

Speaking in *S'ólh Téméxw*:  
Language Dynamics in Stó:lō Approaches to the BC Treaty Process

by

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## *Introduction*

Stó:lō peoples have a long history of addressing settler governments about what has been termed the ‘Land Question.’ Surviving records include petitions from Stó:lō community leaders and representatives dating back to the mid-nineteenth century.<sup>1</sup> Where petitions have been one way of asserting land title for Stó:lō and other First Nations in British Columbia (B.C.), the recent B.C. treaty process is another.<sup>2</sup> In this paper, I look closely at the roles language plays in Stó:lō communications to provincial and federal governments in treaty negotiations. My research into this topic has involved interviews with current community leaders and representatives, and is informed by the academic literature on the B.C. treaty process and the state of the relationship between Aboriginal Peoples and non-Aboriginal governments in Canada.

One of the most comprehensive works to have emerged from the academic literature on recent land claims processes is by anthropologist Paul Nadasdy (2003), whose research with the Kluane First Nation community at Burwash Landing (Yukon) led to his participation in their negotiation of land claims and co-management agreements. Nadasdy suggests that one of the challenges facing Aboriginal Peoples in their dealings with the government is that the onus has been on First Nations to frame all their communications in a language that the government can understand. He has shown how First Nations have been flexible and able to learn this ‘bureaucratic speak’ but he has also shown a more subtle effect. Forced to speak in this language and communicate with officials who have a very limited scope and apply for funding in targeted envelopes (highways, water, forests), Aboriginal groups have organized themselves into

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<sup>1</sup> See petitions listed in: Carlson, *A Stó:lō–Coast Salish*, 170-191.

<sup>2</sup> I would like to acknowledge that there are a range of positions and perspectives in Stó:lō territory on whether or not treaties are the preferred political pathway to pursue Aboriginal rights and title. Unfortunately, it was not possible for me to explore these alternative pathways as much as I would have liked within the scope of this paper.

bureaucracies that mirror government agendas and are increasingly adopting ‘government’ and ‘corporate’ speak. The result, Nadasdy contends, has been the undermining of First Nations’ longstanding ways of thinking, and, along with this, the displacement of traditional priorities. He argues “that the current restructuring of Aboriginal-state relations, which on the surface appears to be empowering First Nations peoples, may in fact be having the opposite effect...these processes may...be acting as subtle extensions of empire, replacing local Aboriginal ways of talking, thinking, and acting with those specifically sanctioned by the state.”<sup>3</sup>

Nadasdy’s findings offer an important critique of the unintended effects of land claims negotiations, and my discussions with Stó:lō community leaders and representatives have indeed shown that it is necessary for them to speak in bureaucratic and legalistic terms in treaty negotiations. However, these discussions have also shown that Stó:lō leaders and community representatives are acutely aware of the risks Nadasdy discusses, and are employing a number of strategies to assert a distinctly Stó:lō vision of what treaties should accomplish and how their negotiation should proceed. In exploring Stó:lō approaches to land claims negotiations, this paper finds that language, history, and Stó:lō-state relations collide in critical ways in treaty negotiations, with language emerging as one of the primary sites of struggle over the authority to direct and define what treaties can and should be about.

Also important to mention here is that this report is part of a broader research project I am planning to undertake for completion of a Master’s in History at the University of Victoria. The M.A. thesis will expand the historical scope of the research conducted for this report in order to consider how these recent language dynamics compare to some of the ways Stó:lō leaders and community representatives addressed settler governments on the land question at the turn of the 20<sup>th</sup> century. A quick glance at early petitions allows for a first observation in comparing

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<sup>3</sup> Nadasdy, *Hunters and Bureaucrats*, 9.

petitions to treaty negotiations: all petitions were written in English. As will be discussed below, there currently exists a concerted effort to ground all approaches to treaty in a Stó:lō framework of understanding, which involves advancing Stó:lō language, concepts, and principles as the basis for and means of participating in the treaty. I would further like to point to the fact that the following paper was made possible by the extraordinary generosity of everyone I encountered while in Stó:lō territory. I am especially thankful to those who shared with me their time and reflections on their experiences of treaty-making politics in *S'ólh Téméxw*. The learning curve for me has been steep, and in this sense, the following report is preliminary and explorative. Any misinterpretations of Stó:lō terms or intentions are mine alone.

### *Treaty-making in British Columbia*

Nadasdy's research offers valuable reflections on Kluane peoples' experiences of negotiating treaty and co-management agreements, experiences that likely correspond in many ways with those of other First Nations engaged in modern land claims processes. It is important to recognize, however, that there are differences in the ways participating First Nations are handling land claims negotiations, and differences in their respective starting points. As Lutz (2008) has shown, First Nations in B.C. have, historically, taken a variety of approaches to dealing with the encroachment of Euro-Canadian settler governments and economies, approaches that have shaped their present realities in not insignificant ways. For example, in comparing how Lekwungen and Tsilhqot'in peoples engaged the Euro-Canadian capitalist economy and settlement, Lutz finds that Tsilhqot'in resistance to settler incursions likely helped them maintain a high degree of language retention.<sup>4</sup> While recognizing that there are commonalities in the policies that have guided the colonial presence in North America and

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<sup>4</sup> Lutz, *Makúk*, 161.

Canada as well as in how they were experienced by indigenous peoples, it is relevant to note that there were significant differences too in what has occurred ‘on the ground.’ It seems feasible that a similar argument could be made for how the relatively standardized procedural framework that guides land claims processes in Canada is being met in different ways by different First Nations in B.C., and that this is will shape the present and future realities of specific First Nations communities in critical ways.

Thus it is important to recognize that First Nations negotiate in and from a variety of geographical and historical positions. In summarizing the range of modern treaties completed or underway in Canada, Godlewska and Webber (2007) note that treaty negotiations in B.C. face a particular set of challenges. They point to the fact that, compared to more Northern treaties, the lands under claim in B.C. are inhabited by large and well-populated settler communities, with First Nations more often making up a small minority of the overall population base. Further, whereas the territories (i.e., Yukon and Northwest Territories) are under exclusively federal constitutional jurisdiction, in B.C. the provincial government has a greater degree of ownership over “public lands and control over resource exploitation.”<sup>5</sup> In this setting, where the province is the primary negotiating party, “Aboriginal title tends to interfere then with provincial resource policies, and, if Aboriginal title is removed, the benefit accrues to the province.”<sup>6</sup>

The fact that treaties are now being negotiated is a credit to First Nations peoples’ political perseverance over the last 150 years, and marks a significant departure from the provincial government’s former position of denying the existence of Aboriginal title in British Columbia.<sup>7</sup> However, partly as a result of the length of time treaties are taking, and partly due to the fixed

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<sup>5</sup> Godlewska and Webber, “The *Calder* Decision,” 18.

<sup>6</sup> Ibid.

<sup>7</sup> For a comprehensive account of this aspect the province’s history and of the sustained Aboriginal political activism it inspired, see Paul Tennant’s *Aboriginal peoples and politics: The Indian land question in British Columbia, 1848-1989* (Vancouver, BC: UBC Press, 1990).

mandates of the province on issues considered key to First Nations negotiators, some First Nations peoples and scholars are increasingly skeptical about what can actually be achieved through treaty-making as it is currently practiced.<sup>8</sup> Importantly, Stó:lō leaders and community representatives have their own perceptions of treaties and treaty-making. In the following discussion I will review some of these perceptions, the rationale behind Stó:lō approaches to treaty making, and the language dynamics at work throughout.

