

Profile of the Sayisi Dene Nation of Tadoule Lake in Northern Manitoba

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INTRODUCTION

Among the people who inhabited the North American continent from time immemorial, there are certain social ideals that are unique to their cultures. Born in North America, these social ideals are often in conflict with those of the European invaders who began to record them. Thus, the foundations of recorded Aboriginal pattern, spirit and principle that bind together thousands of laws and behaviour of

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² Joan Ryan was a community development teacher in Lac La Martre around 1957. She taught basic literacy, started the school system and instituted a public health program to stamp out an annually occurring dysentery epidemic. She extended those programs in other Dene communities and into the Eastern Arctic.

³ Ms. Ryan conducted a survey of the Dogrib people. Joan Ryan, Traditional Dene Justice Project (1983) (unpublished) (on file with author). Although the survey was not complete at the time that it was given to me in 1985 by Mr. John Carton, who was the principal of the Lac Brochet Elementary School, I came across a more organized, but still incomplete version in my studies. Course Manual: Studies in Human Rights Aboriginal Law, taught by Mr. Larry Chartrand, University of Ottawa (2001) [hereinafter Chartrand].

⁴ There were too many elders to mention, but the one who stood out the most was John Clipping, who was the Chief in 1964. I lived and fished with him and he visited me in the Pas. Others include former Chiefs Gladys Powderhorn, Moses Powderhorn, David Thorassie and Sarah Cheekie, who was also the administrator of the nursing station where I worked and lived at Tadoule Lake. Ila Bussidor, Steven Thorassie, Fred Duck, Sammy Bussidor, Joe Thorassie, Jimmy Clipping and best of all Betsy Anderson, who at the age of seventy, could well have been the oldest person in the community at the time.

the indigenous people are usually based on a European interpretation of a worldview that was beyond comprehension. Culling the records of European traders, explorers, missionaries and politicians (none of whom were particularly interested in truly understanding Aboriginal people), common law courts have sought to determine facts about indigenous law. Whatever trustworthy information there may be within these records, such facts are incidental to the purpose for which these reports were written. The Jesuits, for example, were driven by religious zeal, and thus, their observations were seen through missionary eyes. While early historical records should not be ignored, this paper views their historical understanding with great scepticism. Later scholarly accounts are given greater weight, because these observations are driven less by ulterior motives and more by personal curiosity and interest. Most importantly, this paper relies on twenty years of personal experiences gained living as a fascinated outsider within Aboriginal communities.

The cultural groups among the Aboriginal peoples of Northern Canada correspond to climatic latitudinal divides. Above the tree line, where the boreal forest meets the tundra, are the Inuit whose territory stretches far into the arctic. South of the tree line are the Dene, and below them are the Cree nations of the prairies. Yet within this generalization, this geo-cultural scheme is far from perfect. Different peoples meet, mix, mingle and divide at the lines of contact. For instance, it is not uncommon for the Dene and the Inuit to claim the same land as their territory. Similarly, the Dene and the Cree both share and fight over the lands that divide them.⁵ The goal of this paper is to concentrate on the nature of the particular culture of the Dene People. The data is based on observations made with the Sayisi people of Tadoule Lake. However, just as generalizations blur details, the focus on details distorts the larger picture. Thus, the observations regarding the Sayisi people are just that – observations. A deeper understanding of Dene culture would require an in-depth consideration of not only the diversity within the Dene people, but also their place among the peoples of the north.

The Dene People of Northern Canada have lived in the territory they call Denedeh since time immemorial.⁶ Anthropologists refer to the Dene people as the *Edthen-eldili-dene* (“Caribou eaters”).⁷ Their land, centred on the Mackenzie Delta, extends west into Alaska, east into Nunavut and south to the prairies. Culturally the Dene nation is divided into the Dogrib, Chipewyan, the Gwich’in and the South and North Slavey.⁸ The people of Tadoule Lake are Chipewyan and are traditionally referred to as the Sayisi Dene, or the “People of the East.” Their ancestral homeland stretched west from the shores of Hudson Bay and occupied a vast territory that straddles what are now northern Manitoba and the southern regions of the Northwest Territories.⁹ Pursuing a nomadic hunting and gathering existence, the Sayisi Dene established a semi-settled encampment at Duck Lake due to the influence of European trade.

⁵ ILA BUSSIDOR & ÜSTÜN BILGEN-REINHART, NIGHT SPIRITS: THE STORY OF THE RELOCATION OF THE SAYISI DENE (1997).

⁶ Chartrand, *supra* note 3, at 69.

⁷ BUSSIDOR & BILGEN-REINHART, *supra* note 5, at 11.

⁸ Ryan, *supra* note 3; Chartrand, *supra* note 3, at 69.

⁹ BUSSIDOR & BILGEN-REINHART, *supra* note 5, at xvi.

