

DANE-ZAA ORAL HISTORY: *Why It's Not Hearsay*

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INTRODUCTION

ORAL HISTORY IS FUNDAMENTAL to the way Canada's First Nations document their past and interpret their present. Canadian courts have been challenged to understand this oral history as evidence since 1982, when the Canadian Constitution Act was proclaimed. Section 35 (1) of that act stipulates that "[t]he existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed" but leaves it up to the courts to determine the nature of these rights. First Nations maintain that oral history is fundamental to understanding their rights. Since section 35 (1) was established, a good deal of evidence based on First Nations oral history and oral tradition has been presented to Canadian courts in Aboriginal rights and claims cases. These cases highlight differences between Western legal concepts and First Nations systems of governance. They also raise issues of anthropological and historical interpretation as well as legal issues. First Nations narratives identified as oral history (or sometimes as oral tradition) have been accepted in some cases but have been rejected as hearsay under the Rules of Evidence used by Canadian courts in other cases. Perhaps because of the challenges this evidence presents to judges, case law has evolved considerably since 1982, as has the culture of Canadian law schools. "Old school" justices such as George Addy (*Apsassin*), Alan McEachern (*Delgamuukw*), and Antonio Lamer (*Van der Peet*; *Delgamuukw*) have gradually been replaced by a younger generation of lawyers and judges educated in or associated with law schools that encourage First Nations scholars and have an active interest in Aboriginal law. The University of Toronto Law School, for instance, describes its program as follows:

The Faculty of Law has long been dedicated to enhancing the presence of Aboriginal scholars and ideas at the law school. Through recruiting Aboriginal students to the Faculty, offering innovative courses in Aboriginal law, or providing students with opportunities to put their legal knowledge to work on behalf of Aboriginal communities, the Faculty has worked to enhance the Native voice in our educational community.

(University of Toronto Faculty of Law website <http://uoftaboriginallaw.com/WhoWeAre.aspx>)

In *Mitchell v. M.N.R.*, Chief Justice Beverley McLachlin wrote an opinion that was more nuanced than those of previous judges with regard to the validity of oral history evidence in First Nations cases, while also accepting the utility of archaeological and historical corroboration:

Aboriginal rights claims give rise to inherent evidentiary difficulties. However, the rights protected under s. 35(t) should not be rendered illusory by imposing an impossible burden of proof. The rules of evidence must therefore be applied flexibly, in a manner commensurate with the inherent difficulties posed by aboriginal claims. Since claimants must demonstrate features of pre-contact society in the absence of written records, oral histories may offer otherwise unavailable evidence of ancestral practices and aboriginal perspectives. Oral histories are admissible as evidence where they are both useful and reasonably reliable, subject always to the exclusionary discretion of the trial judge. In determining the usefulness and reliability of oral histories, judges must resist facile assumptions based on Eurocentric traditions of gathering and passing on historical facts. Here, the parties presented evidence from historians and archaeologists. The aboriginal perspective was supplied by oral histories of elders such as the respondent. The respondent's testimony, confirmed by archaeological and historical evidence, was useful and the trial judge did not err in finding the respondent's evidence to be credible and reliable.

(*McLachlin, CJ, in Mitchell v. M.N.R.*, [2001] 1 S.C.R. 911, 2001 S.C.C. 33. File 27066)

Since the turn of the millennium, judges in Aboriginal rights and claims cases have generally admitted testimony by First Nations elders, but lawyers for both First Nations and the Crown have also relied on the work of academic "expert witnesses" to interpret their testimony. This article provides a brief review of case law in which oral history was introduced and discusses evidence provided by elders, anthropologists,

historians, and other “experts.” (For a more detailed discussion, see Bruce Miller’s *Oral History on Trial*.) It then considers and evaluates Dane-zaa oral history in light of current legal opinion regarding the admissibility of such evidence.

ORAL HISTORY VS. ORAL TRADITION

Following Jan Vansina’s 1985 book, *Oral Tradition as History*, some experts have testified that the term “oral history” refers only to first-person narratives of personal experience. In a report prepared for *Lax Kw’alaams Indian Band et al. v. A.G. of Canada and HMTQ*, Alexander von Gernet (2007, 27–28) cites Vansina to define oral *histories* as: “recollections of individuals who were eyewitnesses or had personal experience with events occurring within their lifetime.” He says that Vansina defines oral *traditions* as “documents about past events transmitted by word of mouth over at least a generation.” He argues *against* “these materials ... being tendered as evidence about what *actually* happened in a relatively remote past, rather than strictly as evidence about what people *believed* at the time the traditions were recorded in the twentieth century” (emphasis added). He suggests that “oral traditions reflect current belief about the past rather than an accurate reporting of it” (30). Lawyers for the Crown have used this interpretation of Vansina to question the admissibility of indigenous oral traditions in Canadian courts. Any academic historian would agree that his or her work interprets the past and, therefore, could be said to reflect belief current at the time he or she is writing. However, no historian would concede that the act of academic interpretation invalidates that work’s utility for evaluating evidence about – to use von Gernet’s terminology – “what actually happened.” In the same way, First Nations oral historians should be allowed to interpret and contextualize narratives passed down from previous generations without prejudice.

