The Nemiah Valley: Title land, sacred land

Harlan Campbell

"We, the Xeni gwet'in people of the Nemiah, are only saying what our elders have always said. 'If you take care of and respect the land you live on, the land will take care of you.' That is why we made our Declaration – to protect the land.

The face of Ts'ylos is shown on our Declaration. He looks over us. Our elders have passed this down to us, as it has been passed down to them by their elders, since time began. We believe that Ts'ylos will protect us and the land we live on."

Statement from the 'Nemiah Valley Indian Band', August 4, 1992

A "judgment for the ages"[1] declared the front-page of the Vancouver Sun. The National Post called it a "legal earthquake."[2] The "most important Supreme Court ruling on aboriginal rights in Canadian history,"[3] reported to the Globe and Mail. On June 26th 2014, after more than 25 years[4], thousands of hours of testimony and cross-examination, *Tsilhqot'in Nation v. British Columbia*, one of the most expensive and lengthy legal battles in Canadian history, had come to an end. In a unanimous and historic decision, the country's highest court recognized that the Tsilhqot'in people have "Aboriginal Title," land ownership to 1,750 square kilometers of their traditional territory. Moreover, the court defined for the first time what constitutes Aboriginal Title under Canadian law: the right to occupy the land, control how it will be used, and benefit economically from its resources.

The significance of the case -the reason why it made front-pages of newspapers across the country- is not simply due to the fact that Aboriginal Title has finally been recognized and defined by the courts. In a country whose relationship with native people has been so troubled and tumultuous, it may be, as one article in the Globe and Mail suggested, "one of those rare Supreme Court of Canada rulings that points the country in a new direction." [5]

"It only took 150 years," acknowledged Grand Chief Stewart Phillip, president of the union of BC Indian chiefs, "but we look forward to a much brighter future." Admittedly overwhelmed with the verdict, he believes the decision "without question, will establish a solid platform for genuine reconciliation […]."[6] Craig

Benjamin speaking for Amnesty International during the trial on the steps of the Supreme Court put the case in an even larger context: "It's an incredibly important case, not only in Canada but around the world. I would say actually more broadly, for the cause of human rights, because the situation of indigenous peoples, the denial of their land rights, the suffering and the harm that that causes, is one of the most crucial human rights issues of our time. And what the Tsilhqot'in are doing here today is advancing a standard that everyone should stand behind."[7]

How did the Tsilhqot'in win the fight for Aboriginal Title? And why has such a decision taken so long? To be sure, the Tsilhqot'in were the beneficiaries of the efforts of many who fought for Title before them. A long history of litigation and near-wins upon which the Tsilhqot'in could stand –*Calder* in 1973 and *Delgamuukw* in 1997, among others— allowed them to reach the ultimate prize.[8] And without a doubt, the huge body of evidence brought forth[9] -a plethora of historical accounts, legends, and the testimony of traditions that established the necessary "regular and exclusive use of the land"– was critical in securing the landmark verdict. Yet, when one considers the monumental efforts put forth in achieving such an unlikely and costly victory, it is clear that legal evidence and precedents alone cannot account for this unprecedented outcome.

To a great extent, the answer lies somewhere with the "Title Land" itself, heard in the songs that thread together myth and meaning, alive in the dances and drumbeats that have always bound a people and place. As Chief Roger William, the Tsilhqot'in chief in whose name the legal challenge was launched, declared on the day of the court's ruling: "We come from our land… so many stories and legends and history … the songs that we sing, the drum-songs, the dance that we do, it comes from the land." [10]

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Until 1973, when the first road was built, the Nemiah Valley and the Tsilhqot'in people who live there, while less than 150 miles as the crow flies from the

skyscrapers of downtown Vancouver, remained essentially cutoff from the world. Government assistance to the community did not come until 1975. The Nemiah was only connected by telephone in 2000.[11] To this day, the Nemiah Valley is not connected to the electrical grid. "As if caught in a back-eddy of time," wrote journalist Sage Birchwater, who ventured down the new road in the spring 1973. The landscape he saw was "raw," as he described, "with innocence that is always there when the balance between the natural forces and mankind is tilted noticeably on nature's side."

Nestled between the fifty-five-mile long ice blue Chilko Lake to the west, the snow-capped Mount Ts'ylos to the south, the Taseko River to the east and the Brittany Triangle –a vast plateau where wild horses still roam — to the north, the Nemiah Valley is a place where nature has conspired with history to allow a continuity of culture that is truly remarkable.

The people of the valley are the Xeni Gwet'in (pronounced Honey Coteen), the most traditional of six Tsilhqot'in bands. Numbering in the hundreds, they are considered by all Tsilhqot'in to be the caretakers, "charged with the sacred duty to protect the land." To them, their land is their culture. They have always been not only pro-active, but militant in the defense of their traditions and to this day the Tsilhqot'in language is alive and well[12], taught in the community elementary school and spoken at all band meetings and community events. The younger generation is taught and encouraged to fish, hunt and ride horses. This continued capacity for cultural survival has, without doubt, been made possible by their isolation, the result of a unique historical legacy.

