

NO PERMISSION REQUIRED:

**TITLE AND RIGHTS
IN THE TRADITIONAL TERRITORY
OF THE
KITSUMKALUM INDIAN BAND**

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by

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A Paper Based on both
Original Research and Analysis
and

Existing Research Materials

Provided by

Members of the
Kitsumkalum Indian Band
and the Staff of the
Kitsumkalum Social History Research Project

NB: This report provides an opinion based on ongoing research completed as of October 22, 2014. As additional relevant information may be located in the future, the report may be subject to revision.

"It is clear that Kitsumkalum have had a presence on the coast for close to 150 years, and that several generations of Kitsumkalum have lived, fished and harvested in the Prince Rupert Harbour area."

**- Cory Waters, First Nations Lead for LNG Projects, BC Environmental Office
January 30, 2014**

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...[W]e are put down as slaves and animals on this reservation business - On this account the reserve is no good to us - why not take the name away - take the reserve name away and let us be people- let us be free; that is what we want because God gave us this land to live on.

- *Kitsumkalum Chief Charles Nelson to the Royal Commission on Indian Affairs for BC, September 25, 1915 at Spa Xksuutks/Port Essington*¹

Introduction

Over the course of several decades the Kitsumkalum Indian Band (“Kalum”, KIB, or the First Nation), along with its members and staff, its outside consultants, and its legal counsel, have amassed considerable material that corroborates Kalum’s use and occupation of - and aboriginal title to - its traditional territory.² I have reviewed this already-gathered material and have also sought additional information from other repositories of primary sources, including, for example:

- the Hudson’s Bay Company Archives;
- Library and Archives Canada;
- the National Archives (UK)
- the UK Hydrographic Office
- BC Archives;
- active and archived files held by various federal and provincial government departments (for example: AANDC, BC MOF, etc.); and
- the active work and archived records of various anthropologists, ethnohistorical informants, archaeologists, and missionaries working in the field now or held in various repositories across North America.³

Based on that additional research as well as my own review of the existing material held by Kalum, it is clear that the Kitsumkalum Indian Band enjoys sole exclusive occupation and title over much of its asserted traditional territory. Those areas that are not solely occupied by Kalum also feature exclusive occupation and title that is shared⁴ with other residential communities of the Tsimshian Nation, of which Kalum is an important component.

¹ RCIA Transcript Collection, Nass Agency, SCB Resource Centre, Vancouver.

² I am especially grateful to members of the Kitsumkalum Treaty Office and the Kitsumkalum Social History Research Project (KSHRP) for their patient support with respect to the provision of analysis and materials gathered over the course of their very committed history. The focused work of the KSHRP - and the community’s sponsorship of its staff over many years - is specifically acknowledged. Dr. James McDonald’s relationship with the First Nation and the KSHRP - not to mention his epic output over the course of nearly 35 years - should not just be acknowledged, but celebrated widely; very special thanks to Jim for his insight, his objectivity, his commitment and his dedication.

³ Much appreciation to the staff of Library and Archives Canada as well as BC Archives and the BC Ministry of Forests for the many days they spent tracking down and organizing sources and “lost” records that help support the points made below. Paul Harrison’s provision of archaeological data related to Kalum traditional territory also saved me countless days of work – much thanks to him and Triton Environmental Consultants, as well as Rina Gemeinhardt of Kalum’s Consultation and Referral Office, who put Paul and I in touch.

⁴ See *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010 at para. 158.

This paper is driven by the fact that considerable evidence that supports these claims does not appear to have ever been reviewed by either Canada or BC. For example, in a December 15, 1993 Statement of Intent, the Tsimshian Tribal Council (the TTC) stated that the Tsimshian Nation was:

...2. ...made up of:

(a) the following Tribes of Tsimshian Peoples:

Gidzalaal, Ginaxangiik, Gisp'axlo'ots, Gitandoyks, Gitlan, Gilutsau, Gitwilgyots, Git'andoo, Git'tsiis, Gitga'ata, Kitasoo, Kitkatla, Kitselas, **Kitsumkalum**, Metlakatla.

and

(b) other groups, who have organized into collectives which reflect their understanding of Tsimshian law, custom, and social organization.

3. Tsimshian people are also organized in house groups which consist of the Eagle, Raven, Killer Whale, and Wolf clans.

4. The membership of the Tsimshian Nation is substantially coextensive with the membership of the following seven communities: Hartley Bay, Kitasoo, Kitkatla, Kitselas, **Kitsumkalum**, Lax Kw'alaams, Metlakatla. The First [N]ation, however, does not define its existence or its aboriginal title and rights by reference to the provisions of the *Indian Act*.⁵

A TTC special resolution passed in 1992 indicated that one of the purposes for which the TTC was formed in 1988 included assisting "...all Tsimshian People to advance the recognition of aboriginal title or rights to lands, waters and air which the Tsimshian have occupied and governed since the Tsimshian People were put here by the Creator."⁶ The TTC itself was led at the time by Kalum member Ric Miller, currently the *Sm'oogyet* [Chief] of the Kalum House of Gitxon, while a senior TTC negotiator over the same time frame was Kalum member Gerald Wesley, then and still *Sm'oogyet* of the House of Xpilaxha, and currently one of Kalum's senior Treaty negotiators; both signed the December 1993 TTC Statement on behalf of Kalum and thus the TTC – and, by clear extension, the Tsimshian Nation – saw significant leadership roles occupied by Kalum people at a time when shared Tsimshianic interests were pursued with great vigour. That of course should be no surprise because, as will be detailed below, Kalum is and has been an integral part of the Tsimshian Nation since time immemorial.