A close reading of Vansina shows that he refers to personal experiences and third-person accounts (which he calls “hearsay”) only as the *sources* of oral history, not oral history itself. “*The sources* of oral historians are reminiscences, hearsay, or eyewitness accounts about events and situations which are contemporary, that is, which occurred during the lifetimes of the informants. This differs from oral traditions in that oral traditions are no longer contemporary. They have passed from mouth to mouth, for a period beyond the lifetime of the informants” (Vansina 1985, 12–14, emphasis added). He uses the term “oral historians” to refer to

scholars who document oral narratives, and he implies that oral history is the work they produce rather than the work of narrators within the culture. He thus privileges academics over people like First Nations carriers of information about the past. Vansina defines oral traditions as “verbal messages which are reported” (27). “A tradition should be seen as a series of successive historical documents all lost except for the last one and usually interpreted by every link in the chain of succession” (29). Vansina goes on, though, to recognize the collective nature of orally transmitted information:

People hear performers and all the auditors have heard that message. Some tell it in turn to still others. Some who tell it have heard it several times from different people, and fuse all that they have heard together into a single statement. Hence the transmission really is communal and continuous ... The information coming from more people to more people has greater built-in redundancy than if it were to flow in one channel of communication. Multiple flow does not necessarily imply multiple distortion only, rather perhaps the reverse. (30-31)

I make a similar point in a 1990 paper on Dane-zaa knowledge and oral tradition:

Hunting and gathering people typically live in kin-based communities where most social relations take place between people who know one another well. Because people share knowledge of one another's lives, they code information about their world differently from those of us whose discourse is conditioned by written documents. They know their world as a totality. They know it through the authority of experience. They live within a community of shared knowledge about the resource potential of a shared environment. They communicate knowledge through oral tradition. They organize information through the metaphors of a mythic language. They reference experience to mutually understood information. They communicate with considerable subtlety and economy. Hunting and gathering people code information in a way that is analogous to the distribution of visual information in a holographic image. If you take a small scrap of a hologram and look at it carefully, you can reconstruct the entire image it represents. (Ridington 1990, 277)

I see several problems in applying von Gernet's interpretation of Vansina's definition. Vansina wrote that first-person experiences are the sources of oral history in much the same way as written documents

are among the sources of written history. Vansina (1985, 17) describes oral histories as hearsay (6) and oral traditions as “historical gossip” rather than as carefully curated narratives. Yet Vansina’s use of the term “hearsay” is not made with reference to the concept of hearsay as it is employed in English common law. He writes: “The dynamics of accounts start with historical gossip or personal tradition. The latter subsequently become group traditions and eventually traditions of origin” (ibid). These he describes as “all sorts of news and hearsay generated as events occur and [are] communicated through the usual channels of communication in a community” (ibid). Vansina is a medievalist by training, but the examples he provides from his own fieldwork are all from Africa. His experience there led him to formulate important insights into oral tradition, but nowhere does he refer to oral history and oral tradition as evidence that might be used in a court of law. In Canadian courts, von Gernet and lawyers for the Crown have interpreted Vansina’s definitions in such a way as to attempt to diminish the authority of First Nations oral historians (such as the Dane-zaa historians whom I discuss later in this article).

Historian Robin Jarvis Brownlee has written a comprehensive critique of von Gernet’s expert witness submissions (relating to First Nations oral history) to Canadian courts. “His primary role,” she writes, “has been to undermine the credibility of oral history evidence offered in court ... He is one of the principal exponents of a sceptical, even dismissive, attitude toward oral history, repeatedly arguing that it should not be accepted unless there is ‘some form of independent confirmation or other assurance of reliability’” (Brownlee 6-8). It is curious that von Gernet has been so readily accepted as an expert on oral history given that he has published no academic papers on the subject. As Brownlee points out, “he has never conducted it [i.e., oral history research] himself” (9). Further, he “argues through abstractions, decontextualizing Aboriginal oral history, and insisting on the universal applicability of Western knowledge forms and juridical practices” (7-8).

In his testimony in *Tsilhqot’in v. British Columbia*, von Gernet argues that, in the absence of corroborating documentary evidence, oral history evidence cannot be accepted as an account of what really happened. Recent judicial decisions have cast doubt on his argument. Mr. Justice Vickers, in his *Tsilhqot’in* decision (perhaps thinking of the McLachlin decision quoted above), writes:

While I accept much of what Dr. von Gernet has said, I conclude he would not give oral tradition evidence any weight without some

corroboration from an outside source. As I have noted, this approach is not supported by the jurisprudence. (*Tsilhqot'in Nation v. British Columbia* 2007 B.C.S.C. 1700, para. 156)

In a 2013 decision in *Daniels et al. v. Her Majesty the Queen*, Mr. Justice Phelan presents an even stronger opinion of von Gernet's credibility as an expert witness:

Von Gernet came at his task of making his report in an unusual way. He would brook no instructions nor work with counsel; he was there to express his opinions. Regrettably, this was evident in that he exhibited little understanding of the case or the issues for the Court; thus he could not be as helpful as one would have hoped. (*Daniels et al. v. Her Majesty the Queen* 2013, para. 178)

DANE-ZAA ORAL HISTORY

The rest of this article looks at oral histories that I recorded from members of the Dane-zaa First Nations starting in 1964. It is important to note that these recordings are not based on interviews conducted with "informants"; rather, they document the narratives Dane-zaa oral historians chose to tell within the context of participant observation fieldwork. My first recordings were on audio tape; more recently I have used video. Most of the recordings are in the Beaver language and have been translated by Billy Attachie, a Dane-zaa elder with linguistic training. For the Dane-zaa and many other First Nations, it is the narrators themselves who are oral historians. Those (like myself) who document their narratives are documentarians, ethnographers, or academic historians. Dane-zaa storytellers are the keepers of history, in the same way that their accomplished singers, known as songkeepers, are keepers of songs and the stories associated with them. From my almost fifty years of experience documenting the Dane-zaa, I am convinced that the narratives First Nations oral historians produce should be thought of as oral histories rather than simply as sources to be used by non-Aboriginal scholars.