Until 1808, even as Quebec City entered its third century, the Tsilhqot'in had yet to encounter Europeans. Only in that year, along the banks of the great river that would one day take his name, did the explorer Simon Fraser meet a few travelling "Chilk-odins," a people "from the head of a River [The Chilcotin] that falls into this River [The Fraser]." He noted: "They speak of their Country as plentifully stocked with all kinds of animals."

In January 1822, fur-trader George McDougall was the first white man to enter Tsilhqot'in territory. He took note of the astonishing natural abundance of the land and was much taken by the native people: "they are certainly a fine, brave looking set of Indian, whose lands are far from being poor either, as to beaver or Large Animals […] [The Chilko] River they say yields them abundance Salmon in its Season."

Despite word of such bounty, it was several years before the Hudson's Bay Company established a trading post in Tsilhqot'in territory in 1829; and then with only limited success. 'Fort Chilcotin' was situated at the confluence of the Chilko and Chilcotin Rivers, within Tsilhqot'in territory but far removed from the Nemiah Valley. When company man Joseph McGillvary ventured up the Chilko, he found the grand Chilko Lake "surround[ed] by lofty Mountains" and declared: "it abounds in large Animals."

From the start, relations between the colonial traders and the Tsilhqot'in were tense and combative. The trading post was closed for the first time in 1830 and when re-opened the following year, was "met with a very rough reception."[13] In 1838, Chief Allaw, a Tsilhqot'in chief, ordered the HBC traders "off from his Lands immediately, so that they might have the pleasure of burning the Fort." This dispute was eventually resolved, but friction remained and the post was ultimately closed.

Catholic missionaries first appeared on the margins of Tsilhqot'in territory during the 1840s. However, missionary efforts were for the most part ineffective. Catholic priest Modeste Demers, having found the journey north rather strenuous -"a feverish atmosphere, an oppressive sun, a choking dust, a hill to climb, a ravine to cross"- had little success.

With the discovery of gold on the Fraser River in 1859, a flood of miners arrived on the margins of Tsilhqot'in land, but their impact was limited as the Tsilhqot'in avoided contact. However, as colonial presence intensified –the colonial settler population growing from less than 1,000 to well over 10,000 during the latter half of the 1850s- intrusions into their territory compelled the Tsilhqot'in to act.

In 1864, Sir Alfred Waddington, the man for whom British Columbia's highest mountain is named, set out to build a wagon road from Bute Inlet on the Pacific coast, up the Homathko River, through Tsilhqot'in territory to the Fraser River and ultimately to the Cariboo goldfields. The construction crew was making good progress about 70 miles inland when, in the early light of dawn on April 30th, they were attacked by a group of Tsilhqot'in warriors. The foreman's heart was cut out and, by some accounts, eaten raw[14]. It was the start of what became known as the "Chilcotin War," a historic milestone, as it was arguably the only instance of significant military resistance to colonial powers west of the Rocky Mountains.

News of the attack ("the most startling thing of the kind that has yet taken place in either colony" as one newspaper exclaimed) made its way back to Victoria, care of three unlikely survivors who escaped by throwing themselves in the river and floating downstream. In response, a militia was formed, and sent off to fight "until every member of the rascally murderers' tribe is suspended from the trees of their own forests," as one Victoria newspaper urged.

As to what had provoked the surprise attack, some suggested that it was in response to the road crew's abuse of a small group of Tsilhqot'in they had hired on as laborers. Waddington took exception will the fact that his "innocent party" was guilty of any wrongdoing. And, despite the fact that he was markedly wrong on this point –his men had starved, raped and threatened smallpox upon their Tsilhqot'in workers- an editorial he wrote for the Daily British Colonist newspaper on June 13th 1864, does provide some context for why the Tsilhqot'in chose to retaliate as they did:

"Did not the whites also, around the same time bring the small-pox to Bella Coola whence it spread […] and was not one-third of the population carried off by that first visitation? […] And did not about the same time one Angus McLeod and another named Taylor go and collect those same infested blankets in the bushes, which the Indians had deposited with the bodies of three men dead of the small-pox, and put them up carefully as new ones and sell them again to the Indians which brought on a second contagion, carrying off another third of the population. […] The Indians that came down

on Bute Inlet had been shamefully treated, unknown to ourselves" [and thus] "those Indians were naturally tempted to take a cruel revenge and to plunder where they had been plundered."[15]

Indeed, the Tsilhqot'in had been particularly devastated by the smallpox epidemic that swept through northwest coast. (It is estimated that the total aboriginal population may have fallen from over one hundred thousand in 1800 to less than forty thousand by 1863.)

The resulting 'war' lasted all summer, with many attacks and ambushes taking place within the Nemiah Valley. All of this, to the apparent delight of the Colonial Governor: "That Europeans should thus run down wild Indians," wrote Governor Seymour, in a letter dated September 9, 1864 "and drive them to suicide or surrender in their own hunting grounds in the fruit and fish season appears to me I confess a little short of marvelous."[16]

In October 1864, five Tsilhqot'in chiefs arrived unarmed in Quesnel under the impression they had been invited to negotiate peace. Immediately betrayed, they were seized, jailed, and tried before a judge who quickly sentenced them to death, guilty of murder. "We meant war, not murder," the Tsilhqot'in Chief Klatsassin famously asserted. There was no forgiveness or sympathy. Reverend Lundin Brown, who was tasked with converting the condemned to Christianity before their execution noted: "Ignorance in the eyes of the law is no excuse. Terror must be struck into all the Indian tribes. All five must die."[17]

In the wake of the hangings, the Tsilhqot'in retreated ever deeper into their territory, many into isolated corners of the Nemiah Valley. But "terror-struck" as they may have been, they were also victorious and empowered. If the objective of the war had been to rid themselves of the white man, they had most definitely succeeded. Following the 'war', Waddington's ambitious project was abandoned and the Tsilhqot'in were left largely undisturbed by outsiders for years to come.