Equally interesting for the purposes of this paper is the fact that "Allied Tsimshian Tribes" (ATT, or "nine tribes") leader James Bryant was among the signatories of that December 1993 Statement of Intent. Chief Bryant along with Lax Kw'alaams Chief Gary Reece also signed a September 18, 2002 letter to Stan Ashcroft, the

⁵ TTC to BC Treaty Commission, December 15, 1993 (copy from BC Supreme Court File L021279); emphasis added.

⁶ TTC Special Resolution, courtesy KTO Archive [emphasis added].

solicitor for the Kitselas and Kitsumkalum First Nations, stating that **“We respect the fact the we share parts of our Tribal Territories with the Kitselas and Kitsumkalum Indian Bands, who stand with us together as members of the Tsimshian Nation, and with us at the Treaty Table with the Tsimshian Tribal Council.”**⁷

In the same letter, Chiefs Bryant and Reece went on to confirm that, as authorized by Lax Kw’alaams and the ATT/nine tribes, **“Kitsumkalum and Kitselas have claims of aboriginal title and rights within the areas that are the subject matter of the Petition and the supporting affidavits”**.⁸ The Petition itself defined that “subject matter” as:

Aboriginal title over an area surrounding the lower reaches of the Skeena River, and extending to the ocean, on the North Coast of British Columbia in the vicinity of the municipalities of Prince Rupert and Terrace, and as specifically set out in the map attached hereto as Appendix A...⁹

Although the map referred to is missing from the Petition, it is likely the same ATT/nine tribes’ “Traditional Territories Provisional Draft Map” that appears as Appendix A to several affidavits found in the BCSC file containing the Petition itself (BCSC No. L0212179). These territories do indeed overlap with areas over which, as Chiefs Bryant and Reece confirmed, Kalum shares title and rights. However, recent actions by LKIB and MIB appear to be eliding Kalum interests despite the fact that, in addition to its interests in common areas characterized by shared title, Kalum (or its houses) also holds title and rights over specific locations within those shared areas.

In other words, Kitsumkalum’s shared exclusive title in the Tsimshianic context includes exclusive title and rights of use and occupation to specific sites on lands the remainder of which are held by the Tsimshian Nation. This will be explained in detail below, but for now note that shared exclusive title in the Tsimshianic context also includes rights of access and travel to and over those areas exclusively held by the Tsimshian Nation and regarded by its various *galts’ap* ((residential communities) including Kalum) as shared or held in common – marine, harvest and trading routes, for example, which are akin to highways connecting the Nation’s various *galts’ap* (like Kalum) and the exclusively held *laxyuup* (territories) of its various *Wuwaap* (traditional houses).

These routes allowed the various Tsimshian communities, including Kalum, to trade its resources with both fellow Tsimshian members as well as explorers and temporary traders – and eventually permanent settlers – from the outside world.

⁷ Letter from Lax Kw’alaams Indian Band and ATT to Stan Ashcroft, September 18, 2002 (copy from Stan Ashcroft); emphasis added.

⁸ *Ibid.*; emphasis added.

⁹ *Lax Kw’alaams Indian Band, Metlakatla Indian Band and the ATT Association [nine tribes] v. The [BC] Minister of Forests, AGBC, and Skeena Cellulose*, Petition to the Court (BCSC, No. L0212179); emphasis added.

In other words, the areas of shared exclusive title allowed Kalum people to travel freely and without permission to lands over which Kalum people exercised sole and exclusive title – an important feature for a community whose main residential areas were both inland and on the coast.

The Seasonal Round

During a December 16, 1915 interview with the Royal Commission on Indian Affairs for the Province of British Columbia (RCIA), Indian Agent Perry provided the following information in response to the Commission's inquiry:

- Q. Do all the Indians of the Kitsumkalum Band live on the Port Essington reserve?
- A. Now they come and go between Kitsumkalum and Port Essington.
- Q. Port Essington is their home village?
- A. Yes - the same might be said of Kitsumkalum.¹⁰

As part of its seasonal round, Kalum harvested (and still harvests) various resources from specific coastal and island lands that lie beyond those residential areas. In his December 16, 1915 RCIA interview, for example, Indian Agent Perry was asked about prospects for agriculture in the Indian Agency to which Kalum belonged (the Nass Agency), stating that agriculture was “very poor” for reasons including the seasonal round itself. As Perry explained: “..there is a cycle of seasons for the Indians; that is in the early spring they are taking herring, halibut and oolichans; that season is followed by putting in small gardens, then the salmon fishing, the picking berries, and they strip trees and things like that in different seasons of the year...”¹¹

Agriculture, it was suggested almost 100 years ago, was not going to fare well in the traditional territories of the Tsimshian Nation – and it still has not been a focus of its various *galts'ap* (including Kalum) because – climate aside - the seasonal round is still alive and well. Indeed, the catalogue of Kalum sites and attendant evidence below bears out the fact that the seasonal round has continued for Kalum people as it has since time immemorial; the title and rights attached to the locations that are detailed below are essentially co-terminous with that lifeway despite the interruptions at sites like Casey Point, where Railway and industrial development has made access and use exceedingly difficult.

But not impossible.

¹⁰ The same could have also been said of Casey Point, but the village there had been obliterated circa 1909 by railway construction – a fact corroborated by recent archaeological work undertaken by Millenia Research that is discussed in detail below. For the RCIA testimony, please see <http://gsdl.ubcic.bc.ca/collect/royalcom/import/nassedithtmlsection.htm> at 199.

¹¹ *Ibid.*, beginning at 186.