



PHOTO: HILLARY BEATTY



HEILTSUK TRIBAL COUNCIL

Dáduqvłá¹ q̓ntxv Ğvłásaŋ

To look at our traditional laws

Decision of the Heiltsuk (Hałzaqv) Dáduqvłá Committee
Regarding the October 13, 2016 Nathan E. Stewart Spill

¹ Dáduqvłá - to watch Dáduqvłá̓ntkv – we (excluding listener) watch



*Dedicated to the memory of John Bolton Sr. and Jim White,
Champions for the Heiltsuk Nation and People*

ACKNOWLEDGEMENTS

The Dáduqvłá Committee acknowledges our Elders, past and present, whose wisdom and teachings we have relied on in our deliberations and the writing of this Decision.

The Committee also acknowledges our language keepers who have made it possible for us to ensure the Heiltsuk voice is appropriately expressed throughout the Decision. In particular, we hold our hands up to Margaret Brown, Robert Hall, Elizabeth Brown, Marina Humchitt, William Housty and Rory Housty.

“We, the Heiltsuk Nation, are the stewards of the lands and resources in our territory. This is Ǵvǵlǵs, our traditional way, and we will ensure our lands and resources can support our people now and into the future.....

Our Ǵvǵlǵs directs us to balance the health of the land and the needs of our people, ensuring there will always be plentiful resources. We have honoured and maintained our traditions since time immemorial and continue this covenant today.....”²

² from “Qn qnts sasmλats 7ns7ats – For our Children’s Tomorrows” (Heiltsuk Land Use Plan Executive Summary).

1.0 INTRODUCTION

In the early hours of October 13, 2016, the American owned tugboat, the Nathan E. Stewart (“NES”) and the barge that it was connected to, ran aground in Heiltsuk territorial waters, forever changing the lives of all Heiltsuk (the “Spill”). At the time of the Spill, both the tugboat and barge were owned by Kirby Corporation (“Kirby”). Following the Spill, the Heiltsuk Tribal Council (“HTC”) undertook an independent inquiry, with a focus on the events leading up to and the 48 hours after, the sinking. The results of the inquiry were documented in the Heiltsuk Tribal Council’s “Investigation Report: The 48 hours after the grounding of the NES and its oil spill” (the “Report”).

The HTC resolved that a committee be established (the “Dáduqvłá Committee”) to review the Report, assess and adjudicate the Spill in the context of Heiltsuk laws, known as Ğvılás, and prepare a written decision of its findings.³

Ğvılás has been described as the ethos of our people. Ğvılás governs not only our relationship and responsibilities to land and sea resources, but also social relationships and obligations with respect to people, stories and all animate beings in our territory. Broadly defined, Ğvılás means that we as Heiltsuk people derive our strength from our territory by following specific laws that govern all our relationships with the natural and supernatural world. It is the basis of Heiltsuk respect and reverence for the surrounding eco-system.



³ The terms used in this Decision and the finding and recommendations of the Dáduqvłá Committee are not intended to limit any position that the Heiltsuk First Nation may take for purposes of litigation before a court.

For example, terms such “negligence” and “accident” are not intended to preclude other potential wrongful conduct by Kirby, such as intentional or reckless conduct concerning staffing, safety measures, procedures or other factors, that may have made an eventual grounding and spill likely. Likewise, the use of concepts such as “scientific inventory” are not intended to limit other potential approaches, such as an inventory based on Heiltsuk traditional knowledge and expertise, which may be required to assess the impacts of the grounding and spill.

.... Ğvıłás not only governed our relationship and responsibilities to land and resources, but also social relationships and obligations with respect to land and resources. For example, take a little and leave a lot; dispersed and varied resource harvesting obligations to share and support family and community; obligations to care for the resource; seeing all aspects of harvesting, from the taking of the resources to the methods used, as a gift of the Creator.”

“Since time immemorial, we, the Heiltsuk people, have managed all of our Territory with respect and reverence for the life it sustains, using knowledge of all marine and land resources passed down for generations. We have maintained a healthy and functioning environment while meeting our social and economic needs over hundreds of generations.

Our vision for this area remains unchanged. We will continue to balance our needs with sustaining the land and resources that support us. We will continue to manage all Heiltsuk seas, lands and resources according to customary laws, traditional knowledge and nuyem (oral traditions) handed down by our ancestors, with consideration of the most current available scientific information”.⁴

HTC’s decision to undertake an independent review of the circumstances of the Spill and to direct an adjudication in accordance with Ğvıłás was done on behalf of the Nation as an exercise in self-governance and authority over the territory and in response to the failure of the responsible federal and provincial agencies to recognize Heiltsuk jurisdiction during and in the aftermath of the Spill.

The adjudication of the Spill by the Heiltsuk, considering and applying Heiltsuk legal orders, is timely given the July 2017 release by Canada of its “Principles Respecting the Government of Canada’s Relationship with Indigenous Peoples” and in particular, Principle 4, Self-government, which says in part:

Recognition of the inherent jurisdiction and legal orders of Indigenous nations is therefore the starting point of discussions aimed at interactions between federal, provincial, territorial, and Indigenous jurisdictions and laws.

The Heiltsuk expect that the Decision will serve as a tool to support the reconstituting of our traditional governance systems and laws and the Hałćístut⁵ (Reconciliation) process with Canada. This is done from a uniquely Heiltsuk perspective to create the space for Ğvıłás to be afforded full recognition as a legal order.

The Dáduqvı́á Committee wishes to emphasize that the work of fully understanding Ğvıłás is an on-going process and the Decision should not be construed as the final word on its scope and content; rather the Decision is an articulation of Ğvıłás as it is understood and applied by the Dáduqvı́á Committee in the context of the sinking of the NES.

2.0 THE DÁDUQVLÁ COMMITTEE

One of the goals of the HTC in establishing the Dáduqvlá Committee and of the Committee in deliberating and writing this Decision, is to provide a pathway for Ğvılás to be understood by non-Heiltsuk from the Heiltsuk perspective. This requires non-Heiltsuk to make the effort to recognize and respect a different world view and the laws that guide it. The challenge in doing so was well-stated by Anishnabe Professor John Borrows:

In practice, there are enormous risks for misunderstanding and misinterpretation when Indigenous laws are judged by those unfamiliar with the cultures from which they arise. The potential for misunderstanding is compounded if each culture has somewhat different perceptions of space, time, historical truth and causality.⁶

Furthermore, as was noted by former Chief Justice of the BC Court of Appeal, Lance Finch, “...it is a precondition for the principled application of Indigenous laws that these laws be viewed, as far as may be possible, through the lens of the Indigenous culture in question.”⁷ This is precisely the work of the Dáduqvlá Committee - this Decision represents the first time that Ğvılás have been considered, applied and committed to writing - which is why it is imperative that it be done by the Heiltsuk and speak from the Heiltsuk perspective, by those who are properly qualified to do so.

What has been in the forefront of the minds of the Dáduqvlá Committee throughout this process is our collective responsibility to translate and transcribe Ğvılás into the English written language and apply it in the context of the Spill. Our challenge in writing this Decision has been the proper translation of our ways of being, our legal order, which is embedded in the Heiltsuk language. Our spoken language as the carrier of our laws is what gave life to our Ğvılás. Until now, Ğvılás has been understood, transmitted and applied orally over time, through histories, life lessons, ceremony and prayer all of which are connected to our place on the land and waters. Ğvılás is multi-dimensional and there are inherent limits within the translation process to fully capture its full meaning and richness. We refer to this as the “tyranny of translation”.



Heiltsuk Yínás

⁶ from *Canada's Indigenous Constitution* (Toronto: University of Toronto Press, 2010) at pg. 140, referenced in “The Duty to Learn: Taking Account of Indigenous Legal Orders in Practice” by the Honourable Chief Justice Lance Finch for the Continuing Legal Education Society of BC, November 2012: Indigenous Legal Orders and the Common Law at p. 2.1.2.

⁷ *Ibid.*



Bella Bella

Our language reflects our relationship as Heiltsuk people to water, which is a key aspect of this Decision. The significance of water to the Heiltsuk can be seen in the names of our tribes. The main tribes of the Heiltsuk self-identify in terms of our positions to the waters in our territory: the *Qvúqvaýáit̓xv*, meaning people of the calm water; *Wúyalit̓xv* (People of the outside) and *Wúłit̓xv* (People of the Inlet), meaning inside water people; *Ǿíxís*, meaning down river people and *Yísdáit̓xv*, meaning people of *Yísdá* – where mountains meet the sea. These names show how inter-connected we are with the waters which we call home.

Some of our verbs change in terms of where we are in relation to the water. The intricacies of our language demonstrate the intimate relationship the Heiltsuk as a marine people have to water and how it defines our everyday lives. We have been taught water is a living thing and that we have a responsibility to keep our waters safe. Our Elders tell us that if our waters are healthy our community is healthy - physically, mentally, spiritually and culturally. The NES spill damaged our waters and resources and has severely impacted the Heiltsuk's relationship to our lands and waters.

This is the lens through which we have considered and applied *Ǵvǵlǵs* in this Decision.

In order to understand the composition of the *Dǵduqvǵlǵ* Committee, one must have a sense of how current Heiltsuk governance functions. While the duly elected HTC is recognized by Canada as the legal governing representative of the Nation, in fact HTC works in conjunction with the *Yǵmǵs* (the Hereditary Chiefs) and consults and takes counsel from them on matters of key importance to the Nation and its members.

While the authority of HTC derives from the Indian Act, which was imposed on the Heiltsuk and other First Nations by Canada, the authority of the *Yǵmǵs* derives from and is exercised in accordance with *Ǵvǵlǵs*. For this reason, it was important that *Yǵmǵs* be represented on the *Dǵduqvǵlǵ* Committee and in particular, two of the *Yǵmǵs* who derive their title and rights from the *Ǵvǵqvaǵǵitǵv* - the territorial land and waters that were directly affected by the Spill.

As well, it was critical for the *Dǵduqvǵlǵ* Committee to include a knowledge keeper and Elder, a representative of HTC, a youth to bring balance and an urban member in keeping with the Heiltsuk view that we are all one, regardless of where we reside. Accordingly, the *Dǵduqvǵlǵ* Committee is comprised of the following five Heiltsuk members whose profiles are set out at Appendix I:

- *Yǵlǵstis* Pauline Waterfall, Heiltsuk Tribal Councillor and Knowledge Keeper – Chairperson
- *Yǵmǵs* *ǵǵlǵyasila*, Frank Brown – Co-chairperson
- *Yǵmǵs* *Ǵǵǵt*, Arnold Humchitt
- *Lǵnemraeit*, Bessie Brown, Urban Representative and Communications Advisor
- *ǵǵziǵba* Saul Brown - Youth

To fulfill our mandate, the *Dǵduqvǵlǵ* Committee met to consider the concept of *Ǵvǵlǵs*, its meaning and from that perspective, review the Investigation Report. By considering written and oral Heiltsuk authorities and drawing from our own knowledge and experience, we were able to gain an understanding of the source and content of *Ǵvǵlǵs* and its application within Heiltsuk society.

The work of the *Dǵduqvǵlǵ* Committee is a reflection of Heiltsuk society and contemporary research. We were each selected by our leadership based on individual skills, experience and for our *Yǵmǵs* members, the status and positions they hold in the community. We worked collaboratively and by consensus on every aspect of this task, beginning with the confirmation of our terms of reference. From there we shared the stories and the teachings of *Ǵvǵlǵs* learned from our Elders.

Where there were gaps in our knowledge, we looked to our Elders and knowledge keepers for assistance and reviewed primary source materials such as recorded and transcribed interviews with Elders no longer here with us. In doing our work, we walked in the footsteps of our ancestors while using contemporary tools. We cross-referenced our sources to confirm the accuracy of the legal principles we were articulating; for example, the peer-reviewed “Staying the Course, Staying Alive, Coastal First Nations Fundamental Truths: Biodiversity, Stewardship and Sustainability” project report⁸ (discussed below) provided further corroboration that we were on the right path.

Together we have drafted this Decision, carefully reviewed and revised it and believe that it accurately captures the essential elements of Ǡvǻlǻs as it applies to the Spill and its aftermath.

Throughout our deliberations, the Dáduqvǻlǻ Committee has drawn strength from the creator Wúǵvǻmǻ and all our Heiltsuk ancestors who never wavered in their values or their connection with Heiltsuk territorial lands, waters and resources. This Decision is our collective effort to illuminate the complex and ancient Heiltsuk laws that have always and still do define and guide the Heiltsuk way of life.



Turza Lawson and her grandmother Elizabeth Brown at traditional healing ceremony to mark one year anniversary of diesel spill.

⁸ Brown, Frank and Kathy (compiled by). *Staying the Course, Staying Alive, Coastal First Nations Fundamental Truths: Biodiversity, Stewardship and Sustainability*, 2009.

3.0 THE DEVASTATION AT QVÚQVÁI: AN ASSAULT ON HEILTSUK ANTIQUITY

The Heiltsuk (Haítzaqv), through our oral histories and first generation stories, know we have always been here; recent archaeological work at a village site at Triquet Island (Núlawítxv) has confirmed the same, pushing the scientific timeline of Heiltsuk use and occupation back more than 14,000 years. Put into a global context, this Heiltsuk village has been described as three times more ancient than the great pyramid of Giza and is one of the oldest known sites in North America. Thus, western science through archaeological investigations has provided independent corroboration of Heiltsuk place-based ways of knowing and being.

Pre-contact and since time beyond memory, our people who now identify as the Heiltsuk, lived and occupied an area of approximately 35,550 square kilometers along what is today known as the Central Coast of British Columbia. Our núym, sometimes referred to as origin or first generation stories, confirm what we have always known to be true - that our people have always been here and owned this territory for more than 14,000 years.

Traditionally, the Heiltsuk were comprised of five main tribes who spoke a common language: Haítzaqvla and lived in an organized society, sharing a highly developed cultural and socio-political system, rooted in the territorial lands, waters and resources. Although today the Heiltsuk live as one Nation, we continue to recognize our ancestral origins to the Wúyalítxv, Wúíłítxv, Yísdaítxv, Qvúqvaýáitxv and Xíxís tribal groups.

The Spill occurred about one kilometer from Qvúqvái, in the heart of Qvúqvaýáitxv territory. Qvúqvái, was the main village of the Qvúqvaýáitxv, or “calm water people”; the name reflects the sheltered waterways of Gale Passage.