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The choices we make with respect to the land on which we live have a great deal to do with our relationship with that land. A people who have lived generations in a place no doubt form a deep connection to that place and will choose to care for it, as it has cared for them. But the changes we would like to see for our homeland, often have little to do in determining how the landscape is ultimately transformed when dominant outside forces come into play. In this respect, is the landscape but a passive player in its destiny? Do the mountains stand idle, helplessly looking down as those below determine their fate? Perhaps. But a people exist in nature as a function of place: character defined by landscape just as spirit is sustained by one's surroundings.

A people having lived off the land, no doubt gather strength from the land, and given the opportunity, they will fight to protect that land with all of their strength. In the Nemiah Valley, the mountains do not stand idle.

Over the centuries, the Nemiah has held outsiders at bay with its geography, guns, roadblocks, and most recently lawyers. But if you asked the Xeni Gwet'in what has protected their homeland, they might tell you it was all one mountain, or rather, one man who became a mountain. "Mount Ts'ylos looks over us," they would tell you. "We believe that Ts'ylos will protect us and the land we live on."

The creation myth of Ts'ylos tells us that many years ago, long before the arrival of white settlers, a man and his wife lived in the Nemiah near Xeni Lake. Even though they had six children together, Ts'ylos and 'Eniyud had trouble getting along with one another. After disagreements with her husband, 'Eniyud flung her newborn into Ts'ylos' lap, took three of her six children, and left. She walked through the land towards the Tatlayoko Valley. In her journey, she sculpted out the Nemiah Valley and planted the wild potatoes that are still harvested today.

With 'Eniyud gone, Ts'ylos and the three children turned into rock. 'Eniyud with her children also turned to rock. They are the mountains surrounding the Nemiah today. Ts'ylos, the highest point in the Chilcotin Range stands tall. As far away as the highway west of Riske Creek, some eighty miles to the northeast, Ts'ylos can be seen, standing dominant in the distance.

The Xeni Gwet'in are cautious to refer to Ts'ylos with appropriate decorum, taking care to show him respect. The mountain does not appreciate people pointing or staring at him, and there are consequences for those who do. The Xeni Gwet'in elders say that if you point at Ts'ylos, he will make it rain or snow. Bad luck will fall upon you, the weather will change when you are least prepared and are far from home.

Despite such prominence, you might have trouble finding Ts'ylos on a map. On most, the mountain is named Mount Tatlow, after British Columbia's finance minister at the turn of the 20th century, Robert Garnett Tatlow, who famously "rescued the province" from debt in 1903 with the rapid sale of vast swaths of "Crown lands" and forest rights, these sold on "very favourable terms," no doubt.[18]

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Following the events of 1864, British Columbia underwent astonishing changes. In 1871, the British Colony joined the Confederation of Canada and in 1885, was connected to rest of the country with the completion of the Canadian Pacific Railroad.[19] In the four decades following the Chilcotin War, the (non-aboriginal) population grew more than ten-fold to over 150,000 by the turn of the twentieth century.[20] Despite these rapid changes, the Nemiah Valley, deep within Tsilhqot'in territory remained relatively untouched. When, at the turn of the nineteenth century, in September 1899, A.W. Vowell visited the Nemiah with the goal of creating "Indian reserves" he reported: "the trails to Nemiah Valley were of the roughest kind and being beyond the settled portions of the country they have never been improved by either Government or settlers; remaining in the very primitive condition of 'Indian trails'."

While the Tsilhqot'in did their best to keep outsiders out, migration to British Columbia only grew more rapidly: in ten years the population more than doubled with more than 370,000[21] (non-aboriginal) living in the province by 1911. And yet, the Nemiah Valley still remained incredibly isolated.[22]

When alpinist Malcolm Goddard arrived in the Nemiah Valley in 1912 with the objective of climbing the peaks surrounding Chilko Lake, which was even then "said to be the most beautiful lake in British Columbia," he noted with bewilderment that "Very few white men have ever seen the lake, and then only from the north end." Goddard described Chilko Lake as "the colour of Lake Geneva with jagged, forbidding, black, ice hung peaks, rising out of the water five to six thousand feet." Despite his many successful climbs and his published accounts of "peaks comparable to those of the Rockies or the Selkirks," few would repeat his journey.