### *Stó:lō Perspectives on Treaties*

Currently, seven Stó:lō communities are at Stage Four in the B.C. treaty process under the collective banner of the Stó:lō Xwexwilmexw Treaty Association (SXTA).<sup>9</sup> Importantly, Stage Four is the first in the six-stage treaty negotiation process in which First Nation, provincial and federal representatives actually begin substantial, face-to-face negotiation of an Agreement in Principle, and is thus a key opportunity for the SXTA to meaningfully assert their own vision of negotiations and the treaty. In this way, each stage of treaty negotiation “allows for different opportunities to engage in dialogue.”<sup>10</sup> The British Columbia Treaty Commission (BCTC) offers the following explanation of what occurs at Stage Four:

The three parties examine in detail the elements outlined in their framework agreement. The goal is to reach agreement on each of the topics that will form the basis of the treaty. These agreements will identify and define a range of rights and obligations, including: existing and future interests in land, sea and resources; structures and authorities of government; relationship of laws; regulatory processes; amending processes; dispute resolution; financial component; fiscal relations and so on. The agreement in principle also

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<sup>8</sup> For example, see: Alfred (2000); Day & Sadik (2002); Blackburn (2005, 2007); and Woolford (2004). Recent Common Table discussions saw an attempt by 63 First Nations in B.C. to change the provincial government’s mandates on several key issues they saw as impeding more effective resolution of land claims negotiations. See CanWest News Service (2009).

<sup>9</sup> Aitchelitz, Leqá:mél, Popkum, Skowkale, Skawahlook, Tzeachten, and Yakwekwioose. See <http://www.sxta.bc.ca/home.html> for more information.

<sup>10</sup> Dave Schaepe, personal interview, 11 May 2009.

lays the groundwork for implementation of the treaty.<sup>11</sup>

The SXTA has recently renewed negotiations after a political split that occurred in 2005 in which roughly half of the Stó:lō First Nations who had entered the Treaty process under the banner of ‘The Stó:lō Nation’ chose to remove themselves and seek other avenues to securing their Aboriginal rights and title. As such, there exists a range of opinions among Stó:lō people about treaty-making. My discussions with leaders and community representatives both in and out of the treaty process demonstrated that treaty-making is a contested issue in Stó:lō territory, and that regardless of one’s perspective on the issue, criticism of treaties runs very high. In this regard, Grand Chief Clarence “Kat” Pennier, President and Chief for the Stó:lō Tribal Council (and former Yewal Siya:m of Stó:lō Nation) observed that B.C. and Canada’s sanctioning – and funding – of the treaty process as the ‘only way to go’ makes it difficult for communities not supporting treaty to identify and pursue alternatives to the process. Also important is his perspective on the impacts of recently completed treaties on First Nations’ challenges to provincial and federal mandates on what is and what is not negotiable in or outside of treaties. In his words, “as long as the governments continue to make headway in those areas [treaties], they’re not going to change their mandates for the rest of us.”<sup>12</sup>

Chief Joe Hall *Skw’omkw’emexw*, President of Stó:lō Nation and Senior Political Advisor on the SXTA’s negotiating team, sees a new and distinctly Stó:lō governance structure as one of the primary desired outcomes of a treaty. In a new governance system, Stó:lō Xwexwilmexw communities could replace the band system that was created and managed through the Indian Act. For Hall, moving away from non-Aboriginal forms of government means moving towards Stó:lō traditions and language in order to find something that will resonate among Stó:lō people.

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<sup>11</sup> BCTC, “Six-Stages: Policies and Procedures,” *BC Treaty Commission*, 2009, <http://www.bctreaty.net/files/sixstages.php> (Accessed 11 July 2009).

<sup>12</sup> Grand Chief Clarence Pennier, personal interview, 12 June 2009.

He explains:

[I]f we wanted to go into the future...protect and actually enhance the language and cultural practices, we needed to go back to our root systems. And so...something that was as well desired by the Stó:lō people that are involved, the Stó:lō Xwexwilmexw people, is to design a system that is not based on the non-Aboriginal way. Like provinces, municipalities, electoral areas...if the people were going to buy into and own a system it would have to be the traditional system. So we started focusing in on and emphasizing the tribal systems, which is of course based on language boundaries and the *Halq'emélem* language...the three dialects, that you know, essentially dictate which part of the world that you're from.<sup>13</sup>

Similarly, the SXTA's approach to negotiations with the provincial and federal governments is firmly grounded in Stó:lō culture, something Hall believes distinguishes it from other First Nations' approaches to treaty. Importantly, he does not anticipate the transition from the band system to a system developed by the Stó:lō Xwexwilmexw Treaty Association will be an easy one, but Hall feels that founding the new system on Stó:lō culture will help address many issues at once:

[I]t's very difficult to change and it is going to be difficult to change, but if you build it around something that people find a lot of respect in, like the culture and the traditions... it'll be easier to adapt to the system that they should have... So, we know the system has to change...in order to – not just protect and enhance the cultural practices and the existence of the people, but also to, to assist people in overcoming some of the many challenges that they've struggled with.<sup>14</sup>

Importantly, this kind of experimentation with developing contemporary systems of governance that are modeled on traditional Stó:lō beliefs and practices has been going on for some time.

Keith Thor Carlson (2007) discusses his participation in efforts to develop a Stó:lō governance system in the community of Shxw'ōwhámél initiated in the mid-1990s. Carlson's report helps to outline what aspects of the new (traditional) system were difficult to implement due to community fractures that are, in turn, attributable to over a hundred years of colonial incursions into Stó:lō communities and culture. These include "[r]eserve boundaries, policies regarding the

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<sup>13</sup> Chief Joe Hall *Skw'omkw'emexw*, personal interview, 19 May 2009.

<sup>14</sup> Chief Joe Hall *Skw'omkw'emexw*, personal interview, 19 May 2009.



distribution of federal financial resources, missionary-sponsored inter-denominational feuds, and the reification of Band membership lists,” which, together, have worked to isolate communities from one another in ways that were inconsistent with the family-centered governance structure Shxw’ōwhámél sought to implement.<sup>15</sup>

From Hall’s perspective, one of the main challenges facing Stó:lō peoples is “a mindset of dependency” that has developed over time, through which, he states, “a lot of people feel we exist because the government allows us to exist.”<sup>16</sup> Such a mindset is reinforced and perpetuated by a historical and ongoing pattern of language-use, often seen in legal and legislative documents and proclamations, in which the Crown and settler governments describe themselves as ‘allowing’ or ‘permitting’ (or, as important, ‘disallowing’) First Nations to engage in various beliefs, practices and initiatives that First Nations people consider to be self-defining and self-directing. Hall is adamant that the days for this type of language are over, and that such terminology flies in the face of the new relationship that is supposed to be the product of treaty negotiations.<sup>17</sup> What emerges here is the role that language plays in the relationship between Stó:lō peoples and settler governments, and it is indicative of the distribution of power within that relationship. In Hall’s words, a first step towards changing this relationship at the treaty table would entail a shift from a vocabulary of permission to one of recognition in the language from Canadian and provincial governments:

[A]t the end of the day, what we’re looking for – and the other thing that we went to the treaty table with is, you know, the words – anything that purports to be a delegated... activity or operation is always, will always be seen as one side allowing another side to do this. And that’s the kind of language or approach that we’re trying to rid. You know, we go

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<sup>15</sup> Carlson, *Colonial Fracture*, 3. Carlson makes the further, very important point that what people consider to be ‘traditional’ changes over time (23). What various Stó:lō community leaders and representatives mean by terms such as ‘culture’ and ‘tradition’ in these contexts is worth exploring, but was not pursued in this paper. I will attempt to address this issue more thoroughly in the MA thesis.

<sup>16</sup> Ibid., 2009.