Written history both describes and interprets the past; oral history does the same thing. Written history uses documents that have survived from past times as well as interpretations made by historians in a later time. Just because a written document has survived from a different time does not mean that it provides an accurate description of the way things were. Writers then and now are equally subject to being mistaken,

biased, or simply dishonest. Most written documents from the past are not reports of first-hand experience but, rather, accumulations of information from a variety of sources. In 2005, during our research for the Doig and Blueberry treaty land entitlement claim, Pat Cleary, Mitch Goodjohn, Jillian Ridington, and I discovered that the Department of Indian Affairs' annuity paylists missed a significant number of people who were alive in 1914, when reserve land was first surveyed. Even hard documents like paylists, contracts, deeds, and titles are subject to interpretation and revision. Generations of lawyers have plied their trade suggesting alternative interpretations of written documents. It is the job of historians to evaluate such evidence and to place it in a context within which we can understand and evaluate it. First Nations oral history is no different: it describes past events and presents them within a cultural context.

Folklorist Amber Ridington uses the term "oral curation" to describe the work of Dane-zaa oral historians (Ridington and Ridington 2011). Like an academic historian, a First Nations oral historian is both the curator of narratives describing the past and an interpreter of their meaning. A principal difference between them is that academic historians contextualize past documents in writing, while oral historians contextualize orally curated narratives orally. Narratives about events that happened before the narrator's time cannot, by definition, be accounts of the narrator's own experience. Vansina would call these narrations oral traditions; however, I argue that it is more accurate to describe them as orally curated indigenous histories. In describing to Jillian Ridington and me the curation of Dane-zaa songkeepers who preceded him, songkeeper Tommy Attachie stated: "When you sing it now, just like new." By this he meant that their performances (and those of storytellers as well) were recreations of cultural knowledge rather than rote recitations. Dennis Tedlock (1991) refers to this distinction with reference to Zuni oral historian Andrew Peynetsa, but the idea can be traced back to Plato's distinction between *diegesis* and *mimesis*.

Vansina's oral history and oral tradition depend on, in his words, "reported statements from the past beyond the present generation" (1985, 27). Dane-zaa verbal messages carried from generation to generation are part of what I call their "narrative technology" (Ridington and Ridington 2006, 102-4). Elder Billy Attachie calls them "wise stories that I live by." Dane-zaa language and culture are particularly well adapted to transmitting important information from person to person and generation to generation. When a hunter has seen fresh tracks or made a kill, for

instance, he is able to tell others exactly where to go, relying on mutually understood place names and mental maps. Similarly, individuals are able to locate themselves within a mental map of known kin and stories about their lives, some of which go back to pre-contact times.

When we prepared the genealogy of the former Fort St. John Band for treaty land entitlement purposes, our report listed members of the band who were alive at the time their reserve land was first surveyed, including many who had not been counted in the 1914 survey. This allowed Doig and Blueberry (who together made up the Fort St. John Band) to claim additional reserve land for each person not counted in 1914. We began our work with the genealogical information I had recorded from elders during my 1965-66 fieldwork (Ridington 1965-66). We were able to locate written records pertaining to a number of people about whom the elders had told me. Some were found in Roman Catholic Church baptismal and marriage records going back to 1881; others were named in Hudson's Bay Company (HBC) journals. Our research shows that, in 1914, the Department of Indian Affairs neglected to count a significant number of eligible people. Dane-zaa oral history also named some individuals for whom we could find no written record. The genealogical information I recorded in 1965-66 proved to be highly accurate in the cases for which there was written documentation. Because of this accuracy, Canada's negotiators did not challenge oral history information about people for whom we could not find written documentation.

DANE-ZAA ORAL HISTORIES

In 2008, at the request of the Doig River First Nation's chief and council, Jillian Ridington and I began bringing together oral histories for the manuscript that became *Where Happiness Dwells: A History of the Dane-zaa First Nations*. Some of the stories I recorded from elders in the 1960s, while others came from today's elders, including Tommy Attachie, Sam Acko, May Apsassin, and Madeline Succona, who are our contemporaries. Some of the stories, such as the one about the creation of the land and animals told by the last Dreamer, Charlie Yahey, are best understood as cosmological myth similar in kind, if not in content, to the creation story in Genesis. Others tell about people, places, and events that are historical but that contain elements of Dane-zaa belief about the supernatural.

One of these, which I recorded from Doig elder Aku in 1966, is about a man named Duuk'isachin who lived in the eighteenth century, before the time of first contact. My 1965-66 genealogy identifies Duuk'isachin

as a direct ancestor of many people living at Doig and Blueberry today. The story is set in a river valley surrounded by mountains. The description closely fits the Finlay River in the Rocky Mountain Trench. The people who have traditionally lived there are Dane-zaa but are also known by their location as *Tsekene*, Rocky Mountain people. Duuk'isachin dreams that something big and dangerous is on the trail of his people, but they do not believe him until they actually see the monster approaching. They attempt to flee into the mountains, but the giant animal follows them. Finally, Duuk'isachin puts on a pure white moosehide that symbolizes his power and turns to converse with the monster, who addresses him as "Duuk'isachin." It is then and only then that the people learn the name of his power, which means "he slept with a giant animal." He saves them by continuing the relationship with the giant animal begun during his *shin kaa*, or vision quest.

While the focus of the story is the ability of Duuk'isachin to use the power of his vision quest to help his people, it is of historical value in placing an ancestor of the *Ts'ibii Dane* (Muskeg people, later known as the Doig River First Nation) in the Rocky Mountain Trench in pre-contact times. It documents the practice of intermarriage between these two groups prior to contact. For a Dane-zaa oral historian, information about Duuk'isachin's medicine power is more important than any reference to the story's setting. For a Western ethnohistorian, placing an ancestor of the *Ts'ibii Dane* in the Rocky Mountain Trench in pre-contact times may be of greater interest. Both are of equal validity.

A series of stories about this early prophet's son illustrates a convergence of Dane-zaa and Western history. The son, also named Duuk'isachin, was born prior to Alexander Mackenzie's journey along the Peace River in 1793. Like his father, he came from "somewhere up in the mountains." His name shows that he shared the same power as his father. According to the oral history told by Tommy Attachie, in the son's *shin kaa* the giant animal with whom he stayed told him that he would live into his nineties. Dane-zaa genealogy identifies the son as the father of two important leaders of the *Ts'ibii Dane*, Yeklezi and Dechii, both born in the 1840s, according to baptismal records of their children. Both are named in the 1899 North-West Mounted Police census at Fort St. John, which identifies Yeklezi as "Chief of the Muskeg Indians" and Dechii, also known as Tagea, as "The Great Man." Many people living at Doig and Blueberry today are descended from these two leaders. It was not unusual for Dane-zaa men to father children in their sixties or even later. Aku was well into his eighties when his last child was born.

