

PARKS AS PERSONS: LEGAL INNOVATION OR COLONIAL APPROPRIATION?

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I. Introduction

Stanley Park, located in Vancouver, embodies multiple property tensions, with unique legalities that continue to this day. It is a part of the unceded, ancestral traditional Indigenous lands of great economic, political and spiritual value to Coast Salish Peoples, and was home to many families until the mid-1950s. It remains federal land, purportedly set aside for military purposes, then leased in perpetuity to the newly-created City of Vancouver.¹ It is also a coveted, romanticized urban space that is the jewel of a Canadian municipality. Amidst this complex landscape, this paper asks a simple question: what would it mean for Stanley Park to be a person?

Stanley Park is a 1,000 acre stretch of park land located along the City of Vancouver’s northwest peninsula. Under Canadian law, Stanley Park is owned by the federal government, leased to Vancouver in perpetuity, and is under the jurisdiction and management of the elected Vancouver Parks and Recreation Board. It is not just any park, but the crown jewel of one of Canada’s most populated regions, winning accolades like “top park in the entire world” by TripAdvisor.² It boasts cycling and pedestrian paths that hug the wavy coast, turquoise-blue beaches that fill to the brim in summer months, and peaceful lakes for cranky swans. The prominence of lawn bowling and a tea house speak to the city’s colonial origins. However, Vancouver is located on unceded land, which means that the lands was never formally surrendered by the Musqueam,

¹ INDENTURE AGREEMENT, His Majesty King Edward VII and the City of Vancouver dated November 1, 1908, attached to Barbara J. Van Fraassen, Request for Access to Records under the Freedom of Information and Protection of Privacy Act, City of Vancouver (April 4, 2018), online: <https://vancouver.ca/files/cov/2018-128-release.pdf>.

² Amy Judd, “Stanley Park Named Top Park in the Entire World,” Stanley Park Ecological Society (17 June 2014), online: <https://stanleyparkecology.ca/2014/06/18/stanley-park-named-top-park-entire-world/>.

Squamish, and Tsleil-Waututh First Nations (Coast Salish First Nations).³ The land upon which the park sits was once one of the largest settlements of Coast Salish inhabitants, who lived along the Pacific Northwest. For centuries, the land had economic, residential, political, and spiritual importance to Indigenous peoples.⁴ Reminders of these inhabitants are scant and certainly do not include details of the trespassing claims won by the municipal and federal governments in 1926, which displaced Coast Salish inhabitants who had used what is now the park for economic and residential purposes.

Parks are an especially important site of city power. Parks serve as a compelling backdrop to a city's mystique, determining which spaces will be used for particular activities (cycling, walking), but not others (sleeping, urinating). They are demarcated and set aside from the development that permeates urban spaces, yet at the same time sites of social control. Parks also have important economic, social and political significance to a broad range of people and entities, often including Indigenous communities, and are home to dwellers, visitors, and non-human species, including plants and animals.

In the last decade, the Supreme Court of Canada has debunked *terra nullius* as a binding legal principle,⁵ but not before the claim permitted colonial powers to acquire Indigenous lands for their own purposes — including those granted to municipal corporations, encompassing spaces later turned into public parks. First Nations and municipalities across Canada are grappling with how to move forward in the governance of such spaces, introducing legal and policy mechanisms to ‘reconcile’ with Indigenous Peoples in relation to urban lands. Many municipalities are specifically road mapping relationship-building in relation to park spaces. At the time that this article was written, the Vancouver parks board was undertaking a colonial audit to understand the history and future of Stanley Park, and had advanced co-management with First Nations.

In this paper, I consider *personhood*, a mechanism that has been used in other jurisdictions — including cities — to legally reconfigure land ownership.⁶ Te Urewara, once a national park in New Zealand, the Atrato River in Colombia, and the Magpie and Fraser Rivers in Canada became legal “persons” after decades of advocacy by Indigenous Peoples. These natural resources now “own” themselves, a new material and representational making of property that

³ Douglas C Harris, “Property and Sovereignty: An Indian Reserve and a Canadian City” (2017) 50:2 UBC L Rev 321 321.

⁴ “Indigenous” is a broad term for those who identify as the original peoples of North America and their descendants. “First Nations” are Indigenous governments.

⁵ In *Tsilhqot'in Nation v British Columbia*, 2014 SCC 44, [2014], 2 SCR 256 [*Tsilhqot'in Nation*], the Supreme Court of Canada stated that “[t]he doctrine of *terra nullius* (that no one owned the land prior to European assertion of sovereignty) never applied in Canada” (para 69). Many scholars have called into question this statement, given that the same paragraph of *Tsilhqot'in Nation* states, “At the time of assertion of European sovereignty, the Crown acquired radical or underlying title to all the land in the province.” John Borrows writes, “If that land was owned by Indigenous peoples prior to the assertion of European sovereignty, one wonders how the Crown acquired title in the same land by merely asserting sovereignty, without a version of *terra nullius* being deployed. The Crown’s claim to underlying title on this basis “does not make sense” (John Borrows, “The Durability of *Terra Nullius*: *Tsilhqot'in Nation v British Columbia*”, *University of British Columbia Law Review*, (2015) 48 UBC L Rev 701 – 742 at 702).

⁶ By ‘ownership’ I acknowledge the complex relationship between fee simple title and legal tenure, on the one hand, with other forms of entitlement, including Indigenous and Aboriginal claims under Canadian and other legal systems. See generally ROBERT NICHOLS, *THEFT IS PROPERTY! DISPOSSESSION AND CRITICAL THEORY* (2020).

centres a governance role for Indigenous Peoples. This Article asks what personhood could mean for Stanley Park and for Canadian urban parks more broadly. In particular, it explores whether personhood is a legal innovation that reshapes property or, instead, whether it perpetuates the colonial appropriation in the existing legal framework. With the notion that property sets out power over the owned objects, but also the owning subjects, the paper first goes back in time to explore the legal technicalities used by municipal bodies to claim power over Stanley Park. Moving forward to today, I advocate a commitment to the nuances of local Indigenous-led movements and specific Indigenous laws, and knowledge and attention to the colonial structures that form existing property rights and governance models within local governments, rather than a quick attachment to potentially emancipatory forms of property.

II. The legal history of Vancouver's Stanley Park

We need to travel to the past to understand the lore of the 400-hectare area that comprises Stanley Park, one of the largest urban park spaces in North America. Coast Salish communities inhabited these spaces for time immemorial and throughout the decades that preceded and followed what is now British Columbia joining Canada.⁷ There were Indigenous dwelling sites, burial grounds, transportation corridors, and economic development that were well known to colonial figures.⁸ European settlers claimed rights to the Stanley Park peninsula in 1859 and the site was designated as a military reserve acquired by the Dominion government, which would later become the Government of Canada.⁹ As Renisa Mawani states:

The making of Stanley Park was a long and protracted process that was characterized by a series of local and national struggles around space and identity. While the Dominion government had set aside the region around Burrard Inlet for military purposes, the city had its own ideas as to what could be done with this beautiful and valuable property. The city of Vancouver was incorporated in April 1886. Only one month later, officials began discussing ways in which they could lease the government reserve. Because the threat of an American invasion was no longer imminent, city officials assumed that the land was of little value to the Department of Militia and Defense. Although (and perhaps because) the population of white colonists was still very small, civic officials insisted that what the city desperately needed was to establish a colonial presence and to foster a sense of community. A park was proposed as a suitable site for the cultivation of a British identity in the newly formed frontier city.¹⁰

Vancouver City Council's first order of business on May 12, 1886, depicted in Figure 1, was to

⁷ "Time immemorial" is a term used to describe the long-standing, undisputed possession and use of lands by Indigenous Peoples. For a critical review of the courts' use of the term "time immemorial," see Weir, Lorraine. (2013). "Time Immemorial" and Indigenous Rights: A Genealogy and Three Case Studies (Calder, Van der Peet, Tsilhqot'in) from British Columbia. *Journal of Historical Sociology*. 26. 10.1111/johs.12028.

⁸ Mawani, R., *Imperial Legacies (Post)Colonial Identities: Law, Space and the Making of Stanley Park, 1859-2001*, Law Text Culture, 7, 2003.

Available at: <https://ro.uow.edu.au/ltc/vol7/iss1/5>, at 104.

⁹ See JEAN BARMAN, *STANLEY PARK'S SECRET: THE FORGOTTEN FAMILIES OF WHOI WHOI KANAKA RANCH AND BROCKTON POINT* 86-88 (2005).