<sup>17</sup> Ibid., 2009.

to the tables and say we want you to recognize our rights. We want you to recognize that we have the ability, the authority – we don't need the minister babysitting. We don't need any elected official out of a community somewhere else in Canada...basically determining how our life is going to, to occur.<sup>18</sup>

Interestingly, Albert 'Sonny' McHalsie *Naxaxalhts'i*, co-manager of the Stó:lō Research and Resource Management Center (SRRMC) and Technical Advisor to the SXTA Treaty Negotiating Team, suggests that a 'mindset of dependency' is also prevalent and persistent among community leaders, who he describes as having had trouble maintaining a strong enough sense of Aboriginal jurisdiction in engagements with non-Aboriginal governments. McHalsie explains one challenge he has noticed:

We have to get our leaders away from the notion that anything that, you know, whatever results we get from the treaty, that it's something that's been given to us. That's one of the problems that we've had right from the beginning. And even the chiefs themselves, I remember we had a retreat quite a few years ago, and that was one of the things that was raised is that, you know, we hold Aboriginal right title to all this land, to all *S'ólh Téméxw*...But yet every time the chiefs talk about it or even when they talk with DFO [Department of Fisheries and Oceans] or whoever, it's almost like they're, it's like we don't own it...It's like as if 'What are they going to give us', you know. And we talked about it quite extensively at that one gathering or one meeting that we had. And I think it lasted for a little while and then next thing you know, it's right back to that same way of speaking, as if we don't own it. Or as if the province or Canada owns it and that they have to give us some back. Which just doesn't seem to jive with the position that we have, saying that we have complete Aboriginal right and title to all the land.<sup>19</sup>

Hall seems to confirm this in discussing the tendency for community leaders to anticipate what will and will not be accepted by government parties, and to adjust their wording accordingly before even reaching provincial and federal representatives:

[W]e find ourselves too often...just because of the way we've been, and I call it, brainwashed into living with the government – to say, 'Okay, they're not going to accept this, so let's change it.' So we just end up negotiating with ourselves before we go to Poppa, and say 'Listen, is this going to be okay?'... No? You know, 'Oh, well we'll need to change it then.'<sup>20</sup>

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<sup>18</sup> Ibid., 2009.

<sup>19</sup> Albert 'Sonny' McHalsie *Naxaxalhts'i*, personal interview, 19 May 2009.

<sup>20</sup> Chief Joe Hall *Skw'omkw'emexw*, personal interview, 19 May 2009.

McHalsie and Hall's comments raise questions about why firmer positions among Stó:lō representatives may be difficult (or disadvantageous?) to maintain. Whether such positions stem from an adoption of a kind of pragmatism or, as Hall identifies, as a result of 'brainwashing,' what Hall and McHalsie are calling for is a kind of decolonization of the mindsets and language used when approaching provincial and federal governments. No doubt, what the term might mean from party to party would differ, but decolonizing the language used in negotiations has significant implications for a decolonization of the treaty process itself. Ideally, it would result in a relationship, during and after treaty negotiation, which reflects a meaningful departure from what has characterized Stó:lō-state relations thus far. Chief Joe Hall confirms that the treaty is, fundamentally, about changing the power dynamics of the relationship:

The treaty itself, and I've said this many times, is that we're not looking for a delegated authority, we're not looking for delegation. We're looking for a new relationship...we know we're going to have to co-exist, so we're looking for a co-existence agreement [...] That's what treaty-making is all about. It's not cutting a deal to stay away and don't do this.<sup>21</sup>

Changing the language and thus the terms by which the relationship can be negotiated, however, is perhaps the most contentious issue of all in what appear to be highly oppositional settings.

### *Language and 'Certainty'*

Treaty negotiations are characteristically years-long and drawn out endeavors in which all parties must be extraordinarily cautious around what language is included in a final document, largely due to the potential legal implications of its wording should the treaty ever be contested, appealed, or subject to further interpretation in the courts. Chief Hall is sensitive to these aspects of negotiations, as he is to the ways in which they inform the terminology-based strategies of non-Aboriginal governments:

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<sup>21</sup> Ibid.

[I]t's clearly evident that they're putting language in that...their courts will understand, that their courts will interpret – or not interpret...it's another, you know, thing that I've seen over the years is that you put nebulous wording in that you can – that it never says that you can't, but it never says that you can...you can see it in their wording, how they try to maintain the superiority in the treaty...And we want to get rid of that. They don't like anything in there that acknowledges that we had a right. You know, like when we talk about shared decision-making or shared resource revenue. They'll put wording in that – 'Okay, we're going to allow this to happen' – it's not like, 'We know that you're entitled to this.' And they're very careful not to put – to avoid that kind of verbage in there...because I think everything they do is kind of getting it ready for a judge...or a court.<sup>22</sup>

Thus however much Stó:lō, provincial and federal representatives may (or may not) be working towards a 'new' relationship, a relationship is already being built (or maintained) within treaty negotiations themselves, as particular kinds of relational encounters unfold.

At a basic level, the language coming from Stó:lō representatives and from the provincial and federal governments visibly affirms that treaty-making is intended to create a new relationship between Aboriginal peoples and settler governments.<sup>23</sup> Stó:lō understandings of what this new relationship should be founded upon and produce, however, are often different than what can be interpreted from state governments. The term 'certainty' is at the heart of provincial and federal discourse on treaty-making in British Columbia. Its absence is presented as both the primary reason for engaging in treaty negotiation, and its creation the primary intended outcome for settler governments. According to the B.C. Ministry of Aboriginal Relations and Reconciliation, "[t]reaties provide certainty about who owns and who has legal authority over land and resources," and "[c]ertainty encourages investment and bolsters the provincial economy."<sup>24</sup> Uncertainty in this context is understood to be a result of a vagueness in

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<sup>22</sup> Ibid., 2009.

<sup>23</sup> Seen most publicly in British Columbia's 2005 'New Relationship' vision statement, supported by the federal government: <[http://www.newrelationship.gov.bc.ca/shared/downloads/new\\_relationship.pdf](http://www.newrelationship.gov.bc.ca/shared/downloads/new_relationship.pdf)>.

<sup>24</sup> Province of British Columbia, "How do treaties benefit all British Columbians?", *Ministry of Aboriginal Relations and Reconciliation*, 2007, <[http://www.treaties.gov.bc.ca/overview\\_bc.html](http://www.treaties.gov.bc.ca/overview_bc.html)> (11 July 2009).

how Aboriginal title and rights have been defined in federal legislation<sup>25</sup> and through the courts.<sup>26</sup> As Godlewska and Webber observe, the rights-based language in both settings “stresses entitlement but provides little guidance on how responsibilities should be divided between Aboriginal and non-Aboriginal governments.”<sup>27</sup> According to the BCTC, treaties are intended to help resolve this lack of clarity on Aboriginal rights and title by defining what these mean on a nation-to-nation basis, resulting in economic benefit for both British Columbians and First Nations.<sup>28</sup> Strongly implied is that the threat of indigenous-initiated protest and/or court action over economic development projects on contested lands would be lifted from the social, economic and political landscape of British Columbia, thereby making the province, once again, a safe and certain place for business investment.<sup>29</sup>

What is increasingly referred to as ‘certainty language,’ however, is being critically considered in scholarly circles. As UBC anthropologist Carole Blackburn (2005) states, certainty around Aboriginal rights and title was initially advanced as an alternative to prior state policies of extinguishment,<sup>30</sup> but it is not always clear that the latter has been fully eradicated from government objectives for treaty. In analyzing the negotiation process of the Nisga’a Final Agreement (1998), Blackburn argues that economic uncertainty is in fact a defining characteristic of late 20<sup>th</sup> and early 21<sup>st</sup> century global capitalism, and maintains that responsibility for certainty is being disproportionately associated with Aboriginal land claims in

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<sup>25</sup> See section 35(1) of the Constitution Act, 1982.

<sup>26</sup> For a concise review of the key legal decisions in this area, see Godlewska and Webber, “the *Calder* Decision.”

<sup>27</sup> Godlewska and Webber, “the *Calder* Decision,” 29.

<sup>28</sup> BC Treaty Commission, “Sharing the Vision,” *Videos*, 2009, <[http://www.bctreaty.net/video\\_files/sharing\\_the\\_vision/video\\_sharing-the-vision.php](http://www.bctreaty.net/video_files/sharing_the_vision/video_sharing-the-vision.php)>, (11 July 2009).

<sup>29</sup> See also: Government of Canada – Federal Treaty Negotiation Office, *Modern Treaties for a Modern World: Treaty Negotiations in British Columbia*, (Ottawa: Federal Treaty Negotiations Office, Indian and Northern Affairs Canada, n.d.); and Province of British Columbia, “How do treaties benefit”, 2009.