Our ancestors chose this as a village site because it has a year-round source of fresh water with incredible marine biodiversity and easy access to sea resources throughout the bákvlá seasons, including herring, seaweed, salmon, bottom fish and shellfish. Qvúqvái is located in Gale Passage on the edge of the open Pacific with seaward access to Seaforth Channel and Millbank Sound and also Thompson Bay to the west.

The Qvúqvaýáitxv had other villages throughout their territory including at Spiller and Seaforth Channels. They were the last of the Heiltsuk tribes to amalgamate at Qíc (also known as “Old Town”, the former site of the village of Bella Bella) and this was only after their village at Qábá was destroyed by fire.

The Qvúqvaýáitxv were also one of the larger tribes that make up the modern day Heiltsuk and this is reflected during the time of the Indian Reserve Commission in 1881, when the people described by Commissioner O’Reilly as the “Ko-ky-et” branch of the Bella Bella tribe, were allotted 6 reserves. According to O’Reilly, the tribe at that time numbered 60 people and had two Chiefs named Charley Humsit (Hm̓zít) and Kyet (Qáít⁹).

⁹ The name currently held by Dáduqválá Committee member Yírhás Arnold Humchitt.

Heiltsuk Tribal Territories



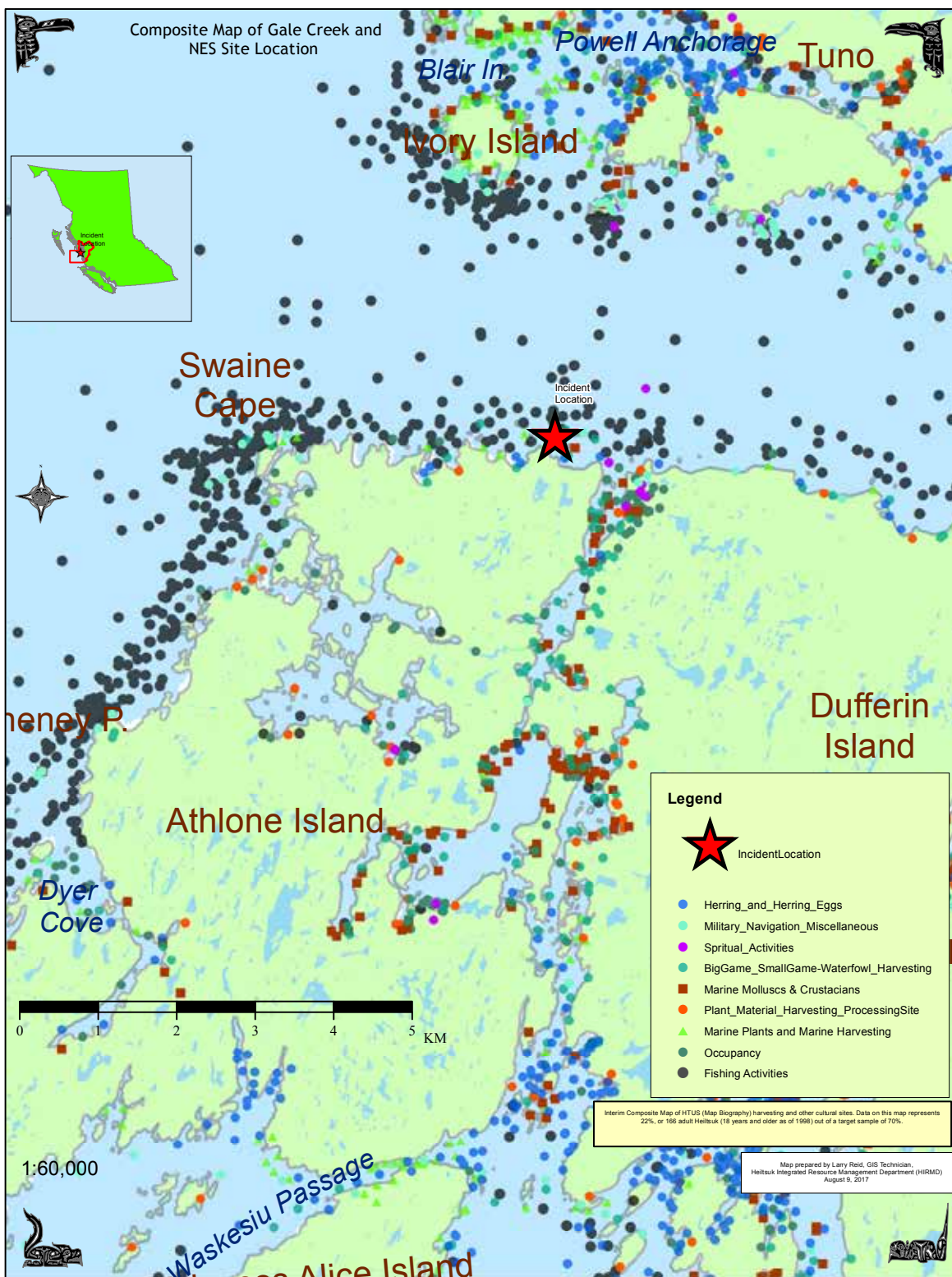
Qvúqvái (Gale Creek)

During O'Reilly's visit in August 1881, the Qvúqváitxv were residing at the village he called "Capah" (Qábá) and which he set aside as an Indian Reserve known as "Kokyet No. 1". Ninety acres were allotted by O'Reilly as Ko-qui No. 6 (Qvúqvái), described as being at the mouth of Gale Creek¹⁰ on Dufferin Island and according to him "...was once the site of a village as is indicated by the ruins of old lodges &c., but is now entirely abandoned." O'Reilly noted the village was convenient to seal and halibut fisheries.

In the late 1800's, the Heiltsuk Chiefs gathered and agreed they would live together as one at Qíc. Given the significant losses suffered by the Heiltsuk since contact, the decision to live in one village was largely driven as a survival strategy. Put into perspective, our estimated pre-contact population of many thousands had by then been reduced to less than 300 people. There was also pressure from the missionaries and other outside forces that the Heiltsuk tribes give up their old ways and "civilize".

The Chiefs committed at that time to live together in a spirit of solidarity which is reflected in choosing the word Haítzaqv (Heiltsuk) to identify our people collectively going forward, meaning human beings, to act and speak correctly, as opposed to the tribal affiliations, which as noted in the Introduction are our positions in relation to our waters.

¹⁰ Also known as Gale Passage.



Heiltsuk Tribal Territories

The head chief of the Q̓wúqvaǵáitxv continues to be Q̓áit, Yímás Arnold Humchitt, with the name, the title and all the rights associated with it passed to him by his late father, Carmen Humchitt who in turn inherited the name from his late father, Herbert (known as Bertie or Bo) Humchitt, who inherited it from his late father Bob Humchitt. The origins of the name Q̓áit, are well-understood and with Q̓áit's permission, below are excerpts of the history of the name and its connection to Q̓wúqvaí - Gale Passage - the Spill site, as told by William Housty at the Q̓áit memorial potlatch on May 18, 2017:

“The first Q̓áit was born among the Tongass, Alaska, Tlingit people. He was born to a noble Tlingit man, and a woman named Q̓andáxv who was taken captive from the area around Klemtu. After he was old enough, Q̓áit his journey back to the Klemtu/Bella Bella area. He eventually ended up¹¹ in Gale Creek, and through his mother’s ancestry came from many great houses amongst the Q̓vúqvaýáitxv. Q̓áit brought with him, the distinct chilkat robe and design, which was recorded as being seen on the beaches of Gale Creek in the early 1800’s by William Fraser Tolmie. Since then, many of the ancestors of the original Q̓áit still retain rights to use this chilkat robe. Q̓áit also brought with him the name Q̓m̓dmax̓t ‘labret in the lip’, which is now the name of Contessa Brown.¹²

Some of the earliest records of Q̱áit go back to the late 1700's when Chief Q̱áit was killed by men who were on a sailing ship that was anchored in Gale Creek. It is said that in a gun battle, Chief Q̱áit was hit with a bullet, and not even the finest shaman of the day could bring Chief Q̱áit back. The tribe later paid the boat revenge by swimming out the ship in the night and smothering the stern with pine pitch, and lighting it on fire, sinking the ship. After making peace, Q̱áit's people helped repair the boat so it could sail back overseas.

Over time, Q̄ait became the head chief of the Q̄vúqvaýait̚xv tribe, and held many great names. Q̄ait was connected to the houses of T̄qval̄xa, Maxmawisaḡmi, Waúyala, H̄r̄zít, Náci, Q̄áqvais, Q̄vítákvn, ḡáḡm̄lá̄xa, Dúqv̄aisla, all from the Q̄vúqvaýait̚xv tribe.

At one point in history, Chief Q̓áít was the uncle to the head chief of the Wúyalit̓xw tribe, Chief Albert Humchitt Sr.. Q̓áít was kin to Chief Albert Humchitt Sr's mother, and after several competitive incidents within the potlatch with his nephew, particularly around the red cedar bark ceremony, Chief Q̓áít died on his way to Disjew on Price Island. Upon arriving in Disjew, a new Chief Q̓áít was named, and later, mortuary poles were erected in Berry Inlet for the deceased chief...

¹¹ Pauline Waterfall explains that “ended up” is often used by the old people to describe the place where one arrives and stays to live. The story notes that Qait’s maternal roots originated from here and therefore it becomes his inherited homeland. His mother would have had an arranged marriage among the Tongass, which is why she was there and why Qait was born there.

¹² From his family teachings, Frank provides this further detail to the Qâit nûyrî: the name Qîrdmax̃ (labret on lower lip) symbolizes nobility of high ranking Tlingit woman at that time. These two names came down from the Tongass Tlingit in southeast Alaska to the Heiltsuk over 300 years ago. Bob Hunchitt Qâit of his generation passed on to his son Bertie, his name Qâit and to his daughter Maggie, the name Qîrdmax̃, who in turn placed it on Frank's sister, Contessa who now shares it with her daughter Vennita. Maggie was the grandmother of Contessa and Frank Brown.

...[The name] Q̓áit re-appears in the history books in the mid-1800's, when the position was held by Charlie Humchitt, who was the father of Chief Moody-Humchitt. The name was then handed to Chief Robert Bell, who held the name for years before his tragic death in 1904, when the name was passed to Bell's brother/cousin Bob Humchitt. At that time in history, Robert Bell held both Q̓áit and Waúyala, and was the finest of Chiefs of his time.

In the 1899- 1900 Department of Indian Affairs, they list the Bella Bella chiefs as Boston Humchitt, Q̓áit, Charlie Tihe, Tom Housty, Nunugvas and Captain Carpenter; this shows how even through the dark years of our history, the name Q̓áit still stood strong.

Bob Humchitt held the name for several years, along with many other names of the family, and eventually passed the name Q̓áit on to his eldest son Herbert (Bertie) Humchitt, from his first marriage to Alice Starr. Bertie was the father of Carmen, and the grandfather of our host [Arnold Humchitt].

Carmen held the name Q̓áit after Bertie passed, and held many feasts and potlatches to re-affirm his name and history. And then in 2007, with his health ailing, Carmen bestowed 50% of his name, Q̓áit, on Arnold, who began sitting in for his father in feasts and potlatches when his father fell ill. After Carmen's passing in 2012, Arnold and family hosted a memorial potlatch, where Arnold fully assumed his father's chieftainship, and took over the reigns as chief of this family.

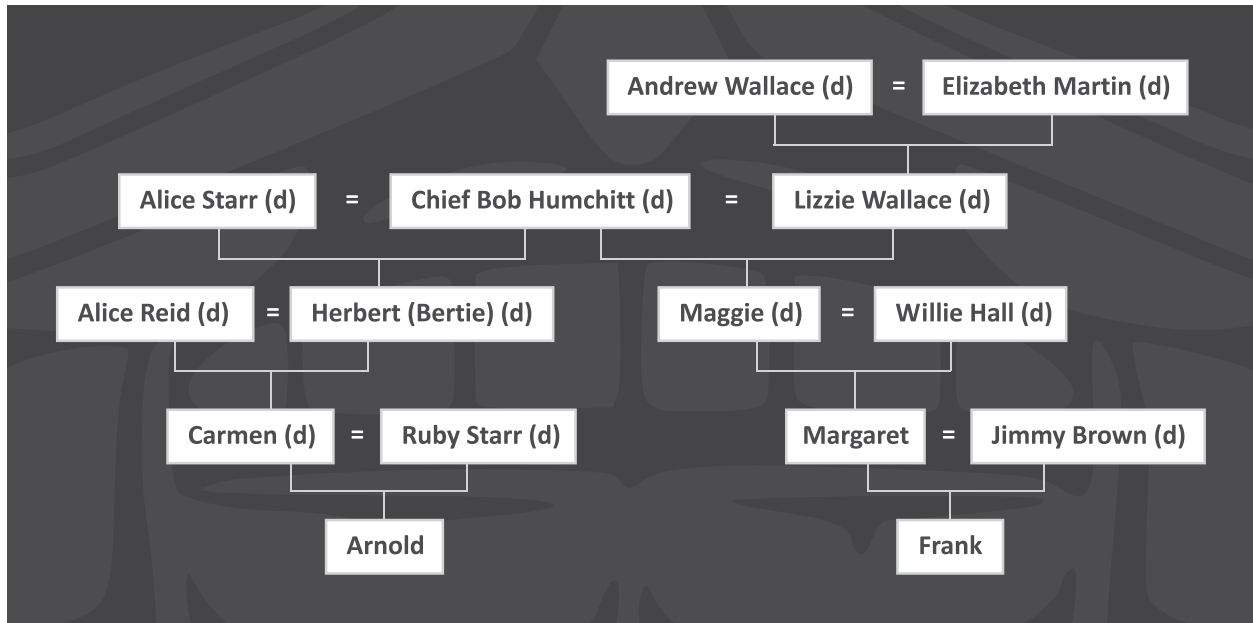
Today, Arnold will re-affirm his name 'Q̓áit, and re-affirm the position that he holds amongst the Q̓vúqvaýáit̓xv tribe. Along with our late chief Wauyala, Q̓áit is one of the two head chiefs of the Q̓vúqvaýáit̓xv tribe, and the head of the eagle clan of the Q̓vúqvaýáit̓xv. Today we re-affirm this history, and re-affirm the position that Q̓áit holds."



