band accept the Department to release money to the people on reserve (750710)." According to minute 750710: "be it resolved that the Mount Currie Band Council allows DIA to release Social Assistance funds from the Social Assistance Program for the needy persons such as child care, orphans, handicapped, on the reserve." Apart from welfare funds, the band was still rejecting other types of governmental funds at this point. However, some people started complaining about the band's policy, which resulted in a break in solidarity. A councilor mentioned that: "This can go on for years. Imagine what's going to happen during the winter. We've got sewage problems. Would cost average \$1,000 to fix one. Think of the old people with their grandchildren. They really need the money. Some people were quite angry about the rejection of the fund. Some people were saying 'How come the Chief and Council did that to us?' People divides because of the road block." The road block also brought racial conflict between the Lil'wat Nation and the neighbouring town of Pemberton. According to minute 750715, the situation between Pemberton and Mt. Currie was tinder dry, and there was a rumour that Pemberton would start road blockades against the natives of Lil'wat at any time.

In the meanwhile, the government was about to send the RCMP to break down the road block. In a meeting with RCMP personnel, some councilors explained the band's position (750717). In turn, Chief Superintendent Simons from the RCMP kept clarifying their position: "Take your items to the courts. [...] I'm coming here because I was told to open the road. I'm not here to debate the issue. I don't speak for the government." At the time the meeting ended the native people were even more determined to continue the road block as a councilor mentioned that: "I hope you people realize what the situation is. We expect violence. We are prepared to die for our land." Another band member said that: "I'm down at the blockade and plan to stay there. If they want me out of there, they are going to have to carry me in my corpse." The Chief tried to calm people down by saying that: "If we keep that blockade up, all the weapons have to be removed. We'll just sit on the road, sing Indian songs. The T.V. and press people will be there. Will be good publicity. This will be more support for the Land Claims issue." However, a few days later, RCMP broke down the road block, and arrested 53 band members. They were charged with "obstructing a public highway." With respect to the governmental funds, the band had finally decided to accept them in September as shown in 750915.

4.2.5. New Control Strategy of the Department of Indian Affairs (DIA)

The outcomes of the radical movements in 1970s can be summarized in three points: (1) Native people's awareness of land rights increased; (2) Governments increased the funding to the people of the Lil'wat Nation in response to their grievances; (3) Strategic divisions were formed in the Lil'wat Nation. The government's paradoxical position toward the aboriginal peoples who opposed governmental funding was to increase funds. Some people were in favor of the increased funding and they eventually became the majority in the community. Consequently,

the band's efforts to reject government funding had to be abandoned. In fact, the government sent money to the community through many channels. An example would be the O&M funds (what these capital letters stand for are not detected), where some \$10,943.60 were sent to the Lil'wat community immediately after the road block. Also, the band received the funding for the Federal Labour Intensive

Table 7 Federal Labour Intensive Projects in 1975

1. Recreation Bldg. Fencing -----	\$13,440.00
2. Skating Rink etc. -----	\$48,480.00
3. Carpenter Shop -----	\$6,720.00
4. Bridge Construction -----	\$24,800.00
5. Elder's Homes -----	\$4,320.00
6. Bus Shop -----	\$600.00
7. Rodeo -----	\$18,400.00
8. Ancestral Fish -----	\$825.00
9. Ski-hill Dev. -----	\$1,320.00
10. Recreation Co-ordinator -----	\$5,300.00
11. New Dump -----	\$5,400.00

Source: Chief and Council minutes on September 15, 1975

Projects which focuses on recreational activities as in Table 7. Initially, nobody opposed the immediate benefits. Eventually, though, it became clear that self-governance could not be attained while accepting large amounts of money from the government. The difference of opinion on this issue created strong divisions within the community, thus undermining the people's sense of solidarity.

4.2.6. Social Assistance

In 1972 when the band started to follow the provincial welfare policy, more than 80% of the band members depended on welfare money. At that time, the band council set a training program as a form of social assistance (720111). Also, for the purpose of regaining band's control over welfare money, the band proposed that all cheques be sent to the band office rather than directly to the bank (730312). On June 1st, 1973, Social Assistance rates went up. It was assumed that the DIA would go along with provincial rates (730802). In 1974, as part of devolution process, the band was to take over the social assistance program from the DIA (740729). Around this period, the detrimental consequences of the welfare system were already being pointed out (750609). The band realized that the administration of welfare was going to be the focus of constant criticism as George Manuel remarked that: "the band would be criticized because the welfare money would not be adequate to meet the needs of the Indian people (750602)." Many people also believed that welfare money from the government was destroying the community economy. The band took over the welfare program in 1977 but the band did not have the authority to make any changes concerning core issues involved in the system. Since the late 1970s, the amount of social assistance had been further increased as reflected in minute 770213: "Concerning social assistance, we have already asked for additional \$30,000 but it's not going to cover to March 31, 1979. We should ask for additional social assistance in the amount of \$15,000. Average at the beginning of this year (April) was \$24,000/mon. for the social assistance. Now we are averaging \$33,000 to \$35,000. In December and January, we spent \$38,000 for recipients. In February, it was \$35,000 and it is still not the end of the month." According to the Welfare Portfolio report (810602), the amount spent in social assistance in May (for one month) was \$62,000, which means that about 300 adults were receiving welfare. The Social Assistant Aides programs, though in operation, did not work well. Various additional incentives for the welfare recipients did not prove effective, either (790213, 790218, 810707). In the 1980s, welfare dependency became well entrenched. While many were advocating political independence, without effective concrete solutions, the Lil'wat people became more and more dependent on the system. Some people believed that this welfare dependency was the result of a

conspiracy designed by the DIA. In any event, one undeniable consequence has been the ever increasing level of frustration among the aboriginal people of the Lil'wat Nation.

4.3. The Internal Conflict Period

4.3.1. Band Administration and Devolution Process

Since the 1960s, the devolution process advanced. Also, the band had to take over the responsibilities of a DIA official who died in 1966. Faced with unfamiliar tasks, the band councilors felt increasingly overwhelmed. The band's administration of its own affairs became the main point of concern. The band finally decided to hire a band manager who would take over the responsibility of governmental office work (700216). In 1974, Ken Matsune, a social worker from the Fraser Indian District, was called upon to explain the transfer of Departmental Programs to Bands. He mentioned that: "With the Social Assistance Transfer, a program of the DIA, the band manager becomes the Chief Administrator, the supervisor of Social Services (740729)." He also pointed out some possible consequences of this devolution process: "Advantage of take-over of program is quick services by taking total responsibility. The Band will have some authority that is now vested in the DIA. The administrator will have control of how to help people. Disadvantage is Social Worker will have to make unpopular decisions (740729)". For several years prior to 1976, the same person acted as both Chief and Band Manager. As the devolution process advanced, it became impossible for one person to deal with the overwhelming amount of work as it is reflected in 760610 and the administrative body have got bigger until present time as Table 8 summarizes this process. This diversification process has created the bureaucratic character of the Chief and Council. With the process of devolution under way, DIA's paternal attitude was expected to be replaced with the band's more auto-