<sup>30</sup> Blackburn, “Searching for Guarantees,” 592.

provincial and federal rhetoric. She further observes that non-Aboriginal governments in Canada have developed a “new set of practices” that codify Aboriginal rights, producing certainty as well as ensuring that

the government [becomes] secure in its sovereignty with respect to its land base through legally informed but politically negotiated treaties and the establishment of recognizable property relations both on and off treaty lands, and [establishes] a framework for dealing with Aboriginal claims within which only certain forms of Aboriginal self-government can be entertained.<sup>31</sup>

Thus while Canadian governments work to reinforce their existing structures, First Nations are still limited in the ways in which their own governments and governance structures can be expressed. Nadasdy makes a similar argument, asserting that while land claims processes appear to be (and, to a certain extent, are) providing participating First Nations with an unprecedented political legitimacy, they are simultaneously contributing to “a new phase in the ongoing process of state formation in Canada.”<sup>32</sup> In this ‘new phase,’ Nadasdy argues, the particular ways in which state power is expressed in land claims contexts has become increasingly subtle and less overtly assimilationist, precisely because the political power of First Nations has been on the rise in recent decades.<sup>33</sup> Nadasdy’s argument here is that state control of indigenous peoples in Canada is now being exerted through the relatively subtle mechanisms of negotiations and language, rather than through more obviously coercive means.<sup>34</sup> In different ways, Blackburn, Nadasdy and Woolford (2004) all connect this new subtlety to a pervasive pressure on Aboriginal negotiators to adopt a ‘pragmatic’ position in order to better deal with the politics of

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<sup>31</sup> Ibid.

<sup>32</sup> Nadasdy, *Hunters and Bureaucrats*, 269.

<sup>33</sup> Ibid.

<sup>34</sup> Importantly, Nadasdy often emphasizes that this exertion of power over Aboriginal Peoples is built into negotiations processes in a way that is not necessarily intentional. To a much greater extent than Blackburn or Woolford, Nadasdy points to the positive intentions of many federal and territorial negotiators, who are committed to fairness even as they unintentionally effect what Nadasdy sees as the further assimilation of indigenous peoples through land claims.

the present. For Woolford, the treaty process is increasingly represented “as a pragmatic exchange between parties who are firmly immersed in a shared reality, rather than as groups with competing legitimate visions of justice.”<sup>35</sup> In this setting, achieving ‘certainty’ for the purposes of economic development appears as a ‘realistic’ goal that, as it has been defined above, sidesteps longstanding issues related to historical injustices, as well as the very real ongoing effects of these historical injustices upon First Nations peoples and their relationships with Canadian governments.

These authors’ works, while clearly informed by their engagements with First Nations peoples, are primarily concerned with deconstructing state discourse in treaty-making. Where such work is crucial in order to get beyond the surface language that often appears in policy, my goal in this paper is to focus on and highlight how Stó:lō peoples are dealing with the language dynamics at work in negotiation contexts. To this end, I examine the specific terms and overall language environment found in Stó:lō approaches to treaty-making, as well as assertions of what are understood as more distinctly Stó:lō language and concepts. As with treaties more generally, Stó:lō representatives have their own understandings of what provincial and federal governments mean when they use the term certainty, and also have their own definitions of what certainty means for them.

### *Reconfiguring Meaning: Same Terms, Different Intentions*

Dave Schaepe, archaeologist, co-manager of the SRRMC, and Technical Advisor to the SXTA Treaty Negotiating Team, makes it clear that certainty is not a word that originates in Stó:lō communities, though it is being redefined by those involved in negotiations in order to make it relevant to Stó:lō perspectives. According to Schaepe, certainty for the SXTA is

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<sup>35</sup> Woolford, “Negotiating Affirmative Repair,” 124.

achieved through the development of a relationship, which the SXTA certainly has very clearly voiced what the treaty is...their vision of treaty is not the achievement of certainty through...the development of a final agreement – final agreement...it's the development of a certain set of relationships.<sup>36</sup>

Chief Joe Hall also sees a rift between what certainty means for provincial and federal authorities and what it means for the SXTA. Over the course of our interview, Hall explained that for the governments, certainty “is the clarity that ‘you won’t sue us afterwards’, or that ‘you won’t seek other rights.’” Put another way, certainty for the federal and provincial governments means that they “basically ignore the fact that [they] stole the land.” For the Stó:lō, on the other hand, Hall regards certainty as “ensur[ing] that we do have that ability to co-exist.” For Hall, co-existing requires the development of a system through which Stó:lō peoples possess “the means to take care of ourselves on an independent basis.”<sup>37</sup>

Grand Chief Clarence Pennier articulates a parallel interpretation of the opposing meanings of certainty for governments and for Stó:lō people. In his mind, “that’s one of the words we want to use too.” Pennier recognizes that “the government wants to have certainty so they can continue with the exploitation of the land and the resources.” This, Pennier observes, is most clearly expressed in the government’s position that treaty reserve land be transformed into fee simple lands. He contrasts this short-term vision of private landholding with its emphasis on the individual title holder with an alternative Stó:lō goal that would see Stó:lō communities not only deriving “some funding from our resources” but also enjoying security through a system of land tenureship that would “protect the land and the resources for future generations” – a vision he sees including Stó:lō people retaining their “Aboriginal title land so that...we’re able to have our people derive benefit in the future.” As Pennier concludes, “certainty is one thing for the province and certainty is one thing for us. And they don’t meet. [laughs] They don’t gel

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<sup>36</sup> Dave Schaepe, personal interview, 11 May 2009.

<sup>37</sup> Chief Joe Hall *Skw’omkw’emexw*, personal interview, 19 May 2009.



together.”<sup>38</sup>

As Schaepe notes, Stó:lō approaches to treaty-making are partly about recognizing the necessity of “breaking down the monolithic nature of some of these words,” asking “what kind of relationships do you build around monoliths?”<sup>39</sup> At issue then, is the need for more flexibility with regards to the terms that are used in negotiations, how existing language is interpreted, and to what extent the language currently used can be changed in order to make space for perspectives and objectives reflecting Stó:lō worldviews, values, and principles. Stó:lō approaches to treaty engage all three of these issues.

One of the ways in which Stó:lō approaches are manifested is in a reconfiguration of the information required by the treaty process. One example is the Statement of Intent (SOI) and its accompanying map of claimed territories, which is prepared and submitted to the BCTC in Stage One of the negotiation process. When what was the Stó:lō Nation Treaty Table (SNTT) was reconfigured into the SXTA after the political split, the SXTA resubmitted a Statement of Intent and SOI map (Appendix 1) to reflect what SXTA members felt was a more nuanced reflection of Stó:lō inter-community relations in the region. Schaepe notes that the hard language – visually and in terms of its vocabulary – seen in the standard SOI format<sup>40</sup> has serious potential to create conflict among First Nations communities: both between treaty groups whose claimed lands might overlap (e.g.; SXTA and the Yale First Nation), and among communities in and outside of the treaty process in a shared region (e.g.; between SXTA and Stó:lō Tribal Council communities or Stó:lō communities independent of either political organization).

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<sup>38</sup> Grand Chief Clarence Pennier, personal interview, 12 June 2009.

<sup>39</sup> Dave Schaepe, personal interview, 11 May 2009.

<sup>40</sup> Standard SOI maps available on the BCTC website offer an image of the relevant region of British Columbia in which claimed lands are either outlined in bold black lines, or shaded in pale blue. The style of map submitted by the SXTA is the only one available on the site that departs from this standard format. See < [http://www.bctreaty.net/files/first\\_nations.php](http://www.bctreaty.net/files/first_nations.php)> for links to the individual BCTC pages of all First Nations in treaty and to access their SOI maps. See Appendix 1 for a copy of the SXTA’s SOI map.

