

**THE ROLE OF IDENTITY IN  
A RESOURCE-BASED CONFLICT**

**By**

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## **I. Introduction**

This paper examines the current dispute between the Musqueam Band and the Musqueam Park leaseholders.

My research combined academic research, archival research, and personal interviews to identify and analyze both manifest and latent issues of the Musqueam Park dispute. I also discuss current mechanisms of dispute resolution, and explore alternative options for resolving or managing this dispute. I chose the Musqueam Park dispute as a case study, both because of its suitability for qualitative action research, and because of my interest in exploring the possible role of identity-based issues in disputes which are considered resource-based. Furthermore, the Musqueam Band dispute is before the Supreme Court of Canada, whose ruling will likely be precedent setting for future land-related disputes involving First Nation Peoples in Canada.

Based on existing documentation, including court records, the Musqueam / leaseholder dispute appears to be a typical landlord / tenant dispute, where two parties disagree over the interpretation of certain provisions in their lease. The leaseholders, the Department of Indian and Northern Affairs (DIAND), and the Musqueam Band all seem to agree that “six percent of the current land value” (Lease #5358, 1966, p.2) is a fair formula with which to calculate yearly lease fees; however, they disagree on how to determine “current land value.” Key point of dispute in calculating the current land value are whether leased reserve land is as valuable as adjacent off-reserve land; whether the land be assessed as freehold or leasehold property; whether the value is determined as developed or undeveloped real estate; and whether servicing costs should be deducted and, if so, in what amount? To complicate matters further, the Musqueam Band and the leaseholders disagree over whether property tax assessment, billing, and payment processes are issues in this dispute or are separate matters.

In addition to analyzing current and historical documentation relating to the Musqueam Park dispute, I researched cognitive and interactional theory to determine if identity-issues play a role in this dispute. Folger (1997) explains that a “*cognitive* perspective focuses on the mental processes and perceptions that influence conflict behavior, the *interactional* perspective focuses on the behavior itself” (p. 47-48). A cognitive theory I explore is the attribution theory where “individuals commonly attribute others’ behavior to dispositional factors . . . ability, mood, effort, and knowledge. . . and their own behavior to situational factors. . . task difficulty, interference, and luck” (Folger, 1997, p. 53). An interactional theory I explore is the coordinated management of meaning that “the interpretation of the meaning of a conversation or message will be shaped by the context or nature of the relationship between the interactants as well as the self-concept and culture of each individual” (Folger, 1997, p. 57).

Research methods used, as defined by Grosshans & Chelimsky, include: qualitative research information, “expressed as numbers. . . and , is about statistical analysis”; and, quantitative research data expressed in words (1992). I am most interested in exploring conflict and relationships between people; therefore, I depended almost exclusively on qualitative research since “findings are more in-depth since they make greater use of open-ended questions [and the] results provide much more detail on behaviour, attitudes and motivation ” (Joppe, 2000). The only reference of quantitative research used relates to land values and lease rates - past and proposed

Issues relating to historical relationships between native and non-native groups quickly surfaced during my interviews. I, therefore, decided to include literature on colonialism as well as information about both the Oka and Gustafsen Lake conflicts due to the similarity of land ownership and management issues.

My primary research questions were directed at understanding both the manifest and latent issues that may be hindering the negotiation process, or preventing

resolution of this dispute, for example: what makes this dispute different from most landlord/tenant disputes—why is it in front of the Supreme Court of Canada? The following are subsidiary research questions that guided my inquiries:

- What are the specifics of the dispute? What are general themes? Who is involved in the dispute and what is their role (ie., Musqueam Band, Musqueam Development Co., leaseholders, community, DIAND)? What led up to the current situation—what is the dispute's background? What meaning does the lease agreement have to each party? What changes have occurred that affect the lease agreement?
- What does each party want, and how do their positions compare and contrast with each other? What do terms like "fair rent" or "current land value" (identified in Federal Court of Appeal documentation) mean to each party? How does each party think the current land value should be assessed?
- Is the conflict productive or counter-productive for either the Band or the leaseholders, and is it possible to know? What behaviours may be influencing the other party's reactions and responses? Is this dispute intractable: that is characterized by "poor or nonexistent communication, rigidity in positions, and a high level of hostility. . . [parties] conceptualize the conflict in win-lose terms and . . . [are] unable or stubbornly unwilling to move from initial positions. . . the conflict may well be accepted as inevitable" (Northrup quoting Azar, 1989, p. 63). What mechanisms are available for the parties to discuss their concerns? What are the conflict resolution mechanisms? Do these mechanisms effectively meet the disputants' needs?

In brief, the term "parties" refers to the Musqueam Band, Musqueam Park leaseholders, and DIAND. It does not include adjacent Salish Park residents, who hold pre-paid, 99-year leases with the Musqueam Band.