Table 8 - Development of Band Administration

Year	Administration Structure
1955	1 Chief, 5 councilors
1959	Secretary was introduced.
1961	1 Chief, 6 councilors
1965	1 Chief, 7 councilors
1966	DIA Assistant Superintendent died. He was the last DIA official residing in the community. Chief and councilors started to receive salary.
1970	Band manager was introduced.
1971	School Board was formed.
1972	Book keeper was hired.
1973	5 portfolios were formed and distributed among councilors: (1) Housing, (2) Economic Development, (3) Health and Welfare, (4) Education, (5) Recreation and Cultural Affairs.
1974	Economic Development Committee was formed. Council of Elders for the Lillooet District was formed.
1976	1 Chief, 9 councilors. Band manager was introduced. Management advisor and trainer were hired from DIA office. Band receptionist and band accountant were introduced. Land Claim Negotiation Committee was formed.
1977	Band Development Training Program is introduced.
1980	Band planner is introduced.
1981	1 chief, 10 councilors, 1 band manager, 1 secretary
1983	Portfolios were diversified: (1) Lil'wat Government, Land Claim Legal Affairs, (2) Recreation, (3) Education, (4) Social Development, (5) Housing, (6) Public Works, (7) Education Development, (8) External Affairs, (9) Finance, (10) Land Management
1984	Land portfolio is formed.
1985	1 Chief, 12 councilors, 1 band manager, 1 secretary
1990	Tribal police is introduced.

Source: Chief and Council minutes

mous style. However, the band has been acting more and more like a branch of the DIA rather than a self-governing body. This enabled the DIA to exercise a more distant control. Now the role of the band is seeking grants from the DIA. In return, the band has to act within the DIA's requirements, which are set as conditions for the grant (720104). This has become a basic pattern of relationship between the Lil'wat and the governments.

With respect to the administration of welfare funds, a councilor mentioned that: "There are certain people that should receive welfare; elders, disabled, single mothers with children. A lot of people are manipulating program. The government are taking little by little from Indians. Indians are just living on welfare, thinking it lasts forever. (810602)." One of the many reasons why people prefer to be on welfare is that they can enjoy other advantages in housing and social services. For example, when the band decides to collect user fees for water and sewage, the welfare recipients are automatically excluded from paying those fees (810625). Since the 1980s, the new town site has been able to provide accommodation for many people in the Lil'wat community by imposing new financial arrangements for the new tenants. The payment arrangements for rent and utilities have strengthened people's dependency on welfare by exempting welfare recipients from immediate payment. The following is an example of a concrete case. This is the case of a man in his mid-30s having a wife and two children. Both the wife and her husband are unemployed. As welfare recipients, both are entitled to receive \$220/month each. In addition, the husband receives some money for the support of his children, say \$200 a month. In total, the family will receive \$640 a month. The immediate payment of the rent and utilities may be avoided, and that can be estimated to around \$800 a month. In short, this family's life on welfare in a new house is equivalent to a life with a salary of \$1,440/month. For this reason, the man in the example above will want to make sure that his income is well over \$1,440 if he is to start working. Unfortunately, such jobs are hard to come by on reserve. This is a typical example of a vicious circle that currently entraps the majority of people in the Lil'wat community. In the face of these enduring problems, it may be difficult to maintain an optimistic vision of the future. The imperative of pursuing self-determination appears even more clearly.

4.3.2. Effort Toward Self-Governance

(1) *Education*: The efforts toward self-governance are evident in the area of education. For a long time, Lil'wat has tried to gain control over the preservation of their own culture. In 1970, the Lil'wat Nation finally established a school under band control. The school has been offering grade 1 to 12 education as well as adult education. The school, emphasizing cultural education, was expected to counterbalance the process of alienation and indoctrination that native students have been subjected to in the Canadian educational system. A school board has been created in the Lil'wat community and the band members acting as board officials have been struggling with administrative, financial, and curriculum-related problems.

(2) *Indian Court*: The band has tried to establish its authority over aboriginal legal matters. One example is the Indian Court designed to deal with criminal cases among the native population. The system came into effect in the 1980s. The Indian Court arbitrates over disputes and sentences the offenders (e.g. 'join the plumbing crew for a week' [810707], 'no drink for 3 months' [810310]). This system gives the band the right to law enforcement based on native customs and values. As such, it has important implications for property rights. However, the

system has not been firmly established. A jurisdictional difficulty was revealed in the council meeting on Dec. 20, 1984, following a concrete case. In that incident, some band members who had broken into a post office (federal facility), upon being caught by a band member, were given the choice of trial avenues between the Indian Court and the RCMP (810414). Another complaint was raised about the band's excessive intervention into family matters, as illustrated in an Indian Court case dated June 12, 1983. Furthermore, an elder mentioned that the system used to work in the past on the basis of mutual respect among band members, but it lost its effectiveness today, when people no longer respect the band councilors acting as judges and instructors.

(3) *Band Membership*: Band membership centers around the right to the band property. So far, the Indian Act has been the only legal authority to determine who is a band member. This is a typical example of the government's paternal relationship towards the aboriginal peoples. It is no wonder that the aboriginal peoples have wanted to develop their own regulations on the issue of band membership. In that sense, during the 1980s, the band tried to extricate itself from the Indian Act. According to the minute of the council meeting on June 16, 1981 and again on Feb. 21, 1986, when Bill C-31 was introduced, the band set its own rules: The children who are born after April 17, 1985, who have one parent who is non-status, will have status, but not band membership; When another person marries into the Band from another band, they do not automatically get transferred; If the Band does not design their own membership code within two years, beginning April 17, 1985, then the Band membership and status will be according to the Indian Act. In short, the band proposed that the Band Council should be the only governing body to determine band membership.

(4) *Family Heads System*: Another example of the effort toward self-governance can be seen in the discussion concerning the family heads system, a traditional decision-making system. In the late 1970s, the majority of the people were in favor of returning to the family heads system, thus replacing the Chief and Council system specified in the Indian Act. The family heads system is a traditional structure, but it has not been in use for a long time (maybe 100 years). As a result, some people don't know which line to choose as their family group, the mother side or the father side. Other people have expressed their confusion around various issues: "How do we know what family we belong to? Some have large families. How are they going to vote?" At a meeting (810108), a councilor mentioned that "It is the people's choice on who is going to be your leader. Does not have to be a relative." Another band member said that: "it is not fair that one family is going to overpower the other." However, some councilors were in favor of going with the family heads system. A councilor mentioned that: "Four years ago, we had a mandate to go to family heads. [...] The family should be the controller concerning housing, education, land, etc." At another meeting (830130), the Lil'wat people addressed again the family heads system. Some people were supportive of the traditional system: "Chairman told the general assembly that there were two options that they should consider: 1) Indian Act, 2) the people's way. We should not go under the Indian Act. I have one priority that is to fight along with George Manuel for the movement. If you go the other way then we are out. [...] Band member A. H.: I support the traditional way. I'm working for the children and elders. We should go through the family head way. Now is the time to decide from family heads down." In 1985 the topic of the adoption of the traditional system was subjected to a vote and the majority chose to remain under the Indian Act. The vote, however, has not put an end to this

controversy which is still on-going.