Along these lines, one of the issues that arose out of my discussions with Stó:lō community leaders and representatives was that of unity. The people who spoke with me expressed concern that the treaty would create new lines of division in and among communities already dealing with the divisive impacts of past legislation and policies, most notably the identity categories created by the Indian Act (e.g.; status/non-status, on-reserve/off-reserve) and the intergenerational divides traceable to residential schools.<sup>41</sup> Schaepe speaks to the SOI map's potential in this regard:

I mean the terminology itself is so prone to conflict, and this is nothing new, but just the way it's drawn, the guidelines for drawing the map, the terminology of the map, what it is...it's just inherently conflicting...so that's what happened, there's a lot of tension and conflict coming out of whether a group's in treaty or out of treaty, seeing these lines and claims to territory and the assumption that it's all exclusive, statements of intent frames it in a way that's not within Stó:lō society or negotiation of use of land and resources, but almost like a land title map, right...it's yours inside, it's not yours outside. That's pretty much the parallel, which is very different than a Stó:lō reckoning of land title and relationships with others.<sup>42</sup>

Schaepe and others worked to change the format of the map in order to reflect a more accurate representation of Stó:lō relationships in the region, among peoples and with the land, that would help nuance the hard definitions of claimed territory required in SOI maps. As he explains,

I think we still call it the statement of intent, we have to. But the, we added a lot of internal definition to it, including *Halq'emélem* terms for the language...So we said, we can't do this with just one line, we have to make, we have to make [laughing], you know, we wanted to show something in the – some substance within the outer boundary that shows the nature of relationships and we were going to use this relationship between language and tribal areas, and then a core area, so we're going to add at least two or three or more layers of additional information to, to get at who the Stó:lō *Xwexwilmexw* are, what their interests are, uh, how they're going to relate to others, whether they're inside or outside of treaty...And mapping is one sort of approach to laying this out, mapping...within parameters that go beyond what the BC Treaty Commission is looking for or even willing to accept.<sup>43</sup>

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<sup>41</sup> See Carlson (2007) for a helpful discussion of the divisive effects of colonial policies and their effects on recent efforts to reconfigure Stó:lō community governance models along traditional lines.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

The sentiment in Schaepe's last quoted sentence demonstrates that the SXTA is actively challenging the treaty process and government representatives to incorporate Stó:lō frameworks. The SRRMC sought out a *Halq'emélem* term to describe a distinctly Stó:lō approach or way, and arrived at the term *xwélmexwqel*, which, as it is applied in this context, is taken to mean, roughly, 'our way.'<sup>44</sup> This turn to *Halq'emélem* and the concepts it carries with it has resulted in a broader reconsideration of the treaty process and, arguably, is the foundation of how the SXTA is recreating its approach to treaty-making in British Columbia.

### *Reconfiguring Meanings: Insertions of Halq'emélem*

Like any language, *Halq'emélem* has an intimate and inseparable connection to worldview in that it represents particular ways of speaking, thinking, perceiving, and being in the world. Thus in inserting *Halq'emélem* into the treaty process and its legal documents, Stó:lō community leaders and representatives are also attempting to insert the conceptual framework or worldview that *Halq'emélem* terms make reference to.<sup>45</sup> Schaepe talks about an increasing move towards taking this approach to the treaty over the last few years as a way of "providing language that supports the Stó:lō perspective, as simple as that...Not to draw on English language, to support Stó:lō principles and perspectives on relationship-making."<sup>46</sup> He explained to me the effort to build an "outward screen" that is distinctly Stó:lō through which everything else can be filtered: treaty negotiations, the English legalistic language that comes with the process, as well the corresponding worldview that its terms reflect. He states, "We want to show

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<sup>44</sup> Ibid.

<sup>45</sup> This could also be seen as connected to broader community-based efforts in Stó:lō territory to ensure that *Halq'emélem* and traditional beliefs and practices play active roles in the reconfiguration of governance, Stó:lō-state relations, and peoples' daily lives. The fact that none of the SXTA's negotiators are themselves fluent *Halq'emélem* speakers contributes to the complex dynamics of language involved in the SXTA's approach to treaty, and at the same time points to larger issues of language loss in many indigenous communities across North America.

<sup>46</sup> Ibid.

in approaching this topic, whatever it may be, that it has to be done from the basic point, a different worldview, a different perspective, a different way of doing things. What's the word for 'our way' of doing things?"<sup>47</sup>

Schaepe and others recognize the power dynamics at work in the contest over language that emerges explicitly at this stage in treaty-making. Schaepe is acutely aware of the strategic nature of their approach in such a setting: "That initiative, just taking the first step in laying out language is offensive, right? It's a, it's a tactic."<sup>48</sup> He discusses the list of Defined Terms that is compiled at Stage Four, terms such as 'First Nation', 'consultation', 'fiduciary duty', and so on. Schaepe emphasizes the need to get as many *Halq'emélem* terms as possible into the list, describing the defined terms as "the centerpieces around which less formal language is written" in the treaty.<sup>49</sup> But as the negotiating parties work to develop an Agreement in Principle, Sonny McHalsie feels that there is still not as much *Halq'emélem* in the working document as he would like:

[M]y line of thinking is that, you know, people start talking about Aboriginal rights and title, and a lot people think of section 35 of the constitution, right. And I like to remind everyone that that's not the source of our Aboriginal rights and title, that's the burden upon the crown to recognize our right and title. So that's why, in 'Be of Good Mind', I talk about what is our rights and title, it's all those things. From a *Halq'emélem* perspective or a Stó:lō perspective, all those different things that are out there on the land, I mean that's who we are. As long as we have the faith and the belief in those things that defines our Aboriginal rights and title. That's why I feel that we – with whatever words we negotiate, I think we should incorporate as much as our language as we can and as much of the perspectives we have towards the land, based on the teachings our elders have left behind for us with the language.<sup>50</sup>

Here McHalsie signals a concerted shift away from relying on non-Aboriginal frameworks for understanding who Stó:lō people are, where and what they come from, what they want to

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<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

<sup>50</sup> Albert 'Sonny' McHalsie *Naxaxalhts'i*, personal interview, 19 May 2009.

achieve, and how they are going to do it. Instead of falling into or maintaining a sense that, as Chief Joe Hall mentioned earlier, Stó:lō people ‘exist because the government allows them to,’ McHalsie and others are providing Stó:lō points of reference to guide them in their approach to treaty-making.

In this endeavor, language communicates Stó:lō values, principles, beliefs, and practices, with some terms more translatable than others. *Tómiyeqw* is a *Halq’emélem* word that in English means both great-great-great-great-grandparent and great-great-great-great-grandchild, and expresses the relationships that exist between Stó:lō people seven generations into the past and the future, with those living in the present held responsible for maintaining the connections between past and future ancestors.<sup>51</sup> Schaepe explains that *tómiyeqw* has been brought into treaty negotiations as a principle to inform decision-making processes (and the development of a treaty more generally). Whether the topic is governance, or resource management, *tómiyeqw* reminds Stó:lō participants of their obligations to their past and future relations and that the treaty “should really benefit people [for] seven generations, it should stand for a long, long time.”<sup>52</sup> In this way, *Halq’emélem* terms begin to make up a competing framework for understanding in the treaty process, with *Halq’emélem* words inserted alongside their English counterparts, as Schaepe explains in comparing ‘resource’ and ‘*sxoxomes*’:

So to look at the environment as not just...the provincial landscape of resource, resource money, you know, value for extraction and conversion into a capital market system...there are deeper sense[s] of relationships that govern how you use things, things like cedar and so on going back to understanding their origin within *sxwôxwiyám*, and as *sxoxomes*, gifts of the creator, to which you have different sets of relationships altogether than are recognized by either BC or Canada. So there are buzz words like that that are key to reforming things within a perspective that is around...those terms that represents a perspective of the Stó:lō as opposed to the federal or provincial governments.<sup>53</sup>

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<sup>51</sup> Stó:lō Nation, *Stó:lō Heritage Policy Manual*, 1-2.