¹⁰ Mawani, *supra* note 8 at 107. Mawani notes at 108, "Not surprisingly, there was never any mention here of the Squamish, Musqueam or Tsleil-Watuth and their ancestral territorial claims."

pass a resolution asking the federal government to convey a lease to the city of the peninsula “in order that it be used by the inhabitants of said City of Vancouver as a park.”¹¹ The presence of Indigenous communities living in Stanley Park was well known to authorities throughout this time, as seen in the map at Figure 2.¹² The federal government agreed, for a nominal one dollar per year. The lease was renewed for ninety-nine years in 1908 and again more recently.¹³ Despite their long-standing claims Coast Salish First Nations have been engaged in consultations and dialogue regarding the park since 2011.¹⁴

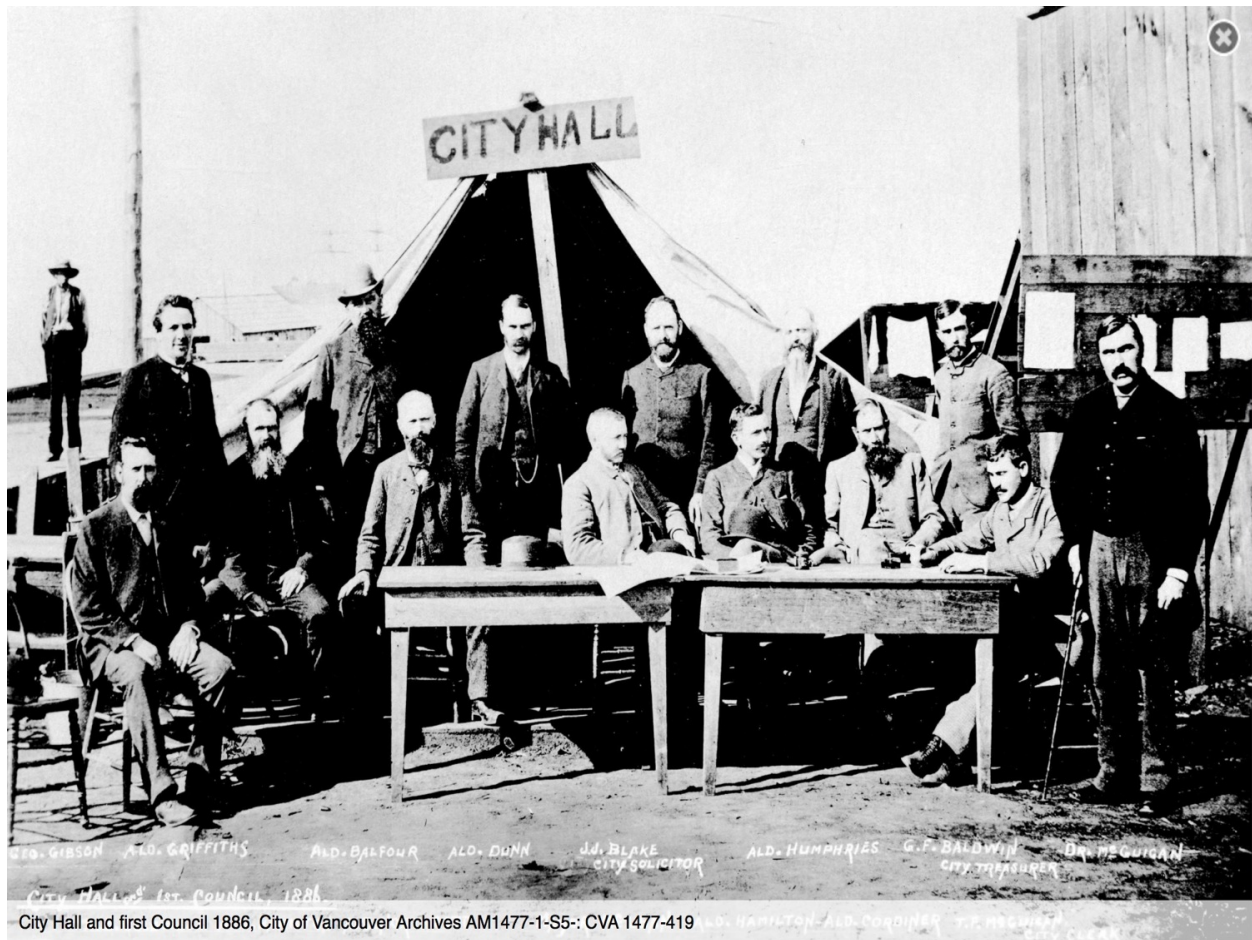


Figure 1: Vancouver City Council, 1886

¹¹ *Id.* at 89–90.

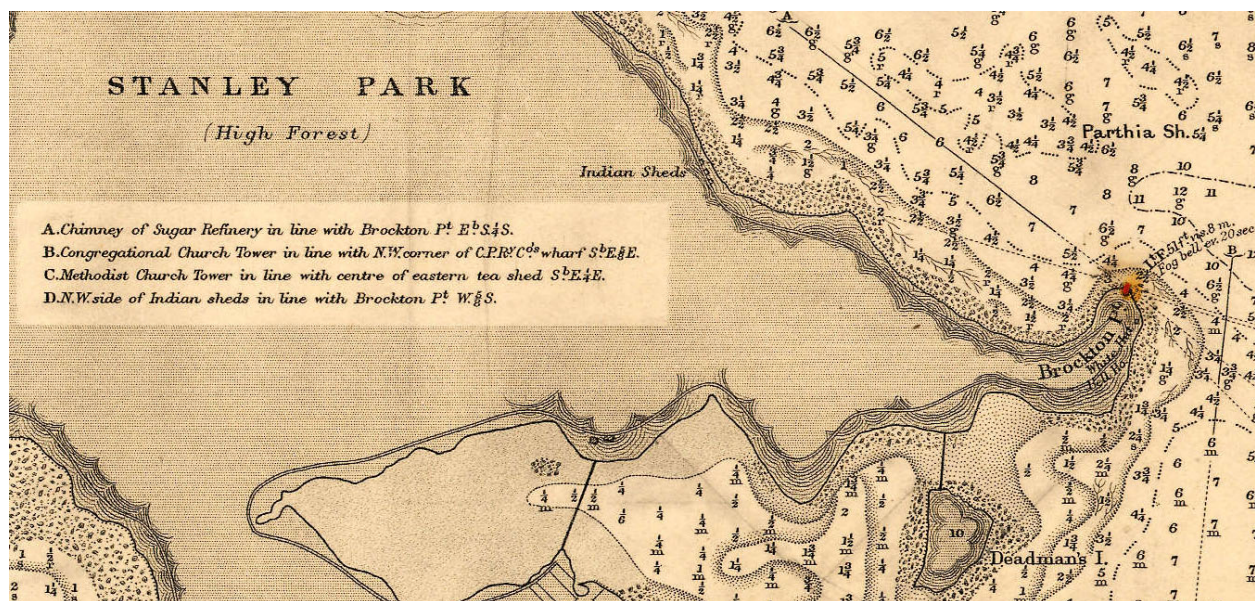
¹² Henry Crease, “Burrard Inlet with Pencil Notations,” British Columbia. See also Vancouver in Lamb, W. Kaye, ed. (1984). *A Voyage of Discovery to the North Pacific Ocean and Round the World, 1791-1795*, 4 vols. London: The Hakluyt Society: 581; Bartoli (1997): 70.

¹³ Frieda Schade, “Belcarra Regional Park - Admiralty Point Lands Statement of Significance,” Greater Vancouver Regional District Staff Report (28 March 2013), online: <<https://fraseropolis.files.wordpress.com/2013/06/regional-parks-service-review.pdf>>. See also *Stanley Park – Leasing the land*, BEAUTIFUL BRITISH COLUMBIA (July 28, 2018), <https://beautifulbritishcolumbia.net/2018/07/28/stanley-park-leasing-the-land/>.

¹⁴ General Manager, “Understanding Stanley Park: Developing a Comprehensive Plan,” Vancouver Board of Parks and Recreation (9 April 2018), online: <https://parkboardmeetings.vancouver.ca/2018/20180416/REPORT-UnderstandingStanleyPark-DevelopingaComprehensivePlan-20180416.pdf>.

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In 1887, Park Board staff destroyed village sites, including part of Xwáyxway, evicting residents in order to build the first park road.¹⁵ This was the first of a series of events critical to the legal displacement of Indigenous residents in urban areas.¹⁶ The construction revealed archaeological sites throughout the peninsula, including burial sites, with remains taken to Ottawa.¹⁷ City workers also removed Indigenous families through the creation of recreational sites, including sports fields and cricket pitches.¹⁸ Governments used other means, unsuccessfully for a number of years, to displace Indigenous residents. In 1888, the City of Vancouver offered compensation to those whose houses had been destroyed in relation to park construction, but residents refused after seeking legal advice.¹⁹ In Coal Harbour, on land that straddled the park and what became a city street, a long-standing Coast Salish family with a matriarch named Mary See-em-ia successfully defended her rights in adverse possession to three acres of land, an initial victory that ultimately resulted in the land fracturing into smaller and smaller pieces, and eventually acquired by the City.²⁰



¹⁵ Mawani, *supra* note 8 at 120.