Oral history accounts of Duuk'isachin's life provide a Dane-zaa perspective on the early years of the fur trade. While medicine powers figure in the story of his life, the events described give us a rich account of how the Dane-zaa adapted to changes brought about by contact with Europeans. Like his father, Duuk'isachin used personal power to protect his people. At that time, fighting between bands of related people living in different areas intensified because of stress on game resources and access to trapping areas caused by the fur trade. Traders were demanding that Dane-zaa hunters supply meat to their forts, both in the Peace River area and as far away as New Caledonia. Powerful men like Duuk'isachin were able to use their power to avoid fights by confronting the leaders of other bands and forcing them to back down without resorting to violence. Tommy's story begins by describing such an encounter. Billy Attachie and Madeline Oker translated. I include this story, as given in *Where Happiness Dwells*, in its entirety because it illustrates the richness and complexity of the narrative that Dane-zaa oral historians constructed regarding the complex relations of the early fur trade period.

Duuk'isachin was from somewhere up in the mountains,
 near where the Halfway River people live,
 but he went to Milligan Creek
 and married into the *Ts'ibii Dane* band.
 He was there when people from High Level [west of Fort Vermilion]
 came to attack the *Ts'ibii Dane*
 but Duuk'isachin never had to kill them.
 He just stopped them with his power.

Those people from High Level
 wanted to go and fight the Muskeg people [*Ts'ibii Dane*].
 One of them told lies about Duuk'isachin.
 The person who told those lies was his nephew, Wayaazi.
 His name was Wayaazi. He was from over there, High Level people.
 They wanted to kill these Milligan Creek [Muskeg] people.

Wayaazi came over to where the Muskeg people were.
 Duuk'isachin was sleeping up there.
 From his dream, he knew they were coming to his country.
 He dreamed they were coming. Duuk'isachin told his wife,
 "I am going to meet them. Let's go."
 His power told him, "You go meet them."

So he went right straight toward where they were coming from.
Some guys went with him. He met them over there.
He came back to his wife and said, "I saw their snowshoe tracks."
They went back to their camp.
Duuk'isachin told his wife, "Make a fire here. Cook something."

"Tomorrow we are going to go to their next camp," he told her.
In the morning after they ate, they went over
to where he saw the snowshoe tracks turn.
They saw a whole bunch of tipis.

He kept going, and he saw big snowshoe tracks in there.
He turned around and went back. That was Wayaazi.
His name was Wayaazi. He was Duuk'isachin's nephew.
He wanted to kill all the Muskeg people.
A whole bunch of his people came with him, too.
He was going to kill the Muskeg people.

After introducing the characters and their relationship to one another, Tommy's story goes on to describe a classic contest between medicine powers. In this case, a face-to-face confrontation is a way of avoiding what otherwise might have escalated into a bloody and drawn-out feud between related bands. As Tommy said in the beginning of the story, "Duuk'isachin never had to kill them. He just stopped them with his power." To a Dane-zaa oral historian like Tommy, and the elders from whom he learned the story, conflict between bands and their leaders was best resolved through medicine power contests rather than through physical violence. As the story unfolds it becomes obvious that competition for trading relations with the post at Fort Vermilion is central to the conflict. From the story's context we can infer that it took place after the North West Company's Rocky Mountain Fort post, which had been at the mouth of the Moberly River, was closed in 1806 due to depletion of game in the area.

"One time I camped there with Wayaazi, my nephew," he said.
He met him at that place. Wayaazi came out from his camp.
He shook hands with Duuk'isachin.
Duuk'isachin shook his hand really hard.
He squeezed his hand like this. Wayaazi asked him,
"How come you squeeze my hand like that? Pretty mean."

Duuk'isachin told him, "You come here with all those guys.
 Maybe you're going to kill me.
 That's why you brought all those guys.
 Do you think I'm going to shake hands with you easy?"
 They stood face-to-face together right there and talked to each other.

Duuk'isachin said,
 "There are lots of people over there in High Level, Fort Vermilion.
 You just came up here with all your guys.
 You're not a man. You came up here like a lady.
 You think you're tough over there,
 but when you come up here, you come like a lady.
 You talk like that to me," Duuk'isachin told him.

After that, Wayaazi quieted down. The next morning,
 he and his people wanted to go back to High Level.
 Duuk'isachin was too powerful. Lots of guys knew about him.
 They knew about his power, so they wanted to go back.
 They started to move back there.
 They went with Wayaazi. Duuk'isachin told him,
 "You're going to go where you said there are lots of people.
 You can talk big up there."

Then Duuk'isachin told him, "I can go back with you."
 Wayaazi said, "You see my snowshoe tracks? Big snowshoe tracks.
 I wonder what you think. You must have got scared."
 Duuk'isachin answered,
 "Oh, those snowshoes, your wife braided them for you.
 You think I'm going to get scared of those?
 I slept with Wonlii nachii [the giant animal].
 Every night I sleep with that one. I'm never scared."
 He told Wayaazi's people that.

Those guys were scared of that power,
 so they started to move back with Wayaazi, to go home.
 Some of them, they talked to each other about beating him.
 "If we let him go back with us over there, something might happen.
 If people try to do something to him, he's going to clean us out.
 He's too powerful. What can we do?
 He's not going to go up there with us," they told each other.