PHOTO: HILLARY BEATTY

Yírhás Q̓áit, Arnold Humchitt at Q̓vúqvaí

Just as the name Ǫáit is connected to Ǫnúqvaí, so too are a multitude of other Heiltsuk names and thus all the holders of the names. For example, Dáduqvǵá Committee member Yímás Frank Brown, who holds the Ǫísdáitǵv name Láǵíǵasila, is the great-grandson of Bob Humchitt referred to above. The close connection between Arnold Humchitt and Frank Brown through their immediate ancestors is depicted in the partial family tree below:



This inter-connectedness of place, history, families and all beings - is one of the fundamental elements of Ǫvǵíǵás and as discussed below, has also been identified more broadly amongst Coastal First Nations, as one of the fundamental truths:

“We are all one and our lives are inter-connected. Our relationship with our territory is fundamental and we regard it as an extension of ourselves. That is why our ancestors gave names to important sites and geographical features, just as names were and continue to be bestowed upon family members.”¹³

And so for the Dáduqvǵá Committee and the Heiltsuk Nation as a whole, there is an inextricable connection to Ǫnúqvaí; the Spill was an assault, not only to our sacred place, but to our way of life and everything that we hold dear and makes us Heiltsuk. Pursuant to our responsibilities under Ǫvǵíǵás, it is incumbent upon us to understand the Spill from the Heiltsuk perspective and determine the appropriate recommended response.

¹³ Fundamental Truth 2, from *Staying the Course, Staying Alive, Coastal First Nations Fundamental Truths: Biodiversity, Stewardship and Sustainability*.

4.0 HEILTSUK JURISDICTION AND ĞVĪĻÁS

Prior to the arrival of settlers in Heiltsuk territory, the Heiltsuk Nation held and developed sophisticated laws to govern our territories, manage relationships, organize behavior and resolve conflicts. These laws are known as our ĞvĪĻás. Heiltsuk ĞvĪĻás have existed since long before the common law system of Canada. Our history is older than our collective memories combined, passed down over approximately 700 generations within Heiltsuk territory.

Heiltsuk jurisdiction over our land, water and territories is embedded in our nŭyŕŕ and it is here we find the source and expression of ĞvĪĻás. Our origin stories are not intended to represent a complete or comprehensive statement of legal jurisdiction over Heiltsuk territory. Rather, the nŭyŕŕ substantiate the basis of Heiltsuk jurisdiction through principles of ĞvĪĻás. Within the nŭyŕŕ are found Heiltsuk names, beliefs, laws, customs and practices that have been continuously exercised since the beginning of time; these form the basis for Heiltsuk territorial jurisdiction over all lands, waterways and animate beings within our traditional territory. The integrity of Heiltsuk jurisdiction has remained intact and persisted through our continued reference back to the nŭyŕŕ, even while adapting to change and the impacts of colonialism. The on-going use of our first ancestor names demonstrates that we continue to fulfill our legal obligation to the territory from which any particular nŭyŕŕ originates.

For the purposes of this Decision which considers the Spill that occurred in Qvúqvaŕaitŕv territory, we look to “nuyem layaxsv gaelglis nalayaxv” (Nŭyŕŕ láŕaxsv gálgŕis nálayaxv), which roughly translates to “the story about the beginning of time or when the world was created” and our oral histories.



We have oral history which tells us tell of the first Ǫvúqvaǵáitǵv; according to Boas, who recorded the story in 1932¹⁴, the núyǵ tells of a bird on a cloud in the country of raven people. First he was a raven, then an eagle, then a swan and finally a snow goose. The bird then took the form of man and sat on a cloud. This transformation signifies the relationship between different birds within Heiltsuk territory and the houses and families that use these respective birds as their crests, in their art, songs and as forms of sustenance. The man then descended down into Ǫvúqvaǵáitǵv territory. He was a great chief and carried the name Ǵǵǵǵlaǵa. This name has been carried down through generations of Ǫvúqvaǵáitǵv people and is currently held by Medric (Bo) Reid Jr. who is the nephew of Dáduqvlá Committee member Yímás Ǵáit, Arnold Humchitt.

There have been real consequences for not maintaining adherence to Heiltsuk authority while in Heiltsuk territory. For example, our oral history tells of a confrontation between the Ǫvúqvaǵáitǵv and the fur trading ship Atahualpa is corroborated by the following western sources:

- Report on Milbanke Sound on the North Coast of America, pg.1 D¹⁵
- British Columbia Coast Names, pg. 152-153¹⁶
- Naval Chronicle, pg.382 (Joel Richardson- 10 of 23 killed, 9 wounded)¹⁷

This conflict is an example of the Heiltsuk Nation exercising its authority in accordance with our Ǵvǵlǵs by dispelling a fur-trading ship out of the territory. Our history tells us that the ship in question was no longer conducting fur-trade business with our ancestors in a manner that was acceptable under our Ǵvǵlǵs. The Heiltsuk had been managing natural resources since time immemorial and our participation in the fur-trade was an expansion, adaptation and extension of this practice, during a time of great transformation and strenuous change. When the trading ship Atahualpa broke our Ǵvǵlǵs in our territory, the ship and its crew suffered grave consequences. This enforcement of Heiltsuk jurisdiction under Ǵvǵlǵs is one example of Heiltsuk agency when making decisions about natural resources and addressing the misconduct of visitors within our territory.

Our oral histories demonstrate the interdependent and intimate relationship the Heiltsuk have with the eco-system that we exercise control over. This relationship of inter-generational transfer of knowledge and system of governance over the millennia brings certainty that we as descendants of the first ancestors in the núyǵ will continue to occupy and exercise jurisdiction over our homelands for generations into the future. Heiltsuk homelands have never been surrendered.

Núyǵ are just one of the ways that the Heiltsuk Nation continues to validate ownership and exercise control over our traditional territories. Our núyǵ are an integral element of our self-determination; they bring into focus our collective right to govern ourselves in a cultural and traditional way based on the teachings of our Ancestors.

¹⁴ *Bella Bella Tales* at page 77.

¹⁵ Anderson, Alex C. Report on Milbanke Sound on the North West Coast of America. 1934.

¹⁶ Walbran, John T. *British Columbia Coast Names, 1592-1906: Their Origin and History: To which are Added a Few Names in Adjacent United States Territory*. Library's Press, Vancouver, 1971.

¹⁷ Clark, James S.; McArthur, *The Naval Chronicle, 1806: Vol. 16, July – Dec 1806: Containing a General and Biographical History of the Royal Navy of the United Kingdom with a Variety of Original Papers on Nautical Subjects*. Cambridge University Press. 2010.



HEILTSUK NATION
PHOTO: TAVISH CAMPBELL
& APRIL BENCZE
OCT. 23, 2016

Ǿvúqvái (Gale Creek)

5.0 ĞVİĻÁS UNDER ATTACK

Heiltsuk, along with other coastal Indigenous people, are descendants of the most complex maritime Indigenous societies in the world. Our people have always been as wealthy as the land and sea around us, which in turn supported the development of a sophisticated and successful society. Our success as maritime people is a result of the biologically diverse ecosystem of the North Pacific which we respected, protected and controlled through our ĞvİĻás and Heiltsuk natural resource management systems rooted in sustainable practices. We guarded our lands, waters and resources from invaders, gifted the rights to certain key locations through wedding dowries or as inheritances, and derived economic benefit through a well-developed trade network.

With the arrival of Europeans to our homelands and waters and the disease, colonial forces and government policies that came with them, all aspects of Heiltsuk social order - our pre-colonial territories, economies, culture, governance system, laws, culture, identities, and ways of knowing and living came under constant attack. Government interference systematically de-coupled ĞvİĻás and Heiltsuk natural resource management and we became displaced from the essence of who we were. Through the resilience and tenacity of our Elders and Yířas, the Heiltsuk have pushed back to reclaim our power; we continue to hold true to our values to propel us forward into the future and put behind us years of attempted subjugation.

From the Gradual Civilization Act of 1857, to the Indian Act, to 1969's Statement of Indian Policy (the "White Paper"), for most of Canada's history, systematic assimilation has been this country's aspiration for Indigenous people, including the Heiltsuk. Indigenous peoples were viewed as a problem that needed to be "solved" (Newhouse, 2016) and various government strategies attempted to achieve that end.

Discriminatory legislation and regulatory policies resulted in the economic marginalization of the Heiltsuk, despite our initiative and ambition to find success within the industries operating in our territory; this included the destruction of our traditional salmon weirs by government agents and being restricted from participating in the drag seine fisheries, while outsiders reaped the economic benefits. For example, in the forest industry, the Heiltsuk had owned and operated forest companies until provincial legislation restricted access to logging permits to registered voters, thereby foreclosing the Heiltsuk.¹⁸ Thus łáłÍyasila and Qáít's ancestors who owned the Humchitt Brother logging company, were put out of business and displaced from the forest industry. Similarly, discriminatory and restrictive policies also created economic barriers for Heiltsuk in the fishing industry and although these are no longer in place, in some instances, the residual effects are still being felt.

One of the greatest assaults perpetrated by Canada on Indigenous people has been the Indian Act. The Indian Act purports to define the very existence of Indians, including matters pertaining to Indian status, band membership, and reserve lands. The Indian Act wrongfully authorizes the Canadian federal government to regulate and administer the affairs and day-to-day lives of registered Indians and reserve communities.

¹⁸ Between 1875 and 1949, status Indians were not permitted to vote in BC provincial elections. It was not until 1960 that voting federally was allowed (prior to then, only Indians who gave up their status and became enfranchised could vote).

Under the Indian Act, the government determined land allotments for Bands in the form of reserves, legally held by “Her Majesty” and set aside for the use and benefit of the members of a Band. The imposition of the Indian Act was an affront to ǂviłás and Heiltsuk jurisdiction over the territory, our systems of governance and the inherent authority of the Yírnas. The Indian Act imposed a foreign governing structure on the Heiltsuk in the form of elected Band Councils, and from 1885 to 1951, controlled the rights of Heiltsuk peoples to practice our culture and traditions through the banning of potlatches.



ǂázitba, Saul Brown holding ǂiála Copper

The potlatch ban was one of the most repressive aspects of the Indian Act. The potlatch has always been one of the most important ceremonies to the Heiltsuk and is a carrier for our way of life. In 1993, the late Kwakwaka'wakw Judge Alfred Scow articulated how the potlatch ban undercut his people's way of life and his words ring true for the Heiltsuk as well:

"This provision of the Indian Act was in place for close to 75 years and what that did was it prevented the passing down of our oral history. It prevented the passing down of our values. It meant an interruption of the respected forms of government that we used to have, and we did have forms of government be they oral and not in writing before any of the Europeans came to this country. We had a system that worked for us. We respected each other. We had ways of dealing with disputes."¹⁹

When Aboriginal political organizing became more extensive in the 1920s and there was a push- back to reclaim what had been stolen, Canada again amended the Indian Act and outlawed the hiring of lawyers, effectively barring Aboriginal peoples from fighting for their rights through the Canadian legal system.

Co-existing with the Indian Act was the Indian residential schools policy which for over one hundred years separated Indigenous children and families. These schools systematically interrupted the transference of Heiltsuk knowledge, language, inter-familial teachings, parenting practice and value systems. Instead of being home with their families, students were indoctrinated by strangers into a foreign world view that denigrated everything Indigenous. Many were subjected to horrific abuses. By 1890, a majority of Heiltsuk children were forced to leave Bella Bella to attend residential schools across Canada²⁰; the last residential school didn't close until a century later and the Heiltsuk continue to suffer the inter-generational impacts caused by the large-scale removal of children from the community. The potlatch ban, coupled with residential schools, attacked the very fabric of Heiltsuk existence by undermining the natural transmission of everything that it means to be Heiltsuk from one generation to the next, and as such, these state-sanctioned acts, designed to undercut the very existence of the Heiltsuk as a people, can only be seen as cultural genocide.²¹

¹⁹ Report of the Royal Commission on Aboriginal Peoples (1996).

²⁰ Harkin, Michael E., *The Heiltsuks: Dialogues of Culture and History on the Northwest Coast*. University of Nebraska Press in cooperation with the American Indian Studies Research Institute, Indiana University, Bloomington, Lincoln, 1997.

²¹ Truth and Reconciliation Commission, *Final Report* (2015).

6.0 HEILTSUK RESILIENCE: KÁXLÁYA ĞVİŁÁS, WE UPHOLD THE LAWS OF OUR ANCESTORS

Despite the persistent external assaults on the essence of who we are, our Ğvıłás have not disappeared, the Heiltsuk people have survived and we are thriving.

From the time of first contact, around the late 1700s, Heiltsuk communities began to feel the effects of social and environmental transformation. It is estimated that between 1775 and 1889, roughly 80-90% of the Heiltsuk population died as a result of pandemic diseases.²² As previously noted, by the turn of the last century, our numbers were down to less than 300. Those survivors were the carriers of our culture and language, our songs, our dances, our rights and prerogatives. Now we number nearly 2500 strong.

During the potlatch ban from 1885-1951, Ğvıłás essentially went underground and was safeguarded by knowledge-keepers who ensured it was passed on from one generation to the next. During the quiet years, Ğvıłás continued to be practiced, although in a manner that kept it protected from the scrutiny of the Indian Agent and the missionaries. The traditional Big Houses were replaced with large European-style homes so that by outer appearance, it seemed the Heiltsuk were becoming a model community subscribing to the Christian values the newcomers were trying to instill. However, inside the privacy of those houses built large enough to accommodate extended families, cultural practices and Ğvıłás continued to inform Heiltsuk daily life.

Over time, the loss of so many of our fluent speakers took with it some of the deeper nuances of Ğvıłás embedded in the language. Even so, after more than a century of disruption, our Heiltsuk culture remains strong and continues to evolve. We have the moral authority and an obligation to ensure our knowledge of Ğvıłás is not forgotten or lost. This is being achieved, and will continue to be achieved, through both oral and written teachings.



PHOTO: KYLE ARTELLE

Traditional healing ceremony at Qvúqvaí one year after diesel spill

²² Boyd, Robert T. *The Coming of the Spirit of Pestilence: Introduced Infectious Diseases and Population Decline among Northwest Coast Indians, 1774-1874*. UBC Press, Seattle; Vancouver; 1999.



7.0 UNDERSTANDING ĞVİĻÁS

Our starting point is the meaning of Heiltsuk, what it means to be Heiltsuk: to “act and say things in the right way” — a fundamental value that embodies the basic guiding principle that is taught to and expected of, Heiltsuk citizens. There is a belief that there is a wrong and right way to act, to speak, and a responsibility to make decisions accordingly. It was and continues to be our responsibility to guide and teach about right and wrong from cradle to grave. This was and continues to be the duty of all, including parents, Elders, and indeed everyone, whether in their personal home, the village or the greater collective territory, to assure that positive behavior and choices are made. Values deemed to be positive and necessary human traits include having respect, being self-reliant, independent, ambitious, hardworking, reliable, resourceful and responsible.