A glossary of terms is available in Appendix I. Nonetheless it is important to clarify here that, depending on the source, the term "interest-based" has (at least) two different definitions: Rothman (1997) defines "interest-based" issues as "the very

tangible, practical resources over which people often compete" (p. 9) and equates it to "resource-based" conflict (p. 10); whereas, Fisher, Ury, and Patton define interests as "basic human needs. . . include: security; economic well-being; a sense of belonging; recognition; control over one's life" (1991, p.48). The later definition of *interests* is similar to Rothman's term, *identity-based*, which he defines as: "relatively intangible, and deeply rooted in the more abstract and interpretive dynamics of history, psychology, culture, values, and beliefs" (1997, p. 11).

To remedy the situation here, I avoid the term "interest-based" altogether. Instead, I use Rothman's (1997) terminology of "resource-based" as "competition over material and territorial interests" (p. 17); and, "identity-based" to describe situations that relate to "people's collective need for dignity, recognition, safety, control, purpose, and efficacy" (p.7).

This study begins with an overview of current and historical documentation related to the Musqueam / leaseholder dispute, followed by research of cognitive and interactional theories. Folger (1997) explains that "although they often overlap, theories operating from the cognitive perspective generally attempt to predict conflict outcomes whereas theories working from the interactional perspective attempt to describe interactions processes." (p. 49) or simply said, cognitive theories "answer the *why* behind relationships" and interactional theories "uncover how people do what they do" respectfully (Folger, 49).

During the next phase, I describe my research methodology and outline specific interview questions and my interview process. Next, I present data collected from interviews, followed by analysis and interpretation of the data and documentation, in conjunction with theoretical frameworks. Finally, I offer conclusions and recommendations, based on conflict intervention and conflict management and resolution theories.

## **II. Literature Review**

As the focus on this paper is to understand the current Musqueam / leaseholder dispute, the following literature review includes: current and historical archives that focus on the dispute as a resource-based conflict; and, the theoretical framework in which to analyze the dispute is social-psychological framework, which seems appropriate given the dispute involves the "mutual relations of human beings" and, "the mental factors governing a situation or activity" (Oxford Dictionary).

The depth and breath of existing literature on cognitive and interactional theories is remarkable; many of the theorists I researched led to other, equally important and interesting, theories and theorists. I chose to focus on the work of: Maslow, Platt, Rothman, Taylor, Fisher, Northrup, Coser, Senge, Azar, Fisher, et.al, Boeree, and J. Jung (not to be confused with Carl Jung).

The multitude of academic literature the outlines human interaction, cognition, conflict is enormous. Many of my ideas result from reading a multitude of theories I have formed are based on the theories and perspectives outlined Unfortunately, I am not able to cite every theory and theorists that has contributed to my understanding of human behaviour and conflict. I will say that by Folger (1997), such as: social influence theory that compares coercion, justification and aggressive behaviours (p. 54-57); social exchange perspective of distributive justice directed by self-interest (p. 22-23) and strategic moves based on a calculation of rewards and costs (p. 28-29); and, productive and destructive conflict interaction and styles (p. 8-9, 32-34).

### **Musqueam Park**

Beginning with court records of the litigation involving the federal government, Musqueam Band, and leaseholders; transcripts of interviews I conducted in connection with this research; and archives, including the original lease agreement

and historical background, I developed a sense of issues in dispute between the Musqueam and the leaseholders, such as: lease fee and terms of the agreement. Spin-off issues, requiring further investigation, began to surface as well, such as: property taxation, assessment, land ownership and management, and lease negotiation. To understand the relationship between these issues, I researched official documentation that the parties refer to, such as: Management of Reserves and Surrendered and Designated Lands (Indian Act); Indian Taxation (provincial governments bulletin); First Nations Property Taxation (federal government publication); Aboriginal People: History of Discriminatory Laws (Moss and Gardner O'Toole, 1987); the Indian Act; Lease #5358; and legal transcripts from the Federal Court of Trial Division, the Federal Court of Appeal, and the Supreme Court of Canada. Whenever possible I referenced the original source rather than a subjective interpretation of its contents.

I also collected information on similar land-based disputes in Canada: the Oka crisis and the Gustafsen Lake standoff, for comparison purposes when analyzing the evolution and escalation of the Musqueam / leaseholder dispute.

### **Social, Psychological, and Philosophical Theory**

Contrary to data gathered from official and unofficial sources, which focuses on objective, resource-based issues, many social-psychology theorists maintain that sources of conflict are often obscure and relate to society or "the mental characteristics or attitude of a person or group. . . that governs a situation or activity" (, 1998). Northrup, for example, argues "that identity plays a major role in the conduct of any conflictual relationship, particularly in intractable conflicts, since threats to identity may cause or escalate conflict" (1989, p. 55).

Another theorist, Rothman, elaborates on the concept of subjective and objective by categorizing conflict as either resource- or identity-based. He defines resource-based conflict as "competition over material and territorial interests" (p. 17), and

identity-based conflict as "deeply rooted in the more abstract and interpretative dynamics of history, psychology, culture, values and beliefs" (1997, p. 11).