4.3.3. Current Issues

Since the road block in 1975, the divisions among the band members have deepened. The arguments around the family heads system, as an alternative decision-making system, is a reflection of the confrontations. The group of people called 'traditionalists' were at the centre of the liberation movement of the 1970s. Today, their central idea is to be free from DIA's control, by reviving the traditional aboriginal way of life as well as by increasing economic autonomy. In the mid-80s, some of them were still advocating the rejection of governmental funds (840626). On the other hand, the mainstream of the band have been insisting the importance of a 'realistic' solution and they have chosen to go along with the DIA's control. Finally, a group of undecided people seem to simply follow the mainstream group. This is probably because the band is literally the only money distributor in the community. Being against the band often means losing jobs. For example, minute 830615 acknowledges that: "Members of the Grievance Committee expressed their concern that there was a monopoly on jobs in the community." Some 'traditionalists' are complaining that they are unfairly attacked. It is difficult to assess the people's complex opinions around these issues. It is even harder to estimate the effect of possible persuasive or manipulative tendencies. What is evident is the strong divisive character of the current community life.

Today, on the traditional territory, the dominant land use is forestry. But the aboriginal peoples have virtually been excluded from the industry. The most part of the traditional territory is under the Crown Land System. The Garibaldi Provincial Park sits in the centre, and the rest is almost entirely within the Soo Timber Supply Area (TSA), and Tree Farm License (TFL) #38 owned by Weldwood of Canada. TFL #38 has 263,000 cubic meters of Allowable Annual Cut (AAC). The Soo TSA has an AAC of 580,000 cubic meters. In this TSA, nine larger companies hold 75% of the AAC. N'Quatqua Logging Co., which is the only native logging enterprise (Anderson Lake Band) operating in the traditional territory, shares 1.2% of the AAC of the Soo TSA. In 1993, the total number of employees in harvesting in those nine larger companies was 261 people, of which merely 11 (no Lil'wat people) were aboriginal people (Crane Management Consultants Ltd, 1994).⁴⁾

In 1990, a group of people, "Lil'wat Peoples' Movement", blocked Highway 99 that passes through the reserve. The stand was removed by the police force who arrested 56 people nearly two month after the blockade was set up. Some hundreds of people in the Lil'wat Nation supported the blockade at that time. This episode shows beyond any doubt that a centripetal force toward solidarity is still alive in the Lil'wat. Solidarity is the key ingredient of any future chances for self-determination and dignity for the people of the Lil'wat Nation.

- 1) The exclusive use of the term 'oppression' in reference to this period may be misleading. Oppression had begun a long time before that period and continues today. Indeed, oppression started prior to this century with the legalized theft of aboriginal peoples' rights to their own land. The oppression is bound to continue until every aspect of colonial policy is resolved. The name "oppression" has been given to that period within the past 50 years because that time shares the most typical characteristics of Lil'wat/White colonial relations.
- 2) The labels of *internal cooperation* and *internal conflict* have been chosen for the following

reasons. The *internal cooperation* period is the time when people collectively resisted against the external forces. This period is characterized by a sense of cohesion and unity among native community members in their struggle against the Canadian governments. During the *internal conflict* period, a number of community initiatives failed because of disagreements and dissension among community members.

- 3) Assimilation policy with statutory consolidation started in the Indian Act, 1876 which made provision for: the definition of 'Indian'; management of reserves; the election of council and chiefs; and 'enfranchisement'. These provisions of the Act were tightened up to the 1940s (Tobias, 1976). The 1951 Indian Act emphasized practical measures for integrating services to aboriginal peoples with services to all Canadians, but its primary objective remained assimilation (Armitaga, 1995).
- 4) The way in which extractive capital is legitimated in BC is well explained by Willems-Braun (1997). In the case of MacMillan Bloedel (MB), a leading forest company in BC, he argues that "Fully aware that legal arguments regarding tenure are inadequate (especially since most tenure-holdings in BC are granted by the Crown and are not hold in fee-simple), MB sets out to legitimate its authority by extending an invitation to evaluate its forest practices in terms of three criteria: expertise, efficiency, and responsibility (p. 11)." However, he points out that "Emptied of cultural histories, the forest becomes a unit governed by natural history and, thus, is free to be subsumed into a discourse of resource management (recently bound to a new, powerful metanarrative of sustainability) and tied to the administrative spaces of the province rather than to the local lifeworlds of its Native inhabitants (p. 15)."

CHAPTER FIVE: CONCLUSION AND DISCUSSION

5.1. Changes in Institutions

The changes in institutions have been explored in terms of three major areas: the creation and dissolution of institutions, the decision-making situation (i.e., context of institutional change), and the decision-making process (i.e., the rise and fall of aboriginal authority). The rapid and important changes in the decision-making situation have significantly affected the land use projects on reserve grounds. Those changes include: population increase, extension of money economy through forestry and agricultural activities, the exercise of various outside interests on reserve lands, and governmental initiatives, such as the introduction of the Certificate of Possession and land rent proposals.

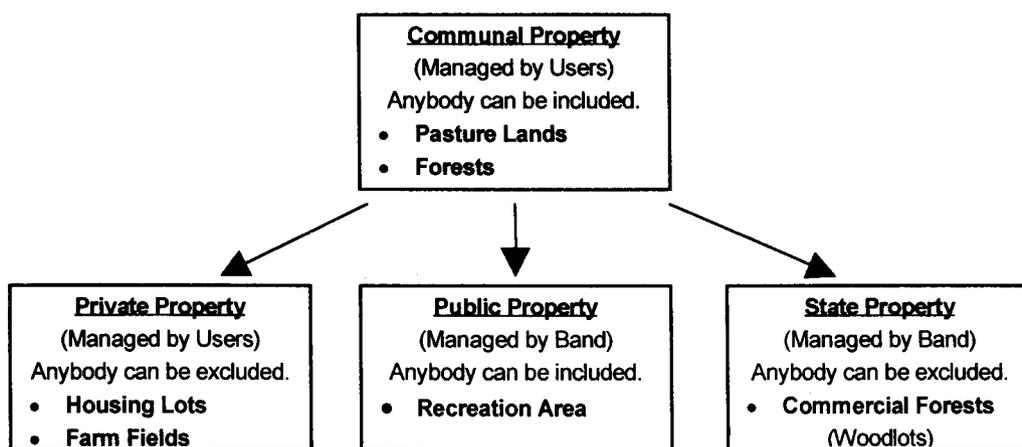
In the area of institutional changes, the events that relate to property rights reflect the balance between individual interests and collective well-being. Two questions became apparent in this process: *Has the native community been able to protect collective interests from the pressure of individual and/or outside interests?; and Have the emerging institutions and arrangements in the community been able to meet the needs of community members?* To begin with, Table 9 shows the land holding structure based on customary practices on the reserve lands. Depending on the kind of property right and the level of activity, each land use agent plays a different role. The agents include individual band members, family groups, and the band. While most areas are open to individual access and use, the band has retained a discretionary power over the reserve management in general. This is obvious when it comes to the issue of the alienation of land. The band appears to hold the *de facto* right to alienation, i.e., to dispose of a piece of land regardless of the user's intention. Alienation has happened when the band thought that the action would be beneficial for the community at large.

Table 9 Internal Property Structure on Reserve Lands

	Access/Withdrawal	Management/Exclusion	Alienation
<i>Public Spaces</i>	Individuals	Band	Band
<i>Forest Lands</i>	Individuals/Companies	Band	Band
<i>Pasture Lands</i>	Stock Holders	Stockman's Committee	Band
<i>Family Fields</i>	Family Members	Family	Family/Band
<i>Individual Fields</i>	Individuals	Individuals	Band/Individuals
<i>Housing Lots</i>	Individuals	Individuals	Band/Individuals

In general, the use of band lands has changed over the past 50 years. In addition to private holdings that replaced a part of band lands and the continuation of communal use of lands, such as pasture and forest lands, property arrangements similar to public property and state property have gradually appeared on band lands. Those are represented by recreational areas and woodlots. This reflects a change in the relationship between the band and band members, whereby the band adopted some land management strategies similar to those employed by the Canadian governments (Figure 3).