To understand ĞvİĻás, one must understand the Heiltsuk concept of home, which is not limited to the physical place where a Heiltsuk person lives, but extends to the village, one’s tribal territories and the greater collective territory. The Heiltsuk are connected with all beings throughout the home and therefore, ĞvİĻás informs the life of a Heiltsuk person and his or her conduct and relationships with all lifeforms, with the land and water and all the resources, as well as the supernatural realm.

Just as the surrounding eco-system cannot do without Heiltsuk people, we cannot do without our surrounding eco-system. The two are intrinsically linked. The integrity of one is dependent on the integrity of the other. This linkage between the Heiltsuk Nation and the ecosystem is part of the natural law aspect of ĞvİĻás. Without a fully functioning, healthy and diverse ecosystem, the Heiltsuk people would not have flourished as we have over the millennia. Our success as a maritime society was not an accident, but rather a direct result of our ĞvİĻás. Our ancestors enhanced elements of nature for our sustenance and benefit, including through the construction of clam gardens and fish traps, transplanting salmon from one stream to another and controlled burning near village sites for to ensure bountiful supplies of seasonal berries, vegetables and medicines.

ĞvİĻás is the foundation that guides our daily lives. According to late Yírhás Moses Humchitt, ĞvİĻás refers to our “power” or authority over all matters that affect our lives. It is a complex and comprehensive system of laws that embodies values, beliefs, teachings, principles, practices, and consequences. Inherent in this is the understanding that all things are connected and that unity is important to maintain.²³

ĞvİĻás guides our societal, cultural, political, spiritual, and economic norms. These norms are part of our place-based ways of knowing and interaction and inter-dependency of the land and sea on which we live. The ĞvİĻás we live by are principles that ensure our way of life is continued and are manifested in the protocols of our potlatch system:

²³ from Heiltsuk draft Marine Use Plan.

7.1 ĞVİĻÁS: THE POWER OF THE COPPER

Since time beyond memory, the High Chiefs Yírnas from the great houses of the Heiltsuk and other Coastal First Nations would hold feasts and potlatches to mark special events in the life of the House. The giving of gifts to guests served to validate these events and acknowledge their role as witnesses to the business taking place during the potlatch. The greatest gift that could be given was the copper. Such a gift was a mark of great respect and honour.

The copper shield is a symbol with many layers of meaning for the Heiltsuk people. The copper embodies our sacred values of tradition, power, prestige, honor, wealth, generosity and history.

The copper itself represents the ancestors of the owner and this is manifest in its shape which resembles a human torso. Coppers often have faces on the upper portion, and always a T shape on the lower half. The T shape represents the backbone or skeleton of the ancestor depicted on the copper. At a potlatch, to demonstrate his or her wealth, the hosting Yírnas might give away or even break a copper, taking care to keep the T shape intact. This is because bones symbolize the substance from which new life begins in the cycle of reincarnation. Bones, the most durable part of our bodies, are believed to house the human soul and this belief occurs in the myths of many Indigenous cultures around the world.

Coppers are so important that each has a name and a story of its own. The following is an excerpt from the copper ceremony that took part during Qáit's most recent potlatch and recounts the history of the copper and the connection of Qáit to Qúúqvái:



Qáit and copper ceremony

(from William Housty speaker's notes; Ǫǻít Memorial Potlatch, May 18, 2017; shared with permission of Ǫǻít, Yímás Arnold Humchitt)

"...This is a very important ceremony, as it is a time when we are able to show our wealth as people of the potlatch, and introduce our coppers to you. The copper is the ancient symbol of wealth, and represents the worth of the potlatch for a chief and his family. The copper is what gives the chief the right to perform different ceremonies, and is something that is held in the highest regard. The coppers are believed to be alive, having many human qualities. The backbone, the ribs, the face and the name, are all qualities shared by coppers and humans. Therefore, the connection that we have with the copper is ancient and deep.

Going back to the beginning, our tribes obtained the first ever copper from the ǻǻta (Sasquatch), who paid back a chief for reviving her dead son, by giving him two coppers that she sat on, and this was the first time our tribes had ever seen these coppers, and they were introduced into our system, and now many generations later, still stand for the same wealth, standing and tradition that they once did.

Today, Chief Ǫǻít owns two coppers; one copper's name is Hǻǻǻínúǻva, the great killer whale. This copper comes from his house, the house of Ǫǻít from Ǫvúqvái in Gale Creek. The reason the copper is named after the killerwhale, is because of the great connection that this family has with the killer whale being one of their crests.

The second copper is named Máwǻǻ, the sea lion. The reason the copper is named after the sea lion is because of the great wealth of food that comes from the sea lion. This copper also comes from the great lineage of Ǫǻít from the Ǫvúqváyǻitǻv.

At one time in the history, Bertie Humchitt owned these two coppers, sadly they were stolen from his house one fall, but he remembered the names of these coppers, and that knowledge was passed to Carmen. So although these aren't the original coppers, the ancient names were remembered so these coppers carry the names of the old coppers.

These coppers are what demonstrates the rights, authority, privileges and prerogatives that are owned by Ǫǻít and his extended family. By introducing these coppers to you, Chief Ǫǻít is demonstrating that he is abiding by the ancient customary laws of our people, and will now carry on with his potlatch and ceremonies knowing that he has done everything in his power to respect and uphold our Haǻǻzaqv law.

When the time comes, Chief Ǫǻít will lay his coppers down beside the fire, to demonstrate his authority and richness that is represented by the coppers, and along with the Chiefs, will be the key witness to what happens for the remainder of the potlatch."

Traditionally, Ǿvǐlǎs guided the moral, ethical and judicial standards of Heiltsuk citizens from young to old. They were taught and reinforced in a number of ways including: leading by example, núsa (storytelling), tqǐlǎ (giving advice when seen to be needed), rites of passage training, and so on. Implicit in the Ǿvǐlǎs were the essential cornerstone values that defined the expected behaviors and practices of Heiltsuk citizens. In that respect, they are similar to the values-based origins and legal principles of behavior defined in the Canadian *Criminal Code*.

ǎxvǎi is the authority that underpins Ǿvǐlǎs and originates from the Heiltsuk connection to land, water and all the resources. We understand ǎxvǎi to be the strength we get from exercising Ǿvǐlǎs - the strength we get from being responsible for protecting our homelands and our families. Indeed, one of our duties as Heiltsuk is to protect our environment, especially our sacred places for future generations and we derive the resolve and the discipline to be successful and to carry out the Ǿvǐlǎs from ǎxvǎi.

While western law is typically understood to function in a linear and unidirectional manner with authority and jurisdiction to act authorized by underlying laws, the relationship between ǎxvǎi and Ǿvǐlǎs is organic, reciprocal and multi-dimensional; ǎxvǎi is the source of the authority for Ǿvǐlǎs through the Heiltsuk connection to land and water. It also provides the strength that empowers Heiltsuk to protect our home environment by applying principles of Ǿvǐlǎs.

Our power and strength comes from our land and waters and we recognize this is where our obligation lies, in our connection to nature. From this source flows our inherent Aboriginal title and rights, including our self-governing right to care for our land and water and all the resources within the Heiltsuk homeland and in turn, to benefit from their use, physically, culturally, spiritually. This concept of reciprocity is grounded in Heiltsuk first generation stories, confirming that we were set down here by the Creator, along with gifts such as stone, trees, food, fire, companions and family, shelter and transportation.



PHOTO: HILLARY BEATTY

Ǿvǐlǎs (Gale Creek)

7.2 ĞVİĻÁS: THE RECIPROCITY INHERENT IN OUR RELATIONSHIP WITH OUR RESOURCES

Reciprocity is a guiding principle of our ĞvıĻás and an essential aspect of the Heiltsuk way of relating to all beings. According to our ancestor, the late Hannah Hall, the Heiltsuk translation of reciprocity is, “giving back goodness received”. When Hannah was young she never saw anyone in need, because “the people helped each other, they helped each other with everything”, including providing free labour for the well-being of the village.²⁴

Elder Evelyn Windsor provided further insight into the “help” Hannah was speaking of. She explained that this gifting was a way of giving back to people for help that was provided and in return, the recipient was obligated to pay someone back for helping. Evelyn characterized it as “almost like a trade but it’s more a gift given out of kindness”. When gifts are exchanged, the timeline isn’t specific but rather when the person who initially received the gift has something that the other needs, the gift will be given back. The gift doesn’t have to be any one particular thing or a material thing at all, it can be an act, acknowledgement, kind words, a ceremonial or spiritual item. For example, our núyrĥ tell us of supernatural gifts being exchanged amongst our Heiltsuk ancestors and animals, shape shifters, heavenly chiefs, supernatural beings and the earth itself.

This mode of relating isn’t just reserved for social relationship amongst the Heiltsuk and includes our relationship with the surrounding environment - our lands, waters and resources.

Looking at salmon as one specific example, one of our Heiltsuk núyrĥ tells of an ancestor who visited salmon in their country and became a salmon before transforming back into human form.²⁵ After our Heiltsuk ancestor returned to his people, the salmon chief made sure to instruct him about our responsibilities of reciprocal respect and caring for the salmon and each other. The underlying lesson is that the Heiltsuk and salmon are literally kin and the Heiltsuk people are in continual connection with the salmon. This connection invokes the Heiltsuk ĞvıĻás of responsibility to manage salmon stocks both for the health and sustainability of salmon and for the health of the people.

The connection of the Heiltsuk to salmon is also affirmed in our potlatch. We have songs, dances and ceremonies to this day that show our spiritual connection to the salmon. These ceremonies are a reminder and living manifestation of our ĞvıĻás, guiding our reciprocal relationship to salmon and obligation to responsible stewardship.

²⁴ Hannah Hall autobiography, pp. 8-10.

²⁵ “The Salmon Country as told by Moses Knight”, in *Bella Bella Tales*.



The Heiltsuk concept of reciprocity is also reflected in the governance system carried out in our potlatches. The spirit of the potlatch is generosity. It is also a way of sharing wealth from the land, managing reciprocal relationships and managing lands and waterways and all the resources that come from them. This reciprocity invokes our inheritance as owners and caretakers. Our inheritance:

- a. Salmon are ancestral gifts with kinship ties to the Heiltsuk.
- b. The Heiltsuk have reciprocal obligations of stewardship to salmon and their environment.
- c. We recognize everything is one and everything is connected. Thus, to uphold this stewardship obligation, a fully functioning eco-system must be intact.
- d. The songs, dances, ceremonies that belong to specific names, families and houses affirm our spiritual connections to salmon that go back farther than our collective memories combined.



The effectiveness of Heiltsuk resource management systems over the millennia is evident when one considers that pre-contact, our numbers were many times higher than they are now. Before the decimation of our population, although we had more people and therefore an increased demand on the ecosystem, not only did we meet our needs in a sustainable fashion, we were so successful we were able to accumulate a surplus, supporting inter-tribal trade and the development of a complex society; this would not have been possible if our people had not managed our resources in a sustainable way. This was achieved through adherence with *Ǵvǵlǵs*.

7.3 *ǴVǴLǴS*: HEILTSUK JURISDICTION DEMONSTRATED BY OUR MARKS ON THE LAND

Heiltsuk knowledge keeper Fred Reid has said that totem poles were jurisdictional markers within the Heiltsuk territory. Fred provided the specific example of a totem pole on what is now known as Calvert Island and that when other Nations and tribes were passing through, they would know whose territory they were in by the totem pole.

Heiltsuk totem poles would usually depict first ancestors, beings and crest animals, marking a house/family's lineage and validating the powerful responsibility and privileges that the house/family held over the territory. Totem poles are tangible evidence of *Ǵvǵlǵs* and ensured everyone entering the territory knew whose house controlled and managed those lands and waters.

Heiltsuk totem poles were also used to represent and commemorate ancestry, histories, people, or events. This connection to the first ancestors of the Heiltsuk homelands is where the phrase "since time immemorial" comes from; these original ancestor *núyǵh* (stories) tell of the creation of Heiltsuk territory. A house/family's relationship with the original ancestors on the pole is what establishes their title to waters and lands of a particular place.

We also feel the presence of our ancestors in the stone pictographs and petroglyphs throughout our territory. These imprints on the land by our ancestors remind us of our ancient relationship with our homelands and waters.



8.0 ARTICULATING ĞVİĽÁS

Traditionally, the transmission of knowledge in Heiltsuk society from one generation to the next was through the teaching of the youth by Elders of the immediate and extended family, by speaking and leading by example. This holds true for the members of the DáduqvĽá Committee to varying degrees, depending on our age and personal experience which for some members included separation from home, family and Heiltsuk culture through the imposition of the residential school system and removal from our village. Drawing from our sources and all we have been taught, the DáduqvĽá Committee has distilled the concept of ĞvĽás into the following foundational principles: ²⁶

Xáta	respect
Pácuá	working hard to be independent, to be reliable, respectful, resourceful. An example of this value is the practice of working hard to gather and preserve traditional Heiltsuk foods to last throughout winter months and avoid dependency upon others for one's sustenance and well-being.
Sála	being in control of one's actions; being in one's right mind; intelligent behaviour to strive for.
Nuáqi	one's thoughts; balance of mind, body, emotions and spirit
QáyáiqĽa-s ĥaík	good thoughts, positive thinking, being pro-active
Wuálas ĥúkv	to be unconditionally kind
ĥíkila	to take good care of something (for example, taking care of one's home and territory, a value held in high esteem). ĥíkilaŋts qŋts wáxv:wúisaŋv - We take good care of our territories. OR the command: ĥíkilaŋsi qŋts wáxv:wúisaŋv - take good care of our territories.
To be truthful.	Although there isn't a Heiltsuk word for "honest" or "truthful", there is for "to lie". Kítsi qíkva means don't lie, because the people will know when one lies. The value of honesty and the stigma associated with being dishonest in Heiltsuk society is evidenced by the word " qáqíxvbala " - meaning a person known to be in the habit of lying all the time.
TqĽíĽá	give advice on what to do and how things should be
ĤaíkĽá	to make things right when needed, to make amends

²⁶ Sources include 1983 interview with late former Heiltsuk Chief Councillor, Cecil Reid (1930-2016); late Hannah Hall (1901-1984), interviewed in HaĽzaqvĽa March 20, 1980, translated by three fluent speakers (Peggy Housty, late George Housty and late Florence Humchitt, transcribed by Pauline Waterfall under their direction; and late Phyllis McKay, HaĽzaqvĽa language teacher as part of her curriculum unit on Heiltsuk values.