Maslow illustrates the notion of identity-based issues as a hierarchy of human needs, whereby fundamental physiological, safety, security, and social needs for love and belonging must be satisfied before higher level needs for recognition, achievement, and self-actualization emerge (see Appendix III). According to Maslow, when a need or value is repeatedly blocked or frustrated, such as the need for safety and security, the level of emotional intensity increases and conflict escalates. On the other hand, when a need is satisfied, the emotional intensity decreases, deescalating the conflict.

Comparatively, in Radford's Sphere of Conflict (1999) the source of conflict is viewed in relation to human values, relationship, data, structural, and interest (see Appendix II). The potential causes of each source of conflict ranges from misinformation, misunderstanding, interpretations, procedures, ideologies, emotion, stereotypes, unequal power authority, and unequal control or ownership of resources.

Fisher (1978) adds procedural problems to the list of "problem areas that often deadlock negotiations [as well as]: substantive problems, such as too few or too many favorable options; procedural problems, such as an absence of process or the wrong process; and problems with people, such as strong emotions, stereotypical labeling, or miscommunication" (Moore, 1996, p. 160).

The theory that seems to bring procedural, substantive, and identity-based issues together is the coordinated management of meaning interactional theory that "provides a basis for identifying and understanding how the same event can have different meanings for the parties involved and how these meanings affect their actions" (Folger, 1997, p. 60), as is the case in the Musqueam Park dispute where

information presented by one party sharply contrasted information presented by the other party.

The cognitive processes of thoughts, perceptions and meanings that influence the interactional process of behaviour expressed by "moves and countermoves" (Folger, 1997, p. 47-49), which is expressed in terms of political maneuvering to get what each side wants. Apparently neither side in the dispute wanted publicity because each expected it would drive market prices down, which it did. However, the maneuvering of each party, aimed at increasing pressure on politicians to intervene, has resulted in the dispute receiving coverage from radio, television, and newspapers.

Folger sums up the cognitive and interactional perspectives in that "although they often overlap, theories operating from the cognitive perspective generally attempt to predict conflict outcomes whereas theories working from the interactional perspective attempt to describe interaction processes" (1997, p. 49).

Other theorists add that human behaviour is motivated - consciously or unconsciously - by social conformity, knowledge, and experience. "Motives such as desires, wishes, plans, goals, intents, impulses and purposes; and emotion, including fear, hate, anger, pleasure, humor, joy, excitement and boredom. . . are among the inner states that influence human behaviour" (J. Jung [not to be confused with Carl Jung], 1978, p. 3, 5).

## **Conflict Theory**

Coser (1956) elaborates on the unconscious processes in his functions of social conflict theory by way of sixteen propositions. Due to the nature of the Musqueam / leaseholder dispute, many of Coser's *propositions* play a role: the expression of frustration and anger by the parties serves as a safety-value during the rebalancing of relative power between the parties. As Coser, quoting Simmel explains, a function of opposition as a safety-value, is to relieve the feeling of

oppression which “ increases if it is suffered calmly and without protest, but also because opposition gives us inner satisfaction, dissatisfaction, relief. . . .Our opposition makes us feel that we are not completely victims of the circumstances” (1956, p. 39). Proposition eleven explains how searching for enemies in out-groups increases internal cohesion by distracting attention from in-group fighting; which is the case within both the Musqueam and leaseholder groups. Furthermore, both parties are engaged in searching for allies (proposition 16) through litigation, media, and by increasing political pressure. Proposition one explains why both the Musqueam and the leaseholder groups believe that their group is negatively privileged and that the other is positively privileged; which Coser attributes to a shift in the “distribution of power, wealth or status” (1956, p. 37).

Bloomfield and Moulton (1999) developed a model of conflict escalation and settlement based on factors identified as influential in particular historical conflicts. The "factors" outlined in the Dynamic Phase Model of Conflict combine so as to worsen or improve the conflict and, thus, move the conflict towards or away from "thresholds" between phases in the direction of greater or less violence. The factors are a variety of influential events and conditions: personalities; relationships; actions; events; and, perceptions. Bloomfield and Moulton further states that some of these factors can generate pressures moving the situation toward "worsening": that is, increased violence or its threat; or, conversely, generate pressures moving the situation in a more benign direction: that is, away from violence.

The Bloomfield-Leiss dynamic phase model of conflict is an elaborate study of conflict escalation and settlement. The model is comprised of nine categories, with three phases within each category, and roughly 20 factors within each phase. So, according to Bloomfield and Moulton, there are approximately 540 factors that can influence the escalation or settlement of a conflict. As a reference, the categories that pertain to the Musqueam / leaseholder dispute might include: previous or general relations between sides; external relations generally; ethnic (refugees,

minorities); economic/resources; internal politics of the sides; communication and information; and, actions in disputed area. Fortunately, the categories of: great power and allied involvement; military-strategic; and, international organization (UN, legal, public opinion), are not involved.

Many of the 540 factors in the Bloomfield-Leiss model relate to identity-based issues, such as: communication and interaction; which Fisher elaborates on by explaining that, “although conflict often arises out of objective and ideological differences, its escalation and intractability are typically the result of psychological and social factors” (1999, p. 85).