In order to interpret these changes in terms of the balance between community control and individual/corporate interests, Figure 4 summarizes the events that relate to the institutional changes on reserve grounds. A number of factors led to a state of confusion over the customary land holding structures. In the 1960s, individual interests in land have increased for housing and farming purposes. In this period people started to regard parcels of land as exchange objects. As land transactions became more frequent, the band failed in its task to administer the land holdings. Also, Canadian initiatives impacted heavily on the reserve land use system. In particular, the Certificate of Possession undermined the customary land holding arrangements. Eventually, the Lil'wat Land Law, which formalized the existing customary activities, emerged from the band's initiative in the 1980s. However, the land law is still in need of refinement and recognition in order to function as a governing land law on the reserve. With respect to timber production, during the 1950s and the early 1960s, the community was controlling the flow of timber resources in order to enhance the collective interests. That type of control excluded commercial logging. Also, the community used the 'tie credits,' a payment agreement among the Pacific Great Eastern Railway, the community store in Lil'wat, and the railway tie makers in

**Figure 3 Changes in the Use of Band Lands**

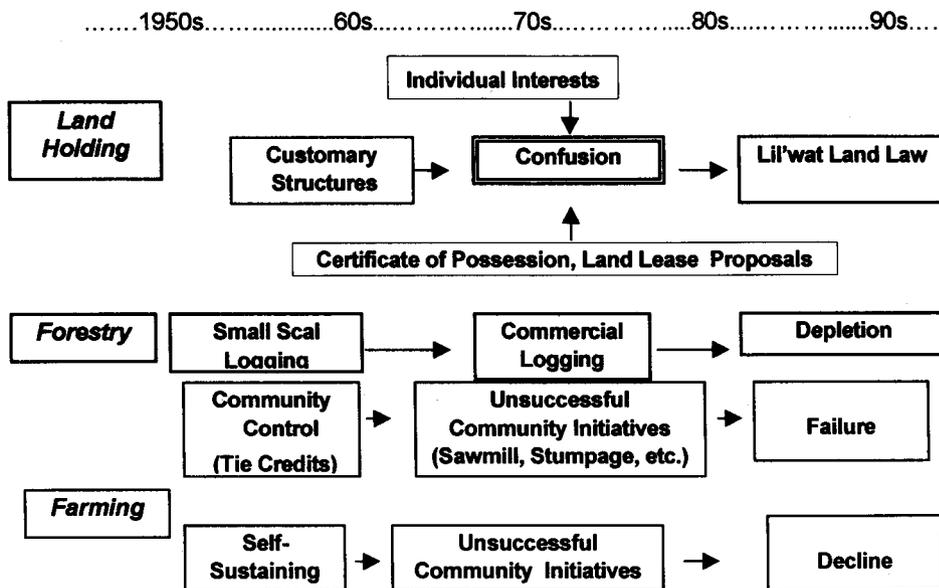


Figure 4 Land Use Structures On Reserve (Institutional Changes)

the community. Commercial logging started in the 1960s by involving community members as middlemen, which depleted forest resources on reserve lands. The community's efforts to control commercial logging proved unsuccessful. Those efforts included an increase in stumpage rates and the construction of a sawmill on the reserve. Farming was once a central activity in the Lil'wat Nation. Farming activities, however, have declined since 1960s. The band made several futile attempts to manage the community fields.

In summary, from the 1970s onward, the community has been losing control in most areas that relate to land management on reserve. The results of this research show that the native community has not been able to protect collective interests from the pressure of individual and /or outside interests. Also, the emerging institutions and arrangements in the community have not been able to meet the needs of individual community members. Originally, the community had the power to control its own affairs, but the rapid economic and political changes affecting the land and the resources, particularly after the 1960s, have had devastating effects on the exercise of community control.

One of the controversial issues in community planning during this period has been the allocation of a certain portion of reserve lands for new town sites. While people's need for appropriate housing is real, the rent exemptions for low income families have deepened unemployment and have accentuated the state of dependency. This example is part of the bigger picture represented by Canada's welfare policy where significant funding is aimed at reducing social inequality. It is ironic that the very policy meant to reduce social inequality in fact promotes economic dependency. Thus, it is clear that property systems in the Lil'wat Nation cannot be viewed in isolation from Canadian policy and other external factors. In this respect, the relationship between the Lil'wat Nation and Canadian governments is essential for understanding the dynamics of property rights in this native community.

5.2. Issues around Authority

With respect to the issue of authority, this study has dealt with the power relationship between Canada and the Lil'wat Nation. The development of the relationship between the two has been described through a number of historical events meant to explain the way in which political and economic imperatives have shaped the relationship. Those historical events also determined the internal power relationship within the aboriginal community. The following is a chronological outline of that process (Figure 5).

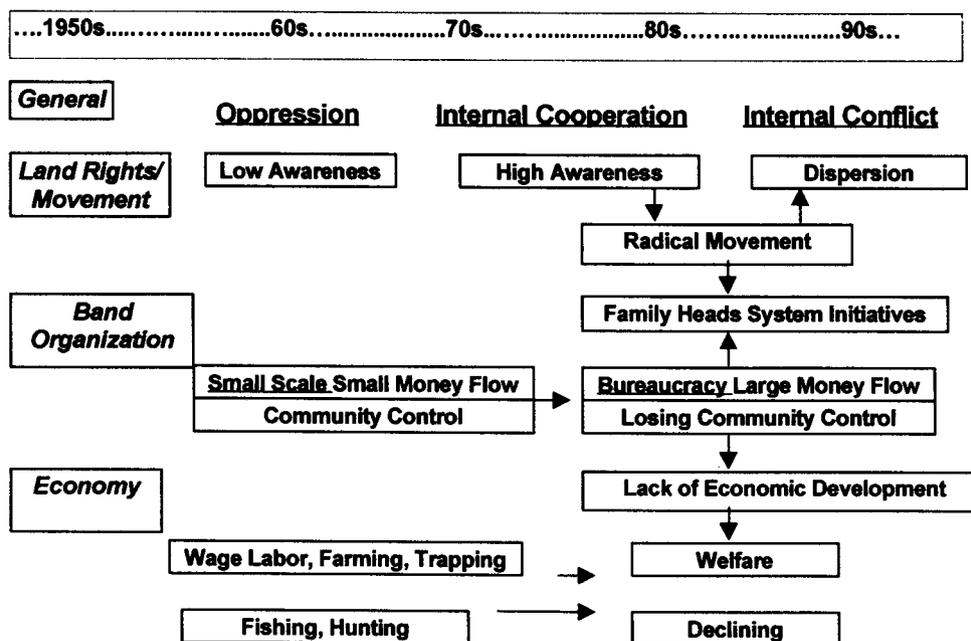


Figure 5 Authority Issue

Pre-1950: Before the contact with the Europeans, the people of the Lil'wat were observing a traditional way of life. The traditional economic system, defined as the hunter-fisher-gatherer system, was altered by the introduction of agriculture in the late 19th century. However, the two systems co-existed and ensured a self-sustained economy until the 1940s, with an ever increasing emphasis on agriculture. The importance of traditional plants as food and material sources diminished around the beginning of this century, and largely disappeared by 1950. Around 1950, the money economy gradually permeated the aboriginal society through the numerous job opportunities in the forest industries. This change people were politically and culturally oppressed by both the federal and provincial governments in Canada, the Lil'wat people retained a certain degree of control over hunting and fishing. In other words, the Canadian authority could not tightly regulate local aboriginal peoples' fishing and hunting practices.

