LEGAL ANECDOTES AND MISCELLANEA

By Ludmila B. Herbst, Q.C.*

THE CRANMER POTLATCH: DECEMBER 1921

It has been almost a century since a potlatch on Village Island led to multiple convictions for breach of the potlatch ban and the shipment, predominantly to Ontario and the U.S. east coast, of many precious ceremonial items that were only "repatriated" beginning in the late 1970s. This piece focuses on that potlatch and the events leading up to it.

Outlawing the Potlatch

Effective January 1, 1885, the *Indian Act* was amended to make it a misdemeanor, punishable by up to six months' imprisonment, to engage "directly or indirectly in celebrating the Indian Festival, known as 'Potlatch,' or in the Indian Dance, known as the 'Tamanawas'".[1] Generally, a potlatch refers to "ceremonies that mark significant events, such as marriages, naming of children, memorials to the dead, raising of totem poles, and transfers of rights and privileges", which "[a]s part of the ceremony" are "validated before witnesses by the giving of gifts of property. Feasting, speeches, storytelling, dancing, and singing are also an integral part of the potlatch."[2]

In justifying the ban, Prime Minister Sir John A. Macdonald expressed to the House of Commons the far more dramatic view held by various of his contemporaries: the potlatch was "a debauchery of the worst kind"; he contended that Indian agents and clergy "unite in affirming that it is absolutely necessary to put this practice down", as it is "utterly useless, especially on Vancouver Island, where the 'potlach' principally exists, to introduce orderly habits while it is in vogue".[3]

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However, even some opponents of the potlatch expressed concerns about whether law—rather than persuasion and (ominously) education[4]—was the appropriate means by which to eliminate the practice, including as "arbitrary interdiction" might lead to "savage hostility".[5] Others protested the injustice of constraining the potlatch by any means. With its facets of gift giving, financial interaction, costume and dancing, it was argued to be either positive or no worse than the theatres, saloons, banks, fashion and holidays associated with settlers.[6] From the 1880s, various First Nations—not all First Nations, or their members, opposed the ban[7]—and certain other allies repeatedly petitioned the federal government to change the law.

One more technical concern with the prohibition was its original imprecision, which Chief Justice Begbie criticized in an 1889 case: "[t]he name [potlatch] is Chinook jargon, which as the language of trade and diplomacy has not been in use more than 50 years. Under the name of a 'potlatch', very different practices & objects may be intended". While basing his discharge of the prisoner before him on procedural grounds, Begbie made a point of noting that "[i]f the Legislature had intended to prohibit any meeting announced by the name of a potlatch, they should have said so. But if it be desired to create an offence previously unknow[n] to the law there ought to be some definition of it in the statute." Though the accused had pled guilty, Begbie noted that "it seems an abuse of the forms of justice to take advantage of that plea against an ignorant Indian who speaks no word of English and allege that he has pleaded guilty to an offence, the facts constituting which we should ourselves be unable to set forth."[8]

In the mid-1890s, the prohibition was amended, arguably providing additional precision. It became an indictable offence to engage in, or assist or encourage the celebration of, "any Indian festival, dance or other ceremony, of which the giving away or paying or giving back of money, goods or articles of any sort forms a part, or is a feature, whether such gift of money, goods or articles takes place before, at, or after the celebration of the same".[9] The section provided that offenders were "liable to imprisonment for a term not exceeding six months and not less than two months".[10]

Enforcing the Potlach Ban Among the Kwakwaka'wakw

Despite the amendment, the section was rarely enforced. This came to change in the "Kwawkewlth Indian Agency", where William May Halliday, a controversial figure, was the Indian Agent; he saw his district as "the cradle and nursing ground" of the potlatch, and the place it had "reached its zenith".[11] Kwawkewlth was the federal government's term for the Kwakwaka'wakw ("the people who speak Kwak'wala"), also known by anthropologists as the Kwakiutl.[12] Within this grouping were "a number of tribes with

separate names and creation stories", based in communities such as Alert Bay (on Cormorant Island, off Vancouver Island's northeast coast).[13] Potlatches were "the foundation of Kwakwaka'wakw economic, political, social, spiritual, and legal systems and the means for transferring cultural knowledge to future generations" as well as "promot[ing] values such as humility, generosity, responsibility, and respect".[14]