¹⁶ *Id.* For academic works from Indigenous authors exploring the displacement of Indigenous Peoples in Canadian cities, see esp Coulthard GS (2014) *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*. University of Minnesota Press; Dorries, H. 2019. “Welcome to Winnipeg: Making Settler-Colonial Urban Space in ‘Canada’s Most Racist City’” In *Settler City Limits: Indigenous Resurgence and Colonial Violence in the Urban Prairie West*. Winnipeg: University of Manitoba Press; Dorries, H. 2017. Planning as Property: Uncovering the Hidden Racial Logic of a Municipal Nuisance By-law, *Canadian Journal of Law and Social Policy*, 27 (2017), 80-102; Tomiak, Julie. 2017. Contesting the settler city: Indigenous self-determination, new urban reserves, and the neoliberalization of colonialism. *Antipode* 49 (4): 928-945; and Tomiak, Julie. 2016. Unsettling Ottawa: Settler colonialism, Indigenous resistance, and the politics of scale. *Canadian Journal of Urban Research* 25 (1): 8-21.

¹⁷ See Sean Kheraj, *Stanley Park*, CANADIAN ENCYCLOPEDIA (June 8, 2017), <https://www.thecanadianencyclopedia.ca/en/article/stanley-park>.

¹⁸ See JEAN BARMAN, *STANLEY PARK’S SECRET: THE FORGOTTEN FAMILIES OF WHOI WHOI KANAKA RANCH AND BROCKTON POINT* 86–88 (2005) at X.

¹⁹ *Id.* at X.

²⁰ *Id.* at X.

Figure 2: Close-up of Map Burrard Inlet, 1891.²¹

In 1897, the ownership of Deadman's Island off Brockton Point, a site with Indigenous inhabitants in Stanley Park, was contested between British Columbia and the federal government, and the court ultimately settled in favour of the latter.²² Later, the city wanted to issue eviction orders against those dwelling on Deadman Island, now deemed "squatters" in Figure 3. Upon review, the Vancouver city solicitor concluded that, "the Indians remain on sufferance to the Crown, and cannot be interfered with by the City of Vancouver."²³ These efforts culminated in a legal action for trespass brought in 1923 to "take all necessary steps in the name of the [federal government] and the city of Vancouver to institute proceedings in the Courts for the ejectment of the squatters."²⁴ Three cases were initially launched by the City of Vancouver, with the Government of Canada joining as a co-plaintiff. The order of plaintiffs was crucial: if only the City of Vancouver brought the trespass claim, Indigenous settlers would need to prove a 20 year period of adverse possession; if the federal government were added, the period would extend to 60 years.²⁵ The governments argued that all of the families were trespassing on Crown lands and should therefore be evicted. The three cases were ultimately appealed to the Supreme Court of Canada.

²¹ *Item: Map 50 – Burrard Inlet*, CITY OF VANCOUVER ARCHIVES (last visited July 25, 2022), <https://searcharchives.vancouver.ca/burrard-inlet-6;rad>.

²² *See* British Columbia (Attorney General) v. Ludgate, [1904] B.C.J. No. 26 (Can. B.C. S.C.).

²³ *Id.*

²⁴ Canada (Attorney General) v. Cummings, [1925] 1 D.L.R. 642 (Can.) [*Cummings*].

²⁵ Mawani, Renisa. (2005). Genealogies of the Land: Aboriginality, Law, and Territory in Vancouver's Stanley Park. *Social & Legal Studies* 14, 315-339 at 326. See also Cummings, *supra* note 24 at 52.

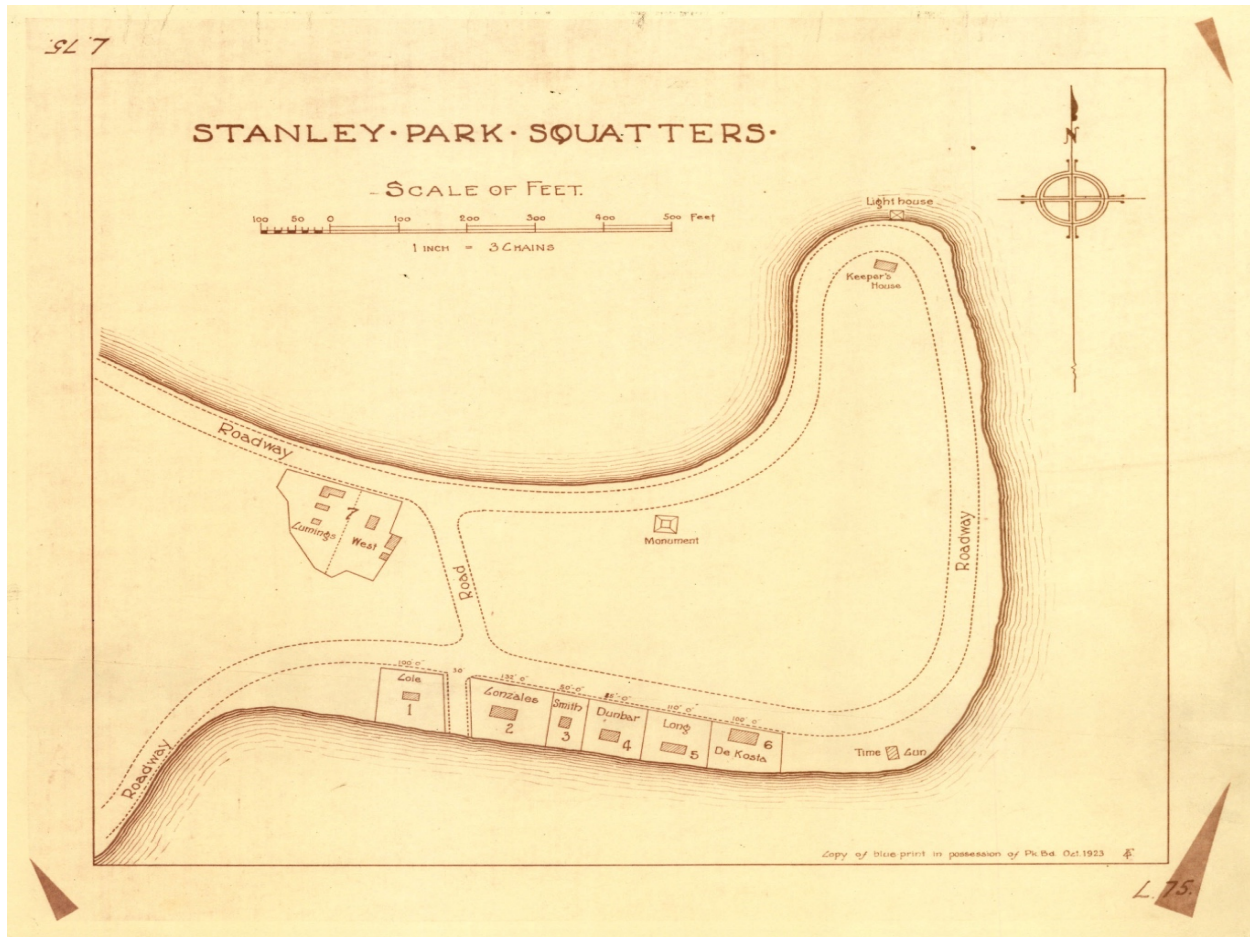


Figure 3: City of Vancouver, 1923²⁶

The central issues raised by the city had to do with the duration of the families' legal tenure to the land based on the laws of the colonializing government.²⁷ City officials claimed that the residents moved to the area after the land had already been discovered and taken by the British Crown.²⁸ The principle piece of evidence was a map created in 1863, around the contested time of the Dominion reserving the peninsula for military purposes, which showed only one home on it, not multiple villages.²⁹ Without written evidence that satisfied the particular rigidities of colonial law, the families brought forward multiple witnesses who corroborated the residence of the families for over 60 years. The superior court judge disregarded this testimony, describing the "old" witnesses who "contradicted themselves."³⁰ At the Court of Appeal, Justice Martin, one of the three presiding judges, disagreed, describing the testimony as "remarkable and beyond expectation precise."³¹ He said, after a careful examination of the Indigenous witnesses, "I know

²⁶ *Stanley Park Squatters*, 1923, VANCOUVER IS AWESOME (December 21, 2016), <https://www.vancouverisawesome.com/history/stanley-park-squatters-1923-1933167>

²⁷ Cummings, *supra* note 24 at 52.

²⁸ Mawani, *supra* note 8 at 326-327.

²⁹ Barman, *supra* note 18 at X.

³⁰ Canada (Attorney General) v. Gonsalves, [1925] 1 D.L.R. 605, para. 26 (Can. B.C. C.A.).