Oppression Period (late 1940s-1960s): The oppression period is represented by the time when Canada, through the Department of Indian Affairs, exerted a certain paternalistic attitude toward the Lil'wat community. An agent from the DIA lived in the community and attended every band meeting. In spite of the DIA's presence, the community was able to maintain a

certain amount of control over local affairs. The issue of rights over the traditional territory was not addressed at the band meetings. In this period, fewer and fewer people in the community were engaged in trapping and hunting activities. Eventually, they became wage laborers working for the logging companies that now had the rights to timber resources on the traditional territory of the Lil'wat Nation. The traditional occupations could only be classified as withdrawal activities. Traplines were mostly abandoned in the late 1950s. The end of the oppression period was characterized by a general decay in productive activities, whether in the agricultural area or in the forestry industry.

Internal Cooperation Period (1970s): The internal cooperation period is the time when conflict intensified between Canada and the Lil'wat Nation. The community's awareness of land rights increased. The Liberation Movement was formed in the community and it involved, among others, the Union of BC Indian Chiefs, and George Manuel, a prominent native leader at that time. The road blockade and the rejection of governmental funds in 1975 were important moments in this process. Conflicts between the Lil'wat Nation and the Canadian governments were seen around salmon resources on the traditional territory. All of this marked the process of re-definition of property systems, not only over fish resources but also over the fundamental relationship between the Lil'wat Nation and Canada. This is the first time that the two systems actually confronted each other in terms of their authority and control over the traditional territory. Unfortunately, the movement did not materialize in the development of a native land use strategy on the traditional territory due to the fact that no management authority was given to the aboriginal people. Although some attempts were made to re-construct a self-sufficient economy, they did not result in long-lasting, fully autonomous institutions and policies. On the contrary, as logging companies started to withdraw from the regional labor market, the Lil'wat people became almost entirely dependent on welfare and governmental funds.

Internal Conflict Period(1980s-present):. In the internal conflict period, the diversity of interests led to strong political divisions within the community. The earlier liberation movement dissipated onto many avenues, following various political, economic, and cultural interests. Under these circumstances, the band's ability to administer resources and programs became the central concern. The DIA controlled the allocation of governmental funds which left the majority of the community members unable to develop their own community strategies. The allocation of governmental funds also produced an economic stratification within the community. The economic and political stratification within the community undermined the solidarity of the people around land questions. Essentially, this period witnessed a polarization between two camps within the native community: the so-called 'traditionalists' have been advocating a return to self-determination and autonomy (such as the re-introduction of the family heads system of significantly altered the traditional economic system. It is important to notice that, while most other aboriginal pdecision making), while the so-called 'realists' have been pleading for a feasible agenda, along the lines of a compromise with Canadian institutions. However, the road blockade of 1990 demonstrated the native people's potential for unity under critical circumstances.

In summary, since the 1970s onward, the Lil'wat Nation has failed to develop internal property arrangements. By definition, no property system can survive without a consistent authority. The customary authority has been undermined in the Lil'wat Nation. Especially, the devolution process has transferred administrative programs and funds from the DIA to the

band, and it has brought about a bureaucracy, which has not only led to a general sense of alienation of the band members from band management, but also diminished the function of the traditional decision-making process. Currently, the band's financial decisions resulting from the devolution process are nothing more than an extension of the DIA's control. Every program and the allocated budget is controlled by Canada, so that there is little room for the band council to implement its own plans. This has weakened the economic base of the community to the point where the Lil'wat Nation has virtually no bargaining power in the dialogue with Canadian institutions.

5.3. Future Directions

A descriptive study such as this research project is not meant to generate normative conclusions. However, this final section covers some potentially important land use strategies for the Lil'wat Nation, based on the community's expressed ultimate goal, which is self-determination.¹¹ There are various opinions concerning the way to reach self-determination. While most Lil'wat people may agree that the long-term goal is to reconstruct their own decision-making authority, there is some disagreement with respect to the short-term strategies to be used in their relationship with the Canadian authorities. Similarly, while some native people insist that economic independence is the key to self-determination, others say that economic advancement along the lines of today's capitalist society will mean furthering the process of assimilation. As such, there is no single agreed-upon formulation for self-determination. With respect to future directions, three levels of concern among Lil'wat people are addressed: (1) internal agreement, (2) framework of relationship with Canada, and (3) economic development.

(1) *Internal Agreement:* Consensus among the people of the Lil'wat Nation is important when making any future projections. In the long-run, rebuilding a sense of cohesiveness in the Lil'wat Nation may need the development of a sense of cultural identity through the advancement in education. Promoting cultural identity through education will foster a sense of pride among the members of the Lil'wat Nation. Of immediate concern is resolving a number of political divisions among community members. Due to those internal divisions, many former leaders of the 1970s and 1980s have withdrawn from political life, which has translated into a significant loss of moral authority and leadership for the native community. Furthermore, currently, a large part of the people are indifferent to political issues. This may be partly due to economic difficulties that have eroded native people's sense of hope and motivation. Immediate and effective action is required in order to restore a viable level of political participation.

(2) *Framework of Relationship with Canada:* We saw the different views expressed by Lil'wat people concerning the BC Treaty. A similar range of disagreement can be found in the community's views on the possible framework of relationship with Canada. In order for the Lil'wat community to reach an informed consensus on the desired type of relationship with Canada, a solid knowledge of traditional property rights and their changes must occur and must be shared by all community members. This knowledge can help the Lil'wat people articulate their aspirations for a better future. As illustrated earlier, traditional property rights are based on the aboriginal worldview. Traditional authorities accompanied by traditional institutional arrangements governed traditional land use activities. In-depth information needs to be acquired concerning both the contents of the traditional property rights and the formation of authority. At the same time, it is important to understand the changes in property rights. Changes in

Lil'wat's property rights have been the focus of this study. The following factors have been identified as influencing property rights: overall changes in the people's way of life, the presence of dual authority, the Canadian policy of assimilation, and native people's struggle towards self-determination. Future studies, using different research methods, may reveal the existence of some already entrenched modern aspects of Lil'wat's life. Although relatively recent, those changes in favour of modernity may be found to be irreversible. The analysis of property rights and their changing dynamics can help the Lil'wat community generate informed strategies in terms of what they need to protect, revive, or create in order to attain self-determination. The strategies drawn from a study on property rights are particularly important if the Lil'wat Nation chooses to start a dialogue with the Canadian governments. For example, those strategies could serve as a basis for the BC Treaty if Lil'wat chooses to participate in the treaty-making process. Treaty negotiations are bound to cover the issue of distribution of authority over the traditional territory. The analysis of property rights may also help native people articulate the contents of 'aboriginal rights' from the point of view of the Lil'wat Nation. This will be an important step given the fact that the definition of aboriginal rights is still ambiguous and often limited to the withdrawal activities, such as fishing, hunting and gathering, without the specification of management authorities. In Canada, a rights-based legal arrangement may be the only way to involve the Canadian people into a constructive dialogue. "aboriginal rights" are an evolving concept, although the content of aboriginal rights has been narrowly defined by the Court. In fact, the most recent court decision, the *Delgamuukw v. British Columbia* by the Supreme Court of Canada in December 1997, may bring a new light on the issue of aboriginal rights and title by suggesting that aspects of cultural heritage can be incorporated as evidence for establishing aboriginal rights and title. Sanders (1996) argues that aboriginal peoples have been employing the process of litigation in an attempt to advance their own cause. At the same time, the concept of aboriginal rights has been accommodated by the provincial and federal governments because, as a modern state, Canada fosters a fundamental respect toward minority cultures. As such, it has been in the national interest to accommodate aboriginal rights, acknowledge the differences, and promote integration.