Halliday's interest in enforcing the ban grew from around 1913/14, coinciding with the installation of Duncan C. Scott as the Deputy Superintendent General of Indian Affairs in Ottawa. It became more practical for Halliday to act when in 1918, at least partly at his own urging, the section of the *Indian Act* (s. 149) was further amended to make the offence summary rather than indictable, so "each Indian Agent has now the power, himself, to try offences of this nature without reference to a magistrate or higher court."[15]

In October 1918, at the tail end of World War I, the Department of Indian Affairs issued a circular "To All Indian Agents in British Columbia" noting that "[i]n view of the urgent need for conservation in all directions – more especially as regards food supplies – no wasteful practice or mode of life can be countenanced." For the Department, the potlach was such a wasteful practice ("[o]ne of the objectionable features of this ceremony is the congregating together of numbers of individuals and the wasteful distribution of food either as presents or in feasting") and it was to be prevented. Although Halliday had communicated such a message to the Kwakwaka'wakws several months earlier (and indeed noted that his audience "of their own accord … expressed not only a desire but also a determination to abstain from such gatherings at least until the war was over"), he met with members of the First Nations again, and read aloud the October circular.

Dan Cranmer (Gwa-gwa-duk-ka-la), the hereditary chief of the 'Namgis band (then known as the Nimpkish) of Alert Bay, and many others, signed a petition in late December 1918 stating that "the Government has not been fully and correctly informed about the potlatch" and asking for "a good man from the Government to come and see us". Alternatively, they suggested, two or three band members could go to Ottawa "to explain to the Government what the potlatch really is". Either way, they wanted to convey the information directly rather than through Halliday.

Convicting the Bridegroom and Brother-in-Law

In January 1919, Halliday convicted two men (the groom and the bride's brother), who had been involved in a marriage ceremony where money had changed hands, of violating the potlatch ban. He sentenced them to the minimum two months' imprisonment, which they were taken to serve at

the Oakalla Prison Farm in Burnaby ("Oakalla"). Halliday thought the case was a clear breach of the ban, but the matter did not end there.

First, as Halliday reported to Ottawa, "[t]he rest of the Indians", who "are very much concerned over the whole thing", "appointed a special committee to go to Ottawa and lay the case of the Potlatch before the Government and ask for a repeal of the act". Around the time the three delegates left for Ottawa, Scott wrote back with what would become a regular departmental response: "the Department has on file reliable information which has been gathered from time to time both in favour of and against the potlatch and it does not appear that there would be anything gained by sending some one to inquire of the Indians the nature of the potlatch." When the delegation met with Scott in Ottawa, apparently his response was cool and he told them, in another familiar refrain, that they could have social gatherings as long as they did not breach s. 149, to which no change was presently warranted.[16]

Second, concerned Kwakwaka'wakw arranged for legal counsel in Vancouver to challenge the convictions: Frank Lyons, "a huge, burly Australian who confined himself entirely to criminal practice".[17] Lyons seems to have thrown himself into action, preparing a notice of appeal and persuading County Court Judge Cayley to grant bail (in the amount of $1,000 for each man, posted "through the assistance of two prominent officials of the B.C. Packers' Association who kn[e]w [them] as two of their best fishermen"[18]). The *Vancouver Daily Province* described Lyons as the action hero that many of us would aspire to be, noting that he then "sped out to Oakalla in a high-powered car"—it was "a wild ride in a 90-h.p. auto"—"to procure the release of the two men. From thence the chase turned to the provincial courthouse, counsel rushing in with his papers and his clients" in "a breathless dash … just thirty seconds before the registry closed and the time for appeal against the prison sentence of the bridegroom and the bride's brother elapsed."[19]

Lyons also wrote to the Department of Indian Affairs seeking a pardon for these "two respectable members of the community"; "[t]hey will tell you that all they did was to have a marriage ceremony performed according to Indian custom and the money which passed was nothing more nor less than a wise provision for the maintenance of the bride lodged with her brother to be kept by him for her use and benefit." The Department responded in mid-February 1919 that "it is not considered proper to ask for clemency pending the decision on the appeal".