³¹ *Id.* para. 30.

of no good reason for placing the testimony of our native Indians at all on a lower plane than those of the others, and in particular I perceive none in this case for doubting the substantial accuracy of their testimony in all essentials. Indeed, in some respects it is remarkable and beyond expectation precise.”³² He concluded, “It is difficult to imagine a stronger position in law than that of the holder of a possessory title antedating the birth of the colony itself.”³³

In 1926, the Supreme Court of Canada disagreed, describing the Indian testimony as “indecisive” and held that the families were trespassers.³⁴ While the city never forced the families to leave, without secure land rights or amenities they slowly dwindled and died out, and were entirely gone by the mid-1950s. Until the early 2000s, the only Indigenous signifiers were those selected by the parks commission; created by First Nations in northern British Columbia, they did not reference the Coast Salish villages or sites.³⁵

III. City power and city parks

Cities are an especially vivid site of property law. In countries such as the United States and Canada, cities are subsumed within the authority of state governments, and have no protection against changes to the design and power imposed on them. In the United States, cities are subject to state pre-emption.³⁶ In Canada, this constitutional brevity has led municipalities to be called ‘creatures of the province’, with provincial governments empowered to set rules regarding what municipalities can and cannot do.³⁷ This limited constitutional status represents a particular view of municipal authority rooted in a doctrine known as “Dillon’s Rule,” a framework of municipal authority advanced by John Dillon, a 19th-century American jurist who objected to purported waste by local governments.³⁸ Dillon’s rule proposes instead that states and provinces keep a “watchful eye” on local governments to ensure that resources are not inappropriately used.³⁹

Even so, cities have a great deal of power and their actions have had a notable effect on Indigenous Peoples. As noted by many scholars, including Professors Brenna Bhandar and Nick Blomley, planning was central to early colonizing efforts and it continues to frame cities as places for private landownership by settlers.⁴⁰ Professor Libby Porter writes that, “Property shapes how cities function, how they look and how we live in them. And property fragments urban environments. It chops up the landscape with titles, fences, investment portfolios,

³² *Id.*

³³ *Canada (Attorney General) v. Cummings*, [1925] 1 D.L.R. 642, para. 11 (Can. B.C. C.A.).

³⁴ *Id.*

³⁵ See generally Renisa Mawani, *Genealogies of the Land: Aboriginality, Law, and Territory in Vancouver’s Stanley Park*, 14 Soc. & Legal Stud. 316 (2004).

³⁶ See generally Richard Briffault, *The Challenge of the New Preemption*, 70 Stan. L. Rev. 1995, 1997 (2018).

³⁷ See Alexandra Flynn, *With Great(er) Power Comes Great(er) Responsibility: Indigenous Rights and Municipal Autonomy*, 34 J. of L. & Soc. Pol’y 111, 113 (2021). See also Ron Levi & Mariana Valverde, *Freedom of the City: Canadian Cities and the Quest for Governmental Status*, 44 Osgoode Hall L.J. 409, 409 (2006).

³⁸ *Id.*

³⁹ Eugene Q.C., Meehan, Robert, Chiarelli & Marie-France, Major, “The Constitutional Legal Status of Municipalities 1849-2004: Success Is a Journey, but Also a Destination” (2007) 22 Nat’l J. Const. L. 1 at 4-5. See also Levi & Valverde, *supra* note 37 at 415-416.

⁴⁰ See generally Brenna Bhandar, *Colonial Lives of Property: Law, Land and Racial Regimes of Ownership* (2018); Nicholas Blomley, *Making Space for Property*, 104 Annals Ass’n Am. Geographers 1291 (2014).

development options and planning zones.”⁴¹ That system of property is imposed on Indigenous lands.⁴² It entrenches non-Indigenous property rights and excludes the people from whom the land was stolen. Most importantly, property works against the recognition that cities, too, are Indigenous places.

As noted earlier in this Article, Vancouver is located on unceded land, which means that the lands was never formally surrendered by Coast Salish First Nations.⁴³ Vancouver’s municipal government planned the city without involvement from the Coast Salish First Nations, although this is changing rapidly. In the past decade, the city has shifted its governance approach in ways that go beyond the actions of other Canadian municipalities. In 2013, the City of Vancouver announced a “Year of Reconciliation” and declared support for the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the first municipal to do so.⁴⁴ A year later, the “City of Reconciliation framework” called on council and city staff to “develop appropriate protocols for the City of Vancouver to use in conducting City business that respect the traditions of welcome, blessing, and acknowledgement of the territory.”⁴⁵ At the time, Khelsilem one of the councillors of Squamish Nation, stated,

[T]he proclamation of unceded territory was in my opinion a gesture by white politicians doing what they were told would be a good gesture to do and were genuine in their attempt to do what they thought was right. I think the most useful critiques of these gestures address the usefulness or non-usefulness of these gestures and what tangible actions could be done instead (if there are any to be done instead). From that standpoint I’d say this gesture completely falls into the definition of colonial politics of recognition that at best give the potential for awareness. But beyond that it’s empty in providing any form of restitution or repatriation for the dispossession the City of Vancouver continuously supports by its very existence.⁴⁶

More recently, Vancouver has undertaken a review of all city bylaws to ensure that they conform with UNDRIP.⁴⁷ And while the city has not engaged with questions of property, land, or restitution, court decisions have resulted in the return of reserve lands in central Vancouver to the Squamish Nation, who are developing a 5,000 affordable housing project.⁴⁸ The Coast Salish

⁴¹ Libby Porter, *How can we meaningfully recognize cities as Indigenous places?*, CONVERSATION (October 4, 2016), <https://theconversation.com/how-can-we-meaningfully-recognise-cities-as-indigenous-places-65561>.

⁴² Jordan Stanger-Ross, *Municipal Colonialism in Vancouver: City Planning and the Conflict over Indian Reserves*, 89 Canadian Hist. R. 541, 543 (2008).

⁴³ For a discussion on the history of the traditional territories of the Musqueam, Squamish, and Tsleil-Waututh Coast Salish peoples, see generally Douglas Harris, *Property and Sovereignty: An Indian Reserve in a Canadian City*, 50 Univ. British Columbia L.R. 333 (2017).

⁴⁴ See Andrea Reimer, *Motion on Notice: Support for Reconciliation with Aboriginal Peoples*, CITY OF VANCOUVER (February 26, 2013), <https://council.vancouver.ca/20130226/documents/motionb3.pdf>.

⁴⁵ Standing Committee on Planning, Transportation and Environment, *Protocol to Acknowledge First Nations Unceded Traditional Territory*, Vancouver City Council (June 25, 2014), <https://council.vancouver.ca/20140625/documents/ptec6.pdf>

⁴⁶ H.G. Hamilton, *Beyond a Formal Acknowledgement*, MAINLANDER (January 7, 2015), <https://themainlander.com/2015/01/07/beyond-a-formal-acknowledgement/comment-page-1/#comment-3080>

⁴⁷ UNDRIP Task Force, CITY OF VANCOUVER (last visited Aug. 1, 2022), <https://vancouver.ca/people-programs/undrip-task-force.aspx>.

⁴⁸ *Vision*, SENAKW (last visited Aug. 1, 2022), <https://senakw.com/vision>.

First Nations have also come together in the past ten years to purchase and develop parcels of land, creating small neighbourhoods with parks, housing, and commercial space.⁴⁹

The Vancouver Parks and Recreation Board (Park Board) governs the city's parks and has its own elected council, with a close economic and political relationship with the City of Vancouver.⁵⁰ It was created and empowered by the City of Vancouver to oversee the development of Stanley Park and, later, all parks, in the city. Very recently, the city's park board announced that it was confronting its colonial past. In 2018, the Park Board approved a "colonial audit" outlining actions by the city dating back to 1888, including removing entire First Nations communities from their traditional territories when the city declared jurisdiction over Stanley Park and other beach areas.⁵¹ The board also apologized to the Coast Salish First Nations for taking away ancestral lands, digging up burial grounds to build roads and playgrounds, and other damaging actions.⁵²

The City of Vancouver and the Park Board are limited in their power to dispose of park lands, but even so the transfer of park land to First Nations has never been on the table.⁵³ The Park hired a reconciliation planner tasked with advancing goals and creating lasting relationships between the government and Indigenous communities, using the UN Declaration of Indigenous Peoples as a guide.⁵⁴ The Park Board concluded, "One of the core acts of colonialism enacted by settlers is the theft of lands and removal of entire communities from their ancestral homes. This core act of colonialism has been undertaken by the Park Board since its inception – beginning with the declaration of jurisdiction over "Stanley Park", as well as beach areas around the City, that were of both cultural significance, and were home, to local nations."⁵⁵ In addressing this colonial history, and based on a multi-step, long-term approach, the Park Board has affirmed, most recently in 2022, the need for "continuing the Park Board's precedent-setting

⁴⁹ MST DEVELOPMENT CORP. (last visited Aug. 1, 2022), <http://mstdevelopment.ca>.

