Citizen Artist News: Clouded Title

examining Indigenous and non-Indigenous perspectives | spring edition: 2018 | citizenartist.org.uk

Reconsidering place: thinking through notions of 'ownership' in the Douglas Treaty

This newspaper is an invitation to enter into an experiment – a thought experiment – to explore the different orientations of settler and indigenous conceptions of inhabiting 'land'. It is focused on a local example and takes as its starting point an examination of the notion of 'ownership' in the context of the Douglas Treaty and contrasts this with a W̱SÁNEĆ (Saanich) Nation creation story, as a way of illuminating some of the complexities of differing conceptions of place that in turn, frame relations between communities.

Since 2013 (when I returned to Canada), I have witnessed non-Indigenous Canadians endeavouring to understand the complexities of their own reality as inhabitants of indigenous lands. In light of the publication of the *Final Report: Truth and Reconciliation Commission of Canada*, it has also become increasingly evident that colonialism persists and sustains fictions of entitlement and possession. Who we are as 'Canadians' and how we behave as a 'community' is deeply entangled with western (British colonial) ideas of ourselves as 'owners'. Happily though, there is growing awareness on the island that Pender is within the traditional territory of W̱SÁNEĆ people and this has led to grass roots activities such as a Reading Circle, the erection of a monument on South Pender and some celebratory social events, the latter two in collaboration with primarily members of the SȾÁ,UT (Tsawout) Nation. These are heartening examples and it is hoped that this publication will help to further enrich discussions of the implications of one's occupancy of the island, in the context of the treaty, by providing a point of entry to the complications of this intellectual and material terrain.

As a proviso, this publication does not represent the W̱SÁNEĆ Nation nor residents of Pender Island. It speaks for neither community. Instead, it is an assemblage of published material from WSÁNEĆ and other indigenous and non-indigenous writers, accompanied by sections of commentary intended to draw out some of the intricacies of the language of the treaty, to illustrate (and examine) differing notions and practices of 'ownership'. Readers will find that there is no singular explanation and barring some suggestions, no solutions to its problems are posed. To expect answers or directives is to miss the point of the publication. The aim is to evaluate the implications of living on lands that are clouded in title.

I am immensely grateful to Earl Claxton Jr (SȾÁ,UTW̱ Nation) for his gracious conversation, patience and guidance in discussing this material. I would also like to thank Emily Artinian of Street/Road Artists Space for her enthusiasm, stimulating conversations and commitment and with whom this project forms part of a larger collaborative art and research project called 'Clouded Title'. I also thank Robb Zuk for his kind and generous help in the preparation of this document. I follow the example of authors such the late Dave Elliot Sr. (W̱JOLEL̵P Nation), Robert YELḴÁTŦE Clifford (SȾÁ,UTW̱ Nation) and Raymond Frogner in the use of SENĆOŦEN spellings (pronounced Sun-cho-thun) i.e., the W̱SÁNEĆ language. The material presented relies on quotes from assembled literature and responsibility for any errors is entirely my own.

Fawn Daphne Plessner
S,DÁYES/Pender Island

Introduction to what's at issue:

It is widely assumed that Pender Island was 'purchased' from First Nations under the Douglas Treaty. It is also currently understood that "the Tsawout, Tsartlip, Pauquachin and Tseycum First Nations […] have land and harvesting rights to Pender under the 1852 Douglas Treaty" (Pender Islands Museum, n.d.). Equally, it is known that "there is an Indian reserve at Hay Point on South Pender Island, which is home to members of the Tsawout and Tseycum First Nations. Carbon dating of artifacts in shell middens near Belden Cove identify an Indian village site that has been more or less continuously inhabited for five millennia. The Poets Cove Resort was built on an ancient First Nations village site" (Wikipedia, n.d.). However, cutting across these claims is "the provincial government's 2007 settlement with the Tsawwassen First Nation [that] includes hunting and fishing rights on and around Pender Island—an arrangement to which the Sencot'en Alliance objected, saying those rights are theirs under the 1852 Douglas Treaty" (Wikipedia, n.d.). Also, it has been said that "The Saanich people have never surrendered title to the Gulf Islands and we also feel that our territory expands across the U.S.A. border" (Claxton, 2007). That is, most of the W̱SÁNEĆ traditional territory has never been ceded. But what exactly does all of this mean? What is the Douglas Treaty and how is it to be interpreted given that it is a document that embodies scarred histories, disputed claims and differing world views?

To date, there is little public awareness of what the Douglas Treaty is and there is no comprehensive or thoughtful public discussion in the Media, let alone evidence of a lived appreciation of one's individual role in its enactment. By its very nature, a treaty imparts responsibilities and duties to the other party -- and *not* just at a governmental level -- but there is no transparent understanding of one's obligations in this relationship with the W̱SÁNEĆ people. Nor is there any public knowledge of the experiences and perspectives of the W̱SÁNEĆ Nation in the history of the treaty's making. The pervasive silence that surrounds this topic sustains public ignorance of the important details that bear on our economic, social, political, environmental and ethical responsibilities in this relationship.

The following discussion therefore is an introduction to how 'land' and 'ownership' are differently regarded as evidenced in published commentaries on the Douglas Treaty and a W̱SÁNEĆ creation story. What follows is not a complete exposition. Instead, this newspaper aims to simply draw out some dimensions of the treaty that frame and indeed, underpin understandings of belonging and claims to 'ownership' by contrasting it with a discussion of relationality in W̱SÁNEĆ cosmology and culture. As islanders, we are bound together in a relationship with the SȾÁ,UTW̱ (Tsawout), W̱JOLEL̵P (Tsartlip), BOḴEĆEN (Pauquachin) and W̱SIḴEM (Tseycum) First Nations bands in virtue of our presence on their territory and under treaty. That is to say, as residents we live here *with* members of the W̱SÁNEĆ Nation even though our colonial history has created the conditions of an apartheid. It is my hope therefore that the following exposition provides a starting point for the recognition of the deeper, more nuanced, W̱SÁNEĆ perspectives on claims to place as illustrated in the literature and the importance of interrogating the persistent British colonial assumptions about inhabiting these lands.

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The Douglas Treaty(1)

Know all men,(2) that we the chiefs and people of the Saanich Tribe, who have signed our names (3) and made our marks to this deed on the eleventh day of February, one thousand eight hundred and fifty-two, do consent to surrender, entirely and for ever (4), to James Douglas (5), the agent of the Hudson's Bay Company in Vancouver Island, that is to say, for the Governor, Deputy Governor, and Committee of the same (6), the whole of the lands situated and lying as follows, viz: - commencing at Cowichan Head and following the coast of the Canal de Haro North-west nearly to Saanich Point, or Qua-na-sung; from thence following the course of the Saanich Arm to the point where it terminates; and form thence by a straight line across country to said Cowichan Head, the point of commencement, so as to include all the country and lands, with the exceptions hereafter named, within those boundaries (7).

The conditions of our understanding of this sale (8) is this, that our village sites and enclosed fields (9) are to be kept for our own use, for the use of our children (10), and for those who may follow after us and the land shall be properly surveyed hereafter (11). It is understood, however, that the land itself, with these small exceptions, becomes the entire property of the white people (12) for ever; it is also understood that we are at liberty to hunt over the unoccupied lands (13), and to carry on our fisheries as formerly (14).

We have received, as payment [amount not stated] (15)

(Signed)
Hotutstun his X mark and 117 others. (16)

Witness to signatures, (signed) (17)
Joseph William McKay, Clerk H.B. Co's service
Richd. Golledge, Clerk

Source: Government of Canada, Indigenous and Northern Affairs (n.d.) *Treaty Texts: Douglas Treaties.* Papers Connect with the Indian Land Question, 1850-1875, Victoria, R. Wolfenden, 1875.

The image of the mountie and Chief Sitting Eagle (of Stoney Nakoda Nation, Alberta) shaking hands is from a popular tourist postcard published in 1955. The staged handshake suggests good relations and clemency between the state and indigenous peoples by focusing on the popular (Modern European) practice of shaking hands following promises, settlements or contractual arrangements, in addition to being a formal symbol of trust. This propagandistic image is a salutary reminder of how pictures of a benificent Canada have circulated within the country and abroad during moments of extensive state violence toward indigneous peoples. The description on the back of the postcard is strikingly ironic and exposes the publisher's efforts to historicize relations between settler and First Nations in its glossed celebration of Canada.The legend on the back of the original postcard reads: "Mountie and Indian Chief -- Here indeed are symbols of Canada's glorious past. A Mountie, resplendant in his famed 'scarlet', greets Chief Sitting Eagle, one of Canada's most colourful Indians."
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W̱SÁNEĆ covenant with XÁLS(1)

A long time ago when the Creator, XÁLS, walked the Earth, there were no islands in the W̱SÁNEĆ territory. The islands that are there today were human beings (our ancestors). At this time XÁLS walked among the W̱SÁNEĆ People, showing them the proper way to live. In doing this he took a bunch of the W̱SÁNEĆ People and threw them back into the ocean. Each of the persons thrown into the ocean became the islands there today. Each of those islands were given a particular name that reflects the manner in which they landed, their characteristics or appearance, or the significance they have to the W̱SÁNEĆ People. "James Island" was named LEL,TOS, meaning "Splashed in the Face." LEL,TOS reflects the way the island landed in the ocean. The southeast face of LEL,TOS is worn by the wind and the tide.

After throwing the W̱SÁNEĆ People into the ocean, XÁLS turned to speak to the islands and said: "Look after your relatives, the W̱SÁNEĆ People". XÁLS then turned to the W̱SÁNEĆ People and said: "You will also look after your 'Relatives of the Deep'". This is what XÁLS asked us in return for the care of our 'Relatives of the Deep' [who] provide for us. (2)

Source: Robert YELKÁTTE Clifford (2016) 'W̱SÁNEĆ Legal Theory and the Fuel Spill at SELEKTEL (Goldstream River)', *McGill Law Journal*, 61:4.

Notes: **The Douglas Treaty**/North Saanich

1) There are 14 treaties that apply to indigenous and non-indigenous communities on Vancouver Island that were formulated by James Douglas between 1850 and 1854. The North Saanich Treaty is specific to one small part of the (northern) territory of the W̱SÁNEĆ (Saanich) Nation, home to four bands: the SȾÁ,UTW̱ (Tsawout), W̱JOŁEŁṈP (Tsartlip), BOḰEĆEN (Pauquachin) and W̱SIḴEM (Tseycum) First Nations (Clifford, 2016). It pertains to residents of Pender Island who live within W̱SÁNEĆ traditional territory. The History Department at the University of Victoria has compiled an online database with information about the treaties called *The Governor's Letters*. The following is an excerpt from one of their documents that offers some context: "In the 1840s, Vancouver Island was home to thousands of First Nations peoples belonging to Nuuchah'nulth, Coast Salish and Kwakwaka'wakw speaking groups (an 1856 census counted 33,873 Indigenous people on Vancouver Island). In 1843, the Hudson's Bay fur trading company established a trading post at Fort Victoria in the territory of the Lekwungen Coast Salish-speaking people. By 1846, Britain and the United States agreed to divide the territories west of the Rocky Mountains, so that the United States controlled the area south of the 49th parallel and Britain controlled the area north of this border, including Vancouver Island. To maintain its hold on the territory and have continued access to the Pacific Ocean for trade routes, the British Colonial Office created a colony on Vancouver Island in 1849. Colonial powers like Britain believed that if they could settle enough of their own citizens permanently in Indigenous territories, they could claim these territories as their own. Britain allowed the Hudson's Bay Company to manage the Colony of Vancouver Island and agreed to let the company have exclusive rights for the next ten years. In exchange, the company agreed to colonize the island with British settlers. Before the Hudson's Bay Company could sell the land to settlers, it first had to 'purchase' (my quotes) the land from its original owners, the Indigenous people. […] Between 1850 -1854, James Douglas signed treaties with fourteen communities on Vancouver Island" (The Governor's Letters, n.d.). On the Tsawout Nation webpage, further clarification about W̱SÁNEĆ territory is described as follows: "The Saanich peoples' territory includes the Saanich Peninsula, south to Mount Douglas, across to Mount Finlayson and Goldstream. In addition, the Southern Gulf Islands, reaching to Point Roberts, and San Juan Islands constituted what is the Saanich Peoples traditional territory. The Tsawout and Saanich people's traditional territory is the lands and seas that we traditionally used throughout every season" (Tsawout Nation, n.d., n.p.).