In 1956, the entire community was relocated to the outskirts of Churchill, Manitoba, but the transition from a traditional hunting economy to the urban environment proved to be misguided.¹⁰ The Sayisi Dene spent over a decade living in tents and shanties on the outskirts of the city.¹¹ In 1967, the government finally established a housing project, called Dene Village,¹² however, in the early 1970s the band decided to take their future into their own hands. After searching for a suitable site for relocation, they set up a new community at Tadoule Lake in 1973, referred to as “Churchill 1.”¹³ This community is one of the most northern and isolated settlements in Manitoba and can only be reached by plane, dog team or snowmobile. The nearest rail link is back in Churchill, two hundred and fifty miles to the east. It is believed that as much as a third of the Sayisi Dene population lost their lives as a direct result of the relocation to Churchill.¹⁴ A full account of this saga of the Sayisi Dene is beyond the scope of this paper, however, it appears that the cultural scars left by this experience are showing no signs of healing.¹⁵ The Sayisi Dene, with a population fluctuating around three hundred and sixty people¹⁶ are having a difficult time returning to their traditional winter hunting and trapping ways.¹⁷

I. Traditional Laws

According to Kierkegaard, the self is a nexus of relationships that achieves autonomy by its capacity to will itself into existence, but in so doing is forever grounded in the power relationships at the core of its being.¹⁸ The law governs social interaction. Thus, every tradition, institution, and convention that serves to order and guide the individual in society is, in one form or another, a substrate of the law. The fundamental law of the Dene is a simple moral ethic that can be summed up by the English expression, “what goes around comes around.”¹⁹ In Dene, the fundamental law is expressed as follows, “*Danii Hogha Gotq Wogha Ekw’i Eghalats’eda*,” literally translated, “Do things the right way – the way you were taught.”²⁰ To understand it fully, one has to explore its combination of ecology and spirituality.²¹ Traditional religions tend to find the sacred within aspects of everyday life and there is no hard and fast division between the divine and the mundane. Since there is no clear line of demarcation between the sacred and profane, the mundane may become sacred depending on the context. As such,

¹⁰ *Id.*

¹¹ Email from Eric McGregor, Senior Analyst, First Nations & Northern Statistics Section (Oct. 3, 2003) (on file with author) (hereinafter McGregor email)

¹² Available at http://www.umanitoba.ca/publications/uofmpress/books/night_spirit.html.

¹³ McGregor email, *supra* note 11.

¹⁴ BUSSIDOR & BILGEN-REINHART, *supra* note 5, at 49.

¹⁵ *Id.* at introduction.

¹⁶ DEP’T OF INDIAN AFFAIRS, CENSUS OF INDIANS IN CANADA (2003).

¹⁷ The people of Duck Lake, rather than spending their whole winter at the camps, occasionally came back to Duck Lake to deposit their harvest and replenish their supplies.

¹⁸ Professor Carl Ridd, Lecture in the course Modernity at the University of Winnipeg, Manitoba (1996).

¹⁹ Ron George, *The Indigenous Law of Aboriginal People: Restoring the Foundation of Justice* (2001) (unpublished thesis, University of Ottawa) (on file with author).

²⁰ Ryan, *supra* note 3; Chartrand, *supra* note 3, at 90.

²¹ See generally DAVID KINSLEY, *ECOLOGY AND RELIGION: ECOLOGICAL SPIRITUALITY IN CROSS-CULTURAL PERSPECTIVE* (1995).

as a hunting-and-gathering people, the Dene have a profound respect for the land. For them, the land is alive, full of supernatural beings that formed the land and the spiritual creatures that continue to inhabit it. Moreover, this otherworldly ethos is firmly attached to the harsh realities of survival. Aside from the weight of tradition, Dene culture is maintained by the value it places upon the maintenance of tight familial bonds. Children are imbued with the values of their elders. From generation to generation the laws of the spirit and the land are passed down through oral traditions and ancient stories.²²

A. Ekw'i eghalats'eda (Hunting Rules)

Camp groupings generally consisted of two to four families, and hunting units were usually based on extended family relationships.²³ Once winter had passed, the Sayisi Dene gathered in large numbers at their traditional ceremonial centre of Duck Lake for fishing and festivals.²⁴ The rules of Dene culture tend to stress order and balance and the most important rules relate to hunting and any breach of these rules leads to dire consequences.²⁵ In the Dene culture, hunting is a sacrament. Rather than taking game, the Dene hunter believes that he is only receiving what the animals themselves graciously offer.²⁶ Every effort must be taken to ensure this beneficence continues. As such, the hunt is replete with proscriptions for correct behaviour, before, during and after the hunt. These include personal initiation ceremonies, ritual offerings and sexual purification. Traditionally, the Dene believe that it is imperative an animal be killed with a single spear and under no circumstances should a wounded animal be clubbed to death.²⁷ After the kill, a symbol is left near the hunting site to inform the other game animals that the kill was properly performed. The hunter thereby expresses his respect and gratitude.²⁸ As a Sayisi hunter once explained:

When I was a young man in Duck Lake and went hunting with my dad, when we came to a place where there was a take and animals, we would put a rock in the water in thanks. We would stand on the land, open our arms and say “Ma see cho nih” (‘Thank you, nature’) out loud.²⁹

Upon a kill, the game is left alone for a short period of time in order to allow the spirit of the animal to find its way back to the herd.³⁰ After butchering, the Sayisi burn a piece of the meat as an offering to the dead animal, thereafter no part of the animal is wasted. The Dene believe in the reincarnation of the animals so the bones are carefully preserved under stones for the animal to reclaim in the afterlife,³¹ and consequently bones are never fed to dogs or used as fuel.³² When a

²² Ryan, *supra* note 3; Chartrand, *supra* note 3, at 90.

²³ Chartrand, *supra* note 3, at 90.

²⁴ This is very similar to Ryan’s report about the Dogrib. It is also very similar to the life-style of the Cree from Brochet and Lac Brochet.

²⁵ Personal Interview with John Clipping, *supra* note 4 [hereinafter Clipping].

²⁶ Personal Interviews with Tribal Elders, *supra* note 4 [hereinafter Tribal Elders].

²⁷ Clipping, *supra* note 4.

