

Colonial gender bias and the impact on reserve creation and specific claims

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Introduction: in grandmother's garden



A potlatch in Tsaxis, 2016 / Gwayi river, 2022



“where women used to take the roots out of the ground...they put down stakes to mark the boundary lines for each one....each woman had a wooden spade and a basket...to take up the roots and to carry the roots “

-Chief Cesaholis, McKenna McBride commission testimonies, 1914

Photo by Sarah Hunt / Tłaliłila’ogwa. Cluxewe, 2021.

Mana Wāhine Inquiry

- Mana Wāhine Inquiry of the Waitangi Tribunal in Aotearoa / New Zealand, launched 2018
- Considering the diverse impacts of treaty non-compliance on women
- Useful example of mechanisms for recognizing women's legal authority and impacts of treaty violations within a resolution process



Photo of Mana Wāhine Inquiry in Kerikeri, Feb 2021, [RNZ.co.nz](https://www.rnz.co.nz)

Mana Wāhine Inquiry

“At the heart of all the claims is the loss of rangatiratanga [sovereignty or self-determination] and the social, economic, environmental and cultural loss that has occurred from this loss of recognition of wāhine rangatiratanga.”

-- Manatū Wāhine / Ministry for Women

Erasure of women in the historic record

- Early settler explorers, anthropologists, historians and political representatives were simply uninterested in women.
- The association of women with rights, status and property was viewed as less civilized.
- The normal course of civilized knowledge involved patriarchal forms of power, including exclusively valuing men's authority and thus their voices in the historic record.

Evidence of women's authority

Women's inherited rights of control

“Traditionally, women inherited and exercised rights of control over many forms of this tangible and intangible heritage” (Bruchac 2014, p 154).

Mobility of women's property

“Another important aspect of thliitsapilthim is their mobility. They may move with women in marriage as part of their *thluuch-haamis* (wedding dowry)” (Green 2019, p 87).

Recognition of women's authority today

“The oral histories tell about the family-owned hunting territories and fishing grounds. They tell about the camas-root and berry grounds owned by women. They tell about the clam beds, hunting grounds, and fish weirs held in common for the community to use” (Hul'qumi'num Treaty Group traditional use plan, quoted in Morales 2018, p 154)

North: matrilineal governance

- Indigenous women in northern regions had authority over traplines, cultivation sites and other important lands and waters.
- Tahltan (Roy 2019) and Tsimshian (Fiske 1991) laws were organized matrilineally with crests, songs, property and inheritance passed on through women.
- Indigenous women in the north held inalienable property rights.
- Within Gitksan kinship systems, a House group granted privileges to access territories or resources through marriage to one of its women members, with those rights remaining only for as long as the spouse remained married to the House member (Napoleon 2001).

Coast: inalienable land rights

Rich landscapes among the Coast Salish were due to “a lot of hard work by her female ancestors who owned and managed the camas fields through seasonal burning, weeding and harvesting on a sustainable scale”

--Cheryl Bryce
(Lekwungen/Songhees), in
Corntassel and Bryce 2012, 157.



Coast: interconnected forms of property

“the various types of property are inseparable; you cannot arbitrarily separate the land from its resources or from the stories or songs and corresponding dances that arise from them.”

-- Lucy Bell (Kwakwaka'wakw)
2006, 36-7.



Photo by Karolina Tokarski. 2019 Climate March.
Double raven & copper button blanket by Leslie Dickie.

Interior: complementary gender roles

As explained by Splatsin elder Julianna Alexander (Nuxnuxskaca cts'e7i7elt), "Splatsin had a community role of Water Keeper. Water Keepers are trained to be aware of Sawllkwa [water] and to know about its behavior. They were responsible for explaining when floods would happen. They had expertise about ice and could advise other people about when ice fishing could take place."

-- Nuxnuxskaca cts'e7i7elt et al. 2019, 4.

Women's laws ignored in reserve creation

- The physical enclosure of reserves was accompanied by women's imaginative enclosure.
- Women were transformed into colonial subjects incapable of owning property or asserting decision-making authority over land.
- Women's land use was largely overlooked in the reserve creation process in BC.
 - Did not fit with colonial ideas of 'title' or 'property'
 - Or simply did not matter to government representatives because this was devalued within Indigenous political, cultural and legal continuity

‘Hunter-gatherer’ erased cultivation

“If you would cultivate your land, it would then be considered your own property, in the same way as your dogs are considered among yourselves to belong to those who have reared them; but *uncultivated land is like wild animals*, and your Great Father, who has hitherto protected you, has now great difficulty in securing it for you from the whites, who are hunting to cultivate it”

-- Lieutenant-Governor of Upper Canada in 1836, as cited in Bartlett 1990, 2.

Destruction of women's property

Materially destroying women's crops and markers of women's property—whether by burning them down, digging them up, replacing them with settler crops, fencing them off or a range of other tactics—the transformation of Indigenous landscapes by settlers was key to the creation of BC's present-day geography.

Racial & gender bias in property formation

Why was cultivating root gardens over thousands of years called 'gathering' but settler gardens was seen as evidence of property?