The first whites to permanently settle in the Nemiah arrived in 1923. Twin cowboy brothers from Idaho, Elmer and Oliver Purjue set up a ranch and by all accounts had a friendly relationship with the Xeni Gwet'in. In fact, Elmer went on to marry a Xeni Gwet'in woman Mary Baptiste and their descendants continued to live of land for generations.[23]

By the 1950s a certain mythic aura had enveloped "Chilcotin Country". Outsiders came looking for ranchlands in what was professed to be the last frontier of the west. By 1970, while ranchers had made homes within Tsilhqot'in territory, it remained a wild and untamed place, with one newspaper concluding that "as you drive the dusty miles along the Chilcotin Road you know that despite man's mania for raping virgin land, this is a land that will never be tamed, and where people will remain just as they are today: rugged, individualistic, proud- and free." In 1973, when the road was completed, the Xeni Gwet'in, incredibly isolated for so long, were finally connected to the outside world and the Nemiah Valley was on the map at last.

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There is a marvelous anecdote that shows just how bountiful the Nemiah Valley remains in recent times. Saint-Clair McColl, a well-travelled pilot from Salt Spring Island, remembers his first trip to the area quite well. In the early 90s, he was hired to fly a floatplane from Vancouver, over the Coast Mountains and down

onto Chilko Lake. "It was a beautiful flight the whole way," recalls Saint-Clair. "Flying at 10,000 feet over massive areas of glaciers, it was just great." But when he arrived above Chilko Lake, his heart sank. Looking down to the large alpine lake he saw large black swaths crossing the water. "I immediately thought some kind of oil spill." The large dark black patches "circles half a mile or more in diameter" looked worrisome indeed. "From the air, the lake was stained black." Fortunately however, it wasn't oil in the lake. The lake was stained with salmon.

On an average year, some one million salmon will leave the Pacific, swim up the Fraser River, up the Chilcotin River, and finally up the Chilko River to arrive in the great Chilko Lake. From where they start the journey near Vancouver, they will travel some 500 miles to reach their destination. And though we may be familiar with the legendary "Fraser sockeye run", few of us realize that, of the many millions of sockeye salmon who swim up the Fraser every summer, the majority are headed to the Chilko River.[24] But the most amazing thing about these fish isn't their staggering abundance. Recent research suggests that these fish are truly unique. The "Chilko sockeye" must not only swim a lengthy distance to reach the lake they must climb a substantial elevation. Chilko Lake, known as the "largest high-elevation lake in North America" sits at 1,172 meters (3845 feet) above sea level. The required elevation gain has endowed the fish with much larger hearts and more efficient metabolism.

"I like to call the Chilko population of sockeye 'Superfish,'" says Erika Eliason, who conducted the research with biologists at the University of British Columbia. "Chilko were able to swim at higher and a broader range of temperatures compared to the other populations we examined. We believe it has to do with how they've adapted to cope with their difficult migration."[25]

In late August, the Xeni Gwet'in will harvest the fish as they have for thousands of years. By early September, the Sockeye will begin spawning, congregating at the head of the lake. There are so many in such high density, that the valley is said to be "alive with the sounds of fish".

Bald eagles descend, joining blue herons and seagulls for a meal, while ospreys and ravens fly above. On the riverbanks, coyotes and black bears rejoice in the bounty. But most impressive of all, are the grizzly bears who, in incredible numbers, descend on Chilko Lake and the upper Chilko River to feast on the dead salmon. So many grizzlies assemble here that viewing platforms have been set up for tourists to observe and photograph the bears.[26] Recent DNA evidence suggests Chilko salmon provide a critical food source for grizzlies in an area as large as 41,000 km^2 - 4 times the size of Banff, Yoho and Kootenay National Parks combined (9,360 km^2) and over 4 times the size of Yellowstone National Park (8,983 km^2). And just like the 'Chilko sockeye' these bears are unique creatures. Unlike the grizzlies living along the Pacific coast, the "dryland grizzlies" of the Tsilhqot'in not only feed on salmon and berries, but also travel the grasslands in search of white-bark pinenuts, corms of wild potatoes, and bear-claw. What's more, these bears represent the last viable stronghold[27] for the dryland grizzly bear (which historically in North America, roamed the dry eastern slopes of the Coast Range), and as such are considered by biologists as an "internationally significant population."[28]

While the abundance of salmon and bears is astounding, what makes the Nemiah and surrounding area particularly unique is that, sharing the forests and valleys with the grizzly, black bears and wolves,[29] are roaming herds of hundreds of wild horses.

Though it is impossible to say just how long the horses have been roaming wild in the Nemiah and throughout Brittany Triangle to the north, historical records confirm that Tsilhqot'in people were living with and riding horses well before European contact in 1808.[30] Over centuries, the practice of capturing and riding wild horses has become an extremely significant part of Xeni Gwet'in culture. As a 1922 report to the BC Surveyor General noted: "[the Tsilhqot'in] are born horsemen and do not like going where they cannot ride." Jonaki Bhattacharyya, an ethnoecologist who has studied the horses at length concluded: "The practice of chasing, capturing and even training those horses keeps local people out on the land, aware of not only the health and characteristics of the horse populations,

but also of other landscape elements and wildlife. In turn, working and interacting with those horses facilitates continued relationships between people and the land."

In 2003, in an effort to protect the horses, the Xeni Gwet'in established the Eagle Lake Henry ?Qayus wild horse reserve, the only wild horse reserve in British Columbia.[31] Harry Setah, a well-skilled horseman was named the first "Wild Horse Ranger." While the reserve brought much needed protection to the horses who are threatened and considered pests by neighboring ranchers, it also brought substantial attention to the Xeni Gwet'in fight for land rights. "You can't have a horse people without horses and the horses are not going to survive without the Xeni Gwet'in," confessed David Williams, president of the Friends of the Nemiah Valley organization.