2) 'Know all men': This clause frames the Crown's (alleged) 'legal' claim of appropriated lands in the context of the Imperial laws of the Doctrine of Discovery. To clarify: the author of the *act* and the author of the *document* is the British Crown. The writer is James Douglas. The addressee of the *act* is James Douglas in his capacity as "agent of the H.B.C. and the addressee of the *document* is '…all men' (Frogner, 2010, p.61). The following cites aspects of Raymond Frogner's discussion of the North Saanich Treaty: The "clause begins the treaty with an assertion of sovereignty directed at both domestic and international audiences. These abstract audiences are meant to bear witness to Crown sovereignty and must therefore acknowledge the European concept of an imperial legal forum. [As applied here, u]sed to enter this forum, and incorporate native signatories, is an invocation of natural law. […] 'All men' brings Aboriginal peoples into the jurisdiction of international law where unique cultural orders [i.e., the laws of the W̱SÁNEĆ, are made to be] susceptible to common [law] rules of land title and governance. But incorporating Aboriginal peoples into the legal domain of international law is not the same thing as recognizing their rights. Within the interpretative framework of English common law, land title and possession demanded evidence of settlement and improvement. By this standard, the Colonial Office recognized that the Aboriginal peoples of Vancouver Island […] held an […] inchoate form of "qualified Dominium" (p.62). However, the claim to ownership of underlying title, within the exploits of the Crown, is declared without "direct reference to the original possessors of the land. The notification at once declares the document's addressee [the W̱SÁNEĆ] and asserts English sovereignty [over the 'ownership' of lands. And at the same time it codifies] settlement for colonial land acquisition" (p.63) and erases recognition of W̱SÁNEĆ law within the international forum. The problem of the Crown's claim to ownership is discussed further below (see note 4 and 13).

3) '…signed our names': Unsurprisingly, there are conflicting accounts of the Treaty's origins, intentions and formulation. Contrary to popular belief, the Treaty is not a straightforward contract of sale of land to the then Hudson Bay Company and the British Crown. Following the murder by James Douglas's men of a young messenger boy from Tsawout Nation (Claxton, 2017), in addition to the felling and theft of trees in Cadboro Bay in Songhees territory (Elliott, 1990), the Treaty was understood by the W̱SÁNEĆ as a *Peace Treaty* (Claxton, 2017; Elliott,1990; Sources of the Douglas Treaties, n.d. see #10, #13, #14, #16). As Hamar Foster states, "The oral tradition of the Saanich people who signed two of Douglas's [blank] sheets of paper is that, whatever may be said or written at the time they believed that the document was a peace treaty. There had been trouble over logging and over the shooting of a young Indian lad, and when Douglas produced piles of blankets and asked them to put 'X's' on a piece of paper, they thought they were being asked, under sign of the Christian cross, to accept compensation for not making war" (Sources of the Douglas Treaties, n.d. see #10 and #14). That is, as compensation for harm done and to put an end to further infractions by Douglas and his men. To clarify, as indicated above, the W̱SÁNEĆ were asked to sign a blank piece of paper and the text was added after members of the W̱SÁNEĆ had been required to mark an X (Claxton, 2017; Sources of the Douglas Treaties, n.d. see #9).

The signing of the treaty was further complicated by the fact that "in 1850 few Hudson's Bay Company employees understood the Salish language and few local indigenous people understood or read English" (Governor's Letters, n.d., p.1; Elliott,1990; Sources of the Douglas Treaties, n.d. see #10 - #14). It is also controversial as to whether or not the names and X's were written by members of the W̱SÁNEĆ. Earl Claxton describes the handwriting of both the text of the treaty and the X marks as belonging to McKay (Claxton, 2017). The late Dave Elliott Sr. (an Elder of Tsartlip Nation) is documented as saying "Look at the X's yourself and you'll see they're all alike, probably written by the same hand. They actually didn't know those were their names and many of those names are not even accurate. They are not known to Saanich People. Our people were hardly able to talk English at that time and who could understand our language?" (Sources of the Douglas Treaties, n.d. see #16). The confusion over names suggest that there were also people present who might have been extended kin of those assembled or some other network of people who may have been invited to witness events, but who have yet to be identified (Claxton, 2017). Raymond Frogner notes that "some W̱SÁNEĆ spoke Chinook, the local native trading language on the west coast, as did J.W.MacKay, HBC secretary to Douglas and signing witness on the document. Douglas also knew some Chinook. However, none of the HBC representatives knew SENĆOŦEN [the language of the W̱SÁNEĆ]. And Chinook, a jargon developed for itinerant trade, *does not possess the vocabulary for land sale*" (my italics, Frogner, 2010, p65). The subsequent addition of the main body of text and proper names evidences the wide gap in (mis)communication between the parties but "despite these communication difficulties, interpreters did help Douglas explain the treaties to Aboriginal groups" (Governor's Letters, n.d., n.p.) and it is understood among the W̱SÁNEĆ that their ancestors, Douglas and his men had assembled at Cordova Bay to conduct negotiations (Claxton, 2017). However, it is obvious that the viewpoint of the W̱SÁNEĆ was not captured in the text of the treaty.

The key point here isn't what is inscribed in the treaty's text – i.e., if one reads it literally. What is important is noticing what has been left out, namely the account of the W̱SÁNEĆ and their reasons for entering into discussions with Douglas. This is where we see the magnitude of colonial practices and indeed, its violence (remembering too that during this period of contact, Victoria was a militarized Fort and there had been instances of military bombardments of First Nations villages on the Coast) (Elliot, 1990, pp.63-65). As J.R. Miller points out, "The fundamental problem in interpreting the treaties is that the two main parties, government and First Nations, have different understandings of what treaties did and what they represent. The national government has tended to take the position that these treaties are merely contracts by which […] First Nations surrendered title to lands in return for compensation such as annuities, reserves, assistance with farming, and other, more specific benefits" (2007, p.28).

Miller continues, "[m]oreover, Canada until very recently has insisted that the written version of the treaties, which its treaty commissioners and bureaucrats had drawn up, of course, were the sole and complete account of what had been agreed. Consequently, the government has usually refused to interpret treaty commitments as anything other than the literal words of its version of the treaty. So, for example, if a treaty said that members of the First Nation that signed it in the 1870s are each entitled every year to five dollars, then that is what they get in the early twenty-first century. […] In short, the federal government has generally interpreted and applied treaties as contracts, reading them in strict literal fashion. For the First Nations, this reading is a perversion of what the agreements were about. […They] take the position that the treaties were not just contracts, and disagree that the full meaning of the treaties is found in the government's published version. [… Instead,] First Nations approached treaty making in search of connection with the incoming people and the crown. They were looking for *assurances of friendship and future support* that would guarantee their survival [and no doubt protection from the tacit and real threat of violence of HBC's militarized forts]. For them, the meaning of the treaties is found in the *relationship* established rather than any specific clause, and the overall significance of treaties to them is that *they were promised help to live well*" (my italics, Miller, 2007, p.28). However, despite the elisions and biases within the text of the Douglas Treaty, it has not been dismissed or rejected outright by the W̱SÁNEĆ or, indeed, the Canadian Courts. It has been enacted in the courts with regard to W̱SÁNEĆ rights to hunting and fishing (see note 14, Claxton v. Saanichton Marina Ltd. and the Queen,1989; Regina v. Bartleman, 1984; Regina v. Morris, 2006; Jack and Charlie v. the Queen, 1985). The Treaty is a document that embodies the rights and title of the W̱SÁNEĆ to their traditional territory. Indeed, there is much work yet to be done to honour and abide by the spirit of its claims such as, and not limited to, furnishing compensations due to the W̱SÁNEĆ for the use of their lands (see note 9 below for further discussion of this last point).

4) The claim that the W̱SÁNEĆ 'consented to surrender, entirely and forever…the whole of the lands' is, on a positive note, an acknowledgement of the implicit rights and title of the W̱SÁNEĆ – i.e., to ask for consent is to first recognize that there is a prior right and title. However, the claim that the W̱SÁNEĆ 'surrendered' their lands is implausible for many reasons including the following: in addition to their believing that they were signing a peace treaty (see note 2), the agreement then pivoted on an understanding that Douglas and the settlers could use part of the W̱SÁNEĆ territory (grasslands on the Saanich peninsula) to grow some crops and that in return, the W̱SÁNEĆ would be paid an annual rent for the use of this land. It was not expected that Douglas and other British settlers would remain in the territory. As Chief David Latasse had pointed out in 1934, "In return for the use of meadow and open prairie tracts of Saanich, the white people would pay the Tribal chieftains a fee in blankets and goods. That was understood by us to be payable each year. It was so explained to us by Joseph McKay, the interpreter for Governor Douglas. The governor [Douglas] himself solemnly assured us that all asked to be ratified would be entirely to the satisfaction of the Indians. He also stated that the only object of the writing [i.e., the signatures] was to assure the Hudson's Bay Company peaceful and continued use of land tracts suitable for cultivation. That was accompanied by [a] gift of a few blankets. We all understood that similar gifts would be made each year, what is now called rent" (Sources of the Douglas Treaty, #6). Also included in the payment at the time were a row of rifles that encircled the pile of blankets (Claxton, 2017).

The language of 'surrender' is a one-sided, asymmetrical claim that exposes the interests of the Hudson Bay Company and the emergent corporate colonial state. The Treaty does not evidence the negotiations or discussions, nor does it reflect an understanding of the W̱SÁNEĆ as *equal* parties to the agreement. This is relevant to present day colonial practices. In an effort to smooth over the evident occupation and exploitation of remaining unceded territories, the government of B.C. has solicited First Nations to enter into treaty negotiations since the 1990s. Arthur Manuel describes the processes of the British Columbia Treaty Commission as perpetuating the skewed assumption of entitlement that favours the interests of the settler state. As he says, "The terms of the negotiations […are not] under Section 35 of the Constitution, under which Aboriginal rights would be recognized and affirmed at the beginning of the negotiations. Instead, [the treaty process is] carried out under the revised Comprehensive Claims policy, which the Mulroney government brought out in 1986. It stated that negotiation would take place under Section 91(24) of the BNA Act [British North America Act], where the federal government had sole jurisdiction over "Indians, and Lands reserved for the Indians." […] The Aboriginal Lands under negotiation [are] defined as lands "held by, or on behalf of, an Aboriginal group under conditions where they would constitute 'lands reserved for the Indians' under Section 91(24) of the *Constitution Act, 1867*." (Manuel, 2015, p.90). In other words, the implicit rights and title of First Nations are not properly recognized at any point in the process and the 'negotiation' then is not dissimilar in principle to the actions of the early colonial government under Douglas. As Taiaiake Alfred says, questions of "indigenous land ownership or questions of the state's claims to ownership or jurisdictional legitimacy" are omitted from the very start (Alfred, 2005, p.111) (see also note 13).

5) James Douglas: James Douglas was born in the West Indies to a Scotsman called John Douglas and a Creole woman, whose name is not certain, but was possibly "Miss Ritchie" (Ormsby,1972). The couple had three children, James being the second born. Douglas's father and three of his uncles (one of whom was Lieutenant-General Sir Neill Douglas, Commander-in-Chief, Scotland) were merchants in Glasgow and held interests in sugar plantations in British Guiana. "Placed at an early age in a preparatory school in Scotland, James Douglas learned "to fight [his] own way with all sorts of boys, and to get on by dint of whip and spur." He received a good education at Lanark, and probably further training from a French Huguenot tutor at Chester, England" (Ormsby,1972, n.p.). At 16 years of age he apprenticed with the North West Company, a competitor of the Hudson's Bay Company. When the two companies combined, Douglas entered the Hudson's Bay Company as a second-class clerk. He excelled at his work and was quickly promoted to take charge of a succession of Forts (Fort Vermilion, Fort St. James, Fort Connolly, Fort Vancouver et al.) to bolster trading and supply routes to HBC's outposts throughout indigenous territories in the West. In 1839, Douglas was promoted to Chief Factor. He actively negotiated trade boundaries with competitors such as the Russians in Sitka territory and with the Americans. The latter resulting in the division of W̱SÁNEĆ territory by the national border between the British colonial state and the USA in the formation of the 49th parallel in 1846. "In 1849, Douglas moved the HBC's headquarters, shipping depot and provisioning centre from Columbia to Fort Victoria in 1851" (Ormsby,1972, n.p.). He was appointed Governor and Vice Admiral of

Vancouver and its dependency by the British Crown. In 1858, on conversion of what was the territory of New Caledonia into the crown colony of British Columbia, Douglas became Governor of British Columbia and remained so until 1864, after which he lived in Victoria with his family. His temperament had been described as "'furiously violent when aroused' [so much so that] the Indians had taken an inveterate dislike to him" (Ormsby,1972, n.p.). Also, his colleagues came to complain of his manner saying that Douglas was "always personally vain and ambitious of late years. His advancement to the prominent position he now fills, has, I [Sir George Simpson] understand, rendered him imperious in his bearing towards his colleagues and subordinates – assuming the Governor not only in tone but issuing orders which no one is allowed to question" (Ormsby,1972, n.p.).