That one guy from High Level thought he had a lot of power.
Duuk'isachin told him, "Sit down." He sat down.
Duuk'isachin said, "I can eat this kind of rock,
the special rock we use to make fire.
I just bite it, you know, I chew it," he said.
He had his own power rock and that guy had one too.
Duuk'isachin gave his own rock to that guy.
"Here," he said. "I'm looking right at you.
Try this while I am looking at you." Duuk'isachin said,
"If you bite that rock, it will go inside and kill you,"
but that guy was scared to try it.

So Wayaazi sent three guys to Fort Vermilion where the store is.
They got tobacco and all that other stuff; bullets, you know, everything, powder. They brought back lots of stuff.
Three people went up there.
When they got back at night, they called Duuk'isachin.
"Come up here. See what we got for you.
Tobacco, lots, everything stuff, here.
From here you can go home, you know, then we will go home."
So he believed in what they told him, too.
"OK, but I'm going to go over there soon as ice has broken up.
I'm going to go down to check fur prices, over there," he told them.

Much of the story is told as a first-person narration by Duuk'isachin himself. We learn that when Wayaazi got back to Fort Vermilion he told lies about Duuk'isachin. After the ice broke up, Duuk'isachin carried out his plan to visit Fort Vermilion. He found that people from there were waiting with guns on the riverbank. Again, he was tested; again, he used his power to prevent violence.

But when they got back up to the trading post
they made a different story.
They told people at Fort Vermilion that
Duuk'isachin had told them,
"Wait till I get up there. I'm going to finish you guys."
Those people made up a story about him.

When the ice started to break up
Duuk'isachin headed to the trading post.

When he got to Fort Vermilion,
the people there had set up their guns on the top of the hills on both
sides.

Wayaazi had told them lies about him.
That's why they had their guns pointed at him.

Duuk'isachin came into their area anyway.
He just looked at all those guns and their powder all got wet.
They couldn't fire. He was so powerful all those guns never went off.
The bullets never left their guns. So he got out safely.
He had an axe and a knife at his side.
When he went in there, people just ran away.
He got to the trading post at Fort Vermilion.

Duuk'isachin wanted access to the Fort Vermilion post not only to
sell his furs there but also to negotiate for the creation of another post
within *Ts'ibii Dane* territory, following the closure of Rocky Mountain
Fort. Tommy describes how he spoke to the traders.

Duuk'isachin talked to the traders. He told them,
"Those guys told lies. I just want to sell my furs
up there in my own country."
He was heading back up to his country. He told them,
"I want my store to be at Gattah Kwanh [near today's Fort St. John],
my side of the river this time."
The trader said, "Everything you say is going to happen."

So next time they put the store on this side, not across.
Before that, they made the first post on the south side of the river.
Indians had a hard time to go across.
"This time," he told them, "I want the store on my side."
That's what Duuk'isachin told them, and that's what happened.
He didn't want to kill the people there. He just did everything right.
That's why their guns wouldn't fire. That's Duuk'isachin's story.

Tommy's story describes events for which we have some Western
documentary evidence, but he tells them from a Dane-zaa perspective.
His rendition is far richer and more nuanced than the simple entries of
a trader's journal. There is an interesting convergence of the oral history
with a trader's report at Dunvegan in 1806, the year Rocky Mountain

Fort closed. The trader wrote: “We settled with L’Homme Seul and band, and they set off. They are to be on the borders of the river, opposite to la Riviere d’Pinette on 20th October [1806], at which place they asked to have a fort this fall” (Burley, Hamilton, and Fladmark 1996, 82).

A post was indeed built at the mouth of the Pine River (later renamed the Beaton River) and remained there until 1823, when it was closed following the merger of the North West Company with the HBC and the murder of HBC employees to avenge the death of a Dane-zaa post hunter. L’Homme Seul was recognized by the traders as an important man during the first three decades of the fur trade, and, according to the 1799–1800 North West Company journal for Rocky Mountain Fort, he was made a trading chief in 1800. The oral history quoted above describes Duuk’isachin asking the traders at Fort Vermilion for a new fort on the Pine River. Given that “Duuk’isachin” was the name used by later generations when referring to Duuk’isachin’s medicine power, it is possible that L’Homme Seul and Duuk’isachin are, in fact, the same person. L’Homme Seul, meaning “man apart,” could even be an oblique reference to the time Duuk’isachin spent away from his people during his *shin kaa*. Interestingly, a Dane-zaa translation of the name would be *Maazon*, which is Tommy Attachie’s Dane-zaa name. Tommy told me that his uncle Frank Attachie gave him the name to remember a famous ancestor. If Duuk’isachin and L’Homme Seul are the same person, he could easily have made the same request of traders at Dunvegan and at Fort Vermilion, both of which are on the Peace River east of Fort St. John.

The story cited above illustrates some interesting features of Dane-zaa oral history. It makes extensive use of quoted discourse in much the same way as would a novelist or, indeed, a Western non-fiction writer. The events described must have been of great interest to the Dane-zaa who lived during the early fur trade; and they have continued to be of interest to later generations. The speech attributed to Duuk’isachin is given as originating from the speaker and his wife themselves, as they describe to their relatives the pivotal events of a shared history. Including such actual events in order to provide a scaffolding for the oral history is an important tool in Dane-zaa oral curation. Members of a Dane-zaa audience will understand that the story reflects a consensus of those present at the time, and they will trust that subsequent narrators have been diligent in their curation of the story.

By the time the HBC replaced the North West Company, the post at the mouth of the Pine (called St. Johns by Burley et al. 1996) could

no longer supply provisions for the New Caledonia brigades. At times, St. Johns could not even sustain its own residents from locally available game. Trader Hugh Faries reports that both Sekani (whom he called “Slaves”) and Dane-zaa (Beaver) were trading at the fort but that most of the meat hunting was carried out by the former. Because game animals near the fort were in short supply, the Dane-zaa were reluctant to hunt there to supply the traders, as the company requested. Their first priority was to feed their own families. The following journal entries give an indication of conditions in 1822 and 1823.