<sup>52</sup> Dave Schaepe, personal interview, 11 May 2009.

<sup>53</sup> Ibid. *Sxwôxwiyám* are oral histories that describe the distant past and that “account for the origins and connections of the Stó:lō, their land, resources and *sxoxomes*.” For more information see citation in

Likely the most important *Halq'emélem* phrase in this project is *S'ólh téméxw te ikw'elò. Xólhmet te mekw'stám ít kwelát*, translated as 'This is our land. We have to look after everything that belongs to us.' McHalsie (2007) describes the statement as a motto or principle for Stó:lō peoples in their engagements with issues around rights and title, and explains how it was shared with him by Stó:lō elder Tillie Gutierrez:

She said that when she was a little girl she remembered being up in Yale. She said that during the summer when she was fishing up there people would get together – the leaders would get together and start talking about the land question. She said every time they got together before they started their meeting, they all started off with one statement, and that was '*S'ólh téméxw te ikw'elò. Xólhmet te mekw'stám ít kwelát*.'<sup>54</sup>

For McHalsie, *S'ólh téméxw te ikw'elò* can be understood as a statement of Stó:lō Aboriginal rights and title, while the second part, *Xólhmet te mekw'stám ít kwelát*, speaks to Stó:lō peoples' obligations to look after what is theirs. So in this statement is both a right and a responsibility to a land that is intimately connected to Stó:lō peoples through their histories and their language. McHalsie also emphasizes the importance of knowing the context and the stories behind a word and its meaning.<sup>55</sup> Working with place names in *S'ólh Téméxw* for many years has helped him to understand and articulate the complex linkages between Stó:lō people; the lands and waters in their territories; *sxwôxwiyám*, the oral histories that "account for the origins and connections of Stó:lō, their land, resources and *sxoxomes*"; *sqwelqwel*, true stories or personal or family narratives; and *shxweli*, the spirit or life force that connects all things in *S'ólh Téméxw*.<sup>56</sup> Together, these elements form a context that offers meanings and value beyond a simple one or two-line definition. As Dave Schaepe explains, *S'ólh Téméxw*

[is]not the boundary, it's not the title line, it's a set of relationships between people and

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footnote below and: Stó:lō Nation, *Stó:lō Heritage Policy Manual*, 8.

<sup>54</sup> *Naxaxalhts 'i*, "We Have to Take Care," 85.

<sup>55</sup> McHalsie, "We Have to Take Care," 109.

<sup>56</sup> Stó:lō Nation, *Stó:lō Heritage Policy Manual*, 8.

places and things within that, that define who the Stó:lō are, who the Stó:lō *Xwexwilmexw* are, what they're looking to achieve in, in establishing their rights and title within and to *S'ólh Téméxw*. So it's not just a geography, it's much more than that.<sup>57</sup>

McHalsie is adept at explaining how *sxwôxwiyám*, *sqwelqwel*, and *shxweli* are relevant to land claims and the treaty process. As an outsider who is just beginning to learn about – and from – Stó:lō, I find it challenging to articulate here the dynamic relationships at work in Stó:lō histories, beliefs, values and practices, which only illustrates to me how difficult, and yet how crucial it would be to do so in a treaty setting. Crucial because understanding the connections would allow one to describe a complex relationship of rights and responsibilities that flow from a frame of reference distinct from the one advanced by Canada and the province, whose political and legal systems fundamentally structure and dominate the logic and language of the BC treaty process. McHalsie also finds it difficult to communicate to a non-Stó:lō audience the meanings of certain *Halq'emélem* terms that have no English equivalent without getting into a much broader explanation:

Most of our words should be there [in the treaty process], but there's some words that – our lawyer said if there's no definition for the word then we'll have to use the word. Like *shxweli* – there's nothing similar to it. We define it as like the spirit or the life force, but, I don't know whether that captures it fully. It has to be explained. Which is just so much to try to explain what it's all about. You have to know the *sxwôxwiyám* stories, the relationships, the story about the fellow transformed into the cedar tree and the ones transformed into the mountains. You have to have knowledge of that to try to understand what that word means.<sup>58</sup>

Importantly, however, *shxweli* is part of what links Stó:lō people to *S'ólh Téméxw* in a way that

*Xwelitem*<sup>59</sup> are not. Thus *shxweli* has important implications for explaining, within a Stó:lō

<sup>57</sup> Dave Schaepe, personal interview, 11 May 2009.

<sup>58</sup> Albert 'Sonny' McHalsie *Naxaxalhts'i*, personal interview, 19 May 2009.

<sup>59</sup> "literally translates as 'hungry people' describing the condition of some of the first non-Aboriginal immigrants into *S'ólh Téméxw* (during the 1858 Gold Rush) who lacked access to the resources and food needed to ensure their survival. In later times, the Stó:lō used this term to describe the seemingly insatiable appetite of Colonial-period immigrants in consumption of the land and resources of *S'ólh Téméxw*. This term is currently applied to those in-migrating (or in-migrated) people who lack land title supported by spiritual/ancestral/historical connections to *S'ólh Téméxw*." Stó:lō Nation, *Stó:lō Heritage Policy Manual*, 8.

worldview, how and why Stó:lō peoples have a legitimate claim to the territories around them:

Incorporating that word and words like it to show our relationships to the land, that we're connected through our *shxweli*, and because the land has a *shxweli* like everything else has a *shxweli*, like all the animals and even places, like rocks and mountains have a *shxweli*. To me that's a huge connection that we have. The government of BC, as far as I know, they don't have a *shxweli*. Neither does the government of Canada. But it's something that we believe in, we have faith in, the belief and the faith in it. So that's why it's important that that word be in there. There isn't an equivalent to it.<sup>60</sup>

The framework that governs treaty-making as it currently exists in B.C. is the product of a particular non-Aboriginal culture in a particular historical moment. The questions at stake here are thus: to what extent is this recognized? How much room is there for other cultural logics to structure the treaty process? Stó:lō approaches to treaty negotiation are testing its parameters in critical ways, and those involved are keenly aware of the problems and risks of their approach. In the next section, I will explore some of the issues Stó:lō leaders and representatives have encountered in their attempts to reshape the treaty process on and with Stó:lō terms.

### *The Risks, Limitations, and Politics of Translation*

Stó:lō Xwexwilmexw leaders and representatives are introducing a different set of authorities and logics into the treaty process. Sources of rights and title other than those based in legal and legislative documents *are* recognized by federal and provincial governments. However McHalsie and others are working hard to ensure that these 'other sources' play an active role in shaping the treaty process and its outcome by becoming part of the language – literally and conceptually – with which negotiations occur. Stó:lō strategies in these settings assume, and to the degree that they can, force non-indigenous federal and provincial representatives to 'come over' to Stó:lō ways of seeing and doing things. But how far does, and can, this go, and what risks or limitations are encountered along the way?

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<sup>60</sup> Albert 'Sonny' McHalsie *Naxaxalhts'i*, personal interview, 19 May 2009.



The primary struggle throughout is over what the treaty is about: is it about certainty, achieved by defining title and rights with finality? Or is it about building a relationship in which the treaty would act as a baseline agreement from which Stó:lō and non-Aboriginal governments can proceed into the future and into an ongoing relationship? Can it be both? Schaepe talks about the problematic ahistoricism of the treaty because of what federal and provincial governments' term the 'modification model' of settling rights and title. Where extinguishment language is technically off the table, a treaty motivated by achieving 'certainty' transforms or 'modifies' rights and title into something that is once and for all definable, delimited, assured and, in effect, settled.<sup>61</sup> That such a vision of treaty-making implies treaties are merely a 'bump in the road' that must be taken care of before B.C. can get back down to business does little to suggest that the 'new relationship' between First Nations and settler governments will offer a very meaningful or lasting change from the 'old relationship.' In this respect, a major concern among Stó:lō leaders and representatives stems from the risk that a signed treaty will be, as it is formally titled, a *Final* Agreement. Schaepe raises questions about what happens if, a few years down the road, another First Nation settles a better treaty with a broader interpretation of the extent of that group's rights and title.<sup>62</sup> He speaks to the fear that a final treaty leaves no room to maneuver in what will inevitably be a future of changing circumstances. As he states,

You sort of eliminate a historical approach by the limitations or locking in...within the confines of the treaty itself – it doesn't come from anywhere else, it doesn't pre-exist the treaty, it's recognized and stuck within the treaty. And therefore the treaty becomes something quite different than just the, the building blocks of a relationship. It has much more to do with not only that but with uh, setting parameters, and setting limits on and confines around the definitions of rights and title to any particular group in the treaty process.<sup>63</sup>

As mentioned above, the issue is now not so much about whether or not the Crown recognizes

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<sup>61</sup> Blackburn, "Searching for Guarantees," 592-3.