6) '… agent of the Hudson's Bay Company in Vancouver Island, that is to say, for the Governor, Deputy Governor, and Committee of the same': Douglas occupied a range of roles that are strikingly conflictual and self-serving; not only did he act as head trader and then chief factor for the Hudson's Bay Company -- a private corporation that controlled (fur) trade across Canada -- but his position as a business man became conflated with his political role as Governor and (head of a military as) Vice Admiral of Vancouver and its dependency, where he was responsible for administering and policing the colony on behalf of the British Crown. The combination of corporate control and exploitation of resources, private gain and political privilege, was a model for the political, social and cultural mindset of the emergent state. Access to the wealth of these lands was also policed, staging contemporary inequalities that persist to this day. As the gold rush began to escalate, mining regulations were drawn up by Douglas, in his role as Chief Factor of the HBC, that included a ban on settlement by white men *not* of British ethnicity. And as Governor, there was a deliberate policy of privileging settlers from the British Isles and a concerted effort to encourage those of primarily Scots, English and Welsh ethnicity to immigrate and 'purchase' land for farming. All of this was done in contravention of the Treaty and its stated claim to honour "unoccupied lands" reserved for fishing and hunting (see note 13 below for further discussion). None of the wealth generated from these exploits was shared with the W̱SÁNEĆ either. "After his authority had been confirmed in August he vested title to land in the crown. [Land] was opened to [non-British] settlement slowly, and, in the hope of attracting more British immigrants, it was priced low. Only British subjects could purchase land, but all those who applied for naturalization could obtain it" (Ormsby,1972, n.p.). It is important to note that eligibility for naturalization, and in turn, access to 'owning' land, was restricted to only some ethnicities. For example, it wasn't until 1947 when Chinese, Japanese and those from the Indian continent, who were *born in Canada*, could apply to become naturalized (The Chinese Experience in British Columbia, n.d.; see also note 11 below for further information). The aggressive grab for resources and land, serviced by the establishment of a political administration to bolster the private advantages of the early British 'Canadians' had not gone unnoticed by the British Parliament. The intention to keep the whole trade of the country for "the HBCo's people as far as possible was […challenged by a colonial secretary in London (Sir Edward Bulwer-Lytton]. He reprimanded Douglas, then took steps to terminate the [HBC's] rights and to open the Pacific slope to [further] settlement. [The Crown clearly wanted a controlling interest in the land and the extracted wealth]. On 2 Aug. 1858, [six years after the signing of the Treaty with the W̱SÁNEĆ, the British] parliament converted the territory of New Caledonia into the crown colony of British Columbia. […The] two interests Douglas represented had become antagonistic, and although there would be general regret at his quitting his old concern [the HBC], his 'ostentatious style of living' as Governor and his liberality in entertaining all comers had been saddled on the fur trade 'whose interests benefitted very little by it'" (Ormsby,1972, n.p.). Divested of his commission and supposedly of his interests in the HBC, James Douglas took the oath of office as Governor of British Columbia at Fort Langley on 19 Nov. 1858. However, he was subsequently found to be appropriating funds from the HBC and within 6 months, the HBC "was pressing its own claims [against Douglas] for compensation for expenditures in the colony of Vancouver Island […]. Instances had been found when 'fur trade' funds had been used for colonial purposes. In addition, £17,000 had been taken from the fur trade account in 1858 'under the pressure of the moment' to buy provisions for the miners flocking into British Columbia. [… Douglas had made] use of the authority with which he [was] invested for the promotion of his private interests and the benefit of his family and retainers" (Ormsby,1972, n.p.).

However, Douglas's private exploits did not affect his career within the unfolding colonial project. HBC's network of trading posts formed a nucleus for the policing and 'management' of the new province. From these early moments of the state, the exploitation of these lands by corporations and private individuals was (and continues to be) entwined with legislation and policing. As early as 1863, the International Financial Society (a group of London bankers) purchased a controlling interest in the HBC (capitalizing it at £2,000,000) (Canadian Encyclopedia, n.d.). Their focus was on real-estate speculation and advocating for the occupation of lands by British settlers and laid the foundation for further British controlled land investment corporations such as the British Columbia Land and Investment Agency, Ltd (1868 -1964). In 1926, HBC co-founded the Hudson's Bay Oil and Gas company (HBOG). From 1973-79, HBOG owned 35% of Siebens Oil and Gas. In 1980, HBOG bought a controlling interest in Roxy Petroleum and in 1982, HBOG was sold to Dome Petroleum (Canadian Encyclopedia, n.d.).

During Douglas's employment in the HBC and afterward in his role as Governor, he amassed considerable personal wealth from the fees he received as a chief trader and factor and later in the appropriation of lands as Governor. "As chief trader he had earned 1/85 of the company's net profits, about £400 annually. As chief factor he was entitled to 2/85. By the spring of 1850 he had accumulated savings of nearly £5000" (Ormsby,1972, n.p.). This is a labour earnings equivalent of approximately $149,000.00 in 2018, but with the *economic power* of approximately $3,856,000.00 in 2018 (Wellman, 2017; Economic Calculator, 2018; Historical Statistics, n.d.). As a comparison, an acre of farmland within the United States was valued at $13.51 per acre in 1850 (Farms and Farm Property, n.d., p.33). In December 1851, Douglas commenced "the 'purchase' of land […] as an investment. To 12 acres he acquired adjacent to the fort [Victoria], he soon added other properties: at Esquimalt, 418 acres in 1852, 247 acres in 1855, and 240 acres in 1858. At Metchosin he bought 319 acres. His most valuable properties were at Victoria – Fairfield Farm and a large holding at James Bay adjoining the government reserve" (my quotes, Ormsby,1972, n.p.).

7) 'lands situated and lying as follows … within those boundaries': The Treaty relies on a cartography of 'straight lines' drawn between sites and points and assumes that the resulting domain (a flat topographical measurement of space) is a coherent and valid way to define territory. It also renders invisible W̱SÁNEĆ conceptions of and approaches to the organisation of place and in turn, to 'ownership' of lands. The Western system of measurement of a territory in terms of points, lines and planes that define the boundaries of a terrain as evidenced in the Douglas Treaty has its history in the cartographic practices of Europe and the Middle East and is at odds with the complex territorial activities and the sophisticated organizational practices of the W̱SÁNEĆ. W̱SÁNEĆ authors (Elliott, 1990; Paul, 1995) point out that traditional territorial areas of a nation included the range of people's *movement* through their lands in the change of seasons and the use and sharing of harvesting, fishing and hunting sites that are contingent on kinship *relations* within and across communities with access being brokered through a system of cultural and political protocols (e.g., asking permissions to enter a territory and/or use of a harvesting site etc.). Importantly, it is not that boundaries do not exist within W̱SÁNEĆ territory per se. On the contrary, they just are not conceptualized as fixed, polygonal and discrete, patches of land. Instead, "people and places are constituted within a complex field of social relations [… including] permeable boundaries or paths and itineraries, structured not to physically impede movement or exclude others, but to provide for the social interaction of different social groups within common places. [… Boundaries then,] are physically located discourses of kin, sharing and travel. [… They] are more like 'sign posts than fences, comprising part of a system of practical communication rather than social control'" (Thom, 2009, p. 181).

Equally important is that "'First Ancestors' and other powerful beings are inscribed in the landscape through legends that describe the creation of the landscape's features by the mythic acts of a powerful Transformer (sometimes glossed in English […] as the Creator) and through the powers of these ancestors and other beings of the spirit world that continue to be recalled and experienced in these places. People may encounter these ancestral figures through the spiritual and ritual practices that take them into the land for spirit encounters. *Relations with these ancestral figures requires reciprocity, sharing and respect for other persons, both human and non-human, who are associated with place. They reinforce kin-based property relations, when the land at once belongs to the ancestors who dwell there, and to those living today who encounter the ancestors.* The kin-based properties in this land-tenure system map out on the land in complex, multi-faceted ways. Not every named place is owned by kin groups. Ancestors may be associated with lands in numerous locations and individuals associating with these ancestors may enjoy property rights in a number of places. These associations with ancestors reveal a network of places in the region that an individual may access by virtue of their genealogy" (my italics, Thom, 2009, p.185-186). W̱SÁNEĆ approaches to territory then, is layered and braided together through family kinships, cultural and religious histories and connections to specific locations (not necessarily contiguous) that in turn, constitute the social, spiritual, economic, geographic and political network that these relations entail. James Douglas's inability and no doubt, unwillingness, to recognize the nuanced system of W̱SÁNEĆ culture and claims to place in his delineation of territory (Government of Canada, n.d., p.3), and the imposition of 'boundaries' in tandem with the creation of the Canadian and United States border, severed families and flattened and restricted W̱SÁNEĆ lands to 'reservations'. Colonial mappings as outlined in the Douglas Treaty ignored the important role that mobility and human (and non-human) relations play in shaping claims to place. Paradoxically too, the western system of mapping of First Nation's territories is currently being relied upon by those engaged in the British Columbia Treaty Process that further undermines the land tenure system based on kin, culture, religion, a sharing economy and mobility (see Thom, 2009, for further discussion). Colonial practices of mapping discrete boundaries of a territory that, in turn, undermine the deep history of indigenous protocols and relationships in the region has deep consequences for First Nations and indeed, for ourselves as residents on the islands (see also note 13 and 14).

8) 'The conditions of our understanding of this sale': As mentioned above (note 4), the claim that the W̱SÁNEĆ sold their lands is improbable. To sell land not only presupposes a conception of land as a *material thing 'owned'* and/or 'possessed' by individuals, but is also logically impossible in light of the religious covenant with the 'transformer' or 'creator', XÁLS, (as outlined in this publication). A transaction of sale would have violated the religious covenant with XÁLS and intentionally broken an obligation to protect the islands -- one's ancestors. On this reading, 'selling' the world in which you lived and to which you had an intrinsic connection through ancestors, kin and reciprocal obligations is not only highly implausible but amplifies the precariousness and burden of the Treaty's claims. It also exposes a willful insistence that western concepts of land as an asset or a commodity, and individual 'ownership', are cogent and incontrovertible, when in fact they are fictions.

Conceptions of 'land' as (dead) 'matter' that an individual appropriates and, in turn, 'owns' as 'property' is rooted in the particular imaginary of the Enlightenment, notably in the writings of John Locke, (British philosopher,1632-1704). A fuller discussion of Locke's notion of property, appropriation and ownership is offered below (see note 13) and the original source can be found in Locke's *Two Treatise on Government,* Sections 25-5, Second Treatise: Of Property. Douglas, in his dual role as agent of the Hudson Bay Company and Governor of the colony, persisted in handling the treaty as a 'sale' of land and *"permitted settlers to take Indigenous land even if it had not been 'purchased'* through treaty" (my italics and quotes, The Governor's Letters, n.d.). This sheds some light on the contemporary problems of 'ownership' that have resulted from the covetous behavior of early colonists and has a direct bearing on the reality of our lives here today on Pender Island.

9) '…our village sites and enclosed fields': The containment of the W̱SÁNEĆ to their 'village sites' and 'enclosed fields' is currently understood as the reservations located on the Saanich peninsula. These main villages are the sites of what were winter residences. As indicated above (note 7), the reservations *do not* define the extent of W̱SÁNEĆ territory as the entire territory was traversed throughout the year with its boundaries determined through relations to kin, ancestors and sites of ceremonial and spiritual importance and a sharing economy etc. Numerous sites on Vancouver Island and the Gulf Islands were inhabited through the spring, summer and autumn months with one particular site on Pender (Pender Canal) known to be in use for over 5,000 years (Carlson and Hobler, 1993). The extensive midden on Browning Harbour beach, much of it now worn away, also testifies to a deep history as a gathering and harvesting site. Arthur Manuel, an extraordinary man who did much to secure international recognition through the United Nations for the rights of Indigenous Peoples, describes the reality of the reservations in the following way: "Indian reserves are only 0.2% of Canada's land mass [making it difficult] for Indigenous Peoples […] to survive on that land-base. This has led to the systematic impoverishment of Indigenous Peoples and this impoverishment is a big part of the crippling oppression Indigenous Peoples suffer under the existing Canadian colonial system. […] Settler Canadians, on the other hand, enjoy the benefit from 99.8% of the Indigenous land base under the federal and provincial governments" (Manuel, 2016, p.4). A rough calculation of land per head is approx. 11.9 sq. km per indigenous person compared to 287.8 sq. km per non-indigenous person. What this means is that, aside from personal wealth accumulated through such things as real estate, the *economic benefits* that accrue from the land's 'use' (such as agriculture, forestry, mining, land taxes etc.) are funneled through and to the settler state. In the distribution of monies to support the public infrastructure, considerably lower sums of monies go to reservations for programmes and services (such as schools and medical services). As Manuel says, "Indigenous Peoples living on *"Indian Reserves"* do NOT get equal programs and services that settler Canadians get" (Manuel, 2016, p.2). Add to that the limited access to fishing and hunting sites (and in turn, the traditional economy of the W̱SÁNEĆ) due to the increased numbers of people residing on traditional territory; the result is a bleak reality (see note 14 below). However, solutions to these injustices are not beyond reach. In addition to arguing for an increased land base for Indigenous Peoples, which is entirely achievable and, interestingly, could accommodate current private ownership of property among the settler population (see Borrows, 2015), Manuel argues that one "goal of finding common ground that both sides can live with" and one that has real potential for the islands especially, could be in the rerouting of a "portion of property taxes" (Manuel, 2015, p.222), as a way to meet the material and infrastructural needs of the W̱SÁNEĆ. This by no means is his only suggestion. It is mentioned here because it is immediately graspable in the context of one's daily life as a resident of Pender. Also, Manuel's criticism opens up possibilities for a 'grass roots' rethinking of how one's presence on the island can become aligned with the interests and perspectives of the W̱SÁNEĆ instead of being partitioned, as it is, in our colonial culture and practices of state.