Mon., 16th Dec. 1822. Sancho and family off, gave them about 50 lbs fresh meat, run the risk of starving very much as there is not a track of an animal to be found within a considerable distance from this place, the Beaver Indians having hunted all summer and fall about the place or country he must pass through. (Burley, Hamilton, and Fladmark 1996, 160)

Thur., 9th Jan. 1823. Owing to the great distance we cart our meat can accumulate no stock. (163)

In early March, the trader reported: “Thur., 6th Mar. 1823. The hunters cannot kill owing to a scarcity of animals they say none” (169). Later that month, he made it clear that the post was no longer able to supply provisions for traders going to New Caledonia:

Mon., 31st Mar. 1823. I am really apprehensive I will have some trouble procuring the stock of provisions necessary at the Portage for the New Caledonia People as the season is coming on so rapidly and having only one Hunter for that purpose, and being entirely destitute of any kind of dry provisions. The Beaver Indians are averse to hunting in that quarter and this year unfortunately no Slaves have made their appearance there, last year it was the Slaves gave me the quantity required and done in a very short time. (Burley, Hamilton, and Fladmark 1996, 174)

Wed., 9th Apr. 1823. I am really at a loss to procure the quantity of Provisions required for the Portage, the season is advanced and a difficult thing to procure Beaver Indians to hunt for that Quarter and unfortunately having no dry provisions. (176)

Finally, Faries reported that the Beavers wished the HBC to move the fort back to near the site of Rocky Mountain Fort, a move that did not, in fact, take place until almost forty years later.

Mon., 21st. Apr. 1823. The Indians wish the Establishment to be removed to or near the Old Fort of Beaver River [Moberly River]. In my opinion it is the best place, owing to the scarcity of animals about here at present and a more central place for the Slave Indians exclusive of the Conveniency of a lake in the vicinity where plenty of fish may be taken they tell me. (Burley, Hamilton, and Fladmark 1996, 176)

The last entry in Faries's journal is Sunday, 18 May 1823. He knew when he left that the new HBC governor, Sir George Simpson, had already decided to close St. Johns after the 1823 trading season. Chief trader Francis Heron was given the task of closing the post. He arrived at St. Johns on 28 October to meet with the Dane-zaa, who were disappointed not to hear any comforting news from him. Heron departed for Rocky Mountain Portage shortly thereafter, leaving the clerk, Guy Hughes, in charge. On 2 November 1823, as Heron reported, Hughes was ambushed and shot by "a young Slave who had been brought up by the Indians of St. John's [sic.]" (quoted in Burley et al. 1996, 127)

Hughes had never managed to establish good relationships with the Dane-zaa. According to Heron's report to his superiors, on 1 November 1823, Hughes tried to get some of the hunters to act as guides to lead him to where provisions were cached. All but one man refused to go. Heron reported that Indians who had not taken part in the murders related the following:

On the first of Novr., Mr. Hughes had tried to engage one from among them to act as guide to some caches of provisions, but that all of them, except one young man had refused to go. Upon this young man's consenting to guide people as required, Mr. Hughes it is said taped [*sic*] him on the Shoulder, saying that he should pay him well for his ready compliance - The Indian young man shortly after retired to his tent, apparently in good health, but in a few hours suddenly took ill, and died that night, which the Indians, attributed to Mr. Hughes having thrown some destructive medicine upon him when he taped him on the Shoulder, and under this plea, determined, next day to assassinate Mr. Hughes himself, which was no difficult matter to accomplish, he being entirely alone and not aware of the danger that threatened him. (Heron quoted in Burley et al. 1996, 129)

Heron, of course, was not a witness to any of these events as the company employees who had been there were dead. He stated that his testimony "was based largely on the accounts of Native witnesses" (Burley et al. 1996, 127). He apparently had no reason to doubt its ac-

curacy. Below are excerpts from Heron's report, followed by oral history from a Dane-zaa perspective. Heron reported on the killings as follows:

On the 2nd of November as he [Hughes] was returning to the house from the River side where he had been conversing with an Indian, a young Slave who had been brought up by the Indians of St. John's, discharged a pistol at him the contents of which passed through his head, but did not cause instant death; Perceiving which his accomplice shot him through the body, which put a period to his existence – They were going to cast his body into the River, but were prevailed upon by an old Indian, to allow it to remain at the house for internment – On the following day as these two assassins, and two of the brothers of one of them (the St. John's Indian) were about to transport some of the property that still remained in the store across the River to their huts, the poor unfortunate four men sent by Mr. Black from the Portage to Dunvegan, arrived and just as they were in the act of debarking, were fired upon by the four Indians I have just mention, who lay in ambush for that purpose at the landing-place – Those of the men who did not immediately expire, the Murderers dispatched with their dags [sic] and cast their bodies into the river. (Heron quoted in Burley, Hamilton, Fladmark 1996, 127-28)

According to Heron, the man who killed Hughes was a Slave (Sekani) who had been raised with the Beavers, and it was his brothers who were responsible for the next day's killings. Following these killings, another canoe bound from the Portage to Dunvegan (which had been delayed to make repairs) arrived after dark. "Friendly Indians," he reported, informed them of the killings, and all but one, a man named Maranda, departed immediately. As had been previously planned, the HBC post at St. Johns was closed, and the company did not open a post in the area again until 1857 (Finlay 1993, 4).