By March 1919, other potlatch prosecutions were afoot, for which Lyons travelled to Alert Bay along with J.H. Senkler, K.C., who had been retained by the federal Department of Justice (Senkler later complained of the department's miserly approach to his fee). After a preliminary debate over

whether Halliday should preside, some discussion ensued which resulted in the Crown's withdrawal of the charges in exchange for an agreement, "signed by all the Indians present numbering in all 79 men", as follows:

> We the undersigned Chiefs and Indians of the Kwawkewlth Indian Agency knowing that there is a law against what is commonly known as the potlatch and that the said law is contained in section 149 of the Indian Act, do hereby covenant and agree that as long as the provisions of the said section remain unaltered that we will obey the law and will not potlatch in an form. And we further agree that we will use our influence in every way to uphold the law and discourage any other from violating this [provision] of the law.
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> We however wish to reserve the right to make representations to the Government to have the law changed to enable use to keep up some of our old customs including the right to potlatch as we have been accustomed to, which is now forbidden by the law …

Halliday, enthused by "a great moral victory as the Indians now have committed themselves to obedience to the law against the potlatch, while heretofore they have been opposing it in every form", agreed it was fair to adopt the same approach to the earlier-convicted groom and brother-in-law. He reported that "it was arranged that they should withdraw the appeal and that the crown would ask that the time the men were out on bail should count as part of their sentence, but that the conviction should be upheld."

The players on the appeal appeared before Judge Cayley in Vancouver in late March 1919, and the agreement was confirmed. The judge understood that, as he expressed in a letter to the federal Minister of the Interior in September 1919, counsel for the Crown was "undertaking to represent to the Department at Ottawa that there should be an investigation by the Department into the custom of potlatching, upon which investigation the Indians were to have an opportunity of putting before a Dominion investigator their troubles and difficulties in regard to potlatching, witnesses to be allowed on each side. Those against, and those in favor, of potlatching will have full opportunity of representing their views."

Asking and Waiting for Action

By late 1919, however, the potlatch ban was still in place, there was still no investigation and the Department of Indian Affairs was refusing First Nations' requests even for supervised gatherings to be held. An undated memorandum from another lawyer, Edwin K. DeBeck, who had not been involved in the making of the March 1919 agreement[20] but became involved in 1920 on behalf of the "Kwakiutl", said that he had "personally seen at least 75% of the signatories and they unanimously declare: firstly that the assurance given to them by all persons concerned in the case made them confi-

dent that the law would be either amended or relaxed, secondly that the necessary representations to the Department in Ottawa would take not more than two months, and thirdly that they were binding themselves merely for the period of two months".[21]

In January 1920, Scott wrote to Arthur Meighen, who was at this point Minister of the Interior and Superintendent General of Indian Affairs, that he did "not recommend the holding of an investigation in the sense which may be implied by Judge Cayley's remarks". In a familiar refrain, he explained that "[t]he facts are already available in this Department … As a matter of fact we probably know more about the aboriginal custom of the potlatch than do the Indians themselves. It would therefore be a useless expenditure to hold an investigation under the circumstances." Instead Scott proposed that the Anthropological Division of the Department of Mines prepare a report.

In February 1920, Charles Marius Barbeau, an ethnographer who later rose to great prominence (though not also without attracting some controversy),[22] was assigned to take on this task. Reportedly First Nations spent "several thousand dollars" on presenting their case to him over some period of time. However, they were not then provided with a copy of his report despite the urgings of DeBeck and the lawyer Leon Ladner, then a Member of Parliament, in 1921 and 1922. More generally matters did not seem to advance, though Lyons again also pressed for amendments to s. 149, and the prominent Sir Charles Hibbert Tupper, K.C.,[23] even offered to draft them.

October 1921 "Ceremony"?

In October 1921, there was what Halliday later reported to Ottawa as participation by "the Indians at Kingcome Inlet … in certain proceedings incidental to the potlatch by which a copper changed hands with the usual ceremony and rites incidental to that portion of the potlatch". Coppers are "beaten sheets of copper in the shape of shields", each with "its own name, history and value"; "owning a copper is required to conduct certain types of potlatch business" and, for the Kwakwaka'wakw, "coppers were perhaps the greatest symbol of wealth and power."[24]

Participants in the October events were charged with breach of s. 149 and appeared before Halliday on December 19 and 20, 1921. The case for the prosecution was presented by RCMP Sergeant Donald Angermann, who according to Halliday "was an old hand at conducting prosecutions and was as efficient as the average counsel".[25] DeBeck (who registered his opposition to the principle "of the Indian Agent hearing any offences against the Indian Act") appeared for the defence, contending that the October events

had not involved a "ceremony" as s. 149 required. Halliday nonetheless convicted the accused and sentenced them to two months' imprisonment each. However, DeBeck asked for a stated case to be submitted to the B.C. Supreme Court, and Halliday agreed to suspend the execution of the sentence until the stated case was heard.