⁵⁰ *Vancouver Board of Parks and Recreation*, City of Vancouver, (last visited July 24, 2022), <https://vancouver.ca/your-government/vancouver-board-of-parks-and-recreation.aspx>

⁵¹ See Dave Hutch & Rena Souter, *Exploring Park Board's Colonial Roots and Current Practices*, CITY OF VANCOUVER (July 16, 2018), <https://parkboardmeetings.vancouver.ca/2018/20180723/REPORT-ExploringParkBoardsColonialRootsAndCurrentPractices-20180723.pdf>.

⁵² *Id.*

⁵³ Vancouver Charter, S.B.C. 1953, c 55 (Can. B.C.). at 488. Under Section 488 of the Vancouver Charter, "The Board shall have exclusive possession of, and exclusive jurisdiction and control of all areas designated as permanent public parks of the City ... and such areas shall remain as permanent public parks, and possession, jurisdiction and control of such areas shall be retained by the Board."

⁵⁴ General Manager, "Exploring Park Board's Colonial Roots and Current Practices," Vancouver Board of Parks and Recreation (16 July 2018), online: <https://parkboardmeetings.vancouver.ca/2018/20180723/REPORT-ExploringParkBoardsColonialRootsAndCurrentPractices-20180723.pdf>.

⁵⁵ *Id.* at 3.

intergovernmental approach to the future stewardship of Stanley Park and other relevant lands.”⁵⁶ This process will take time and ongoing commitment.⁵⁷

So far, the conversation has not pivoted or considered the repatriation of lands or changes in ownership. But what if it did? What form could it take? I look next at personhood as a hypothetical possibility, a legal technology that has been used in other contexts to address alternative claims to park ownership.⁵⁸

IV. Personhood and colonial property rights

Legal geography acknowledges that “law is an anthropocentric terrain. Not only is law the product of human actors, it entrenches the interests of humans over virtually all others and centers the reasonable human person as a main legal subject.”⁵⁹ The question is thus how ‘nature’ and ‘law’ operate in mutually reinforcing ways to create “socially constructed, discursive or epistemological sites through which we collectively make sense of the world and our place within it.”⁶⁰ One of the ways that law constructs itself is in relation to which entities have rights or obligations. In western legal systems, including in the United States, law centres “persons” as right-bearing vessels.

1. Personhood differs based on jurisdiction, form, and legal technicality

Personhood is inextricable from the modern colonial legal system, where humans and those deemed persons are granted particular rights.⁶¹ Those deemed “persons”, whether human or not, are able to exercise power. As David Delaney writes, property law establishes power not only over the owned objects but also in relation to the owning subjects.⁶² Even where non-human entities are deemed legal persons — for example, corporations and municipalities — there is no displacement of the object (the person) exercising rights within the colonial legal system.

Personhood is connected to the “rights of nature” movement, which can be loosely grouped within two families of scholarship. The first, *people-dependent personhood*, is dependent on human actors. Five decades ago, in 1972, American professor Christopher Stone proposed that the state “give legal rights to forests, oceans, rivers, and other so-called ‘natural objects’ in the

⁵⁶ General Manager, “MST Flags at Brockton Point,” Vancouver Board of Parks and Recreation (13 April 2022) at 1, online: <https://parkboardmeetings.vancouver.ca/2022/20220425/REPORT-MSTFlagsBrocktonPoint-20220425.pdf>. See also General Manager, “Understanding Stanley Park: Developing a Comprehensive Plan,” Vancouver Board of Parks and Recreation (9 April 2018), online: <https://parkboardmeetings.vancouver.ca/2018/20180416/REPORT-UnderstandingStanleyPark-DevelopingaComprehensivePlan-20180416.pdf>.

⁵⁷ Vancouver Board of Parks and Recreation, “Reconciliation: Mission, Vision, Values” (16 April 2018), online: <https://parkboardmeetings.vancouver.ca/files/POLICY-ParkBoardReconciliation-MissionVisionValues-20180416.pdf>.

⁵⁸ Maneesha Deckha, *Initiating a Non-Anthropocentric Jurisprudence: The Rule of Law and Animal Vulnerability Under a Property Paradigm*, 50 Alberta L.R. 783, 784 (2013).

⁵⁹ *Id.*

⁶⁰ Bronwyn Parry, *Book Review, David Delaney, Law and Nature*, 33 J. of Hist. Geo. 701, 702 (2007).

⁶¹ See generally CHIP COLWELL, *PLUNDERED SKULLS AND STOLEN SPIRITS* (2017).

⁶² See DAVID DELANEY, *LAW AND NATURE* 222 (2003).

environment – indeed, to the natural environment as a whole,”⁶³ an article that was subsequently cited by dissenting United States Supreme Court justices in the 1972 case, *Sierra Club v Morton*.⁶⁴ Stone argued that legal personality would grant legal standing and enforceable rights to natural resources, where the resource (advanced by an interested individual) could then sue in tort law to receive compensation for damages, to be used for environmental remediation.⁶⁵ Other scholars advance what can be understood as *standalone personhood*. In contrast to humans asserting nature’s rights, nature has stand-alone rights without dependence on assertions of non-humans. This offers a normative realignment of the subjects and objects of property law. Personhood is thus part and parcel of law’s power.⁶⁶ Where nature has been granted personhood status, it “owns” itself, and is thus able to set its own agenda for actions and interests, based on whatever decision-making model is established.

Some argue that personhood is a “potentially revolutionary precedent[] that offer[s] a path forward to redefine relationships between governments, Indigenous peoples and the land in the 21st century.”⁶⁷ Personhood initiatives are growing sharply although unevenly across the world, with 39 countries responsible for almost 90% of all initiatives, as indicated in Figure 4.⁶⁸ Personhood may be recognized through a variety of legal mechanisms, including a constitution, national law, court decision, or local regulation or policy.⁶⁹ Motivations for creating legal personhood, whether specific to a river or another natural resource, are various; they may be rooted in Indigenous or religious beliefs, the human right to a healthy environment, anti-corporate or anti-capitalist sentiments, contamination or disaster relief, or otherwise.⁷⁰ As such, there is no such thing as a single type of designation of legal personhood.

⁶³ Stone, Christopher. “Should Trees Have Standing? Toward Legal Rights for Natural Objects.” *Southern California Law Review*, issue 45. (1972). pp 450-501.

⁶⁴ 405 U.S. 727 (1972).

⁶⁵ Stone, *supra* note 63 at 476-477.

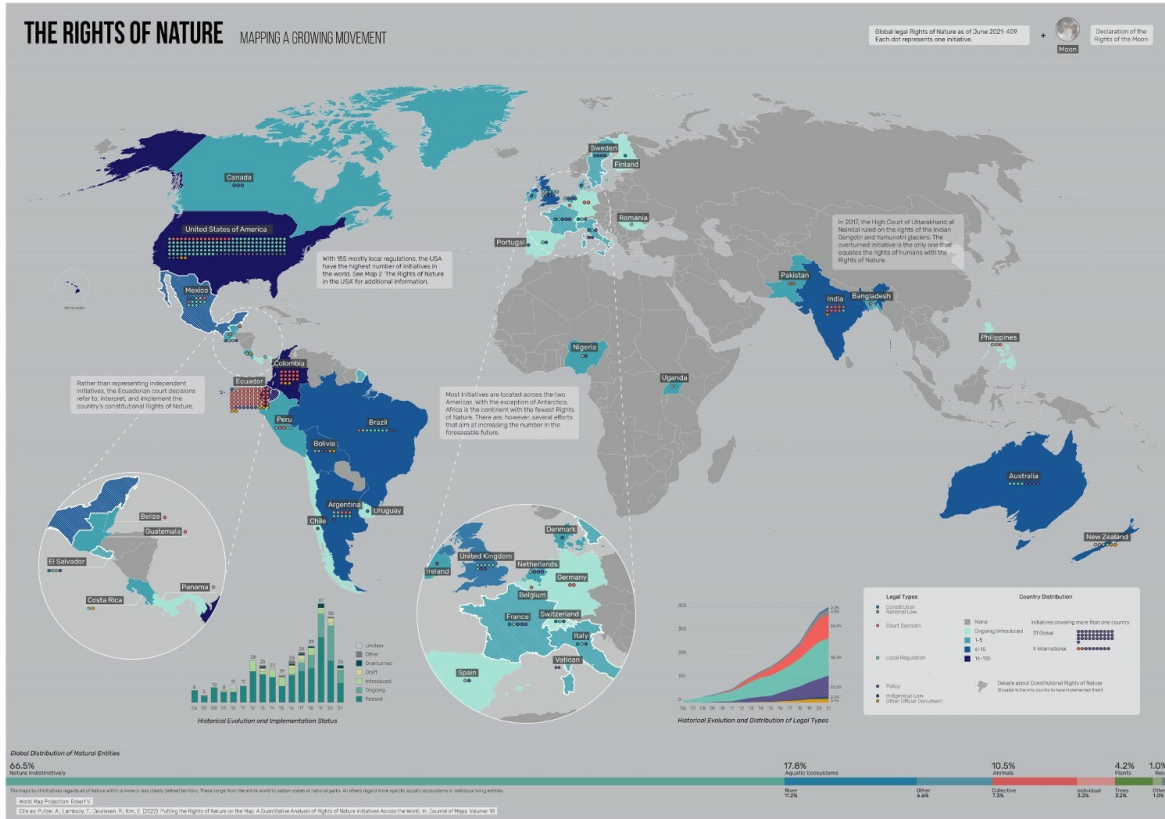
⁶⁶ See generally COLIN DAYAN, *THE LAW IS A WHITE DOG: HOW LEGAL RITUALS MAKE AND UNMAKE PERSONS* 25 (2011).