Radford (1999) also discusses the sphere of conflict in terms of relationship, value, data, interest and structural conflicts. Likewise, he notes the causes of each source as follows:

- ↳ Relationship Conflicts are caused by:
  - ↳ Strong emotions
  - ↳ Misperceptions or stereotypes
  - ↳ Poor or miscommunication
  - ↳ Negative, repetitive behaviour
- ↳ Value Conflicts are caused by:
  - ↳ Differing criteria for evaluating ideas or behaviour
  - ↳ Exclusive intrinsically valuable goals
  - ↳ Different ways of life, ideology, religion
    - ↳ Day to day values
    - ↳ Terminal values
    - ↳ Self definition values

↳ Data Conflicts are caused by:

- ↳ Lack of information
- ↳ Misinformation
- ↳ Different views on what is relevant
- ↳ Different interpretations of data
- ↳ Different assessment procedures

↳ Interest Conflicts are caused by perceived or actual competition:

- ↳ Substantive (content) interests
- ↳ Procedural interests
- ↳ Psychological interests

↳ Structural Conflicts are caused by:

- ↳ How a situation is set up
- ↳ Role definitions
- ↳ Time constraints
- ↳ Geographic / physical / environmental relationships that hinder cooperation
- ↳ Unequal power authority
- ↳ Unequal control or ownership of resources

*(An original copy of Radford's unpublished work, used with permission, is available in Appendix II.)*

Similarly, systems design theorists explore the manifestation and latent sources of a problem. They emphasize the importance of recognizing a problem from its symptoms and applying solutions that focus on solving the problem, rather than on alleviating symptoms (Senge, 1994, p. 37-58). Senge explains that a system is comprised of elements that "continually affect each other over time and operate toward a common purpose" (1994, p. 90). System archetypes, such as: "fixes that backfire" and "shifting the burden," illustrate that symptom solving solutions "are obvious and immediate; they relieve the problem symptom quickly. But they divert attention away from the real or fundamental source of the problem" (p. 136) and when the symptom returns, it is often worse than before (p. 126). Over time the severity of the problem, "often unnoticed at first continu[es] to accumulate as the

wrong solution is repeatedly applied" (p. 126-127). In the Musqueam / leaseholder dispute, compensation as a solution or quick fix has surfaced.

Nagel explains the "tendency to seek an objective account of everything before admitting its reality. But often what appears to a more subjective point of view cannot be accounted for in this way" (1979, p. 196). In the Musqueam Park dispute initial issues identified are resource-based; Azar warns, "conflicts in the world today are framed as conflicts over material interests, [but] empirical evidence suggests that they are not just that. More fundamentally, most contemporary conflicts are about developmental needs expressed in terms of cultural values, human rights and security" (1981, p. 2).

In summary, the current and historical archives I researched provided a chronology of events to which I compared official documents, such as the original lease agreement. From a basic understanding of the background, I analyzed the Musqueam / leaseholder dispute using cognitive and interactional theory. Sociological research explains the many social functions of conflict; which, in the Musqueam Park dispute, likely centre around safety-value and power balancing functions. Social-psychology theorists maintain that identity very much plays a role in conflict and its escalation, it is just that identity relates to human needs and, therefore is more difficult to conceptualize than resource-based issues. In the Musqueam / leaseholder dispute, resource-based issues include the terms of the lease and a lease fee. The word *fair* in the term "fair rent" alludes to identity-based issues, as does the issue of land ownership and management.

Regardless of whether a conflict is resource- or identity-based, systems design theorists warn that although the compulsion to quickly fix the manifest symptom, such as the issue of property taxation, it is "because the pain of not doing something right away is more urgent and feels more powerful" (Senge, 1994, p. 126); however, the results, while immediate, will not have a lasting effect and when the problem resurfaces, it is often with greater severity.

### III. Musqueam Park Overview

According to the Dept. of Indian and Northern Affairs Canada (DIAND, 2000a), there are a total of 75 leases in Musqueam Park. The leases are not lease-to-own so when the leases end on June 7, 2064, the land and any improvements revert back to the Band. "[A]ll current Musqueam Park tenants, no matter when they signed their leases, signed leases with clear terms and conditions that have remained unchanged over time." (DIAND, 2000a, p.6).

*The following chronology of events (used verbatim) is from the Federal Dept. of Indian and Northern Affairs Canada. It appears to be consistent with the chronologies presented by the Musqueam Band and leaseholders. When another document is referenced, I have included a reference to the original document in square brackets.*

[http://www.inac.gc.ca/pr/info/musq\\_e.html](http://www.inac.gc.ca/pr/info/musq_e.html)

Last Updated: April 17, 2000.

*[begin quote]*

#### **Musqueam Park Leases**

Seventy-three tenants, who lease homes in Musqueam Park, are involved in a landlord-tenant dispute with the Musqueam Indian Band. This is not a treaty issue, but a dispute that has arisen as a result of differing interpretations of the terms of a legally binding lease.