²⁸ *Id.*

²⁹ *Id.*

³⁰ This could not be confirmed by the elders, but all agreed that a dead animal should be left for a while.

³¹ Clipping, *supra* note 4; Tribal Elders, *supra* note 4.

bear is killed, a mighty hunter has offered himself as game. This is a solemn and profound occasion. The human hunter pays tribute to his animal counterpart by leaving its bear head on a stump with a stick propping the mouth open. The open mouth is directed towards the sun, thus paying homage to its power and place in the universe.³³

After the hunt, sweathouses are erected to purify the body and soul, because after taking a life one must be purified.³⁴ The Dene people assume human-like qualities in animals. Thus one should not be boastful or arrogant, especially in connection with hunting and the treatment of animal carcasses and great respect must be paid to their life force.³⁵ Consequently, since blood represents life force, it has to be handled very carefully and only the elderly are permitted to consume soup made from the blood.³⁶ Women are never allowed to step over meat, blood or hunting gear and menstruating women and pubescent girls are prohibited from handling either meat or blood.³⁷ The mixing of menstrual blood with the hunt is to be avoided absolutely. The Dene believe the life force of the female womb can diminish the power of the hunters to make a kill and thus endanger the survival of the group.³⁸

There are also certain very practical procedures related to the hunt that are strictly followed. Any clothing that might rustle or catch on twigs is removed. Snowshoes are covered in rabbit fur to mute the sound of movement. Younger men and small children who are unable to remain quiet are left behind, yet all share in the catch.³⁹ Sharing is central to Dene social organization, meat is shared freely with all, especially with widows, the elderly and the needy and the sale of meat is prohibited.⁴⁰ In sum, all these rules point to three central constructs of Dene culture: survival, conservation and respect.

B. Rules Governing Trapping

Trapping activities are not as governed by gender as hunting. Women participate in every aspect of trapping and some women tend their own trap lines.⁴¹ Although subject to similar rules, trapping is not viewed with the same sense of spirituality as hunting, with one exception. If a beaver dam is opened to retrieve adult beavers, the beaver lodge is repaired in a ritualized ceremony to protect the young.⁴² The lack of strict rules for small game leads one to assume that

³² This appeared to be common among the Cree and the Dene of Northern Canada, as well. However, this practice is no longer observed.

³³ BUSSIDOR & BILGEN-REINHART, *supra* note 5, at 33; Chartrand, *supra* note 3, at 95.

³⁴ Tribal Elders, *supra* note 4.

³⁵ My studies indicate that this belief is nearly universal among hunting and trapping tribes.

³⁶ Tribal Elders, *supra* note 4. Some of the elders believed that the blood had medicinal purposes, so it was reserved for those that needed it the most.

³⁷ This seems unlikely in any event, since women were isolated during menstruation.

³⁸ Ryan, *supra* note 3; Chartrand, *supra* note 3, at 95. While the elders confirmed Ryan's observation, the younger generation thought in terms of "contamination."

³⁹ Chartrand, *supra* note 3, at 94.

⁴⁰ This includes both barter and trade, and is therefore likely to be a post-contact phenomenon.

⁴¹ Tribal Elders, *supra* note 4.

⁴² Chartrand, *supra* note 3, at 96. This practice may also have been influenced by the need for the beaver pelts to use as clothes and later, for the fur trade.

the spiritual importance of game is very much related to economic considerations. However, spiritual value could represent a type of scarcity value. The more difficult game is to obtain the more it is revered. When asked directly about this spiritual distinction between large and small game, Dene elders were unable or unwilling to answer. Yet this interpretation is reinforced by the fact that there are no special rules for fishing save the general prohibition on gratuitous waste. Only what is needed is taken and all of what is taken is used.⁴³

C. Territoriality

Although there are no strict territorial boundaries, there is mutual respect for the immediate areas around each hunting campground.⁴⁴ To the Dene, the camp is the centre of the universe and the climate, the topography, the whole cosmos and its organisms are connected in some way to the territory in which they live. However, there is an appreciation of the Dene people as a nation in possession of common tribal lands. This sense of sovereignty requires non-tribe members to seek permission before venturing into Dene tribal territories,⁴⁵ just as there is an expectation that notice should be given to a trapper if one intends to cross trap lines.⁴⁶ Within the Dene Nation each tribe must respect the land of other tribes, but it is very common for tribes to host people from other Dene groups.⁴⁷

D. Summary of Hunting, Trapping and Fishing Rules

Some authors, such as John W. Ragsdale, interpret the ritualized nature of traditional law in religious terms, maintaining that Aboriginals had “a covenant with the gods; a binding pact to maintain the balance through the correct performance of their thoughts, actions, ceremonies, and very lives.”⁴⁸ Such attempts to understand Dene culture in terms of European religious concepts are ultimately uninformative. Terms like “covenant” are not useful since the Dene have no traditional conception of contractual law. Moreover, although “ecological spirituality”⁴⁹ plays a crucial role in the mindset of the Dene people, care should be taken not to impute upon the Dene a modern environmental consciousness. Their behaviour flows from the relationship among earthly things and the supernatural, and as such, their worldview is governed by the needs of survival. Taboos against wasteful behaviour seem closely connected with the scarcity of food. Thus, the European notion of hunting as pleasure and sport is alien to Aboriginal culture. No traditional Aboriginal hunter would kill merely to obtain a trophy.