⁶⁷ Julian Brave NoiseCat, *Opinion: The Western Idea of Private Property is Flawed. Indigenous peoples Have it Right*, *GUARDIAN* (September 19, 2017), <https://www.theguardian.com/commentisfree/2017/sep/19/bears-ears-sacred-native-americans-heritage-trump>.

⁶⁸ Alex Putzer, Tineke Lambooy, Ronald Jeurissen & Eunsu Kim, *Putting the rights of nature on the map. A quantitative analysis of rights of nature initiatives across the world*, J. of Maps (2022).

⁶⁹ See *id.*

⁷⁰ See *id.*

Figure 4: Recognition of personhood across the world⁷¹

2. Examples of personhood: New Zealand and Colombia

Two early examples illustrate the two main ways that personhood for nature can be “created” — through enactment by government (New Zealand), and as determined by courts (Colombia). In New Zealand, personhood status was first granted to a national park called Te Urewera. Under Te Urewera Act 2014, therefore, the park became “a legal entity [that] has all the rights, powers, duties and liabilities of a legal person.”⁷² Fee simple interest in the land is vested in Te Urewera itself⁷³ and is largely inalienable.⁷⁴ In September 2017, the board approved *Te Kawa o Te Urewera*, a management plan required under the Act.⁷⁵ The board must act on behalf of, and in the name of, Te Urewera,⁷⁶ and must “consider and give expression to” Tūhoe knowledge,⁷⁷ including “tapu me noa,” which means “the concept of sanctity, a state that requires respectful human behaviour in a place; and in noa, the sense that when the tapu is lifted from

⁷¹ *Id.*

⁷² Te Urewera Act, 2014 (N.Z.) at Section 11(1).

⁷³ *Id.* at Section 12(3).

⁷⁴ *Id.* at Section 13.

⁷⁵ *Id.* at Part 2(2).

⁷⁶ *Id.* at Section 17(a).

⁷⁷ *Id.* at Section 18(2).

the place, the place returns to a normal state.”⁷⁸ Two-thirds of the board membership are Tūhoe.⁷⁹

Personhood was a legal and political compromise that followed years of negotiation between New Zealand’s national government and the Tūhoe people for authority over and title to the land.⁸⁰ New Zealand’s constitutional foundation includes the Treaty of Waitangi, signed on 6 February, 1840 by representatives of the British Crown and Māori chiefs from the North Island of New Zealand.⁸¹ The Tūhoe people never signed the Treaty of Waitangi and resisted the Crown’s claims to its *turangawaewae* (traditional homelands).⁸² Even so, by 1927, the Crown had claimed two-thirds of Tūhoe lands, including those that became Te Urewera National Park in 1954.⁸³ Personhood in Te Urewera thus represents a compromise, a means of using New Zealand (rather than Tūhoe) law to create a legal framework for the 210,000 hectares of land.⁸⁴ Tūhoe do not have title to the lands.⁸⁵

In contrast, Colombia’s Constitutional Court first recognized the rights of nature in 2015 in a case involving environmental degradation in Tayrona National Park,⁸⁶ stating “rivers, mountains, forests, and the atmosphere must be protected, not because of their utility to humans but because of their own rights to exist.”⁸⁷ The diverse and swampy river, flows through jungles between Panama and Columbia.⁸⁸ Colombia’s Constitutional Courts recognized the Atrato River Basin’s right to “protection, conservation, maintenance and restoration” given extreme levels of mercury and cyanide pollution. The river is home to a number of communities, both Indigenous and afro-Colombian.⁸⁹ Colombia’s recognition of Rio Atrato as a legal person came through the courts, in November 2016.⁹⁰ The case was brought by a coalition of Indigenous and Afro-Colombian

⁷⁸ *Id.* at Section 18(2)(b)(ii).

⁷⁹ *Id.* at Section 21(2).

⁸⁰ GEDDIS, Andrew, RURU, Jacinta, 2019, Places as persons: Creating a new framework for Maori-Crown relations, in J. Varuhas (ed.) *The Frontiers of Public Law*. London: Hart Publishing, pp. 298-316.

⁸¹ Sandra Morrison and Ingrid Huygens, “Explainer: The Significance of the Treaty of Waitangi,” *The Conversation* (5 February 2019), online: <<https://theconversation.com/explainer-the-significance-of-the-treaty-of-waitangi-110982>>.

⁸² Vincent O’Malley, “Tūhoe-Crown Settlement – historical background,” *Māori Law Review* (October 2014), online: <<https://maorilawreview.co.nz/2014/10/tuhoe-crown-settlement-historical-background/>>.

⁸³ *Id.*

⁸⁴ Geddis & Ruru, *supra* note 80.

⁸⁵ Brad Coombes, « Nature’s rights as Indigenous rights? Mis/recognition through personhood for Te Urewera », *Espace populations sociétés* [En ligne], 2020/1-2 | 2020, mis en ligne le 20 juin 2020, consulté le 24 août 2022.

⁸⁶ Corte Constitucional [C.C.] [Constitutional Court], noviembre 10, 2016, Decision T-622 (Colom.).

⁸⁷ *Ibid.*

⁸⁸ Laura Villa, “[The Importance of the Atrato River in Colombia Gaining Legal Rights](https://www.earthlawcenter.org/blog-entries/2017/5/the-importance-of-the-atrato-river-in-colombia-gaining-legal-rights),” *Earth Law Centre* (5 May 2017), online: <<https://www.earthlawcenter.org/blog-entries/2017/5/the-importance-of-the-atrato-river-in-colombia-gaining-legal-rights>>.

⁸⁹ Renata Colwell, Savannah Carr-Wilson and Calvin Sandborn, “Legal Personality of Natural Features: Recent International Developments and Applicability in Canada,” *Environmental Law Clinic*, University of Victoria (September 2017), online: <https://www.elc.uvic.ca/wordpress/wp-content/uploads/2018/05/2017-02-03-LegalPersonalityNaturalFeatures_web-version.pdf> at 22.

⁹⁰ DAVID R. BOYD, *THE RIGHTS OF NATURE: A LEGAL REVOLUTION THAT COULD SAVE THE WORLD* 225–226 (2017).

groups, alongside an environmental non-governmental organization, Tierra Digna, in 2015.⁹¹ It was brought under section 86 of the Colombian Constitution, calling for the protection of constitutional rights by local and national institutions for failing to protect the “social rule of law”.⁹²

The Court opined that the state has violated “fundamental rights to life, health, water, food security, the healthy environment, culture and the territory of ethnic communities” by failing to prevent harmful river mining.”⁹³ The Court asserted that the river has rights to protection, conservation, maintenance, and restoration, with a corresponding duty on the State to provide them. The Court opined that a social rule of law involves the protection of the environment, including rivers, forests, food sources, and biodiversity.⁹⁴ The court stated that the environment is a primary collective interest, reinforced by international environmental legislation.

Legal personhood for Rio Atrato differs from Te Urewera. First, the judgment gave the government “one year to develop a comprehensive plan to end the pollution and damage being inflicted on the Rio Atrato watershed by activities such as deforestation and illegal mining,”⁹⁵ including a restoration plan for the river basin, baseline studies, and the implementation of protective measures.⁹⁶ Second, in regard to governance, the judgment instructed the claimant communities to establish joint guardianship for the Atrato River basin, comprised of one government representative and one representative from the local Indigenous groups. Guardians have the responsibility to follow up on the protection and restoration that the State must provide for the river.⁹⁷ Rio Atrato’s guardians receive advice from the Humboldt Institute and the World Wildlife Foundation, rather than from Indigenous communities.⁹⁸

Examples from New Zealand and Colombia, where green spaces and rivers located on Indigenous lands are now deemed persons, suggests that emancipatory property configurations can reimagine relations between Indigenous peoples and colonial governments. Under this vision, the contours of law’s definitions are acceptable to colonial property models, but cognizant of Indigenous values.⁹⁹ In the case of Te Urewera, the original goal was the return of the lands to the Tūhoe, which was rejected by the government. The Act that provides personhood status for Te Urewera “is not a direct translation of Indigenous conceptions, but rather a potential straitjacket for Indigenous emancipatory politics.”¹⁰⁰ In regard to Rio Atrato, the judgment focuses on repair, centreing the state and humans, rather than giving agency to the river itself.