<sup>62</sup> Dave Schaepe, personal interview, 11 May 2009.

<sup>63</sup> Ibid.

Aboriginal rights and title, or that Aboriginal rights and title derive from a framework beyond the Canadian political and legal one, but to what extent and in what ways this recognition is activated in the renegotiation of Aboriginal-state relations. The kind of active recognition sought by Stó:lō *Xwexwilmexw* communities, as I have understood it, would involve a very deep and fundamental shift in how Stó:lō-state relations are currently enacted in treaty negotiations, and would require a more intensive exploration of Stó:lō-state relationships in the past and a recognition of how these relate to the present. In short, it appears that final definitions of rights and title – which will, according to B.C. and Canada, provide ‘certainty’ – neglect to acknowledge the depth of Stó:lō peoples’ experiences of change in the past, or set them up advantageously to deal with change in the future.

The finality of the treaty raises related issues around how it may impact identity categories and relationships in and between local communities. Schaepe understands that the treaty process might offer some communities – such as the Yale First Nation – an opportunity to go outside more traditional routes of gaining access to resources through lineage-based historical claims by securing rights and territories through treaty. According to Schaepe, it is in cases such as these that the ahistoricism and legal authority of the treaty process can work advantageously for one group and against another, while also hardening particular identity categories in new ways.<sup>64</sup> Schaepe discusses this with regard to the term Stó:lō and who the Stó:lō are. He feels that Stó:lō has been a negotiated term for centuries, and that this is part of a historically-based dynamism of shifting identifications in the region. However he also notes that the “mechanism of treaty is certainly causing tensions on the dynamism of the term Stó:lō itself.”<sup>65</sup> Where Schaepe sees terms such as Stó:lō *Xwexwilmexw* and Stó:lō Nation as starting and not endpoints, he is

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<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

frustrated by the limited ways the SXTA has to communicate this to other Stó:lō and non-Stó:lō communities through the treaty process. And such communication is essential in his view, especially because treaty negotiations necessarily involve groups not at the table, which are not provincial and Canadian governments and the SXTA. Schaepe explains,

So this conversation isn't just with BC and Canada, it's also with all the third parties, you know...it's everybody else out there, including the other Stó:lō who are not part of the SXTA, who are maybe not part of treaty at all...and yet are family members, are Stó:lō [who have a] shared identity as being Stó:lō. That whole set of relationships needs to be maintained, and that's part of the dialogue, it's part of the discussion. So, you know, the difficulty is that, this mechanism of treaty creates this dialogue and means of communicating language that's oriented to this table and yet it's highly public, and...there isn't a mechanism necessarily for the internal workings to be resolved, or issues to be resolved. It tends to get screened through B.C. and Canada.<sup>66</sup>

Materials the SXTA are putting forward partly as attempts to reduce conflict in the claims process often do not reach an audience beyond federal and provincial negotiators and their ministries. One example is the SOI map (Appendix 1) discussed earlier, which was initially received by state negotiators as innovative and as a potential model for other First Nations to deal with “more internal relationships,” meaning relations between First Nations communities. While the map is available on the BCTC's webpage outlining the SXTA's negotiation status,<sup>67</sup> it is not represented in the organization's annual reports.<sup>68</sup> So even though the map has been accepted at the treaty table, its reach beyond this is limited. As Schaepe explains “[t]heir systems don't allow...don't accommodate...the substance we've added to the map.” As a result, “it doesn't get translated – it doesn't get conveyed, right? It doesn't serve to change anything in the way it's conveyed to the public. *So this voice at the table goes as far as the bureaucratic center.*”<sup>69</sup> This inability to re-present the SXTA's intentions, in Schaepe's view, has broader

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<sup>66</sup> Ibid.

<sup>67</sup> BC Treaty Commission, “Stó:lō Xwexwilmexw Treaty Association,” 2009.

<sup>68</sup> BC Treaty Commission, *Annual Report 2008*, n.d.

<sup>69</sup> Dave Schaepe, personal interview, 11 May 2009. My emphasis.

implications:

[A]ny of the First Nations seeing the Annual Report aren't going to see the effort or the intent behind the map, or that there's anything different than anybody else's, you know. So whose, whose vision and language is being portrayed? It's being filtered through – it's coming out of this table, through the treaty table, through the Treaty Commission, and then to the public as something that's been retranslated out of what we've done. So, our mechanism for doing this then is what? Our mechanism of communicating is what? As directly as possible as we can with, with the world out there, that's what we're struggling with. Not just in the treaty process but more broadly than that.<sup>70</sup>

Schaepe raises crucial issues around accommodation, translation and representation of the language and ideas the SXTA is putting forward. Inserting *Halq'emélem* terms into the treaty process is one challenge, but maintaining jurisdiction over their meanings is another, which raises critical questions of authority in the translation of *Halq'emélem* terms and concepts.

Issues of translation have been mentioned earlier, in McHalsie's discussion of how difficult it is to accurately communicate concepts such as *shxweli* in a way that would make sense to non-Stó:lō government representatives, but which also avoids reducing or misrepresenting its meaning according to Stó:lō understandings. McHalsie voices further concern over how *Halq'emélem* terms will be dealt with when incorporated into the legal framework of the treaty process. He explains:

To me, it's almost as if, if the province and Canada are able to define it or even explain it in their legal definitions, then it's almost like they pull it away from us, like they pull the jurisdiction or the power from it away. Like, 'it's okay, like we can do this – it all fits within our system,' right? And to me, it seems like the more we extract things from our culture or our language or our perspective or adapt it or translate it to their language it seems like the more that it is pulling away from us and it becomes under their jurisdiction. That's the way I see it. That's what I'm concerned about. Because you even hear the elders saying that: 'our whole constitution should be in our language.' 'The whole treaty should be in our language.' Right? And I think they're right. I think it should be. Yeah. Because the more it's not in our language, the more it's in the English legal language, that just erodes almost everything that we have. They're breaking it down or whatever it is. That's why I see a lot of the statements or principles that we have, I see those as being important to be included in policy development or as much as we can in the constitution or in whatever treaty or social contract that we come up with in the end, because a lot of those

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<sup>70</sup> Ibid.

things have to be there. A lot of those teachings are like laws or rules, right, or policy. We're short on some now.<sup>71</sup>

McHalsie makes reference to the Stó:lō principles and worldview he is working to bring in to the treaty process. As in any culture, there are rules and protocol; ways of doing certain things that are preferable to others. McHalsie is trying to learn about and to practice the more correct or proper way of doing things from within a Stó:lō perspective, and to translate this in a way that is relevant to treaty-making. Importantly, the objective here is not to make the identifiable differences between Stó:lō and Canadian worldviews 'fit' if it means Stó:lō principles and worldview must be molded around an unchanged Canadian legal and political system. Canadian legal frameworks evident in the language of the treaty process are rarely, if ever made accountable to Stó:lō understandings of right and wrong, or possible and impossible, yet the opposite is commonplace. As McHalsie explains, the drive to ensure Stó:lō leaders and representatives speak on and with their own terms is fueled by a wariness around translating *Halq'emélem* terms and principles into a legal framework of meaning:

[W]e feel that we're going to define something and then they're going to define it legally and then, you know, put it in their way of thinking and then tear apart any rights and title we have to whatever we're talking about, I think that's what they're trying to do, and I think that's the mistrust that a lot of our leaders have.<sup>72</sup>

McHalsie discusses how *Halq'emélem* has been defined and incorporated into the list of Defined Terms:

They're legal definitions, that's what B.C. wants – to be able to define it, legally. So in the end, there's no vagueness there. But to me it's being drafted to their advantage in the end. Another way to erode whatever strength of rights or title that we have to our own language that they can define it and then just erode it so that it matches to their definition, their legal definition. It erodes our rights and title and that's what they want, right?