The contrast between Aboriginal hunters and Europeans is highlighted by an account of the practices of non-Aboriginal trappers at Duck Lake. According to

⁴³ Tribal Elders, *supra* note 4. Some elders claimed that the fish scales and guts had to be buried. If that was true, the practice had been abandoned by 1980.

⁴⁴ Tribal Elders, *supra* note 4.

⁴⁵ Personal Interview with Betsy Anderson, *supra* note 4 [hereinafter Anderson].

⁴⁶ *Id.* See also Ryan, *supra* note 3; Chartrand, *supra* note 3, at 96.

⁴⁷ Although it was Ryan who made this observation, the elders were more protective of their land than Ryan suggests.

⁴⁸ John W. Ragsdale, Jr., *Anasazi Jurisprudence*, 22 AM. INDIAN L. REV. 393, 402 (1998).

⁴⁹ See generally KINSLEY, *supra* note 21.

Ali Bussidor, “the non-Aboriginal trappers were eager to harvest as many pelts as possible within as short a time as possible.”⁵⁰ Europeans would often resort to poisoning game, and this practice would inadvertently and indiscriminately kill other animals. This horrified the Dene. One Indian agent reported that the European trappers were “so ruthless in their trapping methods that whenever they trap they kill off every thing completely if possible and leave nothing for future years.”⁵¹ Philip Godsell, who was a trader in northern Manitoba in the 1920s, later wrote that in one season the European “professional trapper” could “accumulate three or four times as much as an entire Indian family.”⁵² The difference, of course, is that the Indian family wished to hunt year after year, while the European was only interested in quick profits, not a sustainable environment.

II. Justice System

Aside from the specific rules surrounding hunting and trapping, there are very few rules regarding criminal behaviour. Due to the familial bonds of the camp and the communal conception of property, serious crimes were rare.⁵³ Traditional values are all encompassing and allow little room for transgression. The well being of the community takes precedence over personal needs and the watchful eyes of family members are everywhere. Indeed, there is no better police officer than a mother. Elders, who reach decisions by consensus, establish the rules that families enforce and their decisions are based on a lifetime of knowledge.⁵⁴ For those who break the rules, healing circles attempt to understand transgression, resolve disputes and find solutions. Although, reconciliatory measures are preferred over punishment, some crimes demand penalty.⁵⁵ The most serious offences generally relate to hunting and are dealt with by the gravest of sentences: banishment. Minor offences, such as stealing of food by children, are dealt with simply by holding the guilty up to ridicule and shame.⁵⁶ More serious offences, such as the theft of an animal from a trap line, require some deliberation with respect to the appropriate punishment. An offence is reported to the head of the camp, who may publicly scorn the offender, ask the offender to admit his guilt and compensate the victim of his misdeed.⁵⁷ If the offender does not comply, a healing circle may be convened to deal with the situation. More serious punishments, such as social shunning, may be meted out to those who break hunting or trapping rules. Other hunters will thereafter refuse to hunt with a shamed hunter. Although merely socially ostracized, the isolation of a hunter is tantamount to banishment and could, if not

⁵⁰ BUSSIDOR & BILGEN-REINHART, *supra* note 5, at 29.

⁵¹ *Id.*

⁵² *Id.*

⁵³ Ryan, *supra* note 3; Chartrand, *supra* note 3, at 109. However, some offences, such as the raping of wives were not considered a crime since women were expected to give into their husbands’ sexual demands. Furthermore, incidents such as “shaken baby syndrome” were considered accidents.

⁵⁴ Ryan, *supra* note 3.

⁵⁵ Clipping, *supra* note 4.

⁵⁶ Personal Interview with Sara Cheekie, *supra* note 4 [hereinafter Cheekie]; *See also* Ryan, *supra* note 3; Chartrand, *supra* note 3, at 98. Although Ryan describes one method of pinning the food on the child’s clothes, the Sayisi did not use this method.

⁵⁷ Clipping, *supra* note 4; *But see* Ryan, *supra* note 3; Chartrand, *supra* note 3, at 98. There seems to be no elements of public humiliation among the Dogrib.

rescinded, lead to starvation. Nonetheless, in the vast majority of incidences, there is eventually forgiveness and reconciliation.

Although elders convene healing circles, each member involved has the opportunity to be heard. If found culpable, the offender must show contrition and give penance. This usually involves some form of restitution and the goal is always remediation and reconciliation.

A. Traditional Family Law

Selecting partners for marriage in the Sayisi Dene tradition generally is the result of pre-arranged unions, or quickly arranged unions due to an unplanned pregnancy.⁵⁸ Since traditional social groups were small and adolescent women were strictly supervised, the quickly arranged marriage was rare. Once an unmarried woman was discovered to be pregnant, it was the man who bore the responsibility.⁵⁹ A healing circle would be convened and the man found to be responsible would be forced to marry the woman and take care of the child. If he refused, he would be banished.⁶⁰ Beyond this situation, it was the parents who decided future marriages. As one informant related to Bussidor:

When Suzanna was eighteen, her parents told her she would be marrying a widower named Artie Cheekie, who was twenty years older than herself. The decision had been made between Suzanna's parents and Artie, a strong man, a good hunter and trapper who had a child and needed a wife. Suzanna Ellis and Artie Cheekie were married in 1940.⁶¹

Typically, neither member of the couple would have a say in the matter, but a daughter, although very rare, could refuse to marry the man chosen for her. Although a son may not have been able to refuse an arranged union, it was possible for him to ask his parents to consider a particular woman for marriage.⁶² The father of the woman received the offer, but it was the mother who made the ultimate decision⁶³ and women were not permitted to initiate a marriage. Grandparents, although not directly involved, exerted great influence on the decision of the parents.⁶⁴ The marriage then had to be recognized by the community headman and sanctioned at a ceremony attended by the whole community.⁶⁵

Although marriages occurred within the context of a closely related tribal group, first cousins were never allowed to marry.⁶⁶ There is a tradition of polygamy among the Dene, which still exists, but the elders are very reluctant to talk about it. Historically, the chief could marry as many women as he could support, but women

⁵⁸ Ryan, *supra* note 3; Chartrand, *supra* note 3, at 103. This seems to be universal among the Cree, the Dene and the Inuit.