Chief Roger William attributes much of the strength and skills that allow him to be a successful leader to years he spent with horses, first as a child in the Nemiah then as professional rider on the rodeo circuit: "I had to prove myself, I'm small. I've learned to work hard to be competitive, that's the only way I survive." He has won many of the legendary "Mountain Races," the thrilling highlight of the annual Nemiah Valley Rodeo where young Xeni Gwet'in thunder down the mountainside.

In addition to being of great spiritual importance in the Nemiah and symbolic of the unconquered land they roam, horses were, prior to the construction of the road in 1973 a primary form of transportation. Having a good horse meant having the freedom to travel between communities, and beyond.

Henry Soloman, chief in 1973, remembers the changes that came once the road was completed. "Life changed overnight," he recalls. The road meant the trip to William's Lake, then one of the fastest growing towns in the region[32], was only a day's journey. Chief Soloman remembers other benefits that came with the road. "Before, no one wanted to help the Indian." he recalled, "We never got welfare or anything and had to make our own money." In 1975, government started paying welfare.

Other changes happened quickly as well. In 1985, following an outbreak of the mountain pine beetle, the Ministry of Forests opened up much of Tsilhqot'in territory to logging companies. While the forests of Nemiah were left intact, the five other Tsilhqot'in bands saw much of their forests cleared away. At the industry's height, 250 loaded logging trucks departed Tsilhqot'in territory every day.

In 1989, when the Ministry of Forests issued permits for logging across the Chilko River, the Xeni Gwet'in feared that the Nemiah Valley, with its centuries-old stands of spruce, fir and endangered whitebark pine[33] [34], would be next. What's more, BC Hydro expressed ambitions to dam the Chilko, Taseko and Tatlayoko Lakes for a massive hydroelectric project. With these concerns, the Nemiah band hired lawyer Jack Woodward, who had been successful fighting for the protection of Meares Island in Clayoquot Sound on Vancouver Island's West Coast. (It is worth noting that until 1951, it was illegal for natives to hire a lawyer for the purpose of land claims.)

Woodward encouraged them to write out their positions in a declaration. The *Nemiah Declaration* forbid commercial logging, mining, road building, and dam construction in Nemiah: "We are prepared to enforce and defend our Aboriginal rights in any way we are able." Other threats to the land arose. In 1991, the Xeni faced another threat to the land. Taseko Mines Ltd., a Vancouver company, conducted exploratory drilling northwest of Taseko mountain and discovered what was estimated as the tenth-largest undeveloped copper-gold deposit in the world: 2.4 billion kilograms of copper and 380,000 kilograms of gold.

On May 6th 1992**,** when word that logging companies were to begin construction on a bridge over the Chilko River at a place known as Henry's Crossing, the Xeni acted immediately. At one-o-clock in the morning, band members mounted a road-blockade that would last two months as negotiations with the government went back and forth. On two occasions, Chief Roger William brought negotiated logging plans to his community for a vote. On each occasion the Xeni Gwet'in turned them down. Relations between the provincial government and the

Tsilhqot'in National Government were extremely heated and in 1997, things boiled over, with controversy over the rights to re-burry ancestral remains found on a local rancher's field.[35]

The province did make some concessions, and in 1999 issued an apology for the 1864 hanging of the "Chilcotin War" chiefs. But ultimately, after thirteen years of back and forth with no agreement over logging, Chief Roger William and lawyer Jack Woodward decided to make the fight for Aboriginal Title. On November 18th, 2002, *Tsilhqot'in Nation v. British Columbia* went to the provincial Supreme Court.

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The trial was anything but ordinary. Represented by lawyers from the BC Attorney General, the federal Department of Justice, as well as one of Canada's largest law firms, Borden Ladner Gervais, the governments of Canada and British Columbia tried to have the case terminated on technicalities in ten separate attempts before a judge ever heard arguments at trial. The Xeni, having essentially no money of their own, funded the case with donations from the Assembly of First Nations, and environmental organizations. When funds ran out, the Xeni Gwet'in appealed to the court for support and Jack Woodward and his legal team agreed to work for half-pay.

In the days prior to trial, Chief Roger William was subjected to a series of questions from the government lawyers, so that they might build their case. "They wanted to know how much I know about rights and title, about our land, do I know my language, do I know my history," recalls Roger William. "So they asked me a whole bunch of questions." When he says "a whole bunch," the chief does not exaggerate. Over the course of 28 days, before the trial even started, he answered 11,042 questions.[36] Of these answers, not a single one was used during trial. Roger William was not deterred. During the trial he took the stand for a record-setting 46 days.

When it became clear that many Xeni Gwet'in elders were unable to make the journey to Victoria to testify, the court was moved to the Nemiah. In two feet of snow, court was held for 14 days in an empty classroom of the community school.

Elders gave testimony in their native tongue, recalling stories and legends including the creation myths of Ts'ylos and 'Eniyud. Physical objects gave weight to their connection with the land: a *gwezinsh*, the specialized tool for digging mountain potatoes was one of many exhibits, evidence that the Xeni had, for countless generations, harvested 'Eniyud's wild potatoes.