Dane-zaa oral history also records what happened in 1823. In 1965, Johnny Chipesia told me (in English) about the incident from a Dane-zaa perspective. He had heard the story from his father, Tsibiisaa, and other relatives. Tsibiisaa said that his wife's grandfather, Samaloose (also called "Salamoosh" and "Chimarouche"), was a witness to the event. Johnny said that the HBC men wanted the hunters to leave their families and work just for the HBC. Now that game resources of the upper Peace River were running low, Johnny said, the Dane-zaa hunters had to think about supplying their own families before fulfilling their obligations to

the traders. One hunter who had worked for the HBC for several years decided to go back to the bush with his people for the winter. In 1965, I wrote this in my field notes:

Johnny said that at that time the HB wanted the Indians to leave the bush and work for the HB. The Bay didn't sell grub at that time and in fact didn't have any of its own. It did sell guns, axes, knives, or rather traded these goods for furs. The factor wanted the Indians to stay near The Bay and hunt and farm for him. One Indian who had worked for him for several years decided to go back with his people to the bush for the winter. The factor didn't want to let the Indian go, but he decided to go anyway. Before he left he ate a meal at the post. After the meal he took off, but he just made it to a hill on the river bank. There he died of poison that the factor had put in his food. At this, the man's father was angry and went to the factor demanding that he make a coffin and bury his son properly. The factor said, "No," and the father said, "OK, then I'll have to kill you."

The father waited several days and watched the post. When the chance came, he killed the factor and all his men. Then he took off into the bush. Shortly after the killing, a French-Canadian from Hudson's Hope came to the post looking for food and saw what had happened. He would have been killed too, except that Samaloose was across the river at the time and came over to warn him. The next year, "redcoated soldiers" came to look for the father, whose name was Khata, but they could not live off the land and so gave up the search before very long. The father was never caught by the white men for killing the Hudson's Bay man. (Ridington 1965-66)

Recently, Tommy Attachie also told Jillian and me about the events leading up to and immediately following the killings. Billy Attachie and Madeline Oker translated.

Where the Beatton [formerly Pine] meets the Peace,
there was a trading post there.
Nedonslhinne, French [Métis] people, worked for the trader.
In that trading post there must have been powder and bullets.
There must have been something there, food.
There was some food, clothing and ammunition.
Dane-zaa came to trade with them there.
The Dane-zaa were there to trade and get something from the store.

Dane-zaa went to that trading post.
 After they traded, they moved way back in the bush
 on the north side of the Peace River.
 There was one boy, pretty young. He worked for the traders.
 The traders told him to stay working at the post,
 but he saw his people moving away up north.
 That boy slipped away to go with them.
 Not long after his people had moved quite a ways out,
 that boy died. His people had lots of power.
 They didn't like what had happened.
 They went back to get some clothing to bury that boy,
 but the trader said, "If he had stayed here he would have lived."

Unlike Johnny Chipesia's story, Tommy's skips over the part about the boy's people coming back and killing the trader and four of his men. He expects the listener to be familiar with that part of the story, in the same way that Homer expected ancient Greeks to be familiar with the Trojan horse (and so did not include it in *The Iliad*). The "French Guy" Tommy refers to was Maranda. He continues:

Montney's father [Samaloose or Chimarouche]
 camped behind the store. He and his wife were camping there.
 After what the boy's relatives did, they moved across the river.
 More traders were coming down the river.
Nedonslhinne [French voyageurs] were coming in a boat.
 Montney's father saw them coming.
 One French guy stopped the boat and ran up to the trading post.
 The relatives of the boy who had died were waiting and watching.

Montney's dad told the French guys what had happened.
 Montney's dad told them, "They won't bother you while I'm here."
 The French guy was splitting wood.
 The relatives of the boy said, "Who is splitting wood?"
 Montney's dad said, "It's me."
 He helped that guy who came off the boat.

The relatives of that boy said, "I wiped my ass with them."
 "Who was chopping wood?" they asked.
 "It's only me," Montney's dad said.
 "This is not the people you wiped out."

He told them, "I'm the one splitting wood."
 Montney's dad packed up lots of food for that French guy
 and told him to leave early in the morning.

That French guy took the message back to his people.
 He floated back to his people and told them what had happened.
 Every year the company people came back looking for the killers.
 Every year they came back to go after those people,
 but they couldn't find them. Those people had lots of power.
 They couldn't find who did it. (Ridington and Ridington 2013, 126)

Tommy tells the story from a Dane-zaa perspective, but it corresponds to events described in the official account. This is not surprising as Dane-zaa witnesses were Heron's source for the actual killing. The Frenchman he mentioned, Maranda, was the source of information about the "friendly Indian." Heron explained that, according to Maranda, after the killings, "the Indians immediately took him under their protection." The Dane-zaa history does not give Maranda's name, and Heron's version does not identify Samaloose as the friendly Indian. Johnny Chipesia's story is the only one among those I collected that gives the name of the killer. Both Johnny Chipesia and Tommy Attachie are clear that the man who protected Maranda is Montney's father, Samaloose. The name appears in several other written documents. A Fort Vermilion post journal lists "Samarouche" among the "Saint Johns Indians" trading there in 1828. Baptismal records show "Echimarouche" as father of Montagin (Montney), born in 1846, and Joseph Appan, born in 1854. Putting the oral and written sources together we can be certain that the "friendly Indian" Maranda credits for saving his life was Samaloose.

Gerry Attachie recorded another version of the story from Dane-zaa elder John Andre in the 1980s; Billy Attachie provided this translation in 2009.

Long time ago the people say they killed the *Nedonsbinne*.
 Those people were related to Duuk'isachin.
 There was no groceries that time,
 but they gave people ammunition, tobacco.
Dahshíne [Cree, or in this case Cree-Métis Voyageurs]
 were coming up the river from the east.
 They came there to the post and then they went up the river again.
 After those guys went up the river, that's when they killed the HB.

Some of the traders, they went up the river.
 There was one old lady who stayed there.
 After trouble happened at the post, she went up the river
 to wait for them and give them message.
 She wanted them to know what happened.
 That's why she was waiting over there.
 That old lady knew the Dane-zaa were waiting.
 Duuk'isachin's relatives were waiting for those guys
 coming down the river.
 She saw them just turn the corner on the boat.
 When they were coming down, they were just singing.
 She yelled at them, "*Nedonslhinne* got killed," and they took off even
 faster.
 She waved and yelled at them, "*Nedonslhinne* got killed,"
 and she told them to go faster. They even speeded up more.
 They even sang louder and faster.
 When they came to the ground there were people waiting for them
 with guns.
 The Beavers started shooting and they all jumped into the river,
 their boss too. Their boss was hard to kill. He kept diving down.