10) 'kept for our own use, for the use of our children': The classification of individual 'Indians',

that is, the identification of who can be an 'Indian' continues to be controlled by the Federal Government to this day. The registration of status Indians directly corresponds to an individual's entitlement to reserve lands – i.e., who can claim rights to reserve lands under the terms of the Indian Act and Section 91.24 of the Constitution of Canada. "The Indian Act has regulatory power over all facets of Indian life and provides the federal government with a major concentration of authority and social control over Indians – i.e., those that are identified [by the federal Government] as Indians. To decide Indian status there is a Registrar in Ottawa who determines who is and who is not and Indian, based on INAC policies and legislation [the department of Indigenous and Northern Affairs Canada aka Aboriginal Affairs and Northern Development Canada, AANDC]. The Registrar, accordingly, adds or takes people off the list called the Indian Register. The issue is not who is *actually* an Indian, but who is *entitled to be registered* as an Indian *according to the Indian Act*. The Registrar also decides who is not entitled to be registered in the Indian Register" (my italics, National Centre for First Nations Governance, n.d., p.3). The history of the State's system of registration under the Indian Act (commencing in 1869) has proven to be implicitly prejudiced and injurious, with previous legislation stripping the status of 'Indian' from women who married non-Indians, including the elimination of the status passing to her children. The Canadian state also stripped status from any 'Indians' who left the reserve without permission from the local agent of the Indian Office (Claxton, 2017) and anyone who "became a lawyer, doctor or clergyman [or] received a degree from a university, or joined the military. If you lost your status you lost the right to live on the reserve [i.e., one is legally barred from one's own home] and any benefits that might be associated with it. The Federal Government viewed [what it called] enfranchisement as a way of 'civilizing' and assimilating the Indian" (National Centre for First Nations Governance, n.d., p.4). And deep injustices continue to this day. With the implementation of Bill C3 (in 1985), the government instituted a new classificatory system that divides 'Indians' into 2 categories: status 'Indians' (6(1)) and 'half-Indians' (6(2)) with the result that "there is a population growing on reserves that have no status as a result of Section 6(2). These individuals will have no political rights as either band members or status Indians. They will live on the reserve but will become 'ghost people' people with no rights." (National Centre for First Nations Governance, n.d., p.10). To have no rights is the same as losing one's land. The State's management of a Register has accelerated the disenfranchisement of First Nations and their rights to reserve lands. "Even if a band controls its membership list […] *Indian Affairs maintains control over who is registered as an Indian" (*my italics, p.11). This further reveals the presumption that the state should have jurisdiction over who is or is not a member a First Nation and illustrates the continuation of entrenched colonial practices and a lingering conception of indigenous peoples as wards of State under Her Majesty the Queen of Canada. The 'Indians' are obviously more than capable of determining who is a member or not and managing their own registers if need be, but they are perpetually undermined by the State in its insistence that it maintain control over who is registered, i.e., who is legally entitled to be an 'Indian' or not. The undermining of rights to reserve lands, effected through this administrative tool, begs the question: is this a continuation of what Duncan Campell Scott had inscribed into law in the 1920s when he said "I want to get rid of the Indian problem. […] Our objective is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic and there is no Indian question, and no Indian Department, that is the whole object of this Bill" (National Archives of Canada, n.d.). One might pause to reflect on the Canadian presumption of 'managing' the "Indians" through a department of state when the real issue has never been an 'Indian problem' but a settler problem. How do we get rid of the *settler* problem?

11) '…the land shall be properly surveyed hereafter …': In addition to the problem of western systems of mapping territory (note 7),reading this phrase, as Raymond Frogner suggests, "one would assume that the treated region was not yet surveyed. [… Tellingly, from a corporate colonial perspective,] Archibald Barclay, London secretary of the HBC, despaired that the delay in undertaking the surveys was a fundamental mistake in asserting sovereignty on Vancouver Island. Douglas had tried in vain to retain a permanent surveyor in the employ of the HBC in the period when he created his series of treaties. But the comment in the treaty regarding the surveys is not accurate. By the time the *North Saanich Treaty* was prepared, surveyor J.D. Pemberton, under Douglas's direction, had already surveyed a portion of the area identified in the Treaty. Douglas wrote to Barclay on 2 November 1851: 'Mr. Pemberton is still busily engaged with the survey being now employed in the Coast of the Canal de Arro, North of Mt. Douglas [the Canal de Harro between the San Juan Islands and the southern Gulf Islands], and as the weather is fine he expects to get a good deal of work done before the winter sets in.' Douglas also mentioned that this area was planned for a sawmill in which he had invested. The mention of the mill and the description of Pemberton's survey approximates the *North Saanich Treaty* region. One year later, Douglas explained the *North Saanich Treaty* in a letter to Barclay. He commented on a subsequent Pemberton survey near Esquimalt, west of the *North Saanich Treaty* area, and noted '[h]e will then commence on the Saanich District including land lately purchased from the Natives of that Tribe, a part which has already been surveyed.' The Aboriginal representatives listed on the *North Saanich Treaty* discussed with Douglas the treaty's location when they visited Fort Victoria on 11 February 1852 to enact the transfer of land rights. The negotiation of the geographic details of the treaty were the result of an undocumented discussion at Fort Victoria" (Frogner, 2010, p. 57). Two problems surface in the silence of the historical and oral record. On the one hand, "if Douglas mentioned the ongoing survey of the *North Saanich Treaty* region [to members of the W̱SÁNEĆ], it was not captured in the oral history [of the W̱SÁNEĆ. This seems highly unlikely that such an important change to the territorial domain of the W̱SÁNEĆ would go undiscussed within the community. On the other hand, if Douglas …] wrote the treaty with reference to the survey, it is difficult to understand the treaty's vague geographic description." (Frogner, 2010, p. 58).

The vague language of the Douglas Treaty and the corporate colonial methods of 'managing' these lands and the presumption of Crown title, continues to cast a long shadow over contemporary practices of partitioning terrain (see also note 13). For example, until only recently has "Goldstream No. 13 reserve (located 18 kilometres from Victoria) [been returned to the W̱SÁNEĆ. … It] was improperly reduced in 1962 by approximately 10 acres from its original size. […] As Pauquachin Nation Chief Bruce Underwood, on behalf of the W̱SÁNEĆ Nations said: 'The Province of British Columbia, the Government of Canada and the W̱SÁNEĆ leaders are pleased to gather to commemorate the final settlement of a specific claim dating back to 1962. This historic settlement and return of the land has been a critical part of our discussions for the betterment for future generations. […] Our leaders are pleased the wrongdoings of this mis-survey to our nations' land is now being corrected. It is important we honour our relatives that have walked the land before us and those that walk the land after we are gone'" (BC Gov News, 2013, n.p.). The return of lands took "50 years of bureaucracy" to complete (Times Colonist, 2013). A current example is the recognition of "Cordova Spit, or TIXEN, [that] was cut off from Tsawout village by 'arbitrary lines on a map'" (Heywood, 2017, n.p.).

12) 'white people': The term 'white' within British culture during the 19th and 20th century and as understood by James Douglas and no doubt the clerks and witnesses of the Douglas Treaties (whose names indicate Scots, English and in one case, Welsh ethnicity), is in itself a loaded term. Being 'white' was not necessarily understood by the British colonists as the colour of one's skin. Instead, it was a coded term for '*civilized'* and in turn, "*British* ways [of life] were [assumed to be] superior to American, and infinitely superior to those of Native peoples. [Douglas] took for granted the distinction between civilized and savage life, associating the former most completely with the British Isles and the latter particularly with non-literate, non-agricultural peoples" (Cole, 2012, p.2). However, Douglas was not a biological racist but a 'Liberal Humanitarian': "He did not believe, [as many subsequent British Colonial governors, legislators and British settlers had] that Native people were inherently inferior" (2012, p.2). Instead, Douglas subscribed to the idea that those who were not British could *'learn'* to be like the British and in turn, become 'civilized' (as expressed in the assimilationist policies of what came to be the Indian Office). However, by the late 1860s, (biological) racist assumptions about indigenous peoples drove the land policies of the Colonial Office in BC under Governor Frederick Seymour (who followed Douglas into office) and functionaries such as Joseph Trutch, Chief Commissioner of Lands and Work (Cole, 2012). Entangled in the term 'white' then, is a privileging of British peoples who assumed a superior knowledge of and entitlement to devising, managing and policing the emergent Canadian State and its institutions.

It is important to acknowledge the particular legacy and role that British identities and perspectives play in holding (political) power, decision making and in turn, the administration and representation of 'us' – even today. For example, a cursory analysis of the surnames of B.C.'s government cabinets evidences a majority of names of British descent (NDP 82% in 2017 and Liberal 58% in 2013). Amongst the number of women who have been admitted to the BC Legislature in the past 100 years, the majority of the names originate in the British Isles. On display in the halls of the Legislature are photos of women who were 'first' to gain access and notably, the first First Nation female member was elected only in 2016 (and into Cabinet in 2017). There are a tiny number of women of non-British Canadian ethnicity, most of whom have been elected only relatively recently. Equally, when women were given the vote in Canada, it was only those of British ethnicity that were granted this right. It was not until 1948 that those of Chinese, Japanese and South Asian ethnicity could vote and 1960 for status Indians (Canadian Encyclopedia, n.d.). The point here is that the wide range of ethnicities in Canada (including mixed and diffused British ethnicities through 'assimilation') are glossed by invoking the term 'white', creating problematic elisions in understanding the dominant culture of the colony and the assumed normativity of British-colonial perspectives, ideologies, habits and practices. While the public rhetoric of racism has abated somewhat, Canada's ethnic histories and inheritances matter to understanding who and what 'we' are and are essential to engaging honestly with the complexities of reconciliation.

The institutionalization of racism within colonial legislation had not only sanctioned the containment and abuse of indigenous peoples within residential schools (Truth and Reconciliation Commission of Canada, 2015; Cornet, 2007) and the policing of indigenous peoples on reserves through the imposition of the pass system (where individuals needed permissions from a local Indian Agent to move on and off reserves) etc., but was endemic to immigration policies and the policing and management of non-British migrant-settlers throughout the 19th and 20th century. Jews, Italians, Eastern Europeans, Germans, Austrians, Bulgarians, and Turkish peoples – all describable as 'white' and most definitely understood to be 'Europeans' -- were prohibited from entering Canada for periods of time under the Canadian Immigration Act (enacted in 1910) (Matas, 1985). To further draw out the comparison, David Matas suggests that "to talk of racism *in* Canadian immigration policy is over generous. Rather we should talk of racism *as* Canadian Immigration policy" (Matas, n.d.). The Canadian Council for Refugees states that "until the 1960s, [1978 according to Matas], Canada chose its immigrants on the basis of their racial categorization rather than the individual merits of the applicant, with preference being given to immigrants of Northern European (especially British) origin over the so-called "black and Asiatic races", and at times over central and southern European "races" [note: Ukrainians fleeing from war during the Bolshevik revolution were interned in concentration camps as were Canadian born Japanese during WWII]. […] During the years when the Nazis were in power in Germany (and immediately afterwards), Canadian immigration policy was actively anti-Semitic, with the result that Canada's record for accepting Jews fleeing the Holocaust is among the worst in the Western world. Canadian policy towards Jewish refugees was summed up in the words of one official: "None is too many". […] In June 1919 the entry of Doukhobors, Mennonites and Hutterites was prohibited on the ground of their "peculiar habits, modes of life and methods of holding property. […] The prohibition lasted until 1922 in the case of Mennonites and Hutterites, longer for Doukhobors" (Canadian Council for Refugees, 2000, p.3). Immigration policies to the present day treat immigrants from the British Isles and Northern Europe differently than from other parts of Europe and the world. Compare for example, the limited number and protracted scrutiny and processing of Syrian refugees (sponsored applicants are capped at 1000 per annum in 2017 (Brach, 2016) against the generous and easy issuance of temporary work visas -- one of the routes to acquiring permanent residence-- to Irish citizens (6,350 visas in 2013 increased to 10,750 visas per annum in 2014) (Carman, 2014; Irish Canadian Immigration Centre, 2017). Similarly, we see a throwback to entry based on prejudices about 'peculiar habits and modes of practice' in the positing of the 'Barbaric Cultural Practices Bill' (2015) targeted at Muslim migrants (CBC News, 05/05/2015; Smith, 01/09/2016).