The annual lease payment for 1999 was due on June 8, 1999. Only two of the tenants have made that payment. Tenant lease payments to the Musqueam Indian Band are outstanding for the current year from 73 tenants. Five tenants have not made any lease payments since 1995. The dispute over lease payments is currently before the Supreme Court of Canada.

#### **Background**

In 1960, the Musqueam Indian Band agreed to set aside 40 acres of reserve land for leasing purposes. On June 8, 1965, a master agreement was entered into between the Musqueam Development Corporation and the federal government. [Lease #5358, 1965.] (The Musqueam Development Corporation was a private corporation not affiliated with the Musqueam Indian

Band.) The development corporation cleared the land, installed services and roads, subdivided the land into 75 lots and leased these lots from the Government of Canada, and, in some cases, built homes on the lots. The development corporation then assigned the leases for the lots to individuals who became leaseholders for 99-year terms. [Lease #5358, 1965.]

For the first 30 years, until June 8, 1995, the rent was pre-determined for each leased lot. The total rent paid per a typical lot during the first 30 year period was divided as such: 10 years at \$298 per year, 10 years at \$343 per year and 10 years at \$375 per year for a total of \$10,160. This averages out to \$338 per year.

According to the terms of the 99-year leases, rent reviews must take place after the first 30 years of the lease (1995), and each subsequent 20-year period (2015, 2035, and 2055), to be followed by a final period of 9 years (ending in the year 2064).

Clause 15 of the lease provides [t is actually clause two, not 15] that the rent from 1995 onwards will be a "fair rent" for the land and such "fair rent" shall be six percent of the "current land value" of the lots as calculated in accordance with the lease terms. [Lease #5358, 1965]. The lease references the Federal Court of Canada as the vehicle [forum] for resolving rent review disputes between the parties.

The actual wording of the Lease #5358 is:

In the event the Minister and the Lessee or its assignees cannot reach agreement on the rents to be paid in any of the succeeding periods. . .the question shall be determined under the authority of paragraph (g) of subsection (1) of Section 18 of the Exchequer Court Act (Lease #5358, 1965, s.2, ss3).

The Exchequer Court was replaced in 1971 by the "Federal Court of Canada with its two divisions, the Trial Division and the Appeal Division" (S.C., F.C.C., 2000).

In 1995, when the leases came up for negotiation at the end of the first 30 years, a negotiated agreement on lease payments could not be reached. As provided for in the lease, the matter was referred to the Federal Court of Canada. After examining the terms of the leases, the Federal Court Trial Division set the lease payments at an average of \$10,000 per lot per year, in keeping with the rise in property values on the west side of Vancouver in the last 30 years. [(1997), 137 F.T.R. 1]. In setting this lease payment rate, the court discounted the value of the lease payment based on its assessment that reserve lands are inherently worth less than off-reserve lands.

This ruling was appealed to the Federal Court of Appeal. The Court of Appeal agreed with the appellants (the Musqueam Indian Band and DIAND). Lease payments set by the Federal Court of Appeal ranged from \$18,400 to \$26,400 per annum, with an average of \$22,400 per annum. [F.C.C., A-890-97].

These figures are in line with the land values for 10,000-square-foot lots on the west side of the City of Vancouver. The Court of Appeal decision was appealed by both the leaseholders and the Band and it is currently before the Supreme Court of Canada. [(S.C.C., 2000, file no. 27154)]

In 1980, the Minister of Indian Affairs delegated to the Musqueam Indian Band the ability to manage and administer leases on Musqueam Indian Reserves. This delegation was done according to the terms of the Indian Act. [(R.S., 1985, c. I-5, s. 83)]. The delegation effectively made the Band an agent of the Minister in the management and administration of the leases. It did not change or affect any of the terms and conditions of the leases. The landlord remained the same, and none of the obligations under the leases were changed.

In 1991, again according to the terms and conditions of the Indian Act, the Musqueam Indian Band passed a taxation bylaw that was properly approved by the Minister of Indian Affairs. [(Musqueam, 1996, PR-96-01; DIAND, 2000b)]. The passage of this bylaw was in keeping with the spirit and intent of providing First Nations with self-government powers over reserve lands. This bylaw had no impact on the terms and conditions of the leases. The landlord remained the same, and none of the obligations under the leases were changed.

### **Current Situation**

According to numerous judgements of the Supreme Court of Canada, DIAND has a legal and fiduciary duty to, in accordance with the laws of the land, act as a prudent landlord. [S.C.C., 1984, file no.: 17507; 1990, file no.: 20311; 1998, file no. A-890-97)]

Notices of Default, detailing the amount of lease payments owing and noting when that amount is due have been sent to all leaseholders.

Attempts to reach interim solutions with the tenants involving lease payments at the trial division level have been unsuccessful.

On January 14, 2000, the Band applied to the SCC seeking an order that the Court of Appeal decision remains in effect, such that, until the SCC rules that lease payments at the Court of Appeal level are required. A January 19, 2000 letter indicates that the leaseholders do not contest this application and agree that the Court of Appeal decision remains in effect, subject to a number of

qualifying statements also included in the letter. To date payments have not yet been received from all leaseholders.