In November 2007, after 339 days of court hearings, Justice David Vickers issued a verdict. In a 458-page decision, he concluded with unique and unprecedented language: "Tsilhqot'in people have survived despite centuries of colonization. The central question is whether Canadians can meet the challenges of decolonization." Despite accepting the Xeni Gwet'in's claims, Justice Vickers declined to make a declaration of Aboriginal Title due to technicalities. All parties appealed, and the case headed to the BC Court of Appeal in 2012, and ultimately the Supreme Court of Canada in November 2013.

In many ways, the strength that has sustained the Xeni Gwet'in in the fight for their homeland originates in the land itself. As Jonaki Bhattacharyya writes: "The Xeni Gwet'in take strength from the land; they draw their values from the land; they wrestle with the land's challenges." During centuries of struggle, the option of simply moving on, of abandoning the Nemiah and adapting to urban life in the cities has never been possibility. As Harry Setah confessed in 2004: "If we lose, then we're not a culture, we're not a people."

For those of the city, land may be considered very much as "property", a physical space to occupy and inhabit. The Xeni Gwet'in have an entirely different view. The land is where the living spirit of place, history and culture, resides. For the Xeni Gwet'in, the fight to protect the land is a fight to protect their identity, safeguard their language and defend their beliefs. The land is sacred, as is their duty to protect it.

While the title case was being fought in the courts, the Xeni Gwet'in were also fighting on another front. The Taseko gold and copper discovery in 1991 resulted in the `Prosperity' mining proposal, submitted for environmental review in 2008.

In January 2010, then Xeni Gwet'in Chief Marilyn Baptiste (Xeni Gwet'in Chief between 2008 and 2011) led elders, scientific experts and community members in presentations to the environmental review panel, which ultimately rejected the mining proposal. But within a year, a revised proposal, the 'New Prosperity Mine' was submitted and heavy machinery began moving into the Fish Lake area for preliminary work. Chief Baptiste responded immediately, initiating a one-woman road blockade that prevented construction crews from accessing the proposed mine site. In doing so she turned long lines of trucks and machinery around. When the mining company complained to authorities, Baptiste obtained an injunction from the BC Supreme Court prohibiting the trucks and machinery from coming back. When asked about the fight she noted:

"When I was young, my father took our family to Fish Lake and showed us how to fish. He told us where to place fish traps and how he relied on these traps for food. He also taught my son and nieces and nephews how to fish on Fish Lake…. These visions particularly stuck with me when I decided to take up the fight against Prosperity Mine. […]. In our teachings, in our way, much of our rituals, our medicine and how to make our medicine are sacred things. […] What I can say is, when we walk on our land, when we are able to drink out of the waters of our lakes, our rivers, our creeks, our streams – those things are sacred because those are the gifts from Mother Earth. Those are what bring us our fortune, our values, our way of life, our strength."[37]

In early 2014 the federal government once again rejected the proposed Taseko mine and Baptiste was awarded the internationally acclaimed $175,000 Goldman Prize for environmental activism.

Finally on June 26th 2014, the Supreme Court of Canada declared their ruling in the title case.[38] The response from both sides was immediate. "This decision[…] will be a game-changer in terms of the landscape in British Columbia and throughout the rest of the country where there is un-extinguished First Nations title," proclaimed Assembly of First Nations (AFN) Regional Chief Jody Wilson-Raybould, (now Federal Minister of Justice). Former BC Attorney General Geoff

Plant agreed: "Realize that 150 years of government's attempt to deny or to limit or to narrow aboriginal rights has been pretty much thrown out the window by the Supreme Court of Canada."[39]

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It was with much enthusiasm, that I visited the Nemiah Valley in the summer of 2014, not long after the title judgment was declared. The road to get there remains unpaved and rugged. Indeed, at one point we required the help of a tow-truck to pull our vehicle out of an embankment. Although, to be fair, the cause of the accident probably had more to do with being distracted by the beautiful scenery, then with the rough condition of the road.

On my last day in the valley, I woke up early to a cold September morning. In the hours before sunrise, I walked through the tall dry grasses to a small bluff along the east shore of Chilko Lake. As I made my way up the hillside, a light wind whispered softly through the aspens, the leaves faintly golden with the coming autumn. When I reached the top, the view suddenly opened up, overlooking the vast lake and the surrounding mountains, still dimly lit. The view was expansive. All was a quiet. The air was cold.

Ever so suddenly, the sunlight appeared, casting a faint first light on the peaks along the far shore. Slowly, the mountains turned a luminous gold, and the soft fiery light descended evenly towards the cold blue lake.

Two days earlier, elders and members of the Tsilhqot'in and Xeni Gwet'in had stood on this very hilltop, joined by none other than the Premier of British Columbia, Christy Clark. She described the Nemiah as breathtaking: "No wonder this place is sacred to the Tsilqhot'in people who have watched over it for centuries." Standing together, on this newly recognized title land, those gathered acknowledged that the Supreme Court's judgment "offers a profound opportunity" and they agreed to work together "towards a lasting reconciliation." To be sure, there is still a tremendous amount of hard work to come.

Protecting the Nemiah will require a continuing effort. "Yesterday was a very beautiful day," said Chief Roger William, "It started off minus 3 at home, clear sky, a brisk day. This reminded us that we cannot get too comfortable."