Within academic circles, primarily in the field of Postcolonial Studies, reference to 'white' as racial category has been criticized. It is believed that when defining white in racial terms this does not properly capture the essential characteristics of 'white' as an attitude of entitlement to privilege, performed by individuals *of any race*. Taiaiake Alfred offers a list of "what we might call the essence of whiteness as cultural and social construct: profit, growth, competition, aggression, amorality (consciously masked as faux altruism), hierarchy, quantification, dehumanization, exploitation, anti-nature, and homogenization" (Alfred, 2005, p.110). As Alfred says, although these values are the "overwhelming cultural reality of life in Western societies […] they are easier to grasp [and distinguish] when they are considered as a set of practices, or principles, in the context of relations between colonial states and Onkwehonwe (original people). Euroamerican arrogance and its cultural assumptions have operated in the context of political domination and economic dependency to produce pure expressions of white power and project them onto the lives of Onkwehonwe. This arrogance is the root cause of the massive problems affecting our societies and creating such a financial and moral burden on the Settlers: social and psychological suffering in Onkwehonwe communities, unstable political relations between Onkwehonwe nations and state governments, and land dispossession and environmental pollution. Yet, Euroamerican society still displays the persistence of arrogance in confronting these problems by attempting to design solutions within the same intellectual and moral framework that created the problems in the first place! In the processes that have been implemented to attempt the decolonization of internal colonial states […] settlers have steadfastly refused to remove themselves from the foundation of their colonial enterprise. They prefer to lazily observe and address the problem from within the comfort zone of their own imperial cultural heritage" (Alfred, 2005, p.111). This is a powerful indictment of non-Indigenous habits and practices and the forcefulness of the argument provides some clarity for understanding the effects of colonialism on especially indigenous people today. However, by collapsing together the name of a skin colour, 'white', with certain behaviours, the argument obfuscates the importance of ethnic histories to the identities and orientation of individuals within this society and creates elisions around the problem of dominant colonial norms and principles that are specific to and derivative of British culture.

13) 'unoccupied lands': Attempts to explain away the occupation of indigenous lands exposes a host of convoluted legal arguments and questionable assumptions that do more to reveal the precariousness of one's presence and claims to 'ownership' of land than offer any solid foundation upon which one can rely for support. The Doctrine of Discovery (appropriation by sovereign nations of lands claimed to be 'uninhabited'), Terra Nullius (the argument that

no one owned the land prior to possession) and First Possession (first come, first served, as applied to homesteading) casts a long shadow over our legal system and the history of these islands. The following discussion relies on the excellent work of Joanna Harrington and Sengwung Luk who summarise the historical rationale that is embedded in Canadian law and international law and that continue to underpin legal claims to the 'ownership' of indigenous lands by the Crown. The following will first offer a brief overview of the Doctrine of Discovery and then outline how it informs the Douglas Treaty and continues to underpin practices of state.

The Doctrine of Discovery is rooted in two sources "the Papal Bulls of *Romanus Pontifex* (1455) and *Inter Caetera* (1493). These Bulls purported to give Spanish and Portuguese monarchs the right to lands and jurisdictions over any lands that they discovered, based on the idea that the spread of Christianity to non-European peoples gave them the right to do so. Rather than rejecting this principle, other [Western] European monarchs, such as the French and British monarchs, simply sought to modify the rule so that they could also gain lands and jurisdiction by discovery as well" (Luk, 2015). Hence, the 'discovery' of Canada and the concept of 'Crown' land, was justified accordingly and continues to persist based on "the idea that when European nations 'discovered' non-European lands, they gained special rights over that land, such as sovereignty and title, regardless of what other peoples live on that land" (Luk, 2015). To illustrate how this plays out in the courts today, Luk goes on to discuss the Supreme Court of Canada decision in the Regina v. Sparrow case of 1990. "This was the first time the highest court in the Canadian legal system had a chance to deal directly with s.35(1) of the Constitution Act, 1982, which for the first time explicitly enshrined the protection of Aboriginal and Treaty Rights in the Constitution of Canada" (Luk, 2015). However, the Court began by saying "It is worth recalling that while British policy towards the native population was based on respect for their right to occupy their traditional lands, […] there was from the outset never any doubt that sovereignty and legislative power, and indeed the underlying title, to such lands vested in the Crown" (Luk quoting Sparrow, p 1103). The problem that Luk draws our attention to is one deeply absurd assumption: "it is the existence of aboriginal societies and their rights that need proving in the courts: the sovereignty of the Crown is just taken as a given. […] Unless an Indigenous community proves to a court's satisfaction that it has exclusive occupation or control of a territory, the default understanding of the Canadian Legal system is that that territory is Crown land, even if Crown officials and settlers have never set foot on that land. [Also,] even if an Indigenous community can prove that they have an Aboriginal right, Aboriginal title, or a Treaty Right, that right is always potentially subject to infringement by the Crown" (Luk, 2015).

To expand on this point, the following turns to an account outlined by Joanna Harrington. Not until *Tsilhqot'in Nation v British Columbia* (2014) have the courts acknowledged that "the doctrine of terra nullius (that no one owned the land prior to European assertion of sovereignty) never applied in Canada [i.e., is not legitimate], as confirmed by the Royal Proclamation of 1763. […]Territory regarded in law as *terra nullius* was rarely ever empty of people. The literal meaning of the Latin phrase [nobody's land] does not equate to its precise legal content, with a fiction having been developed within the law of nations of that time to treat the lands as if vacant to make the doctrine of discovery fit the situation presented. However, within Canadian law [in light of the *Tsilhqot'in Nation v British Columbia* case], it has been held that the *terra nullius* concept has no application vis-à-vis the European assertion of sovereignty over lands now part of Canada. On 26 June 2014, in a unanimous 8:0 decision that marked the first time the highest court has recognized the existence of Aboriginal title on a particular site, the Supreme Court of Canada made clear that: 'The doctrine of terra nullius never applied in Canada, as confirmed by the *Royal Proclamation* (1763) R.S.C. 1985, App. II, No. 1.' See *Tsilhqot'in Nation v British Columbia,* 2014 SCC 44 at para. 69. [… A]s the Court explains: 'At the time of assertion of European sovereignty, the Crown acquired radical or underlying title to all the land in the province. This Crown title, however, was burdened by the pre-existing legal rights of Aboriginal people who occupied and used the land prior to European arrival. […]The Aboriginal interest in land that burdens the Crown's underlying title is an independent legal interest, which gives rise to a fiduciary duty on the part of the Crown.' However, […] the doctrine of discovery within international law [see note 2] only gave rise to an inchoate claim of sovereignty over territory, giving rise to the more important doctrine of effective occupation. A similar doctrine of occupation can also be found within Canadian law with respect to Aboriginal title claims, with the Supreme Court of Canada confirming that one must examine the continuity, exclusivity and sufficiency of the occupation of the land claimed to establish title at the time of the assertion of European sovereignty" (Harrington, 2014, n.p.). In other words, the *Tsilhqot'in Nation v British Columbia* case lays bare the rights of Indigenous communities but, again, contained within 'the doctrine of occupation' is a rationale that loops back to the moment of 'discovery' with the Crown never having to prove what constitutes its alleged legitimacy to trump the 'underlying title' to land. This illustrates the persistent asymmetrical relation between Indigenous peoples and the state and the limit on Indigenous peoples' rights to their own lands. "The idea that Crown Sovereignty is presumed to exist, but indigenous presence must be proved" (Luk, 2015) is a logical absurdity that undermines not only Indigenous peoples but also Canadians. Surely there are other legal frameworks (and there are) for contending with what one can call 'the settler problem' than relying on a rationale that perpetually undermines indigenous sovereignty and in turn, positions non-indigenous presence as relentlessly arrogant and thieving. Contending with this harsh reality is at the heart of reconciling and no doubt the paradigm of Crown privilege weighs heavily on the conscience of some members of this nation. Can anyone who is non-indigenous claim to be 'settled' in the fullest sense of the word? The colonial origins of the state and the continuing presumption of the Crown's privilege saturates our psyche and identity as 'Canadians', and not to good purpose.

Another aspect of the complexity of the legal fiction of Crown entitlement is the modern concept of property rights that has its roots in the writing of the British philosopher John Locke (1632-1704). Expressions of Locke's work (*Two Treatises of Government*) are found in the Declaration of Independence and the American Constitution and his central political principle -- that rights in property are the basis of human freedom and that government exists to protect these rights and preserve public order-- is germane to the values of Liberal Democracy that embrace the Canadian state. In his chapter on property (Second Treatise, Chapter 5, ss 25-51, 123 – 26), Locke offers a narrative on how one can 'rightfully' claim a 'thing' to be the property of an individual. He argues that "there must of necessity be a means to *appropriate*" what one removes from the Commons (the Commons, as he describes it, is the Earth and all that it offers that was given to all human beings by God). To *justify* what one has taken that is not, in and of itself, one's own, Locke constructs an argument that builds on the premise that one 'owns' one's own body. From this he infers that "the *Labour* of his Body and the *Work* of his Hands, we may say, are properly his." That is, because one owns one's own body it follows logically that one owns whatever results from the 'work of one's hands', i.e., one's labour. He then claims that whatever one removes from the State of Nature and has "mixed his *Labour* with" has, by extension, made (i.e., produced) the thing that was taken into his own and consequently, 'owns' (has a 'right' to) that 'property'. To give an example, he states that "As much Land as a Man Tills, Plants, Improves, Cultivates, and can use the Product of, so much is his Property. He by his Labour does, as it were, inclose it from the Common. […] God and his Reason commanded him to subdue the Earth, i.e., improve it for the benefit of Life, and therein lay out something upon it that was his own, his labour" (Locke,1823, p.116).

Throughout the discussion, Locke repeatedly references appropriation demonstrated through the manipulation of nature. Interestingly too, in many passages he draws on examples of "Indians" but characterizes "the Nations of the Americans" as being "rich in land" but "poor in all the "Comforts of Life" because they had not "improved" the land through their labour (1823, p.118). No doubt this will strike readers as palpably ironic given that there is little evidence of our environment having been "improved" by it being, in this example, agriculturally, but also industrially, exploited by individuals and corporations in the colonial state. Nevertheless, the main point I want to draw attention to here is his argument for 'possessive individualism' that is engrained in our Modern understanding of ownership and property, founded on a justification for appropriation. "The same measures governed the Possession of Land too" as he says. *"If the Indians had not yet mixed their labour with the earth in any permanent way",* or if a region were literally 'uninhabited', then it was considered to be terra nullius. Locke's discussion is layered with assumptions about the alleged validity of individuals "taking from Nature" by outlining the "*use* of land" as the grounds upon which possession is valid. As he says, "Land that is left wholly to Nature, that hath no improvement of Pasturage, Tillage, or Planting is called, as indeed it is, *waste*: and we shall find the benefit of it amount to little more than nothing." Leaving aside the rather peculiar notion of lands being 'waste' if not cultivated, Locke uses this argument to endorse the colonization of the Americas on the basis that "This shews, how much numbers of men are to be preferd to largesse of dominions, and that the increase of lands and the right employing of them is the great art of government" (1823, p.122).

Locke's vision of land, property and ownership and indeed, his perception of the 'Indians', is not only a sad indictment of the paucity of the philosophical assumptions that underpin the legacy of our colonial state, but his influence can be seen in the local example of the Douglas Treaty. As Nick Claxton (Tsawout Nation) points out, Douglas was under "explicit instructions […] from Archibald Barclay in London, who was at the time the [Hudson's Bay] company's secretary. It read: '*With respect to the rights of the natives, you will have to confer with the chiefs of the tribes on that subject, and in your negotiations with them you are to consider the natives as the rightful possessors of such lands only as they are occupied by cultivation, or had houses built on, at the time the island came under the undivided sovereignty of Great Britain in 1846. All other land is to be regarded as waste, applicable for the purposes of colonization. The right of fishing and hunting will be continued to the natives, and when their lands are registered, and they conform to the same conditions with which other settlers are required to comply, they will enjoy the same rights and privileges.*'" (Claxton, 2007, n.d.). This quote vividly captures the self-righteousness and intellectual limitations of the British Crown and its agents. If the land was unoccupied by settlers, it was incumbent on the Crown to ensure that it *did not populate, sell or license lands* and control resources on the 'unoccupied lands' so as not to undermine the agreements of the treaty and encroach on hunting and fishing rights. It was binding on the Crown to abide by the terms of the treaty and to not then subvert its terms by populating the lands with settlers or exploit resources. As Morellato points out, "Consultation processes dealing with Treaty rights must take into account oral history and the promises made at the time of the treaty regarding the nature and scope of treaty rights in question. […] If the oral history of a treaty people provides that at the time of treaty, the Crown promised that the treaty people in question could fish for livelihood purposes over surrendered territory, then land and resources within surrendered territory cannot be *'taken up'* in a *manner that fails to accommodate the treaty promise*" (my italics, Morellato, 2008, n.p.). An example can be seen in the unrelenting market in real estate and land speculation – all without consultation or reparation to the W̱SÁNEĆ.