There was one *Nedonslhinne* who was following the people back.
 He was alone.
 He had a little dog in his arm and he walked by, crying.
 There was a guy who lived in the post. He told that *Nedonslhinne*,
 "Take off tonight while it's dark." He didn't want to go.
 He was just splitting wood.
 Montney Chish [Montney's father],
 when they killed the HB,
 he was there and didn't want to do anything about it.
 He was Samaloose.
 He camped across the river. The guys who killed the HB called across,
 "How come we hear somebody cutting wood?"
 Samaloose said, "There's nobody here. I'm the one splitting wood."
 Early in the morning he told that *Nedonslhinne* to go.
 He gave some supplies to the *Nedonslhinne*. He told Samaloose,
 "There's lots of us over there. We're going to come back."
 That *Nedonslhinne* left early in the morning when it was still foggy.
 After that they came after them every year
 but they couldn't find the people who killed the traders.
 (Ridington and Ridington 2013, 126-27).

The Dane-zaa oral histories given above are rich and full of detail, while the information from written sources, although providing dates, is less complete and does not provide a Dane-zaa context. In the case of Heron's report, the written record of the killing derives entirely from what the Dane-zaa told him. Western historians, almost without question, privilege written documents, even though, according to strict rules of evidence, accounts like Heron's are entirely "hearsay." Heron was not present at the killing he describes, and he relied on Samaloose and other "friendly Indians" for his information. This bias in favour of written sources has continued into the presentations made to Canadian courts by "experts" like Dr. von Gernet.

Many academic historians seem to be unaware of anthropological field methods for recording and contextualizing First Nations oral history. In *Historical Evidence and Argument* David Henige (2005, 97) cites experimental evidence indicating that messages passed from subject to subject are usually distorted at the end of the chain of transmissions, as in a game of Chinese whispers or broken telephone. He argues that such distortions are even more pronounced over time. He seems to be unaware that there is a vast difference between an experiment concerning context-free information between experimental subjects, who share only their status as subjects of an experiment, and the richly contextualized methods of oral curation found among people like the Dane-zaa. Anthropologist Tom McFeat points out that "a message is retained if it is part of group activity and if it fits a cultural schema" (quoted in Miller 2011, 141).

Henige (2005, 100-1) assumes that oral history research is conducted only through an interaction between interviewer and interviewee: "The core of oral history involves a scenario with the researcher, the interviewee and (sometimes) the interpreter." The topic, he says, "must be appealing to those he plans to exploit." This scenario and the assumption that the researcher has the authority to "exploit" his or her subject is so far from the best of anthropological collaborative research that it is hard to believe it was written fairly recently. Henige concludes: "Anyone who accepts the notion that something is lost or altered in transmission cannot treat oral tradition as largely accurate, even though in principle, it could and might be" (107). Critics of oral history cite Vansina's statement (1985, 29) to the effect that "a tradition should be seen as a series of successive historical documents all lost except for the last one and usually interpreted by every link in the chain of transmission." However, Vansina begins the paragraph containing

this sentence with a more nuanced qualification: “*The first and simplest model* supposes that an observer reported his experience orally, casting it in an initial message. A second party heard it and passed it on. From party to party it was passed on until the last performer, acting as an informant, told it to the recorder” (ibid., emphasis added). Dane-zaa oral curation of their history does not correspond to this simple model.

In our genealogical research for the Treaty Land Entitlement negotiation, we found that Canada accepted oral history evidence as factual even without external corroboration. Here, I argue that Dane-zaa oral history should be accepted by Western historians as a reliable account of past events and that Dane-zaa narrators should be accepted as oral historians in their own right. Miller (2011, 150) points out that “the concept of reputation as an exception to the hearsay rule is long established in English common-law tradition, dating to the late 1600s.” Dane-zaa oral historians have a high reputation within their own community. I share that opinion. In the story of the HBC killings, Heron’s report, based on Dane-zaa eyewitness accounts and written in 1823, is not contradicted by Dane-zaa oral history recorded 185 years later. We have been fortunate in being available to document stories that have been in circulation among the Dane-zaa for many generations. The testimony of Dane-zaa and other First Nations oral historians should be excepted from the hearsay rule of evidence.

The story of the HBC killings cited above came from three different narrators and could easily have been recorded from virtually anyone growing up speaking the Beaver language and living with elders. Information, for the Dane-zaa, is more like a hologram than a linear sequence. Like a hologram, each part contains an image of the whole. Rather than being recordings by “the last performer,” the stories Jillian and I recorded reach into the rich body of interconnected Dane-zaa oral history dealing with everything from foundation myths to relatively recent events. As examples of narrative technology and oral curation, these stories tell not only what happened in the past but also what these events mean. They are simultaneously oral histories and works of indigenous historiography. In the context of the early fur trade period of Peace River history, it is the oral histories that substantiate and inform the written documents rather than the other way around. Dane-zaa oral histories more than satisfy McLachlin’s criteria that oral history be “both useful and reasonably reliable.” They are primary documents of Peace River history during the last two centuries, and they exemplify the best of First Nations historiography.

To return to the title of this article, I argue that Dane-zaa oral history is a nuanced account of past events and not hearsay as defined by strict rules of evidence. Both written documents and oral narratives routinely report what people told the writer or narrator rather than what he or she experienced directly. McLachlin's opinion that evidence should be credible and reliable applies equally to both written and oral histories. Dane-zaa narrative technology and their method of contextualizing and orally curating information about the past more than satisfy her test of credibility and reliability. Narrative technology and oral curation also apply in cases in which the oral historians of other First Nations provide testimony.

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