The stated case was scheduled to proceed on January 20, 1922, in Vancouver, before Chief Justice Hunter of the B.C. Supreme Court. Halliday, who travelled to Vancouver for this purpose, and Angermann both urged that legal counsel be retained for the Crown, and the Minister of Justice authorized retaining "Messrs. Russell, Hancox & Anderson". Halliday "spent considerable time with the counsel as there were many points in connection with Indian customs which it was thought best that they should thoroughly understand in order to be able to argue the case in court".

On the stated case, DeBeck argued that what had occurred was a business transaction, not a "ceremony". There had been none of the required "feasting, dancing and singing", attendees did not wear "native costume" or masks and headdresses, and no gifts were distributed. A "copper" had changed hands (possibly purchased by one man for his son-in-law for $10,000, with the first payment, a combination of cash and blankets, being $1400) which DeBeck said had "the same power and effect among the Indians as a bank note of high denomination" (though he admitted there was possibly less than dollar's worth of copper in the shield); individuals gathered to properly witness the transaction and obviate the need to record it in writing. DeBeck added that in any event potlatches were not harmful, that this view was supported by a report of the "Anthropological Society", and that "he had every reason to believe to the act would be amended in this respect".[26]

However, Chief Justice Hunter upheld the convictions and sentences, saying there was "some kind of ceremony" contrary to the intention of s. 149, which is "to prevent the tribe wishing off a copper on some member of the tribe and so relieving him of his money".

Halliday "[i]mmediately … wired Sergt. Angermann … and on my return to Alert Bay the next day he had the five Indians ready waiting … they left that night to serve the term of two months." He also made a point of noting DeBeck's statement regarding the "Anthropological Society" and a pending change to the law, saying "[i]f this statement is not true it would seem that he was in great error in making such a statement, and already his statement has done harm amongst the Indians in this agency. They feel that if the Act is going to be amended at the next sitting of parliament that it shows spite work on behalf of the authorities in prosecuting them for this offense."

In early February 1922, the Department of Indian Affairs responded to Halliday that "if by the Anthropological Society [DeBeck] means the Anthropological Division of the Geological Survey of Canada he is entirely wrong; that Division has never reported to this Department that they were of the opinion that potlatches were not harmful to the Indians." Further, they noted they had written DeBeck in June 1921 that they would not consider the question of amending s. 149.

The Cranmer Potlach and Its Aftermath

By this point, another potlatch, sometimes referred to as "Dan Cranmer's potlatch",[27] had been held in Halliday's district, over a five-day period ending on Christmas Day 1921. This was apparently "the largest ever recorded on the central coast".[28] Around 300 to 400 invitees from various villages (though apparently relatively few of the 'Namgis, given concern about running afoul of Halliday[29]) gathered for it, on Village Island.[30] The location was chosen at least in part because of its association with Cranmer's then wife, Emma Cranmer (Zoh-la-lee-tlee-louq); her family were Mamalillukulla, then of Village Island. The Village Island location may also have been chosen because not within physical sight of the police in Alert Bay; indeed, the police did not observe the event, and the goods to be distributed were shipped there at night.[31] However, apparently at least two converted informants recorded names of attendees.

During the potlatch, the family of Emma Cranmer "returned the property that her husband Dan had given them at the time of her marriage. Then Dan Cranmer distributed the repayment, and a large amount of other property [including "canoes, pool tables, gas boats, sewing machines, gramophones, trunks, violins, bedsteads, blankets, and cash"[32]], to the assembled guests".[33]

The police spent some time investigating before informations were laid on February 1, 1922. Halliday reported to Ottawa on January 24 that "Sergt. Angermann has been busy collecting evidence" from the "widely scattered" participants and that "they are all both old and young in a state of fright as they do not know who will be prosecuted in this case and who will not." Returning to what had become somewhat of a theme of his reports (the pending extinction of the potlatch), he noted that "[t]he general consensus of opinion is that if the next case is successful together with the success that has attended in the stated case that the potlatch will be absolutely dead." This should have cheered Scott, who had issued a further circular in mid-December 1921 noting "alarm that the holding of dances by the Indians on their reserves is on the increase", tending to "disorganize the efforts which the Department is putting forth to make them self-supporting."