(3) *Economic Development*: The people of the Lil'wat Nation agree to the need to end the state of economic dependency, thus reducing the high rate of welfare recipients. However, it is difficult to reach a consensus on the most effective way to achieve economic independent. Typical disagreements centre around the questions: (a) whether the Lil'wat Nation should depend on governmental funds, and (b) how governmental funds should be used. In place of governmental funds, some community members propose the revival of a self-support economy based on fishing, hunting, and farming. Others advocate the construction of small-scale economic projects by utilizing regional resources. Finally, for some, a total rejection of governmental funds is not a realistic option. They criticize the DIA's control over the governmental funds and believe that the DIA can be persuaded into giving the native community more discretionary power in the administration of those funds. It is hoped that this may lead to the creation of a new economic base under native control. In any case, these arguments are closely related to the authority issue, the relationship between the Lil'wat Nation and the DIA or Canada. Although only the people of the Lil'wat Nation can choose a path for their economic development, it may be worth considering an on-going economic plan as an example. Currently, a group of people in the Lil'wat community are initiating an economic project that does not depend on governmental

funds. They advocate that, even with limited resources, they can start some grass-roots economic projects. The Association for Sustainable Aboriginal Planning (ASAP) is an example of such a community-based initiative (see also *Appendix 3*). The ASAP aims at helping the people in the Lil'wat Nation set up an autonomous commercial project involving the construction of a gas station, restaurant, and an aboriginal art shop. Fund raising, volunteering, and awareness raising have been done by members of the ASAP who intend to contribute to the general process of increasing a sense of identity, pride, and confidence among the people of Lil'wat. They hope that the project will help the people of Lil'wat in their efforts toward self-determination, autonomy, and a higher degree of control over their land and resources. They also hope that other native communities may find a source of inspiration in this project and may try to implement some of these initiatives in accordance with their specific local conditions.

- 1) Predicting future directions is inevitably difficult, as can be seen by a number of questions raised by Sanders (1996) regarding the larger historical context: Why has the post-war period seen a revival of concerns about ethnicity, ethnic nationalism, religious "fundamentalism", aboriginal rights, and issues of cultural identity and difference?; Were both liberal and Marxist assumptions on modernization wrong?; Will the new deference to cultural pluralism continue?; or, Is this a transitional phase in a longer-term pattern of modernization and assimilation? For aboriginal peoples, the very struggle to compete with the Canadian mainstream often makes native people choose to stay in or return to the traditional way of life. Ethnicity can be a political process, emerging and coalescing within political struggles. These struggles generate emotional intensity, which, in turn, reflects back onto ethnic group identity.

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Appendix 1. The Contact Letter

Dear Chief and Council:

My name is Akihiko Nemoto. I graduated from Hokkaido University in Japan where I received the Master's degree in Forestry. Currently, I am a doctoral student in the Department of Forest Resources Management at the University of British Columbia. I have studied forest management and policy. My major research interest is community-based forest management systems.

In my doctoral thesis, I intend to explore the traditional and current land use practices of the native people of British Columbia and to focus on Indian Reserves as the only land base under their control. The research is expected to not only identify some features of contemporary land use practices by native peoples, but also provide basic information to the stakeholders in the land

claims' process (i.e. aboriginal peoples, governments, resource industries and concerned citizens) which will help them in finding a reasonable direction to settle their interests.

With respect to forest resource management, it has become obvious that the imposition of 'scientific' management regimes falls victim of its own complex web of ecological relationships to the natural resources. Also, the resource management by large corporations has not been capable of either administering forest resources in a sustainable manner, or generating long-term benefits to regional economies. In this context, I believe that a forest management strategy that welcomes the participation of the local community and incorporates their traditional systems will contribute to the realization of 'sustainable development.'

In British Columbia, native peoples have been virtually excluded from land management in their traditional territories, which are now Crown Land. Recently, however, through the constitutional recognition of aboriginal rights, and the natives' efforts to regain their own rights, the re-allocation of property rights between native and non-native people has become one of the most important issues in Canadian politics. From my perspective, the issue has significant consequences on three distinct levels: the social and economic well-being of the native peoples, human rights in general, and the achievement of sustainable resource management.

The land claim process, however, has been slowed down by groundless doubts about the ability of the native peoples to manage their natural resources. Although a number of native speakers have repeatedly described their relationship with nature as one based on a cyclic and holistic philosophy and on communal use, their arguments have not made a strong impact on the non-native community. One of the reasons may have been the lack of comprehensive research on the current land use practices by native peoples. It is high time that such an investigation was undertaken, especially in the light of the evolution of the land claim process.

Clearly to address these problems comprehensively for the whole province of B.C. would be an impossible task for someone in my situation with limited time and resources. However, I believe much can be learned by studying the land use philosophy and practices of one native community in detail. The Mount Currie Band has a long and continuing association with the forest lands over a considerable territory and would provide, I believe, an interesting and rewarding focus for my work. I seek, therefore, your permission to work with you and your people in this endeavour.

Please find attached herewith my 'thesis proposal', which explains in further detail my research interests. I hope that it will be possible to meet with you soon. I would appreciate the opportunity to discuss my thesis with you in more detail and benefit from your suggestions based on your experiences in these matters.

Finally, let me mention that my research project is conducted under the coordination of:
Supervisor: Dr. David Haley (Faculty of Forestry),
Committee Members:

Dr. John Borrows (Director, First Nation Law Program, Faculty of Law),

Dr. Alan Chambers (Faculty of Forestry),

Dr. Michael Kew (Department of Anthropology and Sociology).

Thank you very much for your attention to this matter. I look forward to receiving your reply in the near future.