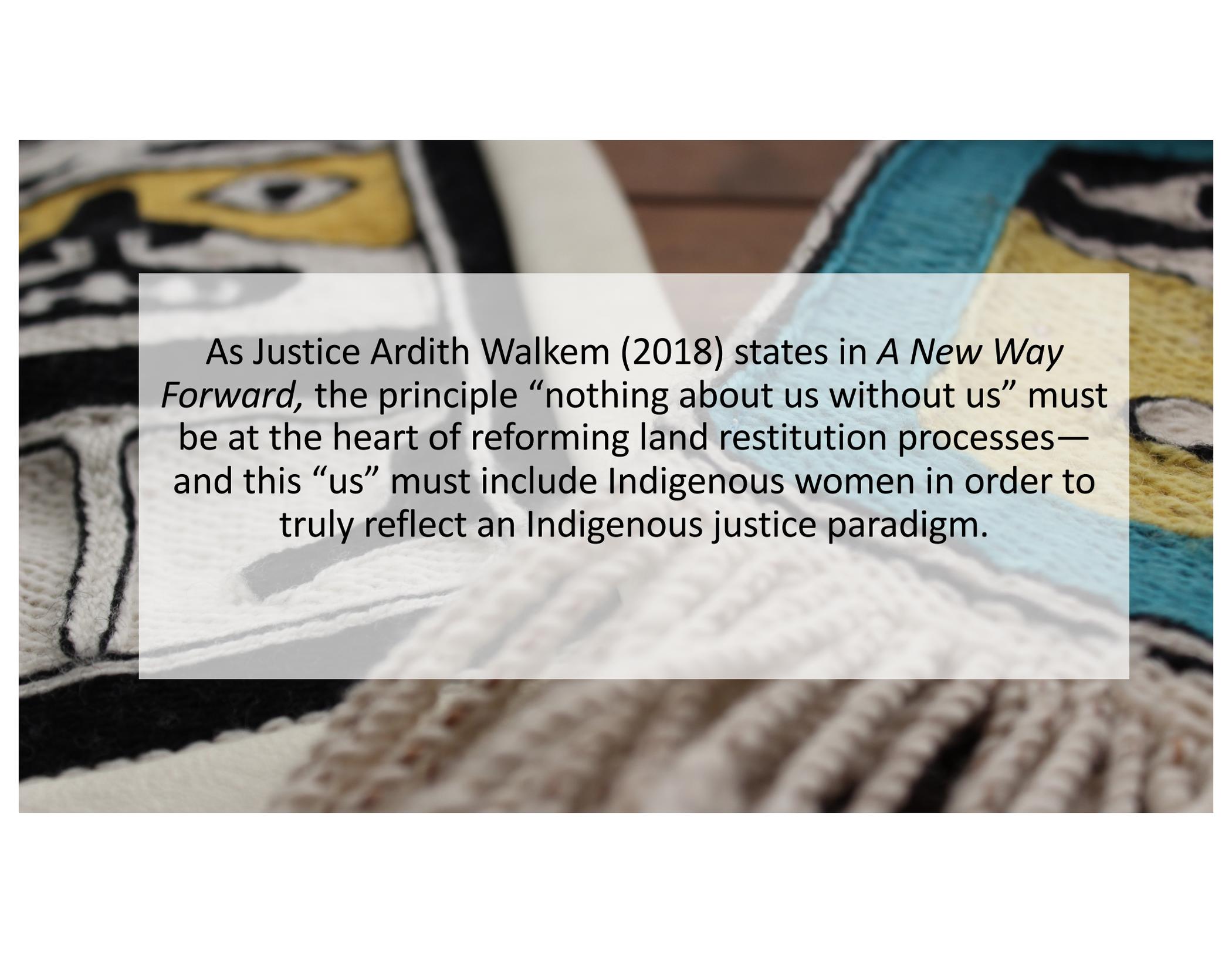
Why was one gathering and the other cultivation?

Why was one evidence of a legal claim and the other not?

"crews poured coal oil over each village's estuarine root gardens and set them ablaze, destroying the year's harvest, leaving soils toxic and likely damaging the gardens' stone structures and wood boundary markers"
-- Duer et al. 2013, 18.

Relevance for specific claims

- Evidence from archival sources, oral histories and traditional knowledge, as well as expert analysis, provides the material basis for traditionally governed property as First Nations cognizable interest in settlement lands for reserve.
- This interest gives rise to unique fiduciary obligations that can become the foundation of asserting a Specific Claim.
- The TK of women and their relationship to territory is the strongest evidentiary basis for a specific claim pertaining to lands under the authority of their nation.
- In the current model, the earliest point TK can be heard is at the Tribunal stage (at the end of the process), not at the earlier stages of establishing the evidentiary basis of a claim.

A close-up photograph of a colorful, textured fabric, possibly a knitted garment or a piece of art. The fabric features various colors including yellow, black, white, and blue, with intricate patterns and textures. A semi-transparent text box is overlaid in the center of the image, containing a quote. The text is in a black, sans-serif font.

As Justice Ardith Walkem (2018) states in *A New Way Forward*, the principle “nothing about us without us” must be at the heart of reforming land restitution processes—and this “us” must include Indigenous women in order to truly reflect an Indigenous justice paradigm.

A close-up photograph of a knitted garment, likely a sweater or scarf. The image shows a white and grey patterned section on the left and a blue and yellow section on the right. The text "GILAKAS'LA!" is overlaid in the center. The text is in a black, sans-serif font, with the letter "G" underlined. The background is a blurred, light-colored surface.

GILAKAS'LA!