A statement of claim has been filed by Canada in the BCSC to commence proceeding to collect arrears of lease payments at the FCA level. The letter further stated that the leaseholders have been advised that Canada would place such proceedings in abeyance until the decision of the SCC, for any leaseholder that provided current payment of arrears at the FCTD level.

The federal government continues to consider its obligation to act as a prudent landlord, taking into account ongoing court actions and the recent granting of leave to appeal by the Supreme Court of Canada.

[end quote]

## **IV. Research Methodology & Ethics**

The research methods I used are social, qualitative, and action research: social research to understand "what is going on. . .and why it is going on" (de Vaus, 1996, 11); "in-depth [qualitative] research into the motivation, attitudes and behaviour of respondents or into a given situation." (Joppe, 2000); and, action research, which "is intended to produce both change . . . and understanding" (Dick, 1997a, p. 2).

Joppe (2000) further defines qualitative research as: data gathered using less structured research instruments; findings are more in-depth since they make greater use of open-ended questions; results provide much more detail on behaviour, attitudes and motivation; is more intensive and more flexible, allowing the researcher to probe since s/he has greater latitude to do so; results are based on smaller sample sizes and are often not representative of the population; and, the analysis of the results is much more subjective.

The sources of information gathered are through archives, observation, and personal interviews. A complete listing of research material is available within the literature review chapter.

### **Archival Research**

I began my research process by examining Musqueam Park archives, both historical and current events. My research process focussed on gaining a depth and breath of understanding about the Musqueam / leaseholder dispute, similar disputes for comparison purposes, and a variety of opinions, such as: internal perspectives of federal government officials, an official spokesperson for the leaseholders as well as a representative for the Musqueam; and, external perspectives including a real-estate appraiser, economics professor, and provincial government officials. Whenever I reviewed a document I noted areas that seemed to contradict other information gathering and conducted further research in that

area. Toni Timmermans, Communications Manager, DIAND, provided government bulletins, Lease #5358, newspaper and media interview transcripts, and court dockets. I also collected numerous documents on the internet under governmental and media websites, including: historical Musqueam archives; official documents, such as the Indian Act, court rulings, and Senate Committee proceedings; and, unofficial newspaper, radio, and journal articles. The university libraries provide government documents, references on how similar disputes were handled (Fisher & McNabb, 1979) and one document written by Barbara Weightman, The Musqueam Reserve, available on microfilm at Simon Fraser University.

The chronology of events laid out by DIAND alone was instrumental in understanding the parties, the issues, and events leading up to the present day situation. Basically, the archives provided an excellent foundation for an understanding of and orientation to the dispute in order to familiarize myself with new terminology, levels of the judicial system, stages of the process as well as, time to differentiate between Salish and Musqueam Park residents: and explore relationships between the Band, the Government, and the leaseholders. The archives were also valuable as a reference, which I used frequently when the parties disagreed about specific wording of the original lease, court rulings, or the role of the federal government.

## **Theoretical Research**

The theoretical framework I use in analyzing the Musqueam / leaseholder dispute is based on the social-psychological perspective as it is concerned with the "mutual relations of human beings" and, "the mental factors governing a situation or activity" (Oxford Dictionary). In other words, the cognitive process of thoughts, perceptions and meanings that influence the interactional process of behaviour expressed by "moves and countermoves" (Folger, 1997, p. 47-49). The conflict theoretical framework ties cognitive and interactional processes to conflict escalation and "the functions of social conflict" (Coser).

## Interview Rationale

My objective in conducting interviews was to hear the perspectives of those involved in the Musqueam Park dispute, to hear what they believe to be the central and underlying issues related in the dispute. Although I was prepared with other questions to try and draw out information, it turned out not to be necessary as every individual I interviewed discussed their opinion and perception openly. In fact, I often had to stop the interviewee to obtain written consent before proceeding, and none hesitated to read and sign the consent form and most were willing to have their name published. I chose not to use a questionnaire because I did not want structure to dictate how each interviewee chose to tell me their perspective. I initiated discussion by asking the interviewee: What do you believe to be the central issues in the Musqueam / leaseholder dispute, and what, potentially, are underlying issues? The only other questions I asked were to encourage the interviewees to elaborate or clarify specifics of their responses. My goal was to learn about what the issues were from each person's perspective; and also, to listen for and explore identity-related issues when, and if, they came up. A few of the comments made by interviewees that seem to indicate identity-related issues are: terms, such as *fair*, *intimidation*, and *power imbalance*; as well as, health related concerns; and, the threat of violence and personal harm.

Based on qualitative research methods, I chose a relatively small number of individuals to interview to which I added other perspectives from media interview transcripts. My main concern was that I include a variety of perspectives from each party including the perspective of at least one key person because I expected he or she would be well-informed, more likely to talk to me because their opinion is already public knowledge; and, I hoped their opinion would reflect the opinions of the people they represent. I also interviewed two Musqueam Park leaseholders and two Salish Park residents to compare with Findlay's to ensure her perspective as a spokesperson reflected the general view of the leaseholders and her not a unique point of view. Although I was not able to arrange an interview with Kerry-Lynn Findlay due to her extremely busy schedule, I am satisfied that I have

adequately portrayed her perspective based on media interview transcripts, court records, and personal papers she has written on the subject. Kerry-Lynn's opinions seem to coincide with the perspectives of the leaseholders I interviewed.