Yours, sincerely
Akihiko Nemoto

Appendix 2 Mount Currie Indian Band Lil'wat Land Law

WHEREAS the Mount Currie Indian Band (the "Band") has had its own customs, rules and proceedings relating to the use of Mount Currie Indian Band land; **AND WHEREAS** the Land Management Portfolio of the Band has prepared this land law as a reflection of previously existing laws of the Indian People of Mount Currie; **AND WHEREAS** at a general meeting of the Band, held March 23, 1986, the Band membership has approved the land law hereinafter set out, and has approved that the Indian Government of the Band will continue, in the future, to assert jurisdiction over the use of Band land; **NOW THEREFORE** the Council of the Band, in accordance with the wishes of the members of the Band enacts as its law the following land law:

A. DEFINITIONS:

Band means the Mount Currie Indian Band; Band Council means the elected Chief and councilors of the Mount Currie Indian Band; Family includes grandparents, parents, siblings and children of any Band member; Family Land means land in the Reserve which has been used and occupied by a family; Land Management Board means those persons appointed by Band Council Resolution or by election of the Band, as the case may be, to perform duties and functions under this Land Law; Land Management Portfolio means those persons appointed by Band Council Resolution to perform duties and functions under this land law; Land Registrar means the person appointed by resolution of the Band Council to perform the duties and functions under this Land Law; Land Use Plan means the Mount Currie Reserve Land Use Plan prepared in May, 1982, attached as Schedule "A" to this Land Law; Reserve means all those lands set aside for the use and benefit of the Mount Currie Indian Band.

B. ZONING:

1. The land within the Reserves will be zoned for use according to the Land Use Plan.
2. The Land Use Plan may be amended from time to time by Resolution of the Council, after such amendments have been approved at a meeting of members of the Band. Thereafter the amended Land Use Plan shall form part of this Land Law.
3. Any use of Reserve land by a Band member (provided that the Band member has had historical use of the land) which, at the time of coming into force of this Land Law, conflicts with the Land Use Plan, will be considered as a non-conforming use. Such non-conforming use may be continued, **PROVIDED HOWEVER THAT** any change to the historic use which is contrary to the Land Use Plan is also contrary to this Land Law, and shall be dealt with in accordance with Clause L(2), hereof.
4. Band land within the Reserve shall only be developed according to the uses specified in the Land Use Plan.
5. If a Band member wishes to develop Band land for any particular use, he or she shall apply to the Land Management Board.
 - a. The application shall state the desired use of the land, the length of time the Band member wishes to use the land, and any proposed license fee.
 - b. The Land Management Board will review the proposal, discuss it with the Band member, and make any necessary changes.
 - c. The Land Management Board will present the application to Chief and Council, indicating whether the Land Management Board approves or disapproves of the application.
 - d. The Land Management Board will consult with the Economic Development Portfolio concerning a license fee for the use of the land as a condition for the approval of the application.
 - e. The recommendations of the Economic Development Portfolio will be submitted by the Land Management Board to the Band Council for approval or disapproval with the application.

- f. Band Council will either approve or disapprove the proposal. If the proposal is rejected, no new application can be made for the same use for six months.
- 6. Except for the designated area in I.R. #7, as set out on the Land Use Plan, no timber shall be cut on any of the Reserves, whether for commercial or domestic use, without the approval of the Land Management Board.
 - a. An application for a permit to cut wood by any Band member shall be made to the Land Management Board, who shall decide whether to issue a permit.
 - b. The Land Management Board shall charge stumpage rate for commercial use permits as established each year by the Economic Development Portfolio, with a base rate as at 1985, and variations made thereafter according to market conditions.
 - c. If the Land Management Board approves of the application, a permit will be issued by the Land Management Board. If the permit is refused, the Band member may appeal to the Council for review. Such appeal shall be made within 30 days of the decision of the Land Management Board. Council will hear the appeal within 14 days of receiving notice of the appeal.

C. PASTURE LAND:

Pasture land on the Reserve will be opened for use by all Band members. Band Council may close such pasture land as and when it deems necessary for the purposes of restoring or upgrading the land.

D. FAMILY LAND:

1. Band members shall not register their land under Certificates of Possession pursuant to the Indian Act, but shall be governed by the provisions of this Land Law.
2. All land transactions involving family land will require the approval of the Land Registrar.
3. The Land Registrar shall approve the transfer of family land in accordance with the following conditions:
 - a. Family land will not be sold outside the family, unless all members of the family consent to such disposition. The land Registrar shall ensure that such consent has been obtained, on evidence satisfactory to the Land Registrar, before considering the transfer. If there is only one member of the family who is alive, the consent of that person's cousins, nieces and nephews must be obtained.
 - b. The Land Registrar shall approve any transfer of family land to other family members.
 - c. Transfers of family land shall only be to members of the Band.
 - d. i) If family land on the Reserve is not being used and occupied by that family, in whole or in part, then any Band member may apply to the Land Management Portfolio to use the land; ii) After receiving such an application the Land Management Portfolio shall prepare a report and make a recommendation to the Land Management Board who shall decide whether the applicant should be allowed to use the family land. In so deciding, the Board will contact the family and hold such interviews as it may deem advisable in an attempt to get agreement with the family on the application; iii) If the Land Management Board cannot obtain such agreement with the family the issue will be referred to Band Council. Band Council may allow any other member of the Mount Currie Band to use that land for a certain period of time, including using the land for the purposes of a residence. Notice of such a decision will be given to the head of the family.
 - e. Any transfer of family land will not be considered valid without the approval of the Land Registrar, and the proper forms filed in the Land Registry, as provided in Clause F, hereof.
4. Documentation on Historic Use:
 - a. No transfer of any family land will be approved under this Land Law unless the Land Management Portfolio is satisfied that there is no dispute involving such land.

- b. No transactions or transfers of land will be approved unless the Land Management Portfolio is satisfied that the person transferring the land is fully aware of the nature and extent of the transaction.
- c. The Land Management Portfolio will document all areas held by a family upon a request of the family. The purpose of the documentation is to ascertain which family has the right to use and occupy such land.
- d. At the request of any Band member, the Land Management Portfolio will conduct a search into the history of any piece of land on the Reserve. Such history will include the taking of oral evidence, and searching documentary evidence as to title.
- e. Any member of the Land Management Board may conduct such an inquiry. If, in the course of such inquiry, there are disagreements as to the historic use or entitlement, a member of the Land Management Board shall meet with the parties to the dispute, and review the oral and documentary evidence surrounding the history of the land. The Land Management Board member will attempt to resolve such disputes, and make a decision as to land entitlement, if possible. If such a decision is reached, the Board will present a report to Band Council on the decision. The Band member may appeal this decision within 60 days of receiving notice of it. The appeal shall be heard by the Band Council.
- f. If improvements have been made on land, which add to the value of land, in an area where there is a dispute as to the land, the individual making such improvements shall be compensated for those improvements by the person entitled to use the land, provided that the improvements were made with the consent and knowledge of the disputes.

E. CHARGING LAND:

No Reserve land will be used as equity for the securing of a loan, without the consent of the Band Council.

F. LAND REGISTRY FORMS:

1. Land Registry Form #1 shall be used in transferring land from one person to another. It shall also be used in the resolution of disputes.
2. Land Registry Form #2 shall be used when any Band member makes application to use Reserve land.

G. TRANSITIONAL PROVISIONS:

Any Certificates of Possession which have been issued prior to the coming into force of this Land Law shall be re-issued under the terms and conditions of this Land Law. Any and all uses of Reserve land by Band members shall only be authorized under the terms and conditions of the Land Law, which shall include agreements relating to the Xito'lacw Housing Project.

H. ROAD AND EASEMENTS:

1. The Land Management Portfolio, in consultation with Chief and Council as may be necessary, shall provide easements through Reserve land required for road, sewer, water, or other community purposes. As far as possible, the Portfolio will obtain the consent of Band members when required to go through family land, provided that such consent shall not be unreasonably withheld.
2. All trails and roads through the Reserve shall be for the use of Band members, except such roads as are built solely by a Band member, for the specific use of a particular piece of family land. Band members are absolutely prohibited from fencing their property in such a way to prevent access to other parts of the Reserve, by other Band members. With the approval of the Land Management Board, any Band member may install a gate to the satisfaction of the Land Management Board, so that access is provided.