These principles are tangible signposts representational of the vast and multi-layered concept of Ğvıłás, for the Dáduqvı́á Committee to reference in adjudicating the impacts of the Spill from the Heiltsuk traditional perspective. In the course of identifying these principles of positive, pro-social conduct, we also learned that there are Heiltsuk words that express the opposite and identify concepts contrary to Ğvıłás - behavior that can bring dishonour to oneself or one's family, is anti-social and must be corrected in order to maintain a healthy community.

As with any legal order, there are consequences associated with a breach of Ğvıłás with the response proportional to the seriousness of the offence. Traditionally, depending on the breach, the response could have ranged from death, to isolation or banishment, to being called before a council of Yı́mas or Wı́úmaqs (women of high rank) for accountability, to service to the community or to undertaking a ceremony within a feast or potlatch to acknowledge the harm that was done and to make amends. Pauline Waterfall recalls her late grandmother's teachings that there was an incremental process of responding to breaches of Ğvıłás. The ultimate sanction short of physical death was to strip a Heiltsuk of his or her membership so that they would have to leave the community and would no longer be considered Heiltsuk. Certain negative behaviours contrary to Ğvıłás were understood to attract natural consequences to the environment or the spirit world which in turn would impact the whole community. Thus the wellness of our place - our homes, our village, our waters and lands was protected, sustained and maintained through respect for Ğvıłás. Generations of our people were brought up to understand that there are human and non-human implications for breaching Ğvıłás and our oral histories speak to those lessons, our body of laws.

One of the most well-understood applications of Ğvıłás is the Heiltsuk practice of isolating those persons who have done wrong from the community. The purpose of isolation is to separate the offender from all he knows, understands and loves and put him on the land, alone to learn to understand himself and have the time and solitude to reflect and hopefully resolve to make positive change. Traditionally, someone put into isolation might expect to live out their lives alone unless they were able to demonstrate that they had learned from their errors and changed their ways, in which case they might be invited back into the village.



Dáduqvłá Committee member Yímás Frank Brown, was the first Heiltsuk to be isolated in living memory. Frank was before the court as a young teenager, and after hearing from Frank's uncle, Robert Hall, Judge Barnett agreed that he should be sentenced in accordance with Ğvılás and for the first time, Ğvılás informed a decision of the Canadian justice system. Judge Barnett ordered that Frank, only 14 years old at the time, be banished and sent out of Bella Bella to an isolated camp where he spent eight months alone. Through the healing power of nature and by re-connecting with the Creator and his spirituality, Frank was able to come to terms with his anti-social behaviour and reconcile with his community. It required him to do the soul-searching and hard work to want to make a change for the better - to actively make that choice to do better. It was Ğvılás rather than the Criminal Code, that laid the way for the personal transformative experience that changed the direction of Frank's life.

Also, in accordance with Ğvılás, as an adult, Frank with the support of his family, hosted a feast to acknowledge the harm he had caused to his community, to uplift those who helped him find his way, to make amends and symbolically wash himself of the past and move forward in his life. As part of protocol and the social covenant of the feast house, it was necessary for Frank to publically recite his experience. This was done through a dance depicting the núyń of Frank's spiritual transformation that occurred while he was in isolation. According to Frank, while in isolation he learned how disconnected he was; by spending time alone he gradually understood his relationship to place which was ultimately revealed as the dwelling place of his spirit and what made him a human being. By re-connecting with land and water, Frank rediscovered his humanity and that the source of his power and all he is, is embedded in place.²⁷ Traditional teachings and beliefs inform our understanding of what it means to be whole; this includes the spiritual connections to our natural world and all life-forces. This sense of connection is fundamental to a sense of balance both in temporal and spiritual ways. To break this relationship and balance results in a concrete sense of disconnection. Frank's personal experience above depicts his disconnection and how he re-claimed his sense of self. Applying these concepts to the community level, the Spill caused an immediate disconnect which continues to be experienced by our people. This sense of disconnection and loss can be equated with mourning the death of a loved one and as was noted in the Report, is an emotion that many of our people expressed as they dealt with the impacts of the Spill.



²⁷ For further information, see *Voyage of Rediscovery* (film by Phil Lucas, 1990, Moving Images Distribution).

9.0 ĞVİĻÁS AND THE FUNDAMENTAL TRUTHS

In deciding the correct way in which to understand ĞvİĻás as a Heiltsuk legal concept and apply it in the context of the Spill, the DáduqvĻá Committee considered legal principles around truth-finding and the assessment of evidence. One of the ways that the western legal system assesses the weight of evidence is by considering credibility and reliability. Credibility refers to the truthfulness of testimony, and reliability means the accuracy with which information or evidence is provided. In considering the information that we received from the Elders regarding ĞvİĻás and what it means, we know their truthfulness is without question. Further, in our opinion, the reliability of what we have learned from the Elders about ĞvİĻás, through their oral teachings and in our readings, is demonstrated by their consistency over time - for example, the lessons we were taught by our current Elders and knowledge-keepers are consistent with the recorded teachings of those who have passed on and going back even further, the truths that ground our núyŋ and oral histories.

ĞvİĻás principles were also independently affirmed and validated in the “Staying the Course, Staying Alive” report on fundamental truths. This report was the collaborative effort of knowledge keepers from the Heiltsuk (DáduqvĻá Committee member, Pauline Waterfall), Haida (Barbara Wilson) and Namgis (Gloria Cranmer Webster) First Nations, who were brought together by łáĻíyasila and his wife Kathy Brown to identify core values common to their



PHOTO: HILLARY BEATTY

Yírhás łáĻíyasila, Frank Brown at Qnúqvái

First Nations and indeed, to many Coastal First Nations. The women collaborated to identify seven fundamental truths that were shared values among their Nations related to biodiversity, sustainability and stewardship.²⁸ The truths were described in the foreword of the report as underpinning principles of stewardship and sustainability and providing an understanding of how Coastal First Nations came to be one of the most complex maritime societies on Earth. In the course of preparing the report, each of the core truths was supported and cross-referenced through the four knowledge-keepers' Indigenous languages, maps, practices and stories in relation to the natural world and the environment. Prior to its publication, the report was peer-reviewed by other Indigenous knowledge-keepers who provided their independent validation.

In reviewing the fundamental truths, we found them to align with and support our traditional knowledge and interpretation of Ǿvǐlǎs:

Fundamental Truth 1: Creation

We the Coastal First Peoples have been in our respective territories (homelands) since the beginning of time.

Fundamental Truth 2: Connection to Nature

We are all one and our lives are interconnected. Our relationship with our territory is fundamental and we regard it as an extension of ourselves. That is why our ancestors gave names to important sites and geographical features, just as names were and continue to be bestowed upon family members.

Fundamental Truth 3: Respect

All life has equal value. We acknowledge and respect that all plants and animals have a life force.

Fundamental Truth 4: Knowledge

Our traditional knowledge of sustainable resource use and management is reflected in our intimate relationship with nature and its predictable seasonal cycles and indicators of renewal of life and subsistence.

Fundamental Truth 5: Stewardship

We are stewards of the land and sea from which we live, knowing that our health as a people and our society is intricately tied to the health of the land and waters.

Fundamental Truth 6: Sharing

We have a responsibility to share and support to provide strength and make others stronger in order for our world to survive.

Fundamental Truth 7: Adapting to Change

Environmental, demographic, socio-political and cultural changes have occurred since the creator placed us in our homelands and we have continuously adapted to and survived these changes.

²⁸ Staying the Course, Staying Alive, Coastal First Nations Fundamental Truths: Biodiversity, Stewardship and Sustainability.

10.0 OUR NUÁQI (“MATURE THINKING”) - FINDINGS

In order to undertake this adjudication, the Dáduqvłá Committee had to:

10.1 UNDERSTAND THE APPLICABLE LEGAL FRAMEWORK;

The Dáduqvłá Committee conducted research and discussion in order to set out in this Decision its understanding of Ğvılás and to consider the principles of Ğvılás in the context of the Spill. Having gone through that process, it was clear that Ğvılás was repeatedly breached by Kirby and government agencies.

10.2 IDENTIFY THE MISCONDUCT AND DETERMINE IF THE RELEVANT LAWS WERE BREACHED BY THE MISCONDUCT;

10.3 ASSESS WHAT HARMS OR LOSSES WERE CAUSED BY THE BREACH AND WHO IS AT FAULT; AND

10.4 IDENTIFY THE POTENTIAL CONSEQUENCES TO THE WRONG-DOER AND WHETHER THE BREACH AND ITS IMPACTS CAN BE REMEDIATED.

Traditionally, any consequences flowing from a breach of Ğvılás would have been determined by the Yı́mas. Here, in the context of the sinking of the NES, after adjudicating the matter and making findings, the Dáduqvłá Committee will make recommendations for the consideration of HTC and the Yı́mas.

The Dáduqvłá Committee determined that the most efficient way to organize the adjudication of the Spill was with a table. The table of “Findings of the Dáduqvłá Committee: Heiltsuk Ğvılás and the Nathan E. Stewart Spill” at **Appendix II** summarizes the Dáduqvłá Committee’s review of the Report, providing linkage between Ğvılás and the fundamental truths, and our specific findings of how Ğvılás was breached by outside parties and the harms that were caused and the instances of Ğvılás in action by the Nation and Heiltsuk first responders.

Appendix II is an integral part of this Decision.

10.5 THE NATIONAL TRANSPORTATION SAFETY BOARD REPORT: ADDITIONAL FINDINGS

During its deliberations in the summer of 2017, the Dáduqvłá Committee discussed the possible causes of the grounding of the N.E. Stewart and whether it was an unfortunate accident to which no fault could not be attributed or whether there had been negligence on the part of any of the parties in charge of the vessel. Those questions were answered when on November 21, 2017, the National Transportation Safety Board (“NTSB”) released its report of the investigation into the sinking. Our summary of the NTSB report is attached as **Appendix III**.



The NTSB reported several instances of what the Dáduqvłá Committee finds to be negligence on the part of the Captain and crew of the NES and ultimately Kirby, who bears the overall responsibility:

- i. **The waiver:** the NES had been granted a waiver by the Pacific Pilotage Authority (“PPA”) of the compulsory pilotage requirements. The waiver was conditional and required among other things that the NES be operated only by approved deck officers who met the requirements.
 - The second mate who was in charge of the NES at the time of the grounding was not on the PPA-approved list.
 - The captain said he was not aware of the compulsory pilotage requirements, the waiver or its requirements.
- ii. **The electronic chart system (“ECS” alarm):** the NES was equipped with a cross-track error alarm navigation tool that when activated, would signal if a course change point had been missed.
 - The ECS was not activated the night that the NES was grounded, and according to the crew, it was normal practice to not use the alarm. If the alarm had been activated, the crew would have been alerted that the second mate (who fell asleep at the wheel) had gone off course and the NES was headed for disaster.
- iii. **Kirby’s safety management system (“SMS”):** required there to be a second watchstander in the wheelhouse while in pilotage waters.
 - No evidence that a second watchstander was ever in the wheelhouse with the second mate.
 - Kirby had other SMS in place to mitigate risk and these were not implemented by the NES crew.

Had the requirements of the PPA or Kirby's SMS been complied with and implemented or something as simple as the navigational tool activated, the grounding and the Spill would not have occurred. It arose out of a perfect storm of human error and complete inattention to mitigating risks within an inherently risky scenario - the NES transporting a barge carrying petroleum products at night, in coastal waters. Although the consumption of non-prescription drugs was not a contributing factor, there is no way of knowing if alcohol was, since although samples were apparently provided by the crew after the accident, those samples were inexplicably lost.

What is of particular concern is the disregard or ignorance demonstrated by the Captain and the crew, and that based on their evidence to the NTSB, the events that lead to the grounding of the NES were a result of usual on-board practices. This was literally an accident waiting to happen which is completely unacceptable.

Such carelessness can be summed up as contrary to the *Ġviļás* principle of *Sála* (being in control of one's actions; intelligent behaviour to strive for"). In making our findings and recommendations, the *Dáduqvļá* Committee has taken into account the results of the NTSB investigation and its report.

10.6 *Ġviļás* Breached: Summary of Findings

The findings of the *Dáduqvļá* Committee, detailed in Appendix II and also with reference to the findings of the NTSB report, are summarized as follows:

A. By Kirby

1. Repeated refusal to provide complete and timely information to Heiltsuk upon request.
2. Objected to Transport Canada and Transportation Safety Board providing information to Heiltsuk upon request.
3. Refusal of NES crew to answer questions asked by Heiltsuk in relation to the incident.
4. Negligence by the company, captain and crew, resulting in immediate and unknown future environmental damage to natural and cultural resources.
5. Negligence by the company, captain and crew, resulting in immediate and potential long-term mental, physical, psychological, cultural and spiritual harms to Heiltsuk, particularly first responders.
6. Negligence by the company, captain and crew, resulting in impact to Heiltsuk food security.
7. Disregard for and disrespect of Heiltsuk's inherited responsibility to protect and sustain its traditional lands and waters and life therein-- thereby perpetuating the colonial mentality and practices that have clearly failed Heiltsuk peoples.

B. By Canada and/or British Columbia and their various agents

1. A disorganized, chaotic and ineffective Spill response, with little to no recovery of product. Our people witnessed the confusion and resulting delay that occurred between the time the Coast Guard first responded and the attendance of and transfer of responsibility to WCMRC. When an agent for WCMRC attended approximately two hours after the spill, they refused to act until receiving authorization from WCMRC and when it did finally provide response equipment, it was inadequate and the window to deploy the equipment safely had closed due to tide and weather conditions. The entire exercise appeared to be a public relations response rather than actual remediation of the spill and its impacts. Given that time is of the essence with any spill, the delayed and ineffective response exacerbated the environmental impacts and our people have paid the price ever since.
2. Lack of appropriate equipment and trained personnel to deploy it.
3. Delay in informing Heiltsuk of the grounding of NES.
4. Disregard for and disrespect of Heiltsuk ecological knowledge and marine expertise. This failure to engage with Heiltsuk mariners and knowledge-keepers who are intimately familiar with the affected area's sea and weather characteristics:
 - a. contributed to the delayed response and confusion of the government-delegated officials who considered themselves to be in charge; and
 - b. needlessly put first responders in harm's way.
5. Disregard for and disrespect of Heiltsuk's inherited responsibility to protect and sustain its traditional lands and waters and life therein-- thereby perpetuating the colonial mentality and practices that have clearly failed Heiltsuk peoples.
6. Failure to provide sufficient and timely training and safety instructions and equipment to Heiltsuk first responders.
7. Authorized Kirby and other similar vessels to traverse Heiltsuk waters without Heiltsuk consultation and consent.
8. No information to Heiltsuk regarding Pacific Pilotage waiver and the reasons why it was revoked days after the Spill.