14) 'we are at liberty to hunt […] and to carry on our fisheries as formerly': This clause is at the heart of a long legacy of the disenfranchisement of the W̱SÁNEĆ by the early creation of the US and Canadian border and then under the colonial government, continuing through to current practices of the British Columbia Treaty Process. There are a number of points that intersect and are in need of fuller discussion. First, the name W̱SÁNEĆ translates as "raised up" (Elliott, 1990, p.14) relating to the geography of their territory and also a historical moment of their survival during a tsunami. They have also been called the "saltwater people [… meaning] that the sea was very important to our way of life" (Elliott, 1990, p.15). During the summer, families "travelled all through the territory […] fishing and gathering food. […] We did not know strict boundaries between our brothers and friends. Each of us did have our own hunting and fishing territories. We respected our traditional territories. We never fought with our friends and brothers over land" (Elliott, 1990, p.16).

Central to the W̱SÁNEĆ way of life then, was their *mobility*. Travelling through their islands was via the water and was necessary because of how their headquarters were (and are currently) situated. As Elliott explains, "There was one thing different about our people. Our headquarters was the Saanich Peninsula. There was no river in our territory. [...Unlike the Cowichan or the Sooke, or Qualicum people, who didn't] have to go anywhere for fish. The fish came to them" (Elliott, 2009, p.55). The W̱SÁNEĆ, by contrast, "had to catch all our fish in the salt water, out in the rough water, the fast running tide of the straights" (p.56) and hence, a sophisticated (and sustainable) system of reef net fishing technology was developed. "A location where a reef net is fished is called a SWÁLET. […] These locations called SWÁLET are all through the Gulf Islands. They belong to different families" (p.57). For example, Poet's Cove is called "SXIXTE […] XIXEXI means "narrow" [and is] the SWÁLET of the Pelkey family" (2009, p.33). However, as Elliott says, "In 1846 when they divided up the country and made the United States and Canada, we lost our land and our fishing ground. It very nearly destroyed us. That is when we became poor people. Our people were rich once because we had everything [i.e., bountiful sources of food and resources. …]. When they divided up the country we lost most of our territory. […] They said we would be able to go back and forth when they laid down the boundary, they said it wouldn't make any difference to the Indians. […] They didn't keep that promise very long" (p.59). The border severed families and barred people from traversing the US/ Canadian border. "Some of our people were arrested for going over there" (p.59).

Since that moment, there have been repeated sanctions against not only movement through territory but following the implementation of the Douglas Treaty (which radically curtailed W̱SÁNEĆ activities on their own lands) in 1916, the oppressive "Department of Indian Affairs outlawed our reef-nets, [and] called it a trap […]. They made it illegal to fish with our SXOLE" (reef net technology) (p.60). The duplicitous and hypocritical justification for banning reef net fishing by the government, and in turn, undermining the core of the W̱SÁNEĆ economy, is evident in the permissions given to a settler fishing enterprise called J.H. Todd and Sons in 1916, who actually did use trapping techniques to harvest fish. The company continued to trap fish until "the middle 1940s before [they were bought out by] B.C. Packers" (Elliott, p.60). B.C. Packers was the culmination of the industrialization and corporatization of the fisheries in BC that exploited the fishing stocks and controlled "fishing stations, canneries, fresh fish branches, fish-curing establishments, cold storage plants, reduction plants and shipyards. […] After WWII, the corporation expanded "rapidly beyond the west coast of Canada. Company facilities sprang up in Atlantic Canada and in foreign coastal areas, including the United States, Mexico and Southeast Asia. It operated until 1997 when its unsustainable techniques led to overfishing and had forced its closure (City of Richmond, n.d.). Elliott asks a penetrating question: "This has to be answered—Why did they do that to our people?" (p.60). Indeed, it is hard to fathom the kind of ignorance it takes to first appropriate and then degrade these precious lands and its resources.

Not only have the W̱SÁNEĆ been dispossessed of the 'ownership' of their land (remembering that the underlying title is under Crown control whose

claim to the possession of lands is never challenged or questioned, see note 4), but the rights and title to the *benefits* of the land – such as hunting and fishing – continue to be subverted in two ways. First, the lack of governmental adherence to the longstanding responsibilities of the Douglas Treaty to *not* undermine the conditions of indigenous rights and title by allowing "unoccupied" lands to be occupied (note 13) has instead resulted in increased numbers of people inhabiting W̱SÁNEĆ territory. To give some context, the population of Pender has grown fivefold from approx. 400 permanent residents in the 1970s to approx. 2400 permanent residents today, added to which are the many hundreds who own vacation homes on the island and who add to the concentration of people in the summer months. This rapid suburbanization has worsened the conditions of the habitat and its animals and led to environmental degradation (contaminated beaches and sea life, increased light pollution and deforestation etc.), impacting on the availability of sea foods, fish stocks etc..

Secondly, the British Columbia Treaty Process has interfered with relationships between First Nations, not only by imposing western systems of mapping (note 7), but also, by ignoring indigenous systems of governance. It has *created* disputes over rights "to hunt and fish as formerly." This is evident in its 2007 treaty agreement with the Tsawwassen First Nation. "The Tsawwassen agreement unfairly trumps this existing [Douglas] treaty, says Sencot'en C'A,I,Newel spokesman Eric Pelkey. […] Under the agreement, Tsawwassen are also granted hunting and fishing rights on the Southern Gulf Islands and in surrounding waters -- rights that the Sencot'en [W̱SÁNEĆ] say are theirs alone" (Kimmett, 2007). The consequences of third party (governmental) brokering of long standing relationships have created tensions between Nations (and not just in this case) and because the foundation of treaty is based on the colonial concept of 'ownership' of land, it ignores indigenous methods of governance where longstanding relationships are core to the negotiation of access to a place within a sharing economy. Negotiations about rights then become skewed between Nations and we see the crudity of western understandings of property undermine more complex and sophisticated indigenous protocols.

We also see how the Crown ignores the very legal agreements it purports to uphold. As Pelkey says, "'First Nations that used southern Gulf Islands in the past did so with our permission. We find it odd that the Crown is willing to implement a Treaty with Tsawwassen that includes harvesting rights in the Gulf Islands when the Crown must first negotiate with us. Sort of [like] having someone make a deal to sell your house and then tell you about it afterwards -- in real estate law this is called title fraud.' […] Pelkey says his people are concerned about a depletion of resources and loss of jurisdiction in their territory. 'We've never stopped sharing resources in our territory,' says Pelkey. 'We've never said we would not allow anyone else to come and access resources, we ask only that they come and ask us for permission.'" (Kimmett, 2007). W̱SÁNEĆ rights to 'hunt and fish as formerly' have been recognized in the BC courts on a number of occasions (see note 3) but, within the British Columbia Treaty Process, the government's methods are divisive. "First Nations that are involved in this process aren't required to consult with neighbouring nations. 'We've been banging on the door now for probably up to three years [since 2004] because of our dissatisfaction with the B.C. treaty process and how we see numerous First Nations laying claim to our lands,' says Pelkey. The [Tsawout, Tsartlip, Pauquachin and Tseycum First Nations …] have reserves on Pender, Mayne, Saturna, Saltspring and Bare Islands. 'This is a very valuable area for us,' says Pelkey. 'Historically our people here have been known as salt water people. We have no major rivers in our territory. We actually live out there on the water and that's why we have those reserves and also fishing stations'" (Kimmett, 2007). We see in this example the devastating results of our government representatives and the Crown overriding the long held, peaceable and enduring arrangements between indigenous peoples in claims to place, as well as subverting the Douglas Treaty. Instead of being *led* by First Nations in the negotiation of place (which obviously would have had to include representatives such as Sencot'en C'A,I,Newel, at the very least), the presumption of the state here, yet again, is the alleged validity of "the Doctrine of Discovery" (see note 13) that sustains the government's colonial project and its determination to appropriate, control and exploit land.

15) 'We have received, as payment (no amount stated)': As indicated above (note 4, 8 and 9), it is perennial fiction that the W̱SÁNEĆ sold their lands and no sum is stated in the text of the treaty or other HBC documents. However, monies and goods were traded with the W̱SÁNEĆ. These transactions may have been understood as compensation in line with a peace treaty. In some of Douglas's correspondence to HBC's offices in London, he claimed to have paid £109.7.6 (109 pounds, 7 shillings and 9 pence) "in woolen goods which they preferred to money." […] This amount conflicts with the Aboriginal oral history, which put the amount "at about 200 pounds" (Frogner, 2010, p.59). However, in the examination of HBC's Fort Victoria accounts, and comparing the "expense ledgers with the price of blankets, it appears that Douglas did not honour the amount promised in the treaty [whatever that may have been], even after accounting for the 300 percent mark-up the HBC placed on the goods traded with the Natives" (2010, p.59).

There is another aspect to the myth of payment to the W̱SÁNEĆ. An early account of Chief David Latasse reveals how economic transactions were tracked within a community. "Latasse was present at the Treaty negotiations in Victoria in 1850. His recollections were recorded in 1934 when he was reportedly 104. 'I say truly that I have no knowledge of payments of money, as mentioned in papers supposed to have been signed by Chief Hotutston and Whutsaymullet and their subchiefs. I know of no act of signing such papers and believe that no such signatures were in fact made by those tribesmen. There was no payment in goods, instead of money. If there had been, custom would have required immediate public distribution of the trade goods to the tribesmen and the women folk. Then all members of each sub-tribe would have known of the payment and the reason why it had been made by the white men'" (Sources of the Douglas Treaty, n.d.).

Latasse's description not only further exposes Douglas's imperiousness and self-interest in his handling of negotiations (see note 6) but it also illuminates Douglas's ignorance of the economic and political practices of W̱SÁNEĆ society. Apparently, Douglas had "originally intended to purchase the entire Saanich Peninsula from local representatives […] but he could not reach a conclusion on the representation of land use" (Froger, 2010, p.58; Sources of the Douglas Treaty, n.d.). What this suggests is that Douglas expected to do business with a single authority, i.e., the "'men with beards' or adult males […] rather than group representatives" (Froger, 2010, p.52). This makes visible his mindlessness and perhaps willful disregard of the distributive communal rights of the W̱SÁNEĆ as an organized, uniform jurisdiction. As Raymond Frogner points out, "[a]s a consequence the distributed communal rights of Aboriginal societies gained inaccurate colonial legal recognition as organized, uniform social jurisdictions in state-purposed treaties" (Frogner, 2010, p.58). Reading between the lines of Latasse's account then, one can surmise that the sophisticated protocols and practices of wealth distribution within the community, coupled with the why's and wherefores of the source of wealth being communicated to members, evidences how *relationships* (both endogenous and exogenous), reciprocity and sharing, structured W̱SÁNEĆ economic practices and traditions. Equally important, Latasse's comments show how oral stories take legal form in that they trace, verify and confirm transactions and events. His account therefore further dispels the rhetoric of land having been 'sold'.

Currently, misleading and indeed, sensationalist descriptions of payments of seemingly large sums of money to indigenous groups continue to infuse newspaper reports and leave out the more complex backstories of indigenous struggles to secure rights to their lands through the courts. Glossing is evident in the reporting of the Nisga'a treaty arranged through the BC Treaty Commission. For example, in 1998, CBC News reported "The Nisga'a people of British Columbia have been fighting for more than 100 years for control of the Nass Valley. The deal gives the Nisga'a 1,930 square kilometres of land in the lower Nass Valley, self-government powers akin to municipal governments and $190 million in cash" (CBC News, 1998). This announcement focuses on what at face value seems to be considerable sums of money but it ignores the actual politics and indeed, the real costs of the agreement – extinguishment of rights and title, onerous financial debt to the government due to vastly expensive court costs over decades, the reduction in size of traditional territory etc.. As Arthur Manuel observes, "The Nisga'a Treaty […] was promoted as a breakthrough by the First Nations Summit and the B.C. Treaty Process" (Manuel, 2015, p.120). However, negotiation within the B.C. Treaty Commission is perverse. It requires that First Nations extinguish their rights and title, in order to then negotiate new, limited, rights. As Manuel says, "the Nisga'a model completely undermined the legal principles and framework for reconciliation of Aboriginal Title with Crown Title that the Supreme Court had set out in *Delagmuukw*. […] By 1999, the rest of the world was beginning to notice that something was very wrong in Canada. [… T]he UN Human Rights Commission released a report on Canada that chided the country for not following the Royal Commission on Aboriginal Peoples' recommendations and sharply criticized the government's extinguishment policy as a fundamental human rights transgression. […] The Human Rights Committee then demanded that the practice of extinguishing inherent aboriginal rights be abandoned as incompatible with Article 1 of the […] Covenant of Civil and Political Rights, which Canada ratified in 1976. […] The Committee was pointing out that extinguishment of our rights to the land was incompatible with our human rights as peoples" (Manuel, 2015, pp.120-121). These are the real forms of 'payment' made by the state to indigenous peoples. When there is mention in the press regarding indigenous resistance, it "comes from below [i.e., not the band councils] as the people refuse to surrender their birthright for quick cash and a tiny fraction of their traditional lands" (Manuel, 2015, p.120).