⁹¹ Colwell et al, *supra* note 89 at 22-23.

⁹² See Cristy Clark, Nia Emmanouil, John Page & Alessandra Pelizzon, *Can You Hear the Rivers Sing? Legal Personhood, Ontology, and the Nitty-Gritty of Governance*, 45 Ecology L.Q. 787, 807 (2019).

⁹³ Susan Bird, Colombia Grants Legal Rights to the Polluted Atrato River, Truthout (3 June 2017), online: <<https://truthout.org/articles/colombia-grants-legal-rights-to-the-polluted-atrato-river/>>.

⁹⁴ See Cristy Clark, Nia Emmanouil, John Page & Alessandra Pelizzon, *Can You Hear the Rivers Sing? Legal Personhood, Ontology, and the Nitty-Gritty of Governance*, 45 Ecology L.Q. 787, 807 (2019).

⁹⁵ DAVID R. BOYD, *THE RIGHTS OF NATURE: A LEGAL REVOLUTION THAT COULD SAVE THE WORLD* 225–226 (2017) at 226

⁹⁶ Colwell et al, *supra* note 89 at 23.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Te Urewera Act, 2014 (N.Z.).

¹⁰⁰ Tănăsescu, M. (2020). Rights of Nature, Legal Personality, and Indigenous Philosophies. *Transnational Environmental Law*, 9(3), 429-453. doi:10.1017/S2047102520000217 at 429.

There is no mention in the judgment of Raizal people's spiritual relationships with the Rio Atrato basin or any sacred beings within it, or those of other Indigenous peoples.¹⁰¹

3. Personhood at the local level

Many local governments in the United States have granted personhood status to nature. As of 2018, more than 3 dozen American municipalities in 10 different states have passed ordinances recognizing that nature has rights, including Pittsburgh, Santa Monica, and Athens.¹⁰² The ordinances are often enacted to oppose industrial activities viewed as causes of environmental degradation. Most ordinances work by allowing citizens to file a lawsuit on behalf of nature for any harm caused by the land from pollution or other harm (like sewage sludge polluting bodies of water). Once damages are awarded, the municipality or a trust uses it to restore ecosystems.¹⁰³ These ordinances can be politically successful. An amendment to the Orange County Charter was supported by referendum in 2020 with 89% voting in favour of the rights of nature provision.¹⁰⁴ Personhood at the local level both affirms a municipality's beliefs on the protection of nature and provides a legal basis for objecting to alleged environmental harm.

Ordinances are not the only legal mechanism used to recognize personhood. In Euanitshit, Quebec, a province of Canada, the Minganie Regional Municipality and the Innu Council of Ekuanitshit created a Joint Declaration stating that the Magpie River had nine rights, among them the right to flow, maintain biodiversity, be free from pollution, and to sue.¹⁰⁵ Guardians would be appointed by the Minganie Regional Municipality and the Innu Council of Ekuanitshit to advocate on behalf of the river.¹⁰⁶ The responsibilities of the guardians include the ability to research, apply and comply with traditional Innu knowledge, introduce conservation planning such as species protection, management and recovery, and participate in consultations on behalf of the river.¹⁰⁷ Although the Declaration was only recently implemented, the designation of personhood represents an important step for the Indigenous Nations involved.¹⁰⁸ However, as

¹⁰¹ Colwell et al, *supra* note 89 at 23-24.

¹⁰² David R Boyd, "Recognizing the Rights of Nature: Lofty Rhetoric or Legal Revolution" (2018) 32:4 Natural Resources & Environment 13.

¹⁰³ For example, a City of Pittsburgh ordinance states that: "Natural communities and ecosystems, including but not limited to, wetlands, streams, rivers, aquifers, and other water systems, possess inalienable and fundamental rights to exist and flourish within the City of Pittsburgh. Residents of the City shall possess legal standing to enforce those rights on behalf of those natural communities and ecosystems. Residents of the City of Pittsburgh possess legal standing to enforce the rights set above on behalf of the ecosystems" [PITTSBURGH, PA., CODE TIT. VI, ART I, CH. 618.03(b) (enacted Nov. 16, 2010), <https://pittsburgh.legistar.com/LegislationDetail.aspx?ID=766814&GUID=3306C0FD-CF64-4F19-9D73-052C69CB9738&Options=ID|Text|&Search=gas>].

¹⁰⁴ Press Release: *First Time in the U.S.: "Rights of Nature" State Constitutional Amendment Filed in Florida to Protect Waterways*, CENTER FOR DEMOCRATIC & ENVTL. RIGHTS (June 2, 2021), <https://www.centerforenvironmentalrights.org/news/first-in-the-us-rights-of-nature-state-constitutional-amendment-filed-in-florida-to-protect-waterways>.

¹⁰⁵ Justine Townsend, Alexis Buntin, Catherine Iorns, Lindsay Borrows, "Rights for nature: How granting a river 'personhood' could help protect it," *The Conversation* (3 June 2021).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* See also Susan Nerberg, *I am Mutehekau Shipu: A river's journey to personhood in eastern Quebec*, Canadian Geographic (8 April 2022), online: <<https://canadiangeographic.ca/articles/i-am-mutehekau-shipu-a-rivers-journey-to-personhood-in-eastern-quebec/>>.

¹⁰⁸ *Id.*

Anishinaabe-Métis Professor and lawyer Aimée Craft states, some Indigenous groups are engaging with the rights of nature movement because it aligns with their own legal systems, “but it’s not a perfect fit” for all.¹⁰⁹

The ?Esdilagh First Nations and Tsilhqot’in Council of Chiefs in British Columbia, Canada, passed the *?Esdilagh Sturgeon River Law* in 2020, stating that the Fraser River was a person, which has suffered from pollution and dangerously low fish stocks.¹¹⁰ Article 4(1)(f) states that: “People, animals, fish, plants, the *nen* [land], and the *tu* [water] have rights in the decisions about their care and use that must be considered and respected.”¹¹¹ The ?Esdilagh Government may make orders, or regulations, or issue permits or other authorizations for Persons, projects, or proposed projects that may implicate the river.

Unlike the examples in New Zealand and Colombia, local ordinances are all vulnerable to court action. In the United States, an ordinance introduced by Grant Township, a rural Pennsylvania town, that has enacted a rights of nature ordinance, has been in court since 2013 to protect natural resources after a permit was issued by state and federal governments to allow resource extraction.¹¹² At question is whether the state—not municipality—has the authority to regulate oil and gas development.¹¹³ Likewise, a US federal court held that the Lake Erie Bill of Rights, which was enacted by residents of Toledo, Ohio, was invalid under the United States Constitution.¹¹⁴ The court concluded that three provisions of the Bill of Rights were unconstitutionally vague, therefore infringing the Fourteenth Amendment of the United States Constitution which protects the right to due process.¹¹⁵ Lawyers have already concluded that the Magpie River ordinance may be subject to dispute, especially as there are no plans to recognize rights of nature in the Constitution.¹¹⁶ Likewise, it is unclear how Canadian governments and regulators will react to Indigenous recognition of personhood in relation to the Fraser River.¹¹⁷

V. Cautious personhood: Indigenous laws at the center

¹⁰⁹ Krista Hessey, “How a river in Quebec won the right to be a legal person,” Global News (2 October 2021), online: < <https://globalnews.ca/news/8230677/river-quebec-legal-person/> >.

¹¹⁰ <http://files.harmonywithnatureun.org/uploads/upload995.pdf>

¹¹¹ *Id.*

¹¹² *Pa. Gen. Energy (PGE) v. Grant Twp.*, Case No. 1:14-cv-00209-JFM (W.D. Pa., Aug. 8, 2014). PGE sued Grant Township in federal district court to overturn the community’s ordinance. PGE succeeded in a motion for sanctions against the township for “frivolous, unfounded, harassing pleadings and motions in pursuit of . . . illegitimate ends, thereby increasing litigation costs, abusing process, and wasting judicial resources.” See also Staff writer, “A Court Hearing for Grant Township: Eight Years Later, and Still No Injection Well,” Community Environmental Legal Defence Fund (4 May 2022), online: < <https://celdf.org/2022/05/a-court-hearing-for-grant-township-eight-years-later-and-still-no-injection-well/> >.

¹¹³ *Id.*

¹¹⁴ Brigit Rollins, *Turning the Tides: Judge Finds Lake Erie Bill of Rights Unconstitutional*, NATIONAL AGRICULTURAL LAW CENTER (March 4, 2020), <https://nationalaglawcenter.org/turning-the-tides-judge-finds-lake-erie-bill-of-rights-unconstitutional/>.