⁵⁹ Ryan, *supra* note 3; Chartrand, *supra* note 3, at 103.

⁶⁰ Tribal Elders, *supra* note 4. Although the elders confirmed this, none of them could remember anyone ever being banished.

⁶¹ BUSSIDOR & BILGEN-REINHART, *supra* note 5, at 34.

⁶² This is a more modern practice. Usually the child is spoken for at birth and unless the spouse dies, it is unlikely that teenagers would not be engaged.

⁶³ Anderson, *supra* note 45.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ This rule seems to exist cross-culturally as it existed in African cultures as well.

were not allowed to marry more than one man.⁶⁷ In intra-tribal marriages the husband moved into the wife's camp. Often, if two men sought the same woman, the competitors would move to the woman's camp in order to work for the father. The one who worked the hardest won the bride.⁶⁸ Inter-tribal marriages were also very common, but in such instances the wife would move into the husband's community – although the opposite could also take place. The deciding factor on mobility was the availability of resources, or the prestige and wishes of the families involved. There were few cases of marriages outside the Dene Nation. In those few that did occur, they involved mixed marriages with both the Cree of the Northland Band to the south, and the Inuit to the north.

1. *Marriage*

The marriage ceremony itself varied in ritual, but usually began with advice for the new couple. Men were told by the elders to love and care for their wife, to make her pregnant and to protect their children. Women were asked to love and obey their husbands and to take care of domestic needs. Men were given permission to punish their wives and children if they disobeyed them, but were warned not to abuse this authority. Men who abused their wives risked banishment from the tribe.⁶⁹ After such counsel from the elders, the couple would thank them for their wisdom and shouts of joy, the beating of drums and a general celebration would follow. This union was expected to last forever.⁷⁰

There is no tradition of divorce or separation in Dene culture.⁷¹ The only exception to this rule was the banishment of an incorrigibly abusive husband or perhaps an adulterer.⁷² As a general rule the wife of a banished husband was allowed to remarry.

2. *Raising of Children*

Although caring for infants is primarily the responsibility of the mother, it can be shared with any female member of the extended family. Children under the age of three or four have no responsibilities, but are often given token chores such as pulling a small bundle of firewood to camp on a mini-sleigh. Responsibilities of the young, however, increase with age. By eight years of age they are expected to contribute to the upkeep of the camp. The division of labour begins in childhood. Boys aid their fathers while the girls help their mother. It is interesting to note that in Dene culture children are brought up to treat every adult as if they were their parents.⁷³ Consequently, adoption was very smooth. The eldest and closest female

⁶⁷ Cheekie, *supra* note 4.

⁶⁸ Ryan, *supra* note 3; Chartrand, *supra* note 3, at 104. None of the elders recalled such an occurrence, but what was common was that if two young men were living with the father, the one who worked the hardest got the daughter born to the head of the camp.

⁶⁹ Tribal Elders, *supra* note 4.

⁷⁰ Anderson, *supra* note 45.

⁷¹ Tribal Elders, *supra* note 4. Although the elders did not seem to remember any separations or divorce, some admitted that the parents would always send the wife back to the husband.

⁷² The men were blamed for sexual misconduct, so if an extra-marital relationship was between a married woman and a man, it was the man who was banished.

⁷³ This appears to be universal among indigenous peoples.

member of a sick or dying mother took over the caring for the motherless child. There were formal adoptions as well and such agreements were honour bound. Once a child had been given to a relative, she became that person's child and was treated no differently than children of her own.⁷⁴

To maintain discipline, young children were told frightening stories by their grandparents to sway them from bad deeds. A favourite legend is about a large and cruel bushman who kidnaps children who wander away from camp.⁷⁵ Upon reaching adolescence both boys and girls enter a series of initiation rituals that prepare them physically and spiritually for adulthood. These rites of passage mark the end of childhood and the beginning of their lives as responsible members of the community.

B. Traditional Government

1. Authority Figures

The traditional leader of the community, referred to as the "Yabahti"⁷⁶ held most of the political power and authority. The position was hereditary, but succession was not automatic. The eldest son must possess the requisite leadership qualities to replace his father. If the community elders deemed the eldest son unsuitable, another member of the community would be chosen. The basis of selection was personal charisma, hunting prowess and dispute resolution acumen.⁷⁷ Women were not considered for this role, but they did have great influence in the selection of the Yabahti.⁷⁸

The "K'awQ" was usually the most elderly male in a camp and he was an adviser as well as an instructor.⁷⁹ He would give advice to the hunters or trappers before they left camp. His advice could concern personal conduct and spirituality as well as practical tips in the ways of the hunt. He also had the authority to deal personally with minor offences of community rules. In Sayisi Dene culture, the K'awQ was also granted the authority to distribute meat to the community. The spoils of the hunt came to the K'awQ, and from him to the community.