On various days in February and March 1922, court proceedings were attempted or proceeded in Alert Bay, complicated by stormy weather and counsel illness. The main roles for the defence were played by the firm of Joseph Martin, K.C., who dispatched his colleague W. Murray to defend Dan Cranmer (described by Halliday as the "principal offender") and others, and the firm of McTaggart & Ellis, with Ellis appearing when able. Halliday observed that "[d]uring my experience in these potlatch cases the Indians have had many lawyers to advise them and much of the opposition to the enforcement of the potlatch law has been owing to the attitude of the lawyers", but Murray and Ellis were "fair and above board" and appeared "anxious to do what was right and in the best interest of the Indians". Through February and into March, DeBeck and Martin also wrote Ottawa respectively seeking an amendment to the law or at least a reasonable outcome that did not involve imprisonment given the pending commencement of the fishing season.

At some point in this period, an agreement was, Halliday reported, "drawn out by the Indian Agent and assented to by the counsel for the defense", adopting a suggestion of Sergeant Angermann "that in order that the Indians might show their good faith that they should voluntarily surrender to the Indian Agent all … paraphernalia used solely for potlatch purposes". The agreement was as follows:

> We the undersigned Indians of the Kwawkewlth Indian Agency do hereby covenant and agree: -
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> Whereas section 149 of the Indian Act makes it an offence to carry out our old custom of meeting together and giving away and taking part in what is commonly known as the potlatch and we now realize and understand that the Government of Canada intends to enforce the Act strictly and that the act is not expected to be amended in this respect.
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> And whereas we the Indians in this agency are willing to do our share in the observance of the law:
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> We therefor covenant and agree that as long as the section remains on the Statutes of Canada we will obey the same and we will do all in our power to see that all other Indians in our agency keep and obey this section of the Indian Act, and that we will assist the authorities in every way to see that this section of the Act is obeyed and kept inviolate.
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> And furthermore in token of our good faith in this our agreement we voluntarily surrender to the Department of Indian Affairs through its representative the Indian Agent all our potlatch paraphernalia to wit: - coppers, dancing masks and costumes, head dresses and all other articles used solely for potlatch purposes. All the above articles are to be disposed of by the Department of Indian Affairs and all funds received therefor to be returned to the original owners.
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> We further agree that all the above properties shall be surrendered to the Indian Agent on or before the 25th day of March 1922.

Halliday reported that the court—he had apparently involved another justice of the peace—decided that if the Indians signed this agreement and surrendered the property, it would be prepared to give suspended sentences to first offenders and recommend to the Minister of Justice that several second offenders be given parole. Halliday reported to Ottawa his firm belief "that the potlatch has been killed as they are all afraid to go on any further with it realizing that they are fighting a losing game. They have spent in the last few years possibly $10,000.00 in deputations and lawyer's fees etc. in connection with it and they feel that it is money thrown away."

The accused and their communities faced a difficult choice. There was some threat that some or all of the remaining attendees at the December potlatch could still be charged. However, the objects that would need to be surrendered were incredibly significant. Ultimately, different communities decided to proceed in different ways. Accused were ultimately sentenced, in April 1922, "according to which tribe they belonged", so individuals were either sent "to jail or release[d] … on suspended sentence in accordance to the manner in which their tribe had accepted the agreement."[34] The 'Namgis—to which Dan Cranmer and, through marriage, Emma Cranmer, belonged—were among those who accepted the agreement and surrendered large quantities of items.

The surrendered material was taken to Halliday at Alert Bay. A teenaged witness at Cape Mudge (whose community also proceeded with the agreement) later told of seeing the scow that "pick[ed] up the big pile of masks and headdresses and belts and coppers – everything we had for potlatching"; "[o]ur old people who watched the barge pull out from shore with all their masks on it said: 'There is nothing left now. We might as well go home.' When we say 'go home' it means to die".[35] Halliday reported that at first he piled the "at least 300 cubic feet" of surrendered material in his wood shed. However, he "arranged with the Anglican Church to obtain the use of the parish hall to open this stuff up and tabulate it on condition that we allow it to be put on exhibition for a couple of days to pay for the use of the hall." The plan was then to direct the material to museums in Canada.

Not all Kwakwaka'wakw communities surrendered their potlatch items, and as such, some of their members went to prison. Halliday's tally in April 1922 was as follows. Fifty-eight informations had been laid, leading to 9 dismissals, 23 suspended sentences, 22 sentences of two months' imprisonment (including for four women), and four sentences (for second offenders) of six months, though for three belonging to groups that had ascribed to the agreement, arrangements were made for early release. Some appeals were initiated but unsuccessful.

