

Time of Trial:

The Gitksan and Wet'suwet'en in Court

DORA WILSON-KENNI

[Text of a talk given at the University of British Columbia, 9 April 1991]

Dora Wilson-Kenni: Thank you. Verna [Kirkness, Director, First Nations House of Learning, University of British Columbia]. Ladies and gentlemen, brothers and sisters, friends, truly friends — I see some familiar faces out there, very happy to see you again. My name is Yagalahl. I am from the house of Spookw and am of the Lax Gibuu clan. Verna asked me, "Where is Hagwilget?" and I said "In New Hazelton" — and this, for some of you who don't know where the Hazelton area is, it's about 780 miles in northwestern B.C.

There are approximately 7,500 Gitksan and Wet'suwet'en of the Skeena and the Bulkley. We are a matrilineal people with four clans and with the House system. The four clans being the wolf, the frog, the flying frog and the fireweed. And one of the important things in our culture is the feast system. And the feast to me is sort of misnamed somehow but that's the only way it seems that it can be described — to me it reminds me of the parliament buildings, where all decisions are made. At our feasts transactions are validated by having them witnessed. And I mentioned the four clans; there always have to be three clans which are witnessing. The feasts take place in the passing on of a chief's name, or a funeral feast, or for raising memorial stones, or totem pole raising. Also naming of a child and also name at age of puberty, and shame feast and earlier marriage and divorce feast.

The village that I come from is very unique in that a lot of the people that are living there are of the Gitksan. It is in the territory of Spookw, my House, but also there are large numbers of Wet'suwet'en people living there as well. So it's about half and half in the population. The language of the Gitksan is entirely different from the language of the Wet'suwet'en and yet the two people have lived in Hagwilget. My grandmother raised me. I was taught the language of the Gitksan and the Wet'suwet'en but

I spoke mainly in the Wet'suwet'en language. But I understand Gitksan very well. So it's very unique, what we have in Hagwilget.

As mentioned earlier, Joseph — who is Gisdaywa, one of the main plaintiffs of the court case — and myself were appointed as monitors for the court case as well as advisers to our lawyers. And that meant that any decisions that had to be made on behalf of the chiefs back home, we had to make them. And we were in court three weeks out of the month. The one week that we went back home we had to report back to the chiefs, and report to them decisions that had to be made, and have them ratify our actions and give us any other instructions that had to be given to our lawyers.

The court case started on May 11th in 1987 in Smithers and as probably everyone knows now there's Chief Justice of the Supreme Court Allan McEachern. We were seeking recognition of ownership and jurisdiction of 22,000 square miles. There's a total of fifty-four plaintiffs, ten Wet'suwet'en and forty-four Gitksan representing seventy-six Houses, of which thirteen were Wet'suwet'en and sixty-three Gitksan. As I said, it started in Smithers but there was a change of venue to Vancouver, January 4th of '88. And this caused hardship on our people because we weren't able to bring everyone to come and sit in the courtroom. They did come at times and were not able to stay for too lengthy a time in the courtroom.

A total of twenty-four of the Gitksan and Wet'suwet'en witnesses took the stand and gave evidence. Twenty-one expert witnesses were called on our behalf. Those included historical geographers, ethno-anthropologists, linguists, genealogists, archaeologists, fishery scientists, and cartographers. But we had a number of professors from universities coming to sit in the court cases as well and listen to the evidence being given. And there was one that came from Newfoundland, and also from Virginia, also from Alaska, and another from England, as well as some from UBC here. So we were very happy to receive the support that we did from those people who did make it to the courtroom.

A lot of the evidence from the elders was done in their homes through commissioned evidence. Thirteen of our elders did their evidence in this way. And cross-examination was done on those. Discoveries were done on ten of our witnesses. Those were done at home as well. Those were done mainly because of the ages of our elders. Cross-examination and affidavits were done and as well as territorial affidavits which numbered fifty-three. The territories — of 133 that were identified on the maps, 36 were the Wet'suwet'en and 77 for the Gitksan. The volumes totalled 374 transcripts and the exhibits totalled 1,240, and there's over 30,000 documents that

were used. It sounds like a small amount when you say exhibits at 1,240, but there were a lot of exhibits where one would be 1-A, -B, -C and so on, and some were into the 300 mark. It is quite a number.

One of the things that happened right off when we started in Smithers was we had to use interpreters because of the language — interpreters for the Gitksan and the Wet'suwet'en. None of our languages are written; it's an oral history. And I guess this is one of the arguments that was used against us; that there's oral history and nothing is written. I guess it's fine if anthropologists get this history and write it down and then it can be recognized.