I. AGREEMENTS WITH BAND EMPLOYEES:

Band Council may enter into agreements with any Band employee who is not a Band member for

the temporary use of Reserve land for residential purposes. The rates charged for such land shall be similar to those charged under the Tenancy Agreement for the trailer court.

J. ALL LAND REQUIRED:

The Band declares that all Reserve land is required for the use of buildings, gardens or for the more convenient use of buildings located on Reserve.

K. LAND DISPUTES:

1. In addition to Clause 4 hereof, there shall be a procedure established for the resolution of disputes as to land entitlement on the Reserve. The disputes which shall be resolved in accordance with this procedure shall be the following: i) Inter-family disagreements; ii) Disagreements between one family and another; iii) Disagreements between the Band, as represented by Band Council, and a family or family members.
2. The objective of this procedure shall be to clarify the existing land holdings in a manner satisfactory to Band members, and without the involvement of outside parties.
3. The head of the Land Management Portfolio will be responsible for meeting with members of the Band and charting the existing land holdings on the Reserve. As part of this procedure, it will be necessary to try to resolve all outstanding disputes by hearing both sides of the issue and coming to a resolution. The charting of the existing land holdings will involve both mapping and documenting the land holdings. This task may be delegate by the head of the portfolio to a staff member.
4. If the Land Management Portfolio is not able to resolve the disputes as to entitlement, the question shall be referred to a panel consisting of Chief and Council and the Land Management Board. The families involved in the issue may meet with the Panel and present their viewpoints. The Panel will attempt to resolve whatever differences arise.
5. For issues which are resolved by the above procedure, there will be a document which will certify the resolution of issues and the state of the existing land holdings. Once certified, it will be entered in the records of the Land Registry, and be considered proof of entitlement to the land.
6. If there is an unresolved dispute over the land, no transfer shall be made until that dispute is resolved.
7. The Land Registry office will be responsible for the custody of all documents concerning Reserve land. The Land Registry shall also be in charge of the documents dealing with other land alienations on reserve (such as hydro agreements, roads, spurline agreements etc.). Survey plans and maps shall be kept in the Land Registry office.
8. The person appointed as Land Registrar will obtain a commission for taking oaths as notary public. In that way, statutory declarations and affidavits can be certified by the Land Registrar and have the force of law.

L. ENFORCEMENT:

1. This Land Law shall come into force on a day fixed by Resolution of the Band Council.
2. If any Band member acts in breach or in violation of the provisions of this Land Law, the Band Council, by notice served on the Band member, shall require the attendance of the Band member at a duly convened meeting of the Band Council. Band Council may impose such sanctions on the Band member as it deems meet, including, but not limited to the cancellation of any permission to use Reserve Land. The penalty imposed by Band Council shall be confirmed at the next general meeting held after the Council meeting.

Appendix 3

A Proposal for the Foundation of The Association for Sustainable Aboriginal Planning (ASAP)

1. **Purpose of the ASAP:** ASAP aims at improving: (1) self-control over regional resources, (2)

independent family economy through job creation, and (3) social and economical improvement of our community.

2. Outline of the ASAP: ASAP consists of members of the Lil'wat Nation managing a trust fund. The management of the fund is based on the "priority system", defined on a project-by-period basis. The sources of the fund are: (1) benefits from projects, (2) ASAP membership fees, and (3) contributions from people outside of the community (e.g. Friends of ASAP in Vancouver and elsewhere). Any ASAP project will be reported at the meetings of the General Assembly who can direct and finalize the projects, and reflect the people's concerns.

3. Priority System: Although the priority among various ASAP projects is subject to consultation with the General Assembly, two initial projects have been set up: (1) Gas Station Project (1st stage), (2) Produce Store Project (2nd stage). These may be followed by other projects, such as: creation of agricultural fields for people's gardening, construction of green house for organic vegetables (which are currently in significant demand in urban areas), revival of traditional food, herb and medicine (including secondary products), the establishment of Indian Art shop (to support Native craftsmanship), development of forestry system on reserve lands, etc.

(1) **The Gas Station Project:** This is an initial project for the ASAP. The profits from this project will support other ASAP projects. A gas station on the reserve presents the following advantages: 1) strategic location - along the main highway in the area, 2) tax free (less tax?) - it can easily compete with off reserve gas stations in price. The initial investment for this project and the running costs in the first short-term period are expected to be supported by the people on and off reserve - not only in Canada but also elsewhere in the world.

(2) **The Produce Store Project:** One problem that has already been noticed is that the money for everyday consumption immediately leaves the community because of the lack of market places in the community. The Store that will be created will purchase commodities from whole sellers and resell them to people both on and off reserve. We will have the different prices between our people and others. Also, the Store will buy local products such as extra vegetables from people's gardens, traditional vegetables, herb and berries from the woods nearby. The Store also intends to produce secondary products from them, and to sell them to people not only at the Store on reserve, but also at Whistler, Vancouver, and even outside of Canada. In this sense, the Store will become a sort of middleman, playing the role of both selling and buying, to utilize our own resources. The Produce Store can encourage gardening activities. In this stage, the creation of fields can be supported as part of the ASAP project. Also, the market encourages people's traditional activities such as hunting and gathering. If this is going well, the market can expand to deal with traditional arts and crafts. At this point an Art Shop project could be developed. More importantly, through these ASAP projects, we can regain part of our cultural identities.

4. Account System: It is essential for the ASAP to have a clear and explanatory account system using a well trained accountant. A financial report of the ASAP should be published at least annually.

5. News Letter: The ASAP will have the obligation to issue reports of its activities to all ASAP members, the major contributors, and other Native communities. Whether or not our initiative is successful, our experience and endeavour will be an example for our children and for people in similar situations.

要 旨

カナダ、ブリティッシュコロンビア州の先住民族リルワット・ネーションを対象として財産権の形成と変動の過程を記述した。財産権を構成する権威と土地制度の展開を先住民の視点で捉えることが記述の中心である。調査は参加型の聞き取り調査法と議事録解読など文献調査法を用い、記載事項の信頼性を高めたる

ため各々の調査法で得られた知見を相互照会した。

財産権の制度的側面では先住民の「伝統」を基礎にした内発的な制度の展開が、カナダ資本主義の発達や福祉国家型社会への移行の中で閉塞状況に陥っている現実が明らかとなった。特に、居留地に導入された疑似的な私的土壌所有制度や土地資源に対する不安定な権利関係が先住民社会に大きな混乱をもたらしている現実が浮き彫りにされた。また、財産権を支持する機構はカナダ法制度と先住民の慣習や世界観との相克によって二重構造化し、その力関係が時々の歴史環境の中で消長してきた過程が明らかになった。今日では政府資金の分配を基軸としてリルワットとカナダとの関係が規定され、それが依存体質を先住民社会の中に固定化させると同時に「カナダ派」「伝統派」といった内部対立の要因となって自立的発展を阻害していることが明らかとなった。

キーワード：財産権，土地利用，先住民，事例研究，ブリティッシュコロンビア