11.0 RECOMMENDATIONS - *ḤAÍKŁA*: TO MAKE THINGS RIGHT - AN OPPORTUNITY FOR CHANGE

11.1 THE STRUCTURE AND PROCESS FOR TRANSFORMATIVE CHANGE

As the Dáduqvłá Committee developed its recommendations, we were brought back to Frank Brown's banishment experience; for Frank personally and our people at a broader level, it represented the first time the authority of *Ǿvılás* was acknowledged and respected by the western legal system. Here, as we apply *Ǿvılás* in the context of the Spill and the impacts on our people, we look to the same framework of accountability and change that underpinned Frank's experience and all our ancestors before him and which is as relevant now as it has always been.



HEILTSUK NATION
PHOTO: TAVISH CAMPBELL
& APRIL BENCZE



Frank's experience is sometimes referred to as a rite of passage that includes separation, transition and incorporation of the experience. This concept is well-documented in our oral histories and was recorded by anthropologists such as Boas in "Bella Bella Tales": tales of separation from the community and ritual purification in which guidance or advice is received from various natural and supernatural helpers. Ultimately there is reconciliation and incorporation back into society through the feasting and potlatch system that recounts and retains the núym̓ as an important societal teaching of Ğvįłás.

Broken down, there are four key elements in the process of transformational change; these inform Ğvįłás and are demonstrated in the sacred dances and protocol of the Bighouse: we move around the circle in a counter-clockwise manner, starting with the **identification** of the issue or problem. We move to **acknowledge** it, **address** it and finally **overcome** it. In doing so, we have challenges at each phase: for example one can be stuck with an issue or circumstance and not realize it. We have to therefore realize and acknowledge the problem and then choose to deal with it or not. When we address the issue, we must reflect on the circumstances and make the decision to take action for change. The challenge within the final phase of overcoming the issue is to not be complacent and instead recognize this as a process or journey and continuum for a sustainable society.

To stay true to our responsibilities to our land and waters, we have followed our ancient protocols to work through this problem of the Spill and determine, in accordance with Ğvįłás and from the Heiltsuk perspective, how to address, move forward and overcome this harm caused to our people and our home.

With the Spill, our people's integral relationship to the land and water was impacted to its core - as our homelands and waters were harmed, so were we. We were collectively traumatized by the actions of visitors to our territory who came without our consent and caused us great harm. Many of our people expressed fear, anxiety, grief and mourning for the injury to our lands and waters and the loss of our way of life at Qvúqvái, as we have always known it. It felt like yet another attack, another instance of cultural genocide - this in what is often described by the dominant society as a time for reconciliation and healing. Instead, it felt like a repeat of colonization and an attack on all we are. The injury to our lands and waters was equally an injury to us as Indigenous people.



From this place of truth, the Dáduqvłá Committee offers the following recommendations for consideration by the HTC and Yímas Council:

A. Regarding Kirby and/or their successors(s):

That Kirby be put on notice that their vessels are not welcome in Heiltsuk waters until they have acknowledged the harms done to the Heiltsuk as a result of their negligence and taken responsibility for their corporate misconduct and the misconduct of the NES captain and crew. By banishing Kirby from Heiltsuk waters until they have taken steps to make things right, is consistent with Ğvılás and how those who do harm to the community have traditionally been dealt with. We recommend that Kirby:

- i. Attend in Bella Bella to meet with HTC and the Yímas, host and participate in a traditional washing ceremony at the community hall and apologize to our people for the Spill and the harms that it caused;
- ii. Participate in a healing ceremony with the Heiltsuk at Qvúqvái. The broader purpose of such a ceremony, involving the responsible parties is to commemorate the Spill and its effects, to remind us that we must be remain diligent in our stewardship responsibilities to ensure “never again”.
- iii. Provide a dedicated funding stream to the Heiltsuk to support:
 - a. Ecological restoration including:
 - an Archeological assessment of Heiltsuk fish trap and clam gardens;
 - a feasibility study focussing on the revitalization of these ancient Heiltsuk technologies for future food security, and economic opportunities;
 - restoration of clam gardens as is being done by other coastal First Nations to revitalize the traditional practice and provide enhanced economic opportunities through reliance on Indigenous knowledge.
 - b. A scientific inventory of marine and terrestrial natural resources in the area impacted by the Spill and an assessment of the state of their health, including any residual effects from exposure to diesel.
 - c. A commemorative camp and learning nest at Qvúqvái to support and provide a base for Heiltsuk food and medicine harvesting and processing and other cultural activities and to serve as a safe harbour and retreat.
 - d. A Heiltsuk-based Indigenous Marine Response Centre;
 - e. Health assessments of long term effects of fuel exposure by first responders;
 - f. annual compensation for income loss suffered by Heiltsuk commercial clam fish until the fisheries ban is lifted and clams are deemed safe for human consumption.



Heiltsuk Tribal Territory

The recommendation to support outdoor, food harvesting and cultural programming is premised on the inherent value that Heiltsuk society places on traditional harvesting activities and being on the land and the water. Our world view is one of inter-connectedness and so there is no separation between us and our surroundings. Experience has shown us that connection to the land and sea is essential for our people's psychological and spiritual well-being and thus the health of our Nation. When the land and water are healthy, so are we and the opposite is just as true. We need now to take steps to reclaim our collective health.

Resource harvesting, involving everyone from youth to Elders, reinforces our relationship to each other and to place - to our land and sea. It is imperative to continue imparting to our youth an understanding of Heiltsuk history and culture that flows from our undivided relationship with our territories. This is achieved through the inter-generational transfer of knowledge and interaction amongst our Heiltsuk food and medicine harvesters throughout the *bákvlá* seasonal harvesting cycle. Moreover, revitalization of traditional diets supports healthier lifestyles and Heiltsuk food sovereignty and reinforces with every meal, who we are and where we come from.

B. Regarding Canada:

That Canada make things right with the Heiltsuk by demonstrating its commitment to principles of Reconciliation and the implementation of United Nations Declaration on the Rights of Indigenous People (“UNDRIP”) by:

- i. Prioritizing implementation of the jointly developed Recommended Actions set out in the May 2017 final report of the *Heiltsuk Nation Standing Together Symposium*, including:
 - a. the development of a multi-party communications protocol to guide and support collaborative communication;
 - b. the establishment of a forum to develop and implement the communications protocol and other subsequent initiatives. The Dáduqvǵá Committee especially supports the joint Heiltsuk-Federal steering committee to help to break down the institutional barriers amongst the responsible agencies that created the confusion and delayed Spill response;
 - c. the creation of a Heiltsuk-centred holistic recovery plan to assess and address Spill impacts such as health and wellness, economic and cultural.

The Dáduqvǵá Committee is mindful that the success of the Recommended Actions is dependent not just on Canada’s commitment, but also on Heiltsuk having the necessary capacity to engage. It is essential that Heiltsuk be properly resourced for the long-term in order to carry out this important Nation to Nation work.

- ii. Dedicating financial and other support for the creation and on-going operation of an Indigenous Emergency Response Centre proposed by the Heiltsuk Nation in the November 2017 “Creating a World-Leading Response Plan”. An important element of an Indigenous response centre will be the engagement of Heiltsuk mariners and knowledge-keepers to act as or support, first responders.
- iii. Providing capacity funding to support the work to formalize an Indigenous maritime first responders alliance. Given that the threat of oil spills is a concern to all coastal First Nations, a coordinated approach to spill response would allow neighbours to synergize their efforts and benefit from each other’s strengths. Given the Heiltsuk experience, we are well-placed to lead the way to help organize a coastal Indigenous network of expertise.
- iv. On-going capacity building and training for the Heiltsuk HIRMD Watchman (and the development of auxiliary teams), who were among the first responders and provided vital on-site support during the various stages of the Spill response.
- v. Create the space for independent jurisdiction and authority of our Heiltsuk Watchman under the Heiltsuk Constitution and laws currently under development, and to bring full legal effect to the Heiltsuk Marine Use Plan, all as part of the work of reconciliation. This would include increased scope of responsibility for Watchman, such as monitoring and compliance, powers of investigation and enforcement, and the strengthening of linkages amongst Watchman coast-wide.



Guardian Watchman on October 13, 2016

On the issue of responsibility and lines of authority in responding to marine spills, the Dáduqvłá Committee has struggled with the notion that currently, this authority rests with WCMRC as a Transport Canada certified response organization. It is our understanding that WCMRC has a close relationship with the petroleum industry (either through funding or ownership) and therefore, there certainly appears to be a conflict of interest; we question WCMRC's independence and their ability to objectively monitor and audit a spill and its aftermath to ensure compliance.

Of further concern, spills in Heiltsuk territory fall within WCMRC's North Coast zone, with the main base in Prince Rupert, and as we learned during the NES sinking, an agent in Shearwater who was inadequately equipped. Although WCMRC arrived from Prince Rupert within the 72 hour response window, the Heiltsuk experience made clear that for there to be any realistic hope for clean-up, the response time must be considerably shorter. It makes common sense that the quicker a spill is contained, the less damage there will be, also bearing in mind there is currently no system or equipment in existence that can adequately contain an oil spill and remediate the damage.

Our recommendations above, calling for changes to the first response regime, flow from Heiltsuk inherited responsibilities and obligations under Ǵwíłás to ensure that our home lands and waters are protected and maintained. The NES sinking has demonstrated critical flaws and gaps in the existing system. Lessons learned should include a re-alignment of first response authority; with capacity funding, training and the necessary logistical supports in place, the Heiltsuk ought to be formally recognized as lead responders in the event of future spills on the Central Coast- we are best placed in terms of our inherent responsibilities, marine and ecological knowledge, experience and location.

- vi. In addition, we recommend cultural awareness and sensitivity training at all levels for federal departments and agencies tasked with marine spill response, including senior decision-makers to address and avoid the disrespect and disregard Heiltsuk knowledge-keepers experienced during the Spill response, especially during the first 48 hours.
- vii. In consultation with the Heiltsuk, the drafting of more comprehensive language around a coastal oil tanker moratorium. The Dáduqvlá Committee is aware that the Heiltsuk have stated on the record our Nation's concerns in relation to Bill C-48, the *Oil Tanker Moratorium Act* in submissions before the Standing Committee on Transport, Infrastructure and Communities. The Heiltsuk submission raises numerous deficiencies in the Bill and proposes alternative language by which it can better accomplish its objectives. The Dáduqvlá Committee's looks to Canada to seriously consider the Heiltsuk submission and take steps to amend the Bill so that once passed, the Act will provide some substantive level of protection to our coastline. What particularly struck the Dáduqvlá Committee is that while the protections offered by the Bill are encouraging, over a year later, our people continue to struggle with the impacts of a so-called "small spill" from the NES, with 1/128 the carrying capacity of the oil tankers captured by the Bill. We call on Canada to consult with Heiltsuk on protective regulatory measures that cover the numerous smaller vessels transporting fuel on and down the coast.

What the NES sinking has illustrated is that even the current legislative safeguards are meaningless when they simply aren't complied with. As there are consequences for violating Ǵwíłás, so should there be legal consequences for violating the laws of Canada.

- viii. We understand that as part of the Ocean Protection Plan ("OPP"), and consistent with the OPP's principle to "Strengthen partnerships with Indigenous Communities", Canada has begun the process to review the *Pilotage Act*, in consultation with, among others, the Heiltsuk. We recommend that Canada provide funding to support the Heiltsuk to be on-going, full participants in the legislative review process; in order to have the capacity to make meaningful contributions, this would include the Heiltsuk having the financial means to access legal advice and other external technical support.
- ix. That the Pacific Pilotage Authority be directed to designate Heiltsuk waters as a compulsory pilotage area in which no pilotage waivers can be granted.

C. Regarding British Columbia:

On September 13, 2017, Premier Horgan released a statement affirming the provincial government's commitment to work in partnership with Indigenous peoples "...to embrace and implement UNDRIP...". Premier Horgan noted that as part of the work, his cabinet ministers have been tasked with reviewing policies, programs and legislation to determine how to bring UNDRIP to action. The statement concludes,

"Our government has made reconciliation a cross-government priority. As we work together to address urgent challenges, like wildfire and emergency response, the opioid crisis and support for children and families in communities, we will embrace and implement UNDRIP in full partnership with Indigenous peoples."

The Dáduqvlá Committee recommends that British Columbia be called upon to make things right with the Heiltsuk by working with our leadership to bring life to Premier Horgan's words. One specific action plan, in keeping with Premier Horgan's commitments, was set out in the October 16, 2017 letter from the Heiltsuk to Minister Heyman, Environment and Climate Change Strategy:

- Confirming the Ministry's stated intention to work with the Heiltsuk on an oil spill recovery plan;
- The development of new regulations that apply to marine oil spills;
- Consultation with the Heiltsuk on the development of regulations that will put into force the sections of the *Environmental Management Act* that will require polluters such as Kirby, to finance and conduct comprehensive environmental impact assessments.



PHOTO: HILLARY BEATTY

Heiltsuk Tribal Territory



After the writing of the letter, there was a meeting in Bella Bella on December 17, 2017, with Heiltsuk leadership, Minister Heyman and other Ministry of Environment and Ministry of Indigenous Relations and Reconciliation officials. One of the main topics of concern for the Heiltsuk was the lack of consultation by MOE/MIRR since the Spill and the on-going impasse amongst Heiltsuk, Kirby and MOE in relation to the scope and details of an environmental impact assessment (“EIA”). As well, the Heiltsuk were seeking the assistance of MOE to help us to recoup funds owing to us by Kirby. The Heiltsuk estimated spill-related expenses to deal with MOE, DFO and Kirby to reach as high as \$500,000. The responsible party - an uninvited guest in our waters - that created the mess, has left Heiltsuk to clean it up and continue to deal with the impacts, including the challenge of assessing and evaluating the impacts. This is a disrespectful affront to the Heiltsuk and the provincial officials were asked to put their words into action and provide the requested political support. One of the commitments made by the Minister was to move forward to define the terms of a mutually acceptable, robust consultation process. There was also commitment by the Minister to secure the funds for a psycho-social assessment.