As I stood on the hilltop, for a short moment the wind calmed and the water became a delicate reflection of the bright clouds above. Is one place any more sacred then another? Is every place sacred to the people who live there, if they have lived there long enough? "We experience slums, prairies, and wetlands all equally as 'places'," writes poet Gary Snyder. "Like a mirror, a place can hold anything, on any scale."

Over the mountains, on the lake, and in valley beyond, the sunlight, finally shining bright and strong warmed the earth, as if one could reach out and touch it. The Nemiah Valley glowed golden in the early morning light of another day.

Ten years ago, when the fate of this place was not so clear, when it might have seemed inevitable that the land would be transformed irrevocably by outside forces –the powerful interests of logging and mining- Roger William, a man who has, without exaggeration, spent his entire adult life fighting for the his homeland, confessed in a dream:

"If my dream comes true, I'd have nothing to worry about. Because my children and their children, they'll know our Tsilhqot'in language, they'll know the history, they'll know the legends. And using the history and legends they'll have a good life."

◆

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Articles and Books

For a wonderful account of **the legal fight for aboriginal title**, see Arno Kopecky's 2014 article in the Walrus available at: http://thewalrus.ca/title-fight/

For a detailed account of the **Title case and the legal precedents**, see the legal review by Harry Swain, long-time federal deputy minister, and James Baillie, senior counsel with Torys LLP at
http://www.torys.com/~/media/files/insights/publications/2015/01/ar20151.pdf
More information is available from Woodward & Company LLP at:
http://www.woodwardandcompany.com/

All **court documents** are in the public domain, including official decisions and appellant's factums. These are extremely helpful in understanding the legal and historical background of the case.

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http://www.vancouversun.com/first+nation+writes+declaration+title+rights+strategy/11474798/story.html

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of Aboriginal-White Relations" and "The West Beyond the West: A History of British Columbia," by Jean Barman.

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For a description of the **Nemiah and Xeni Gwet'in**, see "Nemiah. Home of the Xeni Gwet'in" by Richard Littlemore, David Suzuki Foundation, 2000.

For an **academic account of how oral history** is considered by the law, see: Weir, Lorraine. "Time Immemorial and Indigenous Rights: A Genealogy and Three Case Studies (Calder, Van der Peet, Tsilhqot'in) from British Columbia." Journal of Historical Sociology 26.3 (2013): 383-411.

For a **post-verdict opinion by Premier Christy Clark**, see her September 19 2014 editorial in the Kelowna Capital News: "We're better of with First Nation partnerships"

For the **opinions of Chief Roger William**, see his 2012 report to the Environmental Review Panel (https://www.ceaa-acee.gc.ca/050/documents/p63928/83517E.pdf) and
Bhattacharyya, Jonaki, et al. "It's Who We Are Locating Cultural Strength in Relationship with the Land." Social Transformation in Rural Canada: New Insights into Community, Cultures, and Collective Action (2012): 211.

For interviews with **Marilyn Baptiste**, see "Chilcotin native leader wins major award for mine protest," Larry Pynn, Vancouver Sun April 19, 2015 and the Goldman Prize website: http://www.goldmanprize.org/recipient/marilyn-baptiste/

While perhaps overly nostalgic, Terry Glavin's 1992 "Nemiah: The Unconquered Country" commissioned by the Nemiah Band council, offers a beautiful look at the **people and history of the Nemiah**. "Chiwid" by Sage Birgewater, 1995, offers another excellent account the people and the place.

For an **early account of Chilcotin Country**, see "Chilcotin: Preserving Pioneer Memories," by Bonner, Veera, Irene E. Bliss, and Hazel Henry Litterick, 1995, and **"**Heart of the Cariboo-Chilcotin: Stories Worth Keeping" By Diana Wilson, 2010. Also, see the **first-hand travelogue** of Malcolm Goddard: "The Mountains of Lake Chilko," published in the Canadian Alpine Journal, 1913.

Research on the **Wild Horses** and **Grizzly bears** is in "Knowing Nalhiny (Horse), Understanding the Land: Free-Roaming Horses in the Culture and Ecology of the Brittany Triangle and Nemiah Valley" by Jonaki Bhattacharyya, 2012 and "Grizzly bears in the Tatlayoko Valley and along the upper Chilko River: Population estimates and movements," 2009.

Finally, "Friends of Nemiah Valley" maintains **extensive resources** available at http://www.fonv.ca/

Films:

Video of the **historic meeting** between the premier of BC and First Nations leaders - featuring Christy Clark, Chief Roger William, Grand Chiefs Ed John and Stewart Phillip, and AFN Regional Chief Jody Wilson-Raybould (2014): https://www.youtube.com/watch?v=8cz1Y6kNAcY&ab_channel=CommonSenseCanadian

Blue Gold: The Tsilhqot'in Fight for Teztan Biny (Fish Lake), a film by Susan Smitten (2010) http://www.cultureunplugged.com/documentary/watch-online/festival/play/3352/Blue-Gold--The-Tsilhqot-in-Fight-for-Teztan-Biny--Fish-Lake-

Wild horses of the Nemiah – Television Documentary (2004) http://www.omnifilm.com/factual/wild-horses-nemiah