16) 'Hotutstun his X mark and 117 others': "Overlapping claims to the northern part of the peninsula [see also note 7,3 and 11] made it difficult for Douglas to conclude separate agreements with the individual groups living there. Instead, he concluded one single treaty: the North Saanich Treaty included 117 signatories" (Government of Canada, n.d). However, there were apparently three groups of W̱SÁNEĆ people who 'signed' their Xs to this document: members of the Tsawout Nation, Tsartlip Nation and one other group whose identity is unknown but who may have been present as witnesses (Claxton, 2017).

17) 'Signatories': The author, writer and witnesses of the treaty embody the confluence of the appropriation of lands, resource exploitation and the imposition of legislation and a judicial system that secured methods for policing and overriding indigenous peoples' rights and wellbeing, all in the pursuit of the accumulation of private, corporate and Crown wealth. The individuals who were directly involved in mobilizing the Douglas Treaty had combined roles as HBC traders, clerks, bookkeepers, surveyors, real estate speculators and politicians, and in some cases actively engaged in policing indigenous peoples as Indian Agents, like many other fur traders. They set the tone for Canada as a corporate colonial state and its egregious culture. For example, Joseph William McKay, born in Quebec of Scottish parents, came from a family who were active in the fur trade as trappers and managers.
McKay joined the Hudson's Bay Company on 1 June 1844, at age 15, and was sent to Fort Vancouver (Washington) [… from where he] accompanied […] British naval officers [… on the] reconnaissance of Oregon Territory. Having been transferred in November 1846 to Fort Victoria, […] in the wake of the Oregon Boundary Treaty, he participated in a survey of the area around Victoria and Esquimalt. In 1848 he was promoted to the rank of postmaster, and the following year he was […] second in command at Fort Victoria. […] As an apprentice clerk he […] was sent [by Douglas] to explore the Cowichan and Comox valleys and to establish the HBC salmon fishery and sheep station on San Juan Island. In August 1852 McKay formally took possession, on behalf of the HBC, of the coalfields at Nanaimo. […] While in charge there McKay opened a coal mine, a sawmill, a saltern, and a school" (Mackie, 2003, n.p.). He quit the HBC to manage one of his many businesses, "Vancouver's Island Steam Saw Mill Company [and in]1855 he rejoined the [HBC] at Fort Victoria and bought a farm at Cadboro Bay, which gave him the necessary freehold property to stand in the election the following year to the first House of Assembly of Vancouver Island. At first defeated, McKay contested the election of his opponent, Edward Edwards Langford, on the grounds that he did not possess the necessary property qualification. His complaint was upheld, Langford's election was annulled, and McKay was elected member for Victoria District in his stead. Shortly after the beginning of the Fraser River gold-rush in the summer of 1858 McKay was sent by Douglas to search for a route to the gold-fields between Howe Sound and Lillooet Lake. In June 1860 he was made chief trader and placed in charge of the auriferous Thompson's River district. […] At Thompson's River Post (Kamloops), he spent six years developing the HBC's retail provisions business, supplying Europeans, Chinese, and Indians with food and mining equipment in exchange for gold dust, dollars, and furs. […] In 1865, […] McKay conducted a survey of the country between Williams Creek and Tête Jaune Cache in anticipation of the HBC's proposed telegraph line from Fort Garry (Winnipeg) to New Westminster (B.C.). Between 1866 and 1878 he was in charge of the company's operations at Fort Yale (Yale), in the Kootenay district, and in the Cassiar and the Stikine mining districts, and he directed its coastal trade at Fort Simpson; he was promoted factor in 1872. Four years later he was made a justice of the peace, an appointment he held until 1885. In the summer of 1878 McKay was dismissed by the HBC, in part because of his substantial business dealings outside the company. Since the Fraser River gold-rush McKay had invested in silver mines, salmon canneries, and timber leases, and just six months before his dismissal he had been prospecting near Bella Coola on his own account. [In]1878 he entered into a two-year agreement to manage the salmon cannery on the lower Skeena River owned by the North Western Commercial Company of San Francisco. During the following two decades McKay worked for the dominion government, being appointed census commissioner for British Columbia in 1881 and Indian agent two years later, first for the northwest coast and then for the Kamloops and Okanagan agencies. While agent he […] established an Indian industrial school near Kamloops [i.e., a Residential School that continued to operate until 1977 that incarcerated "hundreds of Secwepemc children"]. In 1893 he was appointed assistant to Arthur Wellesley Vowell, the superintendent of Indian affairs for British Columbia. Throughout this period McKay continued to pursue his business interests. The year before his death he applied for a grant of 40,000 acres on Queen Charlotte Strait, on which he planned to establish a pulp-mill, but he died before he could see it in operation. […] Like several of his colleagues, McKay made [the] transition from fur trader to Indian agent and like most of his contemporaries he exhibited an abiding personal interest [in the private 'ownership' and exploitation] of natural resources (Mackie, 2003, n.p.).

By comparison to McKay and Douglas (note 5 and 6), much less is known of Richard Golledge. He "was born in West Ham, Essex, [England]. At the age of twenty-one, [he] arrived in Fort Victoria on the brig Tory in 1851 as an apprentice clerk. Until 1858, he worked as clerk and secretary to James Douglas. […] Douglas was of too high a rank to have involved himself in the time-consuming task of book-keeping or transcription, but he would nevertheless require the information as an aid in making decisions. […] The later period of [Golledge's] life was marked by allegations of conduct unbecoming his station: drinking, gambling, and playing euchre with a prostitute while acting as Gold Commissioner for Sooke. He married Juliana Charbonneau on 26 September 1871. He died in Victoria at the age of 55, and was buried on 8 September 1887" (Hammond, 1989, p.122).

Notes: W̱SÁNEĆ covenant with XÁLS

It is recommended that the comments on the Douglas Treaty be read in advance of this section, especially notes 7, 8 and 13: the notion of 'ownership' of land is contrasted with selected literature that discusses W̱SÁNEĆ conceptions of place, relations to land and systems of organisation.

1) The following discussion of the story of XÁLS and its implications for understanding W̱SÁNEĆ relations to place, relies on the work of Robert YELḴÁTŦE Clifford, a lawyer and member of the SȻÁ,UTW̱ (Tsawout) Nation. This story of XÁLS is specific to Clifford's own family history and its interpretation is eloquently explained in detail in his article '*W̱SÁNEĆ Legal Theory and the Fuel Spill at SELEK-TEL- (Goldstream River)*' (2016) and other writings (2011, 2016a). He makes clear that this particular story of XÁLS is not necessarily widely shared amongst all members of the W̱SÁNEĆ Nation and variations of its telling are common within the community. I cannot reproduce all that he says as he offers extensive fine-grained distinctions of its significance to his analysis of W̱SÁNEĆ law, governance and culture. Instead, I have selected the sections of his commentary where he discusses this story in particular and hope that readers will seek out his writing for further elucidation. As he says, "W̱SÁNEĆ culture consists of a myriad of stories in which the Creator transformed people and animals as a way of setting an example. Each story is set in a different context and contains its own unique principles. However, beyond any specific principles, these stories also give us broader insights into notions of being, agency and relationality in W̱SÁNEĆ law" (p.772).

To guard against confusion, I have given a title to the story of XÁLS to draw out the comparison with the (North Saanich) Douglas Treaty. My use of the term 'covenant' in the title is motivated by two concerns. First, the intention of this publication is to contrast this passage with the tone and orientation of the Douglas Treaty to illustrate the treaty's colonial and material assumptions of 'ownership' that, in turn, produce the problems of its 'contract'. Secondly, the term is used to introduce what I understand to be a deep and subtle conception of 'land' as an ancestral being and existent life force, embodied in a defining compact between the W̱SÁNEĆ, the islands/ancestors and XÁLS as described in Clifford's story. The English word 'covenant' encompasses meanings beyond mere 'contracts' to include "an engagement entered into by a Divine Being with some other being or persons" (Oxford English Dictionary,1971, p.586). In this respect, the term is, I hope, a useful tool for discerning the complexity of W̱SÁNEĆ *relations* to 'land' and claims to place. However, to be clear, in no way is the term 'covenant' intended to *describe* the nature of the bond between the W̱SÁNEĆ People, land, ancestors and XÁLS. Nor do I pretend to understand the scope and meaning of these relationships. I accept that aspects of these meanings are closed to me and to others who are non-W̱SÁNEĆ inhabitants of this place.

2) To help non-indigenous readers think through the significance and scope of this cosmological story, and in turn, gain an insight into the manner in which it is integral to W̱SÁNEĆ laws, governance and understandings of place, Clifford explains the role of these stories (and others of its kind) within W̱SÁNEĆ culture. As he says, "Indigenous oral traditions have always used stories to teach, guide and reinforce behavior, meaning they can be used to create a framework for understanding relationships and obligations, decision-making processes, and deviations from accepted standards." […] The purpose of W̱SÁNEĆ stories is not about returning to the past, but how we choose to relate to and use stories in guiding our lives today. There is no singular way to tell, use, or interpret a story. Stories are dynamic, not static, and may even take new shapes in different contexts. Stories draw on past knowledge, but there is a continual process of agency exercised in learning from and using those stories. They are a framework for thinking and relating (or the "process of knowing") more than about transmitting 'explicit rules' (p.769-772).

As opposed to the Lockean notion of land, appropriation and 'use' allegedly justifying 'ownership' (see Douglas Treaty, note 13), 'land' here is understood as an *agent* and is foundational to relationships to place, and indeed *claims* to place in the identification of territory, specific fishing and hunting sites etc. That is, "land and the non-human world is animate" (2016, p.767) and I would suggest, *active* in its agential role within a *'compact' of reciprocality*. As Clifford says, "the relationship between humans, the land, and the non-human world is mutual and reciprocal" (p.767).

Clifford begins his explanation of the story of XÁLS by introducing the name and meaning of the SENĆOŦEN word for 'islands'. As he says, the word for 'islands' "is ṮEṮÁĆES, a conjunct of ṮEĆ (deep) and SĆÁLĆES (relative or friend). The W̱SÁNEĆ concept of islands therefore literally translates as "Relatives of the Deep", indicating an ontological connection of the W̱SÁNEĆ people with the islands in the territory" (2016, p.768). He is careful to note that its usage would not necessarily circulate widely within the community (2016a). Whether this is because of a multiplicity of familial stories and interpretations and/or the effects of residential schools is not clear. However, his point is that embedded in the language are meanings of *relations* to land (as a being) that are distinct from colonial orientations to place. As he says, "on its own, this [origin story] indicates an attribution of much more being to non-human elements in the world, which has a bearing upon how we understand and regulate our relationship within W̱SÁNEĆ territory. It is, however, not only being, but also a higher level of agency in the non-human world that we must consider in understanding W̱SÁNEĆ law. Understanding agency in the non-human world [is] exemplified in relation to our Relatives of the Deep, specifically with reference to the creation story of L-EL,TOS (James Island), an island within W̱SÁNEĆ territory. [This] creation story describes both the origin of the island and the name L-EL,TOS, as well as relating how every island is an ancestor to the W̱SÁNEĆ" (2016, p.773).

Clifford continues: "Islands within W̱SÁNEĆ territory were once our ancestors and were given to us by the Creator to maintain our way of life. With this gift came a reciprocal obligation to care for these islands. This obligation is one of our sources of laws. If we are to understand W̱SÁNEĆ law on its own terms, it would be a simplification and a distortion to think of them only as 'islands; – that is, inanimate masses of rock surrounded by water. What are the implications of this understanding? Canadian Law does account for the environment, but these stories indicate a starting point for W̱SÁNEĆ law that goes much beyond that posture. Humans cannot live in this world without drawing and relying on the world around us. This notion is directly acknowledged in the story of L-EL,TOS: *XÁLS turned to speak to the islands and said: 'look after your relatives, the W̱SÁNEĆ People.'* The land and the ecology provides for us. However, our relationship with the external world cannot centre only on our needs as humans: *XÁLS then turned to the W̱SÁNEĆ People and said: 'you will also look after your "Relatives of the Deep."'* The greater attribution of being and agency to land means that our application of W̱SÁNEĆ law must not only be *about* land, but 'deeply *informed* by the land as a system of reciprocal relations and obligations'. It also means that the responsibility to care for the land extends beyond the actions of the W̱SÁNEĆ. That is, W̱SÁNEĆ law also provides the obligation to protect the land against the harmful actions of others" (2016, p.774).