Most recently, on January 30, 2018, the BC government announced it is moving forward with a second phase of proposed regulations under the Environmental Management Act, to improve preparedness, response and recovery from spills. According to the press release, this phase will include “engagement” with First Nations. The Dáduqvłá Committee recommends that the province engage in consultation with the Heiltsuk in relation to the proposed regulations; that recommendation will necessarily include a funding component to provide Heiltsuk with the requisite capacity to prepare for and participate in consultation. The NES sinking and the more recent near-miss with the Jake Shearer places Heiltsuk in the unfortunate lead position of being impacted and the provincial response ought to be proportional.

The province also announced the creation of an independent scientific advisory panel to help address the scientific uncertainties outlined in the report, The Royal Society of Canada Expert Panel: The Behaviour and Environmental Impacts of Crude Oil Released into Aqueous Environments. The recommendations of the advisory panel will inform future regulatory development and approaches to spill response. The Dáduqvłá Committee recommends that at least one half of the panel be comprised of Indigenous representatives, including one Heiltsuk, in recognition of the value of the Indigenous perspective and traditional ecological knowledge in collaboration with western science and in the interests of shared decision-making.

While the Dáduqvłá Committee sees the above as positive movement by the Province, given the seriousness of the Spill and the on-going impacts, we firmly believe more can be done in the interests of accountability and transformative change. We recommend that the Province be called upon to give priority to addressing the urgent issues discussed with the Heiltsuk and that the momentum generated at the December 17, 2017, meeting not be lost.

D. The Pursuit of Justice

One of the strengths of the Heiltsuk has been our resilience, ability to adapt to change and to make the best use of what the dominant society had to offer. After the Spill, the Heiltsuk determined that for justice to be done, we needed to draw from all the legal tools at our disposal. To that end, the Heiltsuk convened the Dáduqvłá Committee to apply our own legal order, our Gvi’ilas, as well as pursuing a civil claim within the external court system. In the interests of attaining full accountability for the harms done to our homelands and our people, the Heiltsuk also look to Canada and British Columbia to similarly make use of all the legal tools available to them.

We understand that the Province launched an investigation after the Mount Polley mine incident but did not lay charges under provincial environmental laws, prior to the expiration of the 3-year deadline. The Committee is not aware if the Province and/or Canada have investigated the circumstances of the Spill and determined whether any of their respective laws were breached. If in fact investigations are underway (or have been concluded), we call upon the Province and Canada to advise the Heiltsuk and keep us informed of the progress and outcome of such investigations and whether charges will be laid.

The Committee is mindful that there are time limits for any environmental charges to be laid and recommends that both the Province and Canada fully investigate in a timely fashion, whether any of their laws have been violated and if so, hold the responsible parties accountable through the laying of charges.

E. Washington State initiatives

The Dáduqvłá Committee was encouraged to learn the Washington State legislature is reviewing a Bill dealing with articulated tug barges (“ATB’s”). A recent Seattle Times opinion article notes that while many of the safety measures to date have focussed on super tankers, smaller size oil barges and ATB’s that move millions of gallons of oil through the Salish Sea, remain under-regulated. The article quoted a 2014 Congressional Research report that ATB’s are described as the “rules breakers” in the maritime industry because they operate with smaller crews, are not required to take pilots and while some may employ captains with local knowledge, this doesn’t equate to “more eyes at the helm. The writer explains that the economic advantages of a smaller crew and lack of regulatory oversight account for the rapid increase in ATB’s. According to the Washington Department of Environment 2016 report, ATB’s and barges made 1,169 and 4,349 calls in the Salish Sea respectively. This is of particular concern, since it is likely that many of those vessels were traveling through Heiltsuk waters to northern ports in 2016 and continue to do so. The writer urged Washington legislators to recognize the risk posed by ATB’s and barges, pointing out that California already has laws in place requiring tug escorts. The article concludes with the hope that Washington’s new Legislature will give these concerns top priority.²⁹

If the Bill succeeds and becomes law in Washington State, it will be of benefit to our people and all coastal First Nations. The Dáduqvłá Committee recommends that the provincial and federal governments be urged to make things right with the Heiltsuk by taking an approach like Washington’s and develop legislation directed at ATB’s and other types of oil barges and the risk they pose to coastal life.



²⁹ Felleman, Fred. *Orcas and Oil Spills Are a Catastrophic Mix*, Seattle Times, December 25, 2017.

12.0 CONCLUSIONS

The Dáduqvǵá Committee has determined without a doubt that our Gvi'ilas was breached by the Kirby Corporation, Canada, British Columbia and their delegated agents and various industrial proponents.

Ǵviǵás encompasses values and beliefs that have been transmitted from one generation to the next, through our oral histories, songs, dances and other teachings and practices. As with any legal system, one of the elements of Ǵviǵás are the consequences that flow in the event of a breach. The opportunity to allow for positive change after a breach is also a principle of Ǵviǵás, as well as being foundational to principles of reconciliation.

The sinking of the NES was an environmental disaster that negatively affected human, animal and plant life—all of which have been in balance, interconnected and intact for thousands of years prior to the Spill. Yet even in one of the darkest moments of our history we understand that we must continue our journey of adapting and moving towards reconciliation. The lessons learned and our healing from this tragedy are integral aspects to maintaining a healthy community, and indeed, a healthy world and moving forward. So too, from our perspective is the imperative that the responsible parties be held fully accountable in accordance with Ǵviǵás and the laws of Canada and BC.

Incidents such as the Spill, caused by industry operating in our territorial lands and waters will over time, systematically erode Heiltsuk natural capital, causing ecological death by a thousand cuts. This is especially so as industrial development continues to escalate, with the support of government in the pursuit of employment and tax revenues. The Heiltsuk cannot and will not stand by silently and witness. Gvi'ilas obliges us to take action and pursue systemic change that takes into account the range of impacts that government-supported industrial expansion has on our people, our territory and our way of life, including ecological, social and economic. Only through the protection of Indigenous communities like the Heiltsuk can the BC coast - and by extension planet Earth - survive. We will keep protecting the coast and contributing to a healthy planet. We believe where Indigenous people live, nature will live and thrive. We have a responsibility as Heiltsuk to ensure our stories and experiences caused by this diesel spill are shared with others.

The recommendations made in this report are an affirmation that Ǵviǵás remains as the foundation of a legal and social order that continues to guide and empower the Heiltsuk to thrive as a Nation, co-existing with and relying upon, its natural environment. Ǵviǵás underpins Heiltsuk responsibility to protect our home for future generations-- from a Heiltsuk and Ǵviǵás informed perspective, home means not just our personal spaces but also our village and the waters and lands that surround us and make up our homeland or territory.

The Heiltsuk people have a long history of defending our homelands, adapting to change as needed. In 1913, the Royal Commission on Indian Affairs for BC (often referred to the “McKenna-McBride Commission”) came to Bella Bella. The Commission’s primary goal was to adjust Indian reserve sizes as a way to settle what was considered to be “The Indian Question”. The Commission heard from a number of Heiltsuk Chiefs and Heiltsuk leader Bob Anderson. The message delivered by Bob Anderson rings as true today and continues to inspire the Heiltsuk for full recognition by government, industry and other third parties, as the rightful owners of our territory and all its resources:

....We know that it is lawful (*sic*) to steal land, and we have no way of finding out whether these men who come and squat here are proper settlers or not. We are the natives of this Country and we want all the land we can get. We feel that we own the whole of this Country, every bit of it, and we ought to have something to say about it. The Government have not bought any land from us so far as we know and we are simply lending this land to the Government. We own it all. We will never change our minds in that respect, and after we are dead, our children will still hold on to the same ideas. It does not matter how long the Government take to determine this question, we will remain the same in our ideas about this matter.³⁰



PHOTO: HEILTSUK INTEGRATED RESOURCE MANAGEMENT DEPARTMENT

³⁰ from Royal Commission on Indian Affairs for the Province of B.C., Bella Coola Agency (Aug 25, 1913)

We believe that the Dáduqvłá Committee recommendations and their implementation will bring about transformational change and indeed, institutional change. Unless we learn from this senseless and catastrophic spill, we are almost certain to fail at providing future generations with a healthy coastal environment and economy.

It is only by making things right again that we will become whole again as a Nation.

AGREED BY CONSENSUS:



Ýilistis, Pauline Waterfall, Chairperson



łáłíyasila, Frank Brown, Co-Chairperson



Qáit, Arnold Humchitt



Lanemraeit, Bessie Brown



Házitba, Saul Brown



HEILTSUK NATION
PHOTO: APRIL BENCZE

APPENDICES

APPENDIX I | DÁDUQVĹÁ COMMITTEE PROFILES

Yilistis Pauline Waterfall, Chairperson

Pauline was born into the family of Chief Náci/Ńúlis/Dúqváisja/Wákidis George and (Ćúmqlaqs) Peggy Housty at Bella Bella BC. Her mother's Starr lineage includes family from Kitasoo. She attended day school at Bella Bella, residential school at Pt. Alberni and graduated from UBC with a B. Educ. degree. She taught adult education in her home community for 40 years at Heiltsuk College, an institute that she helped to create. She is an O.B. C. recipient who was acknowledged for her contributions to post-sec education locally and provincially. Over time, she was invested with traditional Heiltsuk knowledge and has developed cultural orientation workshops and curricula to share this knowledge with others. She is an adjunct professor with Vancouver Island University where she developed and teaches a First Nations Culture & History course with their FN Stewardship program. She is an elected tribal councilor who holds portfolios in governance, culture/heritage and finance. She is a proud mom to 3 adult children and 6 grandchildren and is supported in all her endeavors by her loving husband, John.

Yímás lálíyasila Frank Brown, Co-chairperson

Frank Brown is a member of the Heiltsuk Nation from Bella Bella. His Yímás name is lálíyasila meaning "preparing for the biggest potlatch". Frank has been active for 30 years in Indigenous community development, focusing on youth, natural resources, tourism, forestry, fisheries and stewardship. Frank is a herring spawn on kelp fisher and traditional Heiltsuk food harvester. He is a leader in the Pacific coast wide ocean-going Indigenous canoe resurgence and served as initiator and events planner for the Tribal Journey to Bella Bella 1993 and 2014. Frank has served as the Director for Aboriginal Tourism BC and was Chairperson of the Heiltsuk Economic Development Corporation, Director of Land and Marine Stewardship for the Coastal First Nations- Great Bear Initiative; established and was the Program Manager for the FP Innovations, BC Forestry Program. Frank was also the founding Director of the Heiltsuk Integrated Resource Management Department. Frank is also an entrepreneur and owned and operated SeeQuest Adventures, an Indigenous eco-tourism venture. Currently, Frank is an Adjunct Professor at Simon Fraser University's Resource and Environmental Management Department. He also developed and is implementing an Aboriginal Eco-Tourism Training Program through a partnership with the Heiltsuk Tribal Council, Vancouver Island University and North Island College.

Yímás Qáit Arnold Humchitt

Arnold was born into Chief Qáit's family at Bella Bella, BC. His mother Ruby's family roots stemmed from both Heiltsuk and Kitasoo Nations so he feels blessed with a large extended family. With his father Carmen's passing, Arnold was installed as a Hereditary Yímás who now holds the ancestral Chief's name Qáit. He attended the Bella Bella Day School until Grade 4 and then was sent to Pt. Alberni Residential School, where he attended for ten years and returned home at the age of 16. As with other survivors, Arnold experiences were negative and difficult; however, this didn't diminish his strong spirit. He entered into the labor force and held several jobs including in fish canneries, in the local fish hatchery and as a custodian at the local hotel. He never shied away from hard work and continues to contribute to his Nation's development in his role as a Hereditary Leader. His ancestral name and chieftainship come from the Qvúqvaýáitxv territory where the NES fuel spill occurred. With this lineage, Qáit has a vested responsibility in participating in the ongoing resolution to address this and other environmental concerns that impact his homelands and waters. He is a highly respected leader who is dedicated to his people and Nation.

Lanemraeit, Bessie Brown

Bessie has more than 25 years of research, journalism and public relations experience.

The late George Manuel (president of the National Indian Brotherhood and the Union of BC Indian Chiefs) taught Bessie that information and knowledge is power. Since then her passion has been to provide relevant information on Indigenous issues to community leaders and members. She believes effective communications leads to the active participation of members in the development of healthy and democratic communities.

One of the most important things Bessie learned at each of her jobs is the importance of knowing First Nations history. She has been blessed with many mentors who have taught her about the rich histories and rich cultures that Indigenous people have. Knowing that history helped build her identity and create a sense of pride around being part of the Heiltsuk Nation and the larger Indigenous community.

For more than a decade she has been the Communications Manager for the Coastal First Nations. Other jobs she had include being the editor of British Columbia's oldest First Nations newspaper the Native Voice, librarian with the Union of BC Indian Chiefs, senior reporter with a community newspaper in New Westminster, assistant negotiator with the Heiltsuk Treaty Office, and communications advisor with the Federal Government. Her educational background includes certificates in Journalism from Langara, Vancouver Community College and Public Relations from Continuing Studies, University of Victoria.

Háziłba, Saul Brown

Saul is a student of Heiltsuk Ḡviłás and governance. As food sovereigntist, he sees the intrinsic value and necessity of giving effect to Heiltsuk laws out on the water and land. Having worked with Elders on the Marine Governance file with the intent of breathing life into Heiltsuk ancestral law in the contemporary, the resurgence of Heiltsuk legal traditions is major facet of his journey. Saul completed a B.A. with distinction at UVic, writing a thesis on Heiltsuk laws that govern the herring fishery in contrast to the Canadian law (Fisheries Act and case law). This thesis was presented at the University of Hawaii in 2015. He is currently a negotiator for the Nation's Hałcístut process.