Those to be imprisoned were to go to Oakalla. Emma Cranmer may have offered to go in place of at least one of the women, but this was not permitted.[36] Those whose sentences were not suspended were initially held in a school at Alert Bay, where she cooked for them. On April 10, Sergeant Angermann escorted those convicted to Vancouver on the CPR steamer *Beatrice*.[37] They were then jammed into trucks for the drive from the port to Oakalla; the trucks kept breaking down (with flat tires) given that so overloaded, and ultimately they walked the rest of the way.[38] Their time in prison was humiliating, and some never recovered from it; one of them organized a "grease potlatch" on their return home as a form of cleansing.[39] Immediately on their release, Emma Cranmer met them at Oakalla, and paid for their streetcar trip back to Vancouver, the "Japanese Hotel" at which they stayed on Cordova Street, their restaurant meal and their steamship tickets home.[40] Dan Cranmer evidently also felt lifelong anguish for his role in what had occurred.[41]

By the time Emma Cranmer returned to Alert Bay with those released from Oakalla, Dan Cranmer may have left her (though "this had nothing to do with our custom for many of our people were angry about this for years to come"); "[m]uch later", Emma Cranmer married one of the men who had served time at Oakalla, Herbert Martin (Mencha),[42] the brother of artist and chief Mungo Martin (Nakapankam). Dan Cranmer married Agnes Hunt (Gwant'ilakw); they had several children including Doug Cranmer (Kesu'), who became an artist (trained in part by Mungo Martin), and Gloria Cranmer Webster, O.C., who took on a leading role in establishing the U'Mista Cultural Centre at Alert Bay.

By the time those convicted were released from Oakalla, Halliday was still sorting through the spoils. In September 1922, he sold a portion to George Heye, who had travelled to Alert Bay on behalf of a "New York museum" and offered "exceptionally good" prices; the Department of Indian Affairs sharply reprimanded Halliday for exceeding his authority in selling the material, "especially" when "to be taken to the United States". Most of the material went to the Victoria Memorial Museum in Ottawa (now the Canadian Museum of Civilization ["CMC"]) and the Royal Ontario Museum, though nine objects were displayed in Scott's office until their return, after his death, to the CMC.[43]

Very little was paid for the items to their actual owners; no compensation was paid for coppers and perhaps under $1,500 in total for the rest. Halliday later wrote that "the Indians considered [the sum realized] entirely inadequate, but this is a matter on which opinions differed very much"; he noted that "[s]ome of the things for which good prices were paid, the ordinary individual would not consider worth anything at all, while some of the things were more or less new and though in many instances were much better

looking, they only brought fair to low prices, as to those learned in the antiquities of the Indians they had little historic value".[44]

In 1979, after much First Nations effort, the CMC "repatriated their portion of the collection to Kwakwaka'wakw territory to be placed in the Kwagiulth Museum (opened 1979) and U'mista Cultural Centre (opened 1980)", with the Royal Ontario Museum returning its portion in 1988 and the National Museum of the American Indian in 1993 and 2002.[45]

The potlatch did not entirely end after 1922, but adapted, including at times by gift distribution being done on a house-to-house basis.[46]

The potlatch ban was finally removed from the *Indian Act* in 1951, with Chief Mungo Martin then hosting "[t]he first public potlatch … in 1953 … on the occasion of the opening of his bighouse in Thunderbird Park, across the street from the legislative buildings in Victoria. Some of our people did not attend, afraid that they might be arrested. There were no arrests and the potlatch was a great success."[47]