From the Musqueam perspective I am fortunate to include correspondence I received from both Chief Campbell and a reply to my questions of Lewis Harvey, who is general counsel for the Band. Similar to the leaseholders, I interviewed another Musqueam Band member based on a recommendation. Jim Kew is a former Band Council member, whose perspective is similar to Campbell's and Harvey's. However, Gail Sparrow, a Band Council member and former chief, differs in her opinion and, although I have data on this difference of opinion it is a separate issue and one that I do not believe is relevant to the dispute between the Musqueam and leaseholders so I do not intend to include it here. Although Kew, Campbell, Sparrow, and Harvey more than adequately represent the Musqueam perspective, I still would have liked to talk with at least one Musqueam person not politically connected to the Band.

The third key party in this dispute is the Federal Government. I interviewed two DIAND officials and received advice from a third person. I was only able to gather the Minister's perspective through media interview transcripts. The government officials I spoke with are all involved with First Nations issues: one official is directly involved in the Musqueam / leaseholder dispute; an other official has previous experience working directly with the Musqueam Band; a third official is not directly involved in this dispute but has a thorough understanding of the issues and needs of many First Nation people in British Columbia. All three officials provided extensive background information.

I also chose to interview two Salish Park residents who also lease land from the Musqueam Band but whose leases are pre-paid for the duration of the 99-year agreement. The Salish Park leases sit between the Musqueam Park leases and the Musqueam homes, which is one of several reasons I chose to include their

perspective. I am interested in the perspective of this separate group of leaseholders about the dispute from a slightly removed position. The first Salish Park resident I interviewed was a highly educated and skilled individual with whom I expected to have a very no nonsense type of discussion. The most significant information I gathered during this interview was the extent to which Salish Park residents have been affected by a dispute that apparently does not involve them. The emotional intensity expressed as fear, frustration, and concern were very high. Some Salish Park residents fear for their personal safety and yet have no faith in the ability of police to do anything about it “except to report after the fact that an unfortunate incident occurred, seriously injuring a resident of. . .” This may seem exaggerated to the reader but consider this: Salish Park residents, like Musqueam Park residents, have been victimized by pipe bombs, threats of violence to their personal safety, intimidation, and a serious risk of danger when Musqueam youths were ripping the hydro boxes off their homes. The pipe bombs and damaged hydro box incidents were also relayed to me by a Musqueam individual.

The second significant impact to the Salish Park residents is that although their leases are pre-set until the lease expires, the market value of their homes has diminished just as they have to Musqueam Park residents whose lease fees are up for renegotiation.

The second Salish Park resident I interviewed was recommended to me by a resident I met on the street. This person was considered to be the person who knew all there was to know for reasons I will not disclose here. The value in speaking to this individual was in the pragmatic approach taken in analyzing the behaviour and issues between the Musqueam Park residents and the Musqueam Band.

To summarize, the perspectives collected include key representatives from both parties: Musqueam Chief Ernest Campbell, and Lewis Harvey, legal counsel for the Band; and, Kerry-Lynn Findlay, the official spokesperson for the leaseholders,

a lawyer, and a Musqueam Park leaseholder herself; as well as two Salish Park residents, two Musqueam Park residents, two Musqueam individuals, two DIAND officials, and the Minister of Indian and Aboriginal Affairs Canada. Other than the key spokesperson whose perspective I wanted to include, all other interviewees were chosen based on recommendations from others familiar with the dispute. Interviews typically lasted 1½ hours, but some extended to three hours depending on what the interviewee permitted. As well, the time and location for the interview was chosen by the interviewee.

I think I was able to gain sufficient trust to garner candid responses by explaining my methodology, allowing them to ask questions, and by explaining that my intention for doing the research on this particular dispute. I followed a checklist that included: an introduction of who I am and the purpose for the interview request; my intent to not interfere with the judicial process; to assure anonymity by not using their names or direct quotes that could reveal their identity unless permission to do so is granted; to maintain strict confidentiality; and, confirm that because the process is voluntary, based on free and informed consent, they have the right to terminate their involvement at any time. I also explained about the publication of the results as a thesis; my plan to destroy notes taken during the interviews; and, prior to the interviewee signing the consent form I asked if they had any questions.

During each interview I followed the advice of Hammersley & Atkinson, by "watching what happens, listening to what is said, asking questions - in fact, collecting whatever data are available to throw light on the issue" (1995, p. 1). From the archives I had developed a list of potential issues, such as how current land value should be assessed, and if the interviewee did not bring it up, I would wait until they were finished and ask for their opinion on the topic. I would explore the meaning behind reactions or choice of words, and ask questions to clarify a term or point of view. By just watching, listening, and asking questions provided the interviewees with the freedom to talk about what is important to him or her, and I had the opportunity to collect data on the same issues from many different

perspectives. While setting up most of the interviews I sensed some resistance to meeting with me; however, at the end of the interview I was always invited to contact them again if I had any further questions. I think the shift in their willingness to be interviewed was because they sensed how much I really wanted to hear their opinion. For me this is more than just an exercise to satisfy university degree requirements, I really want to know what the issues are and how the individuals involved are doing.