APPENDIX II | FINDINGS OF THE DÁDUQVLÁ COMMITTEE: HEILTSUK ĞVÍŁÁS AND THE NATHAN E. STEWART SPILL

1. ĞVÍŁÁS	2. BREACHES OF ĞVÍŁÁS	3. HARMS CAUSED	4. ĞVÍŁÁS IN ACTION
<p>Xáta- respect</p> <p>-is the foundation of, and inter-connected with, each of the fundamental truths:</p> <p>Fundamental Truth (“FT”) 1: We have been in our homelands since the beginning of time (ie. inherent jurisdiction)</p> <p>FT 2: Connection to Nature - we are all one, our lives interconnected. Our relationship with the territory is fundamental and we regard it as an extension of ourselves.</p> <p>FT3: Respect- all life has equal value, acknowledge and respect that all plants and animals have a life force.</p> <p>FT 4: Knowledge - our knowledge of resource use and management is reflected in our relationship with nature</p> <p>FT 5: Stewardship: we are stewards of our land and sea; our health is tied to the health of land and waters.</p> <p>FT 6: Sharing: our responsibility to share, support, provide strength to others.</p> <p>FT 7: Adapting to Change</p>	<ol style="list-style-type: none"> 1. Repeated lack of response, delayed response and incomplete responses to Heiltsuk information requests; failures to respect and violation of, Heiltsuk title and rights.¹ 2. Kirby objection to TC and TSB providing requested documents to Heiltsuk; also Kirby refusal to provide documents to Heiltsuk.² 3. Heiltsuk offers of their knowledge, and experience to help protect environmentally significant areas from diesel were largely disregarded on Day 1 when time especially critical.³ 4. No recognition of Heiltsuk traditional ecological knowledge by government and industry as part of the “Transport Canada Partnership”.⁴ 5. On day 1 and 2, no training, safety instructions or gear to Heiltsuk first responders.⁵ 6. NES crew transported to Shearwater refused to answer questions from Heiltsuk or disclose anything as to what occurred on board.⁶ 7. Kirby’s refusal to disclose to Heiltsuk why NES missed the course change, who was on watch and if they held a waiver.⁷ 8. NES route through Heiltsuk tribal waters, without Heiltsuk consultation; Coast Guard aware of FN concerns about NES travelling inside waters.⁸ 9. a) Heiltsuk not informed about Pacific Pilotage waiver or if all exemption requirements were met by NES crew, despite Heiltsuk’s expressed concerns about oil tankers (In 2015, PPA renewed Kirby’s coastal waiver without consulting Heiltsuk).⁹ b) No information to Heiltsuk why waiver revoked and refusal to disclose when requested.¹⁰ 10. Foundational; failure to consult demonstrates lack of respect for Heiltsuk jurisdiction; FCA decision evidence of Heiltsuk ability and commitment to litigate and advance a winning argument relying on the Western legal system. 11. Canada’s failure to consult with Heiltsuk on “World Class Tanker System”.¹¹ 12. BC’s failure to consult with Heiltsuk on proposed changes to <i>Environmental Management Act</i>¹² 13. Late call to Heiltsuk to report spill (breach of respect to Heiltsuk and all the FT’s) 	<p>Chaos on water¹³</p> <p>Delay in coordinated response and corresponding increase in spill and environmental impacts (lack of proper equipment, esp spill response materials; confusion where to locate equipment, all leading to delays).¹⁴</p> <p>Delayed and uncoordinated response = increased harm to environment</p> <p>Magnitude of impacts to Heiltsuk, including:</p> <p>Physical (sickness from exposure to diesel), emotional, economic, social, cultural, spiritual impacts to Heiltsuk</p> <p>Impacts on food harvesting activities - food security</p> <p>Impacts to sacred sites</p> <p>Economic, cultural and social impacts; ecological impacts/damage to local species (sources for above listed harms)¹⁵</p> <p>NES ran aground.¹⁶</p>	<p>Heiltsuk disagreement with oil tankers in Heiltsuk waters and support for tanker moratorium in BC coastal waters.¹⁷</p> <p>Heiltsuk first responders on spill site by 6:30 am on Oct 13 to assist and monitor.¹⁸</p> <p>Bo Reid identified as Chief of the affected area and the Hemas delegated point of contact.¹⁹</p> <p>In 2010, Heiltsuk called on Fed govt to ban oil tankers on the coast.²⁰</p> <p>Heiltsuk participated in JRP hearings for Northern Gateway and in the Federal Court of Appeal challenge, arguing inadequate consultation. The FCA agreed.²¹</p>

1. ĞVİĻÁS	2. BREACHES OF ĞVİĻÁS	3. HARMS CAUSED	4. ĞVİĻÁS IN ACTION
<p>híkila - to take good care of something (for example, taking care of one's home and territory, a value held in high esteem). híkilaŋts qŋts wáxv:wúisaŋv "We take good care of our territories"</p> <p>Aligns with Xáŋa, Sála, Páčuá, which in turn align with:</p> <p>FT 1: Creation (inherent authority)</p> <p>FT 3: Respect</p> <p>FT 2: Connection to nature</p> <p>FT 5: Stewardship</p>	<p>WCMRC's 72-hr spill response time is unacceptable and the fuel spill recovery effort during that window was ineffective (too little too late)</p> <p>Chaotic, disorganized response by agencies shows need to work together inclusively, by consensus. Failure to do so breaches Ğvıĵas and the FT's and contributed to delay in response measures and the listed resulting harms²²</p> <p>Not until Oct 15 were Heiltsuk first responders provided with safety equipment and training²³</p> <p>Not until Oct 14 was Heiltsuk local knowledge recognized and not subject to approval by response agencies²⁴</p>	<p>Economic, emotional, cultural and social impacts to Heiltsuk; impacts on food harvesting activities - food security</p> <p>magnitude of spill to Heiltsuk</p> <p>-impact on sacred sites</p> <p>-"emotionally, felt worse the 2nd day"</p> <p>Economic, cultural and social impacts of the Spill; ecological impacts/ damage to local habitat and species (for example, endangered and fragile abalone stocks). As of March 2017 when Report released, parts of Area 7 still closed by DFO for bivalve shellfish harvesting due to contamination.²⁵</p> <p>Short and long-term health impacts of diesel exposure on Heiltsuk first responders²⁶</p> <p>Delay in effective spill response caused by confusion, equipment unclear line of authority and disregard for Heiltsuk knowledge increased environmental harms (ie. Heiltsuk reported absorbent pads sank causing further contamination²⁷)</p>	<p>Heiltsuk first responders and Nation immediately responded and maintained a steady presence on site and provided on-going assistance²⁸ (despite Canada's assertion and unilateral assumption of jurisdiction)²⁹</p> <p>Heiltsuk monitors who stayed on-site overnight observed that booms broke loose due to tide³⁰</p> <p>HTC organized check-in, food, fuel for crews and Heiltsuk³¹</p>

1. ĞVILÁS	2. BREACHES OF ĞVILÁS	3. HARMS CAUSED	4. ĞVILÁS IN ACTION
<p>Ǫáćua - working hard to be independent, reliable, respectful, resourceful.</p> <p>Aligns with:</p> <p>FT 1: Creation</p> <p>FT 2: Connection to nature</p> <p>FT 3: Respect</p> <p>FT 4: Knowledge</p> <p>FT 5: Stewardship</p> <p>FT 6: Sharing</p> <p>FT 7: Adapting to change</p>	<p>Further examples of chaos, confusion and disregard for Heiltsuk causing delay in response time and protective measures:</p> <p>Heiltsuk request for booms to be deployed denied without authorization from WCMRC - and third parties willing to wait and not take necessary action³²</p> <p>Heiltsuk attempting to contact Coast Guard, told to instead contact response team³³</p>	<p>Delayed response caused increased environmental exposure to diesel³⁴</p>	<p>Heiltsuk take action, risk personal harm to successfully keep barge off rocks and shore of Gale Ck.³⁵</p> <p>Heiltsuk attempting to work collaboratively and to coordinate response efforts</p>
<p>Tǫíla - to give advice on what to do and how things should be</p> <p>Aligns with:</p> <p>FT 1: Creation (inherent jurisdiction)</p> <p>FT 2: Connection to nature</p> <p>FT 3: Respect</p> <p>FT 4: Knowledge</p> <p>FT 5: Stewardship</p> <p>FT: Sharing</p> <p>FT 7: Adapting to change</p>	<p>Discounting of, disregard for, delayed willingness to accept, Heiltsuk knowledge and advice (ie. putting out booms; where to anchor the barge)³⁶</p>		<p>Soon after the spill, Bo Reid was identified to the 3rd parties as Chief of the affected area and the Hemas delegated point of contact</p> <p>Heiltsuk first responders provided advice, recommended remedial action</p> <p>Heiltsuk request Incident Command be set up at Band Office</p> <p>Dáduqvǻ recommendations to HTC and Hemas</p>

1. ĢVĪĻĀS	2. BREACHES OF ĢVĪĻĀS	3. HARMS CAUSED	4. ĢVĪĻĀS IN ACTION
<p>Ĥaīklā - to make things right when needed; to make amends</p> <p>(for example, a step in the right direction: when PPA revoked Kirby's waiver and added conditions to vessels with existing waivers)³⁹</p>			Daduqwala recommendations to HTC and Hemas
<p>Ķāyāiqīa-s ĥaīk - good thoughts, positive thinking, being pro-active</p>			The decision to adjudicate the circumstances of the NES incident in accordance with Gvi'ilas ⁴⁰

ENDNOTES

- ¹ Investigation Report, paras. 10, 13, 15 (document request summary) 16, section 3.2.1 (interview requests); paras. 32, 39, 85, 86, 123, 134
- ² Par. 33
- ³ Paras. 106, 118, 122, 124, 161, 163, 164, 171
- ⁴ Para. 62
- ⁵ Para. 118, 181.
- ⁶ Paras. 123; p. 53
- ⁷ Para. 135
- ⁸ Paras. 48, 49
- ⁹ Paras. 53-55
- ¹⁰ Paras. 56-57
- ¹¹ Para. 66
- ¹² Para. 72
- ¹³ Paras. 120-121
- ¹⁴ Para. 119, 146, 147, 149, 154
- ¹⁵ For example: paras. 83, 84, 134, 160 ; witness statements at pp. 51, 54, 56, 57, 59, 61-63, 66 ("when our environment is sick, we are sick") 67, 69-70 ("emotionally, felt worse the 2nd day"), 137
- ¹⁶ Paras. 58-60
- ¹⁷ Para. 11
- ¹⁸ For example, witness statements, pp. 48-70; paras. 99, 105, 115-116, 129
- ¹⁹ Paras. 3-9, 85-86.
- ²⁰ Paras. 75-76
- ²¹ Paras. 77-78
- ²² Paras. 137, 158
- ²³ Para. 181
- ²⁴ Para. 142
- ²⁵ Paras. 188, 190
- ²⁶ Para. 186
- ²⁷ Para. 157
- ²⁸ Paras. 138, 142, 145, 155
- ²⁹ Para. 64
- ³⁰ Para. 139
- ³¹ Para. 138
- ³² Para. 113
- ³³ Para. 111
- ³⁴ Para. 137
- ³⁵ Para 110
- ³⁶ For example, paras. 122, 130, 134; witness statements at pp. 48-51.
- ³⁷ For example, paras. 122, 130, 134; witness statements at pp. 48-51.
- ³⁸ Para. 130
- ³⁹ Paras. 56, 60
- ⁴⁰ Paras. 3-9

APPENDIX III | SUMMARY OF NATIONAL TRANSPORTATION SAFETY BOARD REPORT

The United States' National Transportation Safety Board ("NTSB") released a 14-page Marine Accident Brief on November 21, 2017 on the grounding of the Nathan E Stewart. The NTSB notes that none of the crew was injured but environmental damage occurred when approximately 29,000 gallons of fuel and lube oil were released. Damage to the vessel and barge was estimated at \$12 million.

The NTSB has authority to investigate and establish the probable cause of any major marine casualty. Its report is based on factual information either gathered by NTSB investigators or provided by the Coast Guard from its informal investigation of the accident.

The NTSB does not assign fault or blame for a marine casualty. Rather its "investigations are fact-finding proceedings with no formal issues and no adverse parties . . . and are not conducted for the purpose of determining the rights or liabilities of any person."

The NTSB found the probable cause of the accident to be that the second mate who was in charge of the NES during the critical time, had fallen asleep at the wheel and not been aware that the ship was off course. Despite the many systems Kirby apparently had in place to safeguard against accidents such as this, they weren't implemented by the Captain and his crew the night of the Spill.

The NTSB's key findings were:

- Prior to the grounding, all NES's vital systems were functional, and there were no indications of a mechanical failure that may have led to the accident.
- Drug tests were conducted on all seven crew and the results were negative. A company representative stated that alcohol testing was performed on the crew after the accident, but those samples were lost with the vessel.
- The waters where the grounding occurred were deemed to be a compulsory pilotage area that fell under the jurisdiction of the Pacific Pilotage Authority (PPA). International vessels of 350 gross tons or larger were required to hire a PPA - licensed pilot as a risk mitigation measure to ensure safe transit through the waterway. However, the law allowed for a waiver from the compulsory pilotage requirement for vessels under 10,000 gross tons that met certain conditions.
- Kirby was granted a waiver to specific tug boats and barges in the company fleet that were operated by a list of deck officers who met the sea time requirements for the route.
- The NES captain and chief mate were listed among the deck officers who satisfied the sea time requirements. The second mate, however, was not on the PPA - approved list.
- The NES captain stated to investigators that he was not familiar with the compulsory pilotage requirements, nor with the details of the company's waiver and its requirements. The PPA revoked Kirby's waiver from the compulsory pilotage requirements on October 16, 2016.

- Kirby's safety management system ("SMS") required that the NES have an additional watchstander in the wheelhouse with the licensed deck officer while they were in pilotage waters, unless that individual was making safety rounds, answering alarms, or performing other tasks of short duration. There was however no evidence that a second watchstander was ever present on the bridge with the second mate.
- Kirby had system management systems in place intended to mitigate the risk associated with vessel operation, however, the procedures and processes outlined in each system were not implemented and applied by the NES' crewmembers.
- It is the company's overall responsibility to ensure that its systems are implemented and consistently followed at all levels of the organization, both ashore and aboard each vessel. However, on board a vessel, the captain is responsible for ensuring that the procedures and processes are followed, including motivating the crew to comply with the provisions of the SMS.
- Based on the statements of the crew as well as the lack of documentation in the vessel's logbook or elsewhere regarding the performance of the safety rounds, there is no evidence to indicate that that SMS procedures were implemented.
- Although the second mate was aware of the electronic chart system ("ECS") cross-track error alarm function, he didn't use that navigation tool and said it was normal practice for the navigation team to not utilize the alarm.
- Had the ECS alarm been activated as it was supposed to be, the alarm would have sounded after the second mate missed the course change required near Ivory Island at 0053. Based on time, speed, and distance calculations, the alarm would have activated at approximately 0055 and provided ample time for the second mate to take corrective action.
- The second mate had fallen asleep sometime after 0024, based on the last-known control input near Salal Island. When investigators asked him why he missed the course change he stated simply that he had fallen asleep.



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