ENDNOTES

1. On April 21, 1885, IW Powell, the Superintendent of Indian Affairs, issued a circular to Indian agents, asking them to advise "the Indians in [their] locality" of the passage of this law. The *Indian Act* amendment had been preceded by a proclamation of the Governor General warning the Indians against engaging in the potlatch: "Indian Potlatches", *British Columbian* (18 November 1882); *Debates of the House of Commons* (24 March 1884) at 1063 (Sir John A Macdonald, second reading); *Debates of the House of Commons* (7 April 1884) at 1399 (Sir John A Macdonald, committee).
2. Catherine Bell, Heather Raven & Heather McCuaig, in consultation with Andrea Sanborn, the U'mista Cultural Society & the 'Namgis Nation, "Recovering from Colonization: Perspectives of Community Members on Protection and Repatriation of Kwakwaka'wakw Cultural Heritage" ["Recovering from Colonization"] in Catherine Bell & Val Napoleon, eds, *First Nations Cultural Heritage and Law Case Studies, Voices, and Perspective* (Vancouver: UBC Press, 2008), 33 at 46–47.
3. *Debates of the House of Commons*, *supra* note 1 at 1063 (second reading) and 1399 (committee).
4. See "Separating Children from Their Traditions: 1867–1939" in *Final Report of the Truth and Reconciliation Commission of Canada*, Volume 1: Canada's Residential Schools: The History, Part I – Origins to 1939, 629.
5. "Indian Potlatches", *supra* note 1.
6. See e.g. "Nootka Chief Speaks", *Victoria Daily Colonist* (1 April 1896).
7. It is sometimes difficult, of course, to say why—whether it was missionary influence, or sometimes opposition that would have existed, regardless, to certain associated practices. See for the story of one opponent, Leslie A Robertson (with the Kwagu'l Gixsam Clan), *Standing Up with Ga'axsta'las: Jane Constance Cook and the Politics of Memory, Church, and Custom* (Vancouver: UBC Press, 2012).
8. This is the case of He-ma-sak or Hamasak, referred to as well in Hamar Foster, QC, "A Man Like Greer" (2020) 78 Advocate 347 at 355 and note 43. According to the archived notes of his judgment, Begbie continued: "It is easy to suppose that a man might plead guilty to swearing being conscious that he had used such an adjuration as – 'Adzookers', which is no oath, or plead guilty to gaming meaning to admit [to] having play[ed] at cribbage without stakes."
9. Also banned were engaging or assisting in "any celebration or dance of which the wounding or mutilation of the dead or living body of any human being or animal forms a part or is a feature". This prohibition does not seem to have been controversial or, indeed, needed as a practical matter.
10. The minimum had deliberately not been included in the original version of the provision but was included here and created issues. Indeed even Halliday, in February 1920, noted that "in small offences I might suggest that I think the penalty rather drastic as a fine, say from $25.00 to $500.00 or imprisonment as stated in the act or both, might suit the occasion better and would allow more latitude to the … magistrates."
11. WM Halliday, *Potlatch and Totem, and the Recollections of an Indian Agent* (London: JM Dent & Sons Ltd, 1935) at 3. Ethnographer Charles Marius Barbeau, who plays his own part in the story (see *infra* note 22), described Halliday's book as having "some features of a great book", but being "a long way from being a great book", with Halliday having "failed to understand profoundly the elements of grandeur in the events that enriched his long experience": (1936) 17:3 Canadian Historical Review 341 at 341–42.