In summary, documentation on the Musqueam Park dispute provides an extensive overview of the historical and current circumstances on which the dispute evolved. Theoretical perspectives focussing on human behaviour and motivation, as well as what is believed to cause conflict to escalate and de-escalate, provide a theoretical framework. The interviews conducted provide a personal perspective of individuals involved. Each of these three approaches is essential to understanding the resource- and identity-based issues in the Musqueam Park dispute.

## **V. Summary of Collected Data**

As background, the “Musqueam’s main reserve, IR No. 2, consists of 416 acres in the south-western part of Vancouver, on the north bank of the Fraser River” (Campbell, 1999b, pg. 1). Musqueam Park (Parcel "A") is 40 of the 416 acres of the Musqueam Indian Reserve and is subdivided into 75 large lots. Each single-family dwelling is about 2,400 to 3,000 square feet of total living space.

I collected data from personal interviews, radio and television interview transcripts, and personal correspondence. The data reflects the following perspectives:

**Campbell, Ernest**

- Musqueam Band Chief

**DIAND**

- Department of Indian and Northern Affairs officials

**Findlay, Kerry-Lynn**

- Musqueam Park (third resident) and spokesperson for the leaseholders

**Harvey, Lewis**

- Musqueam Band legal council

**Kew, Jim**

- Musqueam Band member

**Nault, Robert**

- Then Minister of Indian and Northern Affairs Canada

**Residents of:**

Salish Park (SPR #1 & 2), and Musqueam Park (MPR #1 & 2)

**Sparrow, Gail**

- Member of the Musqueam Band and Council and past Chief

As well as perspectives from: Ronald B. Barbour, a Vancouver writer for Raven’s Eye, (Aboriginal newspaper of British Columbia and Yukon, associated with the aboriginal Multi-Media Society); a paper written by Jonathan Kesselman, a

Professor of Economics, UBC, and Director, UBC Centre for Research on Economic and Social Policy; and, Patricia Coppard, staff writer for the Vancouver Courier newspaper.

I read Interview transcript excerpts from the following media outlets: Edmonton's CHED-AM Radio; Vancouver's CBU-AM, CKNW-AM and CKST-AM radios; and, BCTV Television Vancouver. They include the perspectives of Kerry-Lynn Findlay, Musqueam Park leaseholder and spokesperson; Lewis Harvey, legal council to the Band; Gail Sparrow, Musqueam Band member; and, Robert Nault, then-Minister of Indian Affairs. Kerry-Lynn's opinion is also available from court records and from an unpublished paper she wrote on the Musqueam/leaseholder dispute. Chief E. Campbell's perspective is drawn from both an article he wrote for the Vancouver Sun and from a presentation he made to the House of Commons Standing Committee on Aboriginal and Northern Affairs.

## Summary of Issues

The issues, from Chief Campbell's perspective are "simply this: It's about abiding by the terms of lease contracts which require the lessees to pay a fair rent for the properties they lease" (Barbour, 1999, p.1). However, these are only two of the issues to which there are a multitude of spin-off issues which alter the issues from *simple* to complicated. The following summary of issues illustrates both the complexity and interrelation between economic and identity issues.

As you will notice from the following summary list of issues that a primary issue, such as property taxation, will spin off into secondary issues relating as far back as land ownership and colonialism; and the secondary issues, such as colonialism, surface other issues, such as rights, ownership and expropriation. As mentioned earlier, I do not believe that the following list is conclusive by any means. Furthermore, although this list portrays a linear progression the issues are interrelated and intertwined with each other.

The intent of the following list is to illustrate, graphically, using a drill down approach to show how each issue is comprised of secondary issues and secondary issues contain yet more issues. Each issue listed will be expanded on to some degree in the following pages; however, as a snapshot, the primary issues related to the terms of the lease are shown as headings and secondary issues are shown as subheadings.

- Terms of Lease Agreement #5358
  - ↳ Current Land Value
    - ↳ Property Assessment
      - ↳ On/off-reserve, servicing costs, discrimination
      - ↳ Market Value / Property Values
      - ↳ Relationship between Property Assessment & Taxation

## Terms of Lease Agreement #5358 – cont'd

### ↳ Property Taxation

- ↳ Taxation Without Representation
- ↳ Role of the Minister of Indian & Northern Affairs Canada
  - ↳ Allegations of breach of lease / breach of fiduciary obligations (human rights)
  - ↳ Colonialism and First Nations self-government
    - Land Ownership
    - General perceptions of uncertainty, discrimination, expropriation

### ↳ Lease Negotiation & Management

- ↳ Lease Negotiation