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River Voices, Three Part Documentary, (2014) by Jeremy Williams at: https://www.youtube.com/watch?v=i3wJ6DFJkkc&ab_channel=jeremywilliams

1 http://www.vancouversun.com/Vaughn+Palmer+Welcome/9979280/story.html?__lsa=d99b-0a03

2 http://news.nationalpost.com/full-comment/andrew-coyne-after-aboriginal-land-title-ruling-why-not-protect-property-rights-of-all-canadians

3 http://www.theglobeandmail.com/news/national/supreme-court-expands-aboriginal-title-rights-in-unanimous-ruling/article19347252/

4 http://www.woodwardandcompany.com/?page_id=87

5 http://www.theglobeandmail.com/globe-debate/tsilhqotin-brings-canada-to-the-table/article20521526/

6 "It only took 150 years, but we look forward to a much brighter future. This, without question, will establish a solid platform for genuine reconciliation to take place in British Columbia." "I didn't think it would be so definitive," Phillip added. "I was actually prepared for something much less." "It's not very often that I'm without words, and I'm quite overwhelmed at the moment." Tsilhqot'in First Nation granted B.C. title claim in Supreme Court ruling, CBC News, June 26 2014. http://www.cbc.ca/m/touch/news/story/1.2688332

7 https://www.youtube.com/watch?v=i3wJ6DFJkkc&ab_channel=jeremywilliams

8 Amongst others, Calder (1973) found that Aboriginal rights survived European settlement and Delgamuukw (1997) established that oral history is admissible as evidence.

9 "The documentary evidence was voluminous. Six-hundred and four exhibits were entered – exhibit 156 alone contained over 1,000 historical documents; exhibit 0250 contained 150-200 historical maps; and exhibit 450 comprised 58 volumes which contained 3,000-4,000 documents. When final arguments were submitted in April, 2007, the judge received about 7,000 pages of written submissions from the lawyers on all sides." http://www.woodwardandcompany.com/?page_id=87

10 http://aptn.ca/news/2014/06/26/supreme-court-hands-tsilhqotin-major-victory-historic-ruling/

11 Court testimony gives the year as 2000, while Xeni Gwet'in website states that the Nemiah "was connected to a telephone system in 2009."
12 A 2012 survey of the community found that among the 416 Xeni counted, 128 of speak Tsilhqot'in fluently and 164 understand and/or speak somewhat.

13 Fort St James Post Journal 1831-2, http://www.woodwardandcompany.com/wp-content/uploads/pdfs/Final_Argument.pdf

14 For a vivid telling of the massacre, see: Klatsassan, and other reminiscences of missionary life in British Columbia; Brown, R. C. Lundin (Robert Christopher Lundin), -1873

15 See June 13th 1864 issue of the Daily British Colonist, available at http://www.britishcolonist.ca/dateList.php

16 *Frederick Seymour, The Forgotten Governor*, by Margaret A. Ormsby http://ojs.library.ubc.ca/index.php/bcstudies/article/viewFile/801/844

17 "Klatsassan, and other reminiscences of missionary life in British Columbia," Page 111

18 http://www.biographi.ca/en/bio/tatlow_robert_garnett_13E.html

19 Until that time, a letter mailed from Vancouver to Toronto needed an American stamp and was delivered via San Francisco.

20 The West Beyond the West: A History of British Columbia, page 430

21 Makúk: A New History of Aboriginal-White Relations, page 166

22 The situation was somewhat different on the periphery Tsilhqot'in territory, where newly built roads provided corridors of access to the outside world. Mail was being delivered by stage-coach and by 1905, Hanceville, a store operated by Norman Lee Hance, only 50 miles north-east of the Nemiah Valley, was considered a "post office of importance to the ranchers and other residents of that locality." The Tsilhqot'in still actively defended their lands against outsiders as best they could. When an Englishman, Mr. Hewer, applied to settle within the Tsilhqot'in territory, Chief Anaham rode to Hanceville to warn Mr. Hance that, so

enraged were the Tsilhqot'in, that they may "go crazy" and "Kill em'all whiteman." Mr. Hewer, frightened by the threats, opted to settle somewhere else.22 Mr. Hance, having feared the worst, was relieved. Business continued at Hanceville and amazingly the store maintained operation until burning down in 2017.

23 Chilcotin: Preserving Pioneer Memories, page 370

24 http://www.cbc.ca/news/canada/british-columbia/up-to-4-million-sockeye-expected-in-run-1.1107354
See more at: http://www.tsylos.com/chilko-river-salmon-run#sthash.7z82QQbV.dpuf

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26 http://www.tsylos.com/chilko-river-salmon-run

27 http://www.ceaa.gc.ca/050/documents/43054/43054E.pdf

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34 http://www.fgcouncil.bc.ca/Factsheet1-WhiteBarkPine_2011.pdf

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"Legal odyssey ends with advice to get a treaty," The Vancouver Sun, November 22, 2007

37 http://www.goldmanprize.org/recipient/marilyn-baptiste/

38 http://nationalunitygovernment.org/content/canadian-first-nations-are-ecstatic-over-historic-supreme-court-ruling

39 Geoff Plant –June 27, 2014. http://www.cbc.ca/player/play/2468398421
http://theplantrant.blogspot.ca/2012_03_01_archive.html