12. "Recovering from Colonization", *supra* note 2 at 34–35.
13. *Ibid.*
14. *Ibid* at 46–47.
15. Department of Indian Affairs, circular dated October 21, 1918.
16. February 26, 1919 letter from JD McLean, Asst Deputy and Secretary to Bishop of Victoria.
17. The Honourable HI Bird, "Some Early Personalities of Bench and Bar: An Address by the Honourable Chief Justice H.I. Bird" (1964) 22 Advocate 177 at 180.
18. "Romance of Indian Life: Marriage Customs of North Tribe Have Bearing on Conviction", *Vancouver Daily Province* (10 February 1919).
19. *Ibid.* This is not the only story regarding Lyons and a car. At one point in his career, Lyons practised out of "an old high topped limousine motor car of doubtful vintage", which had apparently been his fee in one case; during the Depression, he was "quite prepared to take his fee in any form if cash was not available. Hence the office, watches, false teeth, or anything else that might later be redeemed": Bird, *supra* note 17 at 180.
20. DeBeck wrote in his undated memorandum: "Of course such an agreement is farcical on the face of it – an agreement not to commit an offence against the law. Why the very fact such an agreement is considered implies that in the absence of the agreement they might break the law! It is simply another instance [of] the half-hearted enforcement of the law ([s] 149)." DeBeck's father had been an Indian agent and DeBeck himself, then of the Vancouver firm Dickie & DeBeck, later became Superintendent of Brokers and then Clerk of the House (Legislative Assembly of British Columbia): "Bench and Bar" (1949) 7 Advocate 11.
21. There may be some issue with how the terms of the agreement were translated for those signatories who did not speak fluent English. One of the polarizing figures in these events is the court interpreter, Jane Constance Cook (Ga'axsta'las): for a nuanced view, see Robertson, *supra* note 7. Gloria Cranmer Webster, OC, describes Mrs Cook's role in the prosecution of the accused for the Cranmer potlatch in "The Potlatch Collection Repatriation" (1995) UBC L Rev 137 at 138: "When the magistrate asked each of the accused, 'How do you plead, guilty or not guilty?' she translated the question into our language as, 'He wants to know, were you there?' Everyone, of course, replied, 'Yes.'"
22. "Charles Marius Barbeau", *Canadian Encyclopedia*, online: <www.thecanadianencyclopedia.ca/en/article/ charles-marius-barbeau>; "Charles Marius Barbeau", Wikipedia, online: <en.wikipedia.org/wiki/Marius_Barbeau>.
23. University of Toronto & Université Laval, "Tupper, Sir Charles Hibbert" in *Dictionary of Canadian Biography*, online: <www.biographi.ca/en/bio/tupper_charles_hibbert_15F.html>.
24. Online: <umistapotlatch.ca/potlatch-eng.php>. See also Emma Louise Knight, "The Kwakwaka'wakw Potlatch Collection and Its Many Social Contexts: Constructing a Collection's Object Biography" (Masters of Museum Studies thesis, University of Toronto Faculty of Information, 2013) at 34, note 6.
25. Halliday, *supra* note 11 at 191.
26. "Wealthy Red Man Coppered: Process Set the Family Back $10,000, Chief Justice Hears", *Vancouver Daily Province* (20 January 1922).
27. See e.g. Tina Loo, "Dan Cranmer's Potlatch: Law as Coercion, Symbol and Rhetoric in British Columbia, 1884-1951" (1992) 73:2 Canadian Historical Review 124.
28. Knight, *supra* note 24 at 32.
29. Douglas Cole & Ira Chaikin, *An Iron Hand Upon the People: The Law Against the Potlatch on the Northwest Coast* (Vancouver: Douglas & McIntyre Ltd, 1990) at 119 [Cole & Chaikin, *Iron Hand*].
30. Cranmer Webster, *supra* note 21 at 138.
31. Cole & Chaikin, *Iron Hand*, *supra* note 29 at 119.
32. Knight, *supra* note 24 at 32.
33. Christopher Bracken, *The Potlatch Papers: A Colonial Case History* (Chicago: University of Chicago Press, 1997) at 123. See also Daisy (My-yah-nelth) Sewid-Smith, *Prosecution or Persecution* (Ny-Yum-Beleess Society, 1979) at 4.
34. RCMP Crime Report (19 April 1922).
35. Joy Inglis & Harry Assu, *Assu of Cape Mudge: Recollections of a Coastal Indian Chief* (Vancouver: UBC Press, 1989) at 104, as quoted in Knight, *supra* note 24 at 33.
36. Sewid-Smith, *supra* note 33 at 4.
37. Cole & Chaikin, *Iron Hand*, *supra* note 29 at 122.
38. Sewid-Smith, *supra* note 33 at 57 (setting out the recollections of Herbert Martin).
39. *Ibid* at 54–63; "Recovering from Colonization", *supra* note 2 at 56. Apart from degradations of prison came others associated with Oakalla having a farm. As Herbert Martin recounted, "To my surprise I saw the Chieftains of the Kwakiutl, Highyahlth-kin (John Whonnok). Whonnock was feeding the pigs. Also Billy McDuff was feeding the pigs. James Knox the youngest was with them. Three of them were feeding the pigs. Imagine! the great Chieftains of the Kwakiutl degraded to feeding pigs": Sewid-Smith, *supra* note 33 at 61.
40. Sewid-Smith, *supra* note 33 at 63.
41. "Recovering from Colonization", *supra* note 2 at 56.
42. Sewid-Smith, *supra* note 33 at 6.
43. Knight, *supra* note 24 at 3–4, 43.
44. *Potlatch and Totem*, *supra* note 11 at 192–93.
45. Knight, *supra* note 24 at 3–4.
46. Douglas Cole & Ira Chaikin, "A Worse than Useless Custom: The Potlatch Law and Indian Resistance" (1992) 5:2 W Legal Hist 187 at 209–10; Cranmer Webster, *supra* note 21 at 139. In *Potlatch and Totem*, *supra* note 11 at 194, Halliday remarked, in what sounds like somewhat of a begrudging tone, that while individual delivery of gifts did not attract prosecution, "there was no *éclat* attached to the one who gave it, and the affair would fall very flat".
47. Cranmer Webster, *supra* note 21 at 139.