¹¹⁵ *Id.*

¹¹⁶ E.g. Elizabeth Raymer, *Quebec’s Magpie River is Granted Personhood*, CANADIAN LAWYER (March 9, 2021), <https://www.canadianlawyermag.com/practice-areas/esg/quebecs-magpie-river-is-granted-personhood/353752#:~:text=In%20February%20the%20regional%20county,and%20to%20take%20legal%20action> (quoting a legal expert’s uncertainty over the “weight behind the legal argument [derived from the ordinance].”).

¹¹⁷ Tsilhqot’in Nation, *?Esdilagh Sturgeon River Law*, HARMONY WITH NATURE (May 28, 2020), <http://files.harmonywithnatureun.org/uploads/upload995.pdf>.

There are reasons to be cautious about a sweeping endorsement of personhood in relation to parks generally and Stanley Park in particular. First, many advocates of personhood emphasize the promise of environmental protection without reference to or reflection on Indigenous laws. Professor David Boyd, UN Special Rapporteur on Human Rights and Environment suggests that personhood could strengthen the legal protection that “generations of environmental laws have failed to provide,” rather than natural resources acting as a commodity and a piece of property to be owned and discarded as desired by the owner.¹¹⁸

However, personhood is rooted in a certain conception of property and ownership. In some Indigenous legal orders, property is not “owned” and cannot be ceded. Indigenous law may be premised on a “reciprocal relationship with the Earth.”¹¹⁹ Professor Robin Wall Kimmerer, who wrote *Braiding Sweetgrass* about bringing together Indigenous ways of knowing and scientific knowledge,¹²⁰ states that, “Land is not capital to which we have property rights; rather it is the place for which we have moral responsibility in reciprocity for its gift of life.”¹²¹ As Indigenous leader, Grand Chief Harold Turner, stated:

The Creator gave us life, inherent rights and laws which governed our relationship with nations and all peoples in the spirit of coexistence. This continues to this day. We as original caretakers, not owners of this great country now called Canada, never gave up our rights to govern ourselves and thus as sovereign nations. We, as sovereign nations and caretakers of Mother Earth, have a special relationship with the land. Our responsibilities to Mother Earth are the foundation of our spirituality, culture and traditions [. . .] Our ancestors did not sign a real estate deal, as you cannot give away something you do not own.¹²²

Second, personhood may not be consistent with Indigenous worldviews or have Indigenous support, and may not necessarily be rooted in Indigenous legal orders or reflective of Indigenous priorities.¹²³ Professor Melany Banks notes that personhood “is not the language that would be used if we were to take seriously the idea that Indigenous peoples and European settlers came together as two equal sovereign nations.”¹²⁴ Similarly, Professor Carwyn Jones asserts that using legal personality “confirms that Māori legal traditions will not be recognized on their own terms but instead only through the closest equivalent from the Western legal tradition.”¹²⁵ In other

¹¹⁸ Juliette Deck, *Rights for Rivers*, MCGILL INTERN’L REV. (May 16, 2021), <https://www.mironline.ca/rights-for-rivers/>.

¹¹⁹ Dave Courchene, *Sharing Indigenous Knowledge on Survival in Times of Climate Change*, TURTLE LODGE (November 18, 2016), <http://www.turtlelodge.org/wp-content/uploads/2016/11/Sharing-Indigenous-Knowledge-on-Survival-in-Times-of-Climate-Change-Turtle-Lodge-Nov18.2016.pdf>.

¹²⁰ Robin W. Kimmerer, *Greed Does Not have to Define Our Relationship to Land*, LITERARY HUB (June 4, 2020), <https://lithub.com/robin-wall-kimmerer-greed-does-not-have-to-define-our-relationship-to-land/>.

¹²¹ *Id.*

¹²² Royal Commission Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples, Vol 2: Restructuring the Relationship* (1996), available at <https://data2.archives.ca/e/e448/e011188230-02.pdf>

¹²³ Mihnea Tanasescu, *Nature Advocacy and the Indigenous Symbol*, 24 *Envtl. Values* 105 (2015).

¹²⁴ Melany L. Banks, *Aboriginal Title or Legal Personhood for Land?*, 2 *Canadian Soc. for Study Prac. Ethics* 1, 8 (2018).

¹²⁵ Carwyn Jones, *New Treaty, New Tradition: Reconciling New Zealand and Māori Law* 98 (2016).

words, personhood is a legal compromise that is not necessarily rooted in Indigenous law.¹²⁶

In relation to Stanley Park, the Coast Salish First Nations have not endorsed legal personhood in the context of Stanley Park, nor confirmed that it is an appropriate way to reflect their interests. The legal system that adopts it constructs particular rights, obligations, powers and limitations in relation to the ‘personhood’ designation. It is crucial to ask what personhood is meant to accomplish, who is asking for it, and the intentions behind it. Personhood requires that we also need to be mindful of geographic, cultural, social, historical, and legal differences.¹²⁷ The specific spaces of Stanley Park have their own unique contexts, with different nations, laws, and significances. There are multiple First Nations involved, each with their own governance models and peoples that have a role to play in contemplation of legal technologies. There are risks of superficially adopting institutional responses developed in radically distinct contexts while expecting identical results.

Third, as Professors Eve Tuck and Wayne Yang warn, “settler moves to innocence attempt to relieve the settler of feelings of guilt or responsibility without giving up land or privilege, without having to change much at all.”¹²⁸ Legal personhood can be introduced without changing power relations. Professor Glen Coulthard cautions that, “[y]ou’re never going to gain the full recognition of your freedom from your oppressor. They will only recognize you to the extent that it serves their own interests. The effect that that recognition being given to you has on the dominated or the colonized is that they come to see that gift of recognition as a form of justice or decolonization itself. You think recognition is actually freedom and decolonization, but it’s really colonization in a new form.”¹²⁹

In the context of Stanley Park and parks broadly speaking, there are significant limitations on granting a form of personhood that goes beyond symbolism to shifts real power to Indigenous peoples.¹³⁰ Personhood without legal teeth would embody the “settler move to innocence” that Tuck and Yang outline; that mere veneer has replaced dialogue, with a rush to conclude the difficult task of confronting colonialism within cities. Truly engaging with law, Indigeneity, and parks in relation to Stanley Park means confronting the use of trespass claims to displace Coast Salish residents and the use of municipal laws to allow the city and Park Board to govern Stanley Park for century without acknowledging Coast Salish people. It would involve ongoing and committed dialogue to affirm that personhood was the appropriate designation under Indigenous as well as Canadian law.

VI. Conclusion

¹²⁶ As the Indigenous Circle of Elders states, “Indigenous governance is informed by Indigenous law. It can take on myriad forms from First Nation to First Nation, some of which are interim steps toward a vision that may take years to fully recognize.”

¹²⁷ See Cristy Clark, Nia Emmanouil, John Page & Alessandra Pelizzon, *Can You Hear the Rivers Sing? Legal Personhood, Ontology, and the Ni y-Gri y of Governance*, 45 Ecology L.Q. 787 (2019).

¹²⁸ *Id.*

¹²⁹ H.G. Hamilton, *Beyond a Formal Acknowledgement*, MAINLANDER (January 7, 2015), <https://themainlander.com/2015/01/07/beyond-a-formal-acknowledgement/comment-page-1/#comment-3080> (quoting Khelsilem's comment).

¹³⁰ Vancouver Charter, S.B.C. 1953, c 55 (Can. B.C.).

This Article has considered personhood status for parks, with a specific focus on Stanley Park in Vancouver. Personhood can shift the way in which natural resources are understood in law, from an *object* of property to a *subject* of property. The resource itself can now set its own agenda and advance its rights through stewards or guardians acting on its behalf. This has enormous potential for environmental protection in particular. Personhood can also shift the governance of natural resources from colonial governments to First Nations, as evidenced in New Zealand. As the examples of Te Urewera and Rio Atrato show, success is especially evident at the national scale.

In the context of local governments, the potential of personhood to meaningfully advance Indigenous rights is less certain. Local ordinances, where judicially tested, have been overturned by courts. In the Canadian context, personhood is a more recent phenomenon, and it remains unclear how courts would endorse or apply personhood given the constitutional status of local governments. Moreover, First Nations have played a pivotal role in determinations of personhood in both the Magpie and Fraser Rivers.

In this thought experiment — could Stanley Park be a person? — I suggest cautious personhood. If personhood is appropriate under the respective laws of the Coast Salish First Nations, Indigenous involvement is a precondition, with Indigenous laws necessary to affirm Stanley Park as a person. Such actions would de-center the city itself as the granter of rights under their own terms, strengthen the personhood designation, and ensure that personhood is not a settler rush to innocence.