If there's another way we can define it, right away that breaks down our language, our use of the language in the treaty. So in the end it's answerable to their courts not answerable to

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<sup>71</sup> Albert 'Sonny' McHalsie *Naxaxalhts'i*, personal interview, 19 May 2009.

<sup>72</sup> Ibid.

ours. So in the end they want to make sure they can define that word in a court setting; what's the legal definition of that *Halq'emélem* word in English? Like, you know? [laughs] So. Yeah, so it seems to me that's what they're trying to do.

### *Conclusion*

All communication involves translation of some kind; an interpretation based on the frameworks of meaning we have access to. The problems of translation in Stó:lō treaty negotiations are primarily due to the uneven distribution of authority when it comes to controlling language and the interpretation and definition of its meanings. In seeking to understand historical relationships between Aboriginal and non-Aboriginal peoples in B.C., Lutz observes that “[t]o say that Aboriginal Peoples are engaged in a dialogue with Europeans does not suggest that both parties had the same power to shape that dialogue.”<sup>73</sup> It seems the same could be said for the more recent encounters taken up here.

In her analyses of the negotiation and outcomes of the Nisga'a Final Agreement, Blackburn (2007) notes, “the Nisga'a are still faced with having to conform to non-aboriginal legal institutions and values and subject their rights to legibility according to non-aboriginal legal systems.”<sup>74</sup> She further asserts that the formula for establishing reconciliation in the Nisga'a Final Agreement fails to meaningfully reverse the colonial relationship between the state and the Nisga'a, largely due to the fact that “aboriginal rights have to be defined in ways that do not challenge the sovereignty of the Crown.”<sup>75</sup> Meaning that Aboriginal peoples and Aboriginal rights “bear a greater burden of accommodation” in producing the compatibility necessary to ‘move forward’ into a reconciliation that corresponds to federal and provincial definitions.<sup>76</sup> Nadasdy's conclusions are much the same as Blackburn's in this regard, and both offer very

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<sup>73</sup> Lutz, *Makúk*, 22.

<sup>74</sup> Blackburn, “Producing Legitimacy,” 631.

<sup>75</sup> Ibid.

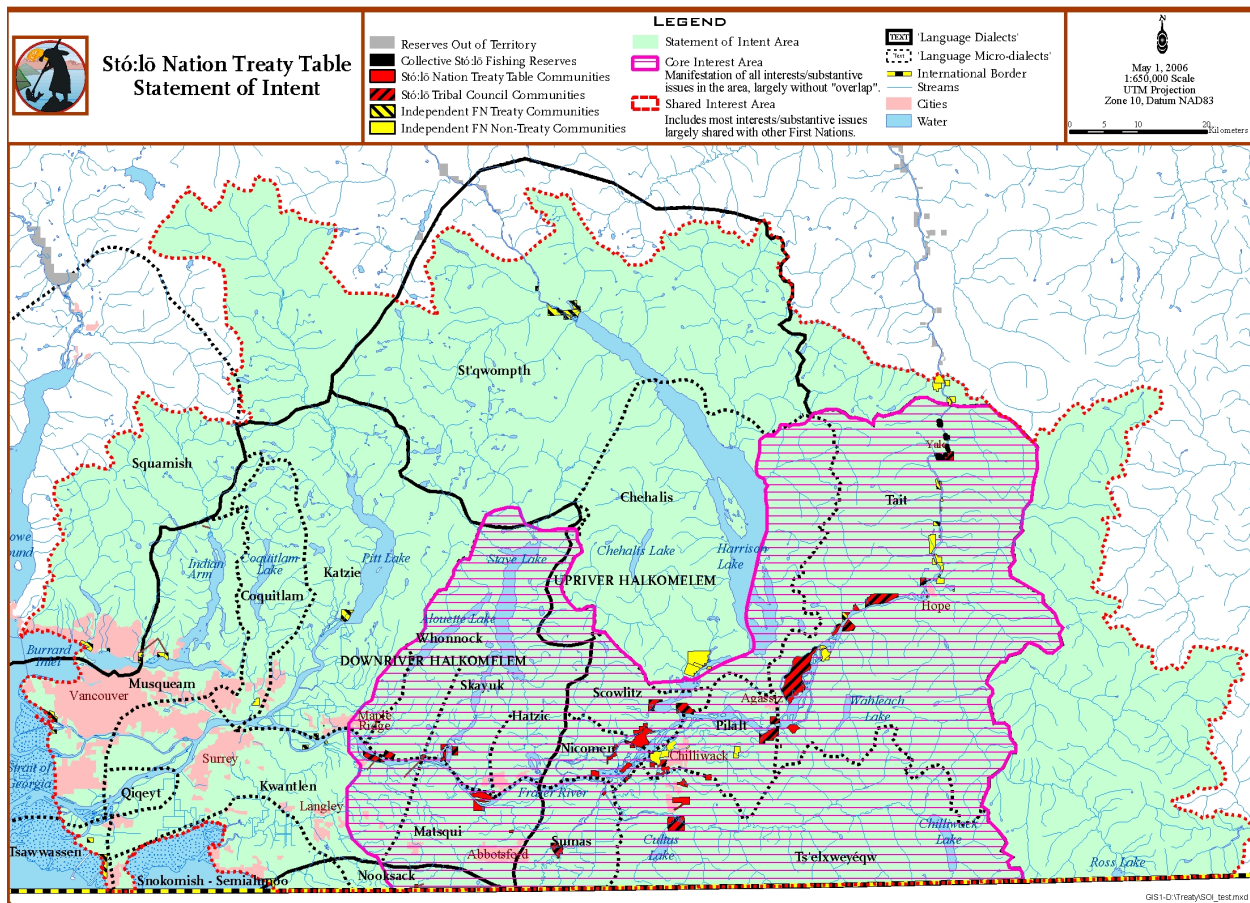
<sup>76</sup> Ibid.

useful tools for critically considering the current state of land claims processes. However, as important as it is to identify how these processes are currently structured in ways that disadvantage First Nations, it is also crucial to identify the specific ways in which First Nations are conscious of this and are developing strategies to deal with the opportunities and hazards presented by land claims processes. In short, in order to understand Aboriginal-state relations more fully, we must give equal attention to the ‘Aboriginal’ side of these relations, and to the existence and assertion of First Nations peoples’ definitions of how to ‘move forward’ and what this might mean.

In the case of Stó:lō negotiations, it appears that in many ways both ‘sides’ of the treaty table wants the other to speak on their terms, in their language and adopt the other’s vision of what treaty can and should accomplish. What distinguishes these efforts, however, is the allocation of power among the parties that enables one side or the other to determine how much of their language and vision is represented in both the process and the result of treaty-making. Stó:lō community leaders and representatives are working hard to change the language used in the treaty process in order to ensure the treaty reflects what they want from it. To this end, they are reconfiguring the terms and procedures by which negotiation occurs, and inserting *Halq’emélem* words and their associated ways of thinking into the language of treaty in B.C. They are encountering both the limitations and risks of such an approach, and are, in the meantime, also building a particular vision of how best to redefine governance, law, resource management and other Euro-Canadian terms and concepts in relation to *xwélmexwqel*. In doing so, Stó:lō leaders and community representatives are redefining the ways in which they will live in *S’ólh Téméxw* with and on their own terms.

## Appendix 1





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