2. Spiritual Leaders

The power of the Shaman, or medicine man, was acquired through dreaming and fasting alone in the bush. However, the specific skills of medicine and healing were passed down from older Shamans to those youth who could also experience mystical dreams. This position was primarily spiritual in nature and authority. Although primarily healers, the powers of Shamans were sought when game was scarce, or when the lost needed to be found.

⁷⁴ Ryan, *supra* note 3; Chartrand, *supra* note 3, at 107. Ryan made the same observations about the Dogrib, as I did of the Cree of Lac Brochet.

⁷⁵ Ryan, *supra* note 3.

⁷⁶ Ryan, *supra* note 3; Chartrand, *supra* note 3, at 102.

⁷⁷ BUSSIDOR & BILGEN-REINHART, *supra* note 5, at 27.

⁷⁸ Anderson, *supra* note 45.

⁷⁹ Ryan, *supra* note 3; Chartrand, *supra* note 3, at 102-3.

Some within the community were considered to be Diviners,⁸⁰ gifted with foresight. They could predict the future and were called upon to determine the best time and place for the hunt. It is also believed that a Diviner could communicate with game and could ask animals to offer themselves for the hunt, so that the community could eat. Similarly, they could reach lost souls in the woods and guide them back to the safety of the camp. Often the powers of the Diviner were bestowed by an animal familiar, which became a totemic symbol of spiritual authority.

Another mystical figure of authority was the Spiritual Clown,⁸¹ a jester-like figure who possessed healing powers. The jester would dress in caribou hides and would dance through the camp, seeking people to cure. Like the Diviner, he was believed to possess the power to predict the future. Although these specialists were not political leaders, their spiritual powers complimented political authority.⁸²

III. The Interrelationship of Tribal Law, External Law and Colonialism

A. Tradition and Colonialism

Although the arrival of Europeans brought many changes to the Dene society, initially, the influence was largely invisible and the transformations gradual. The foreigners needed help and guidance to survive in this unfamiliar land. As more Europeans arrived, the power balance shifted and European influence became more obvious and powerful. More often than not, the result was socially and culturally destructive to the Dene. At first Europeans were only interested in trading for fur.⁸³ This kept cultural influence to a minimum and interaction occurred on the basis of equality. Each had an interest in what the other had to offer. The arrival of missionaries, on the other hand, was altogether different. They viewed the Dene as morally inferior and sought to save the Dene from the evils of their own traditions. Thereafter Dene culture was under attack.

The first missionaries to arrive in the Lac Brochet area were Oblates of Mary Immaculate. They were mostly French-speaking Roman Catholics from Belgium. In contrast, the first missionaries in the Sayisi territory were Anglicans. The Dene were thus not only torn between their own culture and the ways of European missionaries, they also became divided according to the schisms of Christian theology.⁸⁴ The Jesuit Black Robes⁸⁵ and the Anglican Evangelicals

⁸⁰ *Id.*

⁸¹ During my visit, just the term “clown” was used.

⁸² Ryan, *supra* note 3.

⁸³ Tribal Elders, *supra* note 4; *But see* Ryan, *supra* note 3; Chartrand, *supra* note 3, at 124 (reporting that it was not the fur traders, but rather the missionaries who were the first outsiders to arrive).

⁸⁴ A comparison of Catholicism and Dene culture is instructive.

The following are examples of similarities between Catholicism and Dene culture:

- both believe in The Almighty, but with different names;
- both believe that there is a spiritual life after death;
- both believe in the communion of spirits;
- both believe in miracles or mysteries; and
- both believe that God/gods can work through humans.

Differences include:

- the belief in multiple gods by primitive cultures;

travelled by dog-teams and boat across Dene territory, and at cross-purposes, denigrating each other and the Dene culture they were both committed to destroying.⁸⁶ Ironically, because these missionaries learned the Dene language and lived off the land with the Dene people, their accounts have become the primary historical source for understanding traditional Dene culture. In order to gain acceptance among the Dene, they often took on the mantle of the Yabahti or the K'awQ.⁸⁷ For example, they would bless a marriage performed by the Yabahtis, thus associating his power with their own religious authority. The message from the priest to the couple was the same as those given by the Dene elders and the two ceremonies were complementary.

Both the priest and the leaders of the Dene people claimed spiritual powers, but the power of Christianity proved to be irresistible. The struggle between traditional beliefs and Christianity was largely decided, not on the basis of religious persuasion, but on the basis of the devastation of new diseases. Contact with the Europeans introduced smallpox, tuberculosis, chicken pox, scarlet fever, cholera, influenza, and whooping cough. The Dene, with no previous exposure to these plagues and no resistance, began to die in catastrophic numbers. Dene Shamans, Healers, Diviners, Yabahtis and K'awQs were all powerless to save their people. Traditional leaders were overwhelmed and people lost faith in their traditions. Only the missionaries offered hope. Faced with the missionaries armed with European medicine in one hand and the Bible in the other, the Dene saw their salvation in Christianity.

B. Paradigm Shift

The Dene holistic view of the world as a balance between the natural, human, spiritual and animal worlds was transformed into one in which humans were at the mercy of one God as represented by the missionary priests. Each individual became responsible for his or her own salvation. A paradigm shift then occurred, from community life to individual responsibility. Residential schools took children away from their family and elders and placed them in a European education system, within which both the Dene language and cultural traditions were forbidden. At home, with the children gone, the role of women became marginalized and the importance of the male-dominated fur trade increased. Domestic responsibilities were further devalued due to the advent of the cash economy.