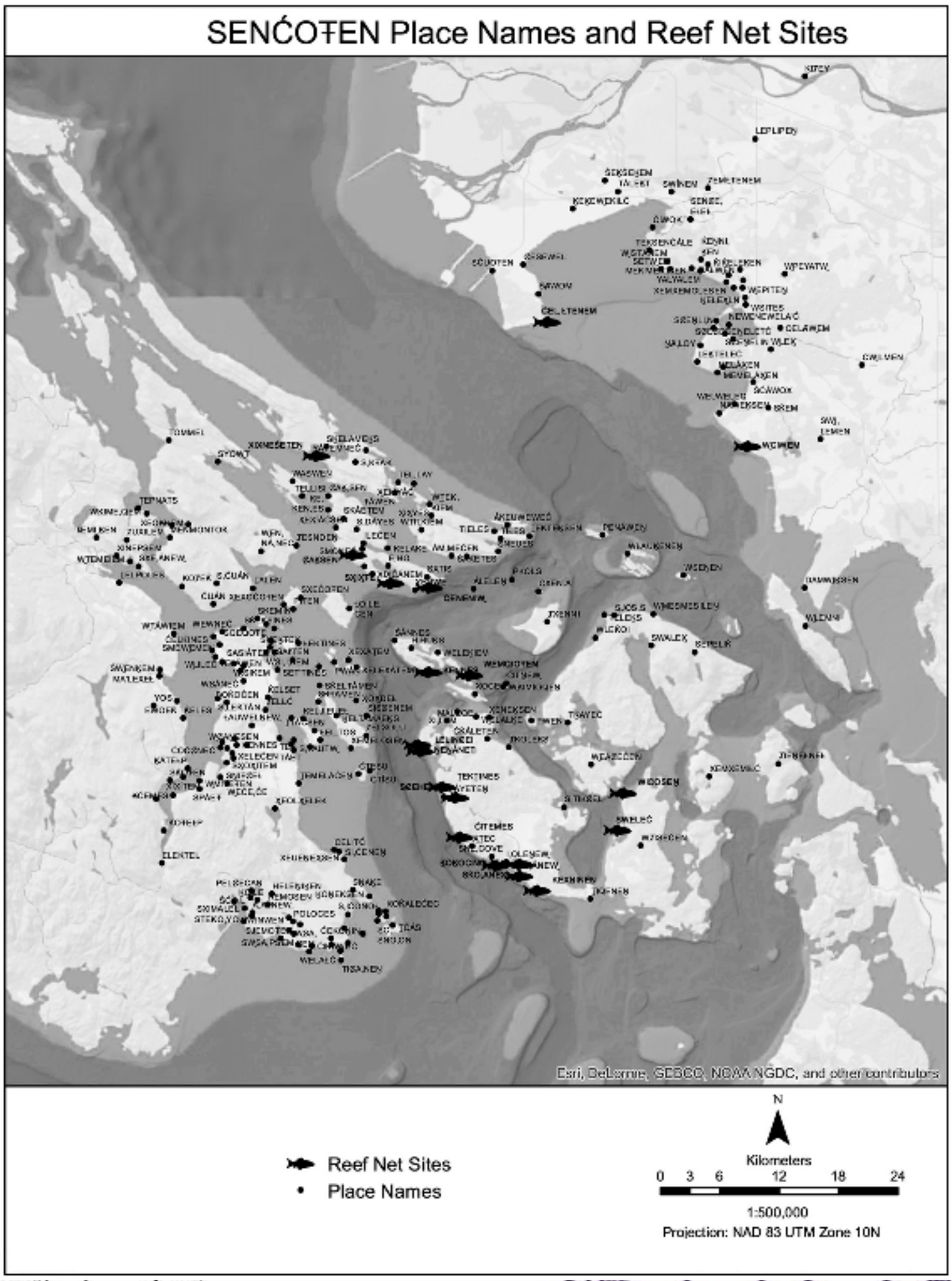
I would suggest that another important aspect of Clifford's discussion is the social and political implication for those of us who reside on his family's and other members of the W̱SÁNEĆ Nation's territory. Clearly, no one who is non-W̱SÁNEĆ can boast of such a complex and integral connection to these islands and his discussion helps expose the shortcomings of the pervasive colonial imaginary of land as 'real estate' that one 'owns' and has 'dominion' over. Remembering too that regardless of any legislation relating to environmental protections, Canadian Law is burdened by the Lockean imaginary of land and nature as 'dead'/inanimate and malleable matter – what Locke calls 'waste'. Land (and nature) then has no 'value' unless transformed through 'use' (see note 13). An example of this habit of mind can be found in how land and nature is curated through gardens and 'wildlife' parks, forest 'management' and the practice of destroying trees and animal habitat to create a scenic 'view'. By contrast, in Clifford's writings we begin to grasp the implications of agential relations to land. He invites us to think through and appreciate what it is to see in these islands, and its non-human inhabitants, one's ancient and living ancestors; to be connected to this place over layers of time; to know in the details of the landscape (and the SENĆOŦEN place names) the presence and lessons of the 'Transformer' (or 'Creator'); to be rooted to specific fishing, hunting and harvesting locations throughout the entire territory via connections to one's (human and non-human) ancestors and kin over millennia and to be embodied in an enduring reciprocal relationship to these lands. And even though non-W̱SÁNEĆ residents are not privy to these deeper (ancestral) connections to land that are based on a cosmology reaching back through time, the emphasis on *relationships* to land and non-human inhabitants (rather than dominion over discrete spaces) as a foundation for governance is very promising. Many questions arise: How might we understand one's obligations under 'treaty' not only as a form of membership with the W̱SÁNEĆ Nation but also based on conceptualizing the land as agential? How might colonial habits and practices be exchanged for a system of local laws that are derived from W̱SÁNEĆ law and culture? As he says, "The diversity of ways to interpret and use stories is an exciting component of indigenous law. While these stories are less about explicit rules, they can be the framework for deliberation, the means by which we judge the application of specific legal principles, and the soil from which those principles grow. […] Taking these stories seriously means paying attention to a sophisticated form of understanding and transmitting a distinctive set of values and cultural assumptions. It also involves learning to discern the legal principles flowing from these stories, values and assumptions, and the evolving intellectual and experiential context guiding the application of those principles. All of these tools for thinking foreground relationships to ecosystems and the non-human world, as opposed to a liberal paradigm [within colonial culture] that centres on the individual [and 'ownership' of land]. Those relationships have an aspirational dimension, but they are not a romantic ideal any more than the notion of individual freedom and non-interference. They are what we strive for, or the conditions we seek to generate through law. It is an entirely different starting point with its own implications for law" (my italics, 2016, p.770-771).

Members of the Squamish Nation preparing for the ceremonial protocols and permissions for coming ashore, Tsawout First Nation Reserve, *Tribal Journey*, 2017.

“Prior to the signing of the North Saanich Treaty in 1852, the subsequent creation of discrete reserves, and the creation of ‘bands’ under the Indian Act, the W̱SÁNEĆ comprised a single group, or knot, of extended families who share the SENĆOŦEN language and cultural order that revolved around their relations with marine creatures, some terrestrial animals, spirit beings, and with one another. The W̱SÁNEĆ families exploited different ecological niches within the W̱SÁNEĆ world, tailoring their seasonal movements according to the timing of local events. Such a pattern meant that one family knot could acquire through trade with another family knot what could not be procured locally. Tsawout members only rarely say that they ‘own’ the locations of the reefnet fisheries or other fisheries associated with specific families, but instead are descended from those fisheries, or are owned by them. It is a complex system of belonging that links kinship and community to territory and animal relatives.” (Tsawout First Nation, 2015, p.23).

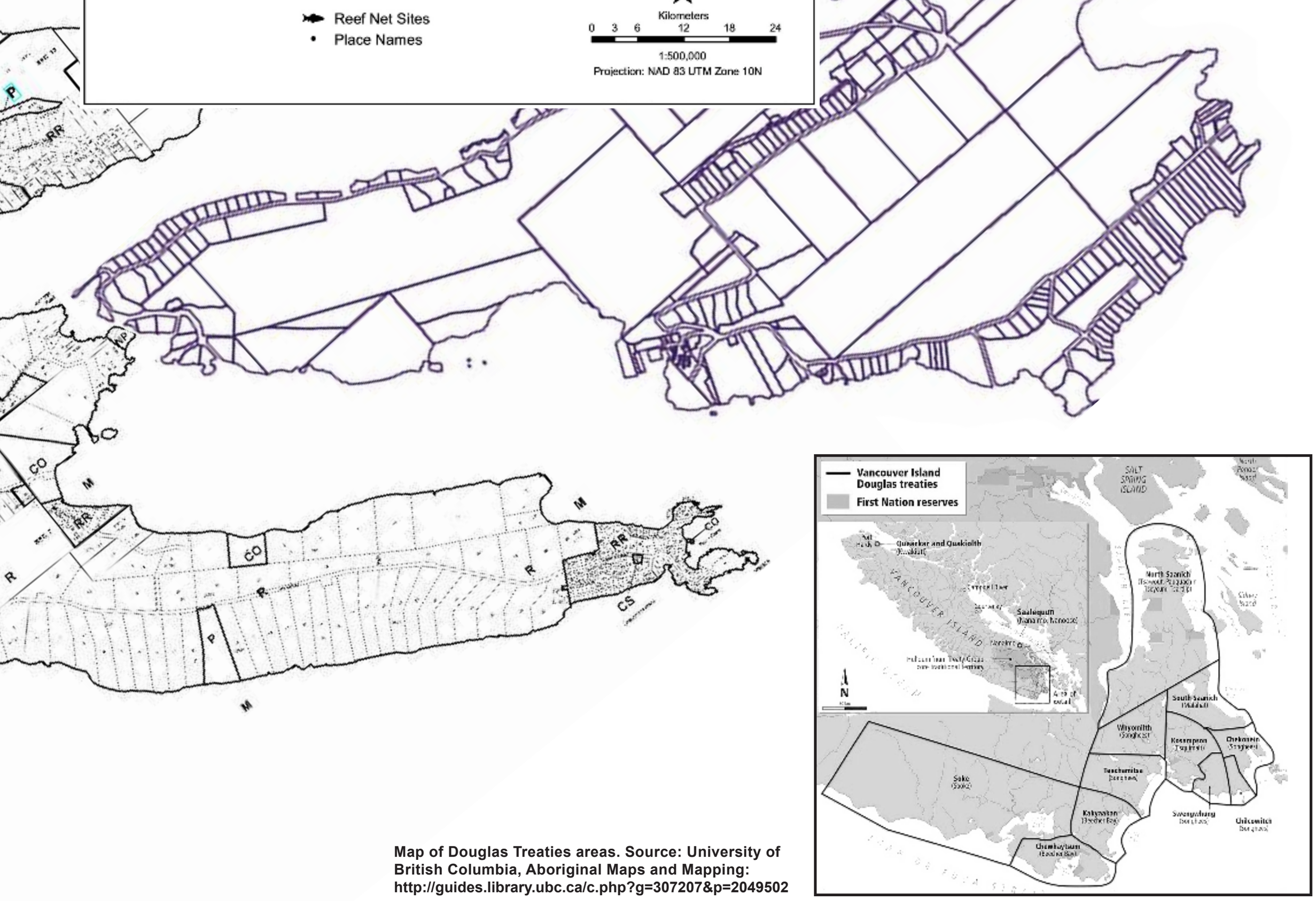
Map of Pender Island showing discrete patches and borders of individually ‘owned’ land. For a discussion of the problems relating to the concept of ‘property’ and collonial practices of map making, see ‘Douglas Treaty Notes’ 7, 9, 11 & 13.

Source: Islands Trust: http://mapfiles.islandstrust.bc.ca/



Map of W̱SÁNEĆ First Nation Traditional Territory. For a more detailed discussion see 'Douglas Treaty Notes' 1, 14 and all of the notes to 'W̱SÁNEĆ People's covenant with XÁLS.'

Source: Courtesy of SṮÁ,UT (Tsawout) First Nation. Copyright © Tsawout First Nation. All rights reserved. This map or any portion thereof may not be reproduced or used in any manner whatsoever without the express permission of Tsawout Nation.



Map of Douglas Treaties areas. Source: University of British Columbia, Aboriginal Maps and Mapping: http://guides.library.ubc.ca/c.php?g=307207&p=2049502

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