Some of the questions and the documents that were used against us were the genealogies. We had to prove that we existed. We had to prove that we were a people and that we had a language. It was very strange and highly emotional at times — causing a lot of anger. And sometimes drove me to tears when I got home. I never ever showed it in public. I waited till I got alone and then just beat the wall and say, "Why? Why? I'm sitting here. Can't you see me?" We had to prove who we were. How our names were given to us. Like for instance where my name came from; we'd have to prove it came from my grandmother, my grandmother's mother's mother and so on — like I said it's a matrilineal system. We had charts upon charts for all of our houses. It was put on the wall in the courtroom. Some days you walk in there and see all these genealogies just pasted to the wall.

Anyone that was involved in any organization were questioned on that. Anyone that was involved in band council, on band council, being elected to band council, working for band council. We were questioned on that. Any one of us that purchased land off the reserve — we're not supposed to leave our reserve but if we bought land we were questioned very well on that. Anyone who had taken out permits for fishing or hunting was questioned. Never mind that those permits were forced upon our people. Because if they didn't take those permits they were thrown in jail. A lot of this type of evidence went in.

Trapline registrations — that was very interesting in the way that traplines were registered, and it was made to look as though those were the extent of the territories. Anyone having driver's licence, that was questioned — even if you had electricity in your home or you used telephones, that was questioned. All of this was supposedly to support the provincial and the federal government lawyers' theory of acquiescence to the non-Indian law. One of the very hurting things to me and to a lot of elders were the files that were brought from the Department of Indian Affairs,

estate files and wills. Those were put to the peoples as they appeared as witnesses and a lot of these documents have never ever been seen by the closest family of the people who made those wills or any of the information in these state files. Even today if I went into the Department of Indian Affairs and asked for information I wouldn't be able to get it.

So there we were in court, and all of these things were being put in front of the witnesses. And they were being asked questions about it. And a lot of evidence that had been put in before the chief justice had to do with some of our people who have died. We've had a great responsibility placed on our shoulders by our ancestors. Because the fight that we have been fighting, and are still fighting, had been placed there a good many years ago when they first realized the wrong that had been done to them. When the oldest person was being cross-examined on his evidence he was 104 years old at the time. He was telling about his experiences of being burnt out on his territory, and this was during the time — the wintertime — when he was out checking his traps. He came home to find that his cabin had been burnt down and this was in below-zero weather and his family and he had to walk back to Moricetown. And that was from the area from around Houston that he was telling about. Those types of things were very — it was maddening to see him. He's a very tiny little man because at the time he was 104 years old. And we went back to Smithers for the cross-examination of him in Smithers. And there he sat in the witness stand, tiny, but sat very proud and answered with a very strong voice. And it was at that moment that I realized why we were there in court — when I saw him and the way he was answering. He was very strong, yet they were treating him like he was a criminal, sitting in this witness box. The only crime that we committed was being born Aboriginal people, descendants of Aboriginal people of this country. And it hurt.

It was highly emotional when Alfred and I had to do talks in different areas while we were in Vancouver here and report what was happening in the court. It was very hard for us to do this because we had to talk about the elders that had to tell us their experiences. And it was a real education. It's an education that I would not otherwise have received, I don't think. The one thing that I find that is offensive to all of us, and I say this because of the decision that came down on March 8th where they dismissed us. The court case finished on June 30th of '90 and we received the decision on March 8th. Which was also by the way the International Day of the Woman — that was said because it was just like slamming our matriarchal system. To me it was a sad day when I heard that decision. And

yet in a way I was happy because in a way it was a victory. A victory in a way that yes, our oral history was slammed around as we were witnesses on the witness stand, but we have it written in black and white now for anyone to see in those transcripts, in those 374 volumes of transcripts. In all of the commissioned evidence, all of those affidavits—it's there written, and that is something that the Gitksan and Wet'suwet'en people have done to further this fight for recognition. And I think that it doesn't matter how long it takes; we are not finished yet. This is just the beginning. As you probably know, our lawyers have already put the filed notice for the appeal on April 2nd. So it's a victory to us in a way, but it's still a long, hard battle.

And at this time I would really like to thank all of those people who have supported us in our fight in this court case, because there have been a good many people, not just here but throughout the different parts of Canada as well as our local area at home. And I'd like to thank you very much for listening to me tonight. Thank you.