C. Traditional Law to Colonial Law

The women's contribution to society came to have no market value and the men of the community were also losing traditional authority. In order to police dealings between the Dene and the traders, the Yabahtis would sometimes ask for

sacrifice to appease gods;
the Trinity, even among Christians;
the Eucharist, even among Christians [hereinafter comparison].

⁸⁵ This is how the elders at Lac Brochet referred to the priests.

⁸⁶ BUSSIDOR & BILGEN-REINHART, *supra* note 5, at 31.

⁸⁷ See comparison, *supra* note 84.

the help of the Royal Canadian Mounted Police (RCMP) in resolving dispute.⁸⁸ Soon Canadian law became Dene law. Systematically, the RCMP became an agent of political colonization. The Canadian government began to assign and regulate trap lines licenses. These assignments to individual trappers led to the break down of the extended family as the primary unit of economic production. Rather than a social right, game became personal property. Since far-off officials now controlled the hunt, mismanagement soon resulted. The Government of Manitoba severely restricted the movement of trappers. The unintended consequence of this action was the intensive over-harvest of small areas. Game was not given the opportunity and time to reproduce, and game populations collapsed.⁸⁹

D. The Resistance

Outraged by this destruction, traditional culture began to regain some of its former strength even though Christian churches could call on the state in this battle of values. Laws were enacted to ban traditional ceremonial activities. The Indian Act of 1876 and subsequent treaties dictated that tribal chiefs be elected according to European political processes.⁹⁰ An individual ballot in a competitive process replaced community deliberation. Nonetheless, the Sayisi people continued to follow their own ways and pick their own leaders in their own manner.⁹¹ With time, however, the Canadian government took direct control over the community leadership and Chiefs became employees of the state⁹² and opportunistic politicians took over the leadership from traditional elders. With adhesion to Treaty 5,⁹³ the Dene lost title to their lands in return for promises of money, education and economic development.⁹⁴ Eventually the Canadian government would be compelled to take control of the community. The Dene people were left deeply impoverished and powerless over their own affairs. Although traditional practices have waned, they have not disappeared. The attempted assimilation of the Aboriginal people in Canada was short and very damaging. Yet, its early successes led to its ultimate demise. Instead of assimilating, Aboriginal people now stand united demanding restitution.

IV. Post-Treaty Governmental Structure

Although the Canadian assimilation policy did not originate with British North America Act (BNA) of 1867,⁹⁵ the Constitution Act of 1867 left the Aboriginal Peoples fate in the hands of the colonial government in Ottawa. The Act states,

⁸⁸ Ryan, *supra* note 3; Chartrand, *supra* note 3, at 125.

⁸⁹ BUSSIDOR & BILGEN-REINHART, *supra* note 5, at 35.

⁹⁰ An Act to Amend and Consolidate the Laws Respecting Indians, S.C. 1876 Chapter 18.

⁹¹ Tribal Elders, *supra* note 4.

⁹² Indian Act of 1985, R.S., c.1-6, s.74.

⁹³ BUSSIDOR & BILGEN-REINHART, *supra* note 5, at 25-26.

⁹⁴ K. McNeil, *Aboriginal Title and Section 88 of the Indian Act*, 34 U.B.C.L. REV. 159 (2000).

⁹⁵ The Constitution Act of 1867, 30 & 31 Viet. (U.K.).

It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated ... (24) Indians, and Lands reserved for the Indians.⁹⁶

Originally, this provision was simply intended to ensure that the Federal Government, not the Provinces, would handle all relations with Indians.⁹⁷ The provision was not drafted to be a delegation of authority over Indians, but nonetheless, it came to be so interpreted. The First Nations of Canada lost the power to govern their own affairs in 1876 with the passage of the first Indian Act as it sought to place a large degree of administrative control of Indian Bands under the Department of Indian Affairs.⁹⁸ The Act begins by stating:

Whereas it is expedient to amend and consolidate the laws respecting Indians: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

This Act shall be known and may be cited as ‘The Indian Act, 1876’ and shall apply to all the Provinces, and to the North West Territories, including the Territory of Keewatin.⁹⁹

The statute then proceeds to define the authority of the Superintendent General:

The Minister of the Interior shall be Superintendent General of Indian Affairs, and shall be governed in the supervision of the said affairs, and in the control and management of the reserves, lands, moneys and property of Indians in Canada by the provisions of this Act.¹⁰⁰

Despite the colonial pretensions of the Canadian government, Aboriginal customs continued. Indeed, there are early Canadian cases that recognized the force of customary Aboriginal laws.¹⁰¹ For example, in an 1889 case, Justice Wetmore held that English common law “did not abrogate Indian laws and usages.”¹⁰² Almost a century later, in the case of *In re Noah Estate*,¹⁰³ Justice

⁹⁶ *Id.*

⁹⁷ See generally KING GEORGE R., THE ROYAL PROCLAMATION OF OCTOBER 7, 1763, reprinted in DOCUMENTS RELATING TO THE CONSTITUTIONAL HISTORY OF CANADA, 1759-1791, at 163 (Arthur G. Dougherty & Duncan A. McArthur eds., C.H. Parmelee 1914) (1907) (discussing the federal government’s dominion over Indian land and enjoining individuals from taking possession of Indian lands).

⁹⁸ Department of Indian Affairs and Northern Development Act (“DIAND Act”), R.S., c.1-7, s.1.

⁹⁹ Indian Act of 1876, *supra* note 92.

¹⁰⁰ *Id.*

¹⁰¹ R.v. Baby [1855] 12 U.C.B.Q. 346.

¹⁰² *The Queen v. Nan-E-Quis-A-Ka* [1889] 1 Terr. L.R. 211 at 212-13.

¹⁰³ *Id.*

Sissions found attacks upon the legal validity of traditional Aboriginal marriages to be “scandalous.”¹⁰⁴

The most damaging effect of the Indian Act was inflicted by section 12, which provides that the term “person” means “an individual other than an Indian, unless the context clearly requires another construction.”¹⁰⁵ Consequently, Aboriginals had no standing at law until 1973 in the case of *Calder v. A.G. of B.C.*,¹⁰⁶ in which the court held that the Aboriginal people were able to bring a case before the Supreme Court of Canada. This case was brought to establish title to traditional lands, but since the Aboriginal claim rested on oral traditions and most elders with first hand knowledge of past ways had long died, the band had substantial evidentiary problems. Chief Justice Dickson, in another case, insightfully observed, “given that most Aboriginal societies did not keep written records, the failure to do so would impose an impossible burden of proof on Aboriginal peoples, and render nugatory any rights that they have.”¹⁰⁷ The verdict in *Calder*, which held that Indians had enforceable legal claims to traditional rights, came as a complete shock to the government of the day and forever altered the relationship between Canada and its First Nations.

A. Traditional Revival

Traditional Dene culture is gathering strength. Elders are once again viewed with respect, medical doctors are enlisting the aid of traditional healers and a growing number of children are entering adulthood through the new interpretations of the old rites of passage. Unfortunately, the Dene people of Tadoule Lake, being isolated and poor, still remain beset by cultural malaise. However, interesting developments in cultural renaissance are occurring on the international scene through the Assembly of First Nations.¹⁰⁸

The people of Tadoule Lake have a major suit in the courts against the Federal Government of Canada for the damage caused by their relocation to Churchill.¹⁰⁹ One area in which traditional culture has blossomed, is in the control of adoptions and foster care. Child welfare is now local and well established in accordance with the traditional culture, but remains spiced with Western administrative flavour. It is still run through the Provincial Welfare Department, however, the Band decides who adopts a child. The success did not come easy. Initially the Provincial Government refused to reimburse close family members for taking care of foster children on the grounds that family members should not be paid for taking care of their responsibilities. The folly of that argument is clear. In small and close-knit family communities, if only outsiders are given the incentive

¹⁰³ *In re Noah Estate*, [1961] D.L.R. 185.

¹⁰⁴ *Id.* at 195.

¹⁰⁵ Indian Act of 1985, *supra* note 92.

¹⁰⁶ *Calder v. British Columbia*, [1973] 34 D.L.R. 3d 145.

¹⁰⁷ *Simon v. R.*, [1985] D.L.R. 4th 390, 408.

¹⁰⁸ All of the small Canadian bands channel their grievances through the Assembly of First Nations in Ottawa. Each band, no matter how large or small, has one vote in the election of the Grand Chief.

¹⁰⁹ BUSSIDOR & BILGEN-REINHART, *supra* note 5, at 139.

to be foster parents, then as a result, only outsiders could eventually adopt a child.¹¹⁰

In terms of addressing its own internal problems, there are as of yet no tribal courts in Tadoule Lake. Offenders for major crimes still have to be flown to Thompson to face the Canadian judicial system. The Sayisi people, though, are becoming less and less willing to cooperate with the RCMP in the investigation of minor and middle range crimes. As a result, elders using traditional laws are increasingly resolving these offences unofficially. Although there is no community holistic healing circle centre in Tadoule Lake, the community could use the facilities in the Hollow Water First Nation.¹¹¹ The purpose of Community Holistic Circle Healing (CHCH) is to take responsibility for the problems of the community, to use the power of the circle to bring the community back into balance, and to improve the health of the community for future generations. CHCH is based on the traditional belief that troubled individuals are created, not born. According to CHCH, it hopes “to break the cycle of abuse, and that given a safe place, healing is possible and will happen.” CHCH relies on the wisdom of elders and traditional ways. In order to resolve problems the CHCH attempts the following:

- To bring it out into the open;
- To protect the victim, in such a way as to minimally disrupt the family and community functioning;
- To hold the person accountable for his/her behaviour;
- To give the opportunity for balance to be restored to all parties.

In a cooperative relationship with the courts, CHCH presents itself as both a pre-sentencing alternative as well as a sentencing alternative. Each case is considered to be unique and is handled accordingly. A period of incarceration, if it includes input from the community, is seen to be a necessary requirement in cases where the prognosis for healing is not good.¹¹²

V. Epilogue

The people of Tadoule Lake face an uphill battle in restoring their traditional culture. Many of the elders with knowledge of the old ways have passed away and unfortunately, much of their knowledge has died with them. There is currently a movement to import the ideas and traditions of other Aboriginal groups, regardless of whether they have any basis in Sayisi traditions. As a reaction against the imposition of European culture and values, this is completely understandable. Without authentic Sayisi to look to, the young are finding strength in a general First Nations identity. Hopefully, with time, the Sayisi people will be able to build a prosperous society upon the foundations of their own traditions and the values they choose to adopt as their own, rather than those forced upon them by circumstances beyond their control.

¹¹⁰ For a comparison, see the United States’ Indian Child Welfare Act of 1978, Pub. L. No. 95-608, 92 Stat. 3069 (codified as amended in 25 U.S.C. § 1901) and what led to its enactment.

¹¹¹ Community Holistic Healing, Wanipigow, Manitoba R0E 2E0.

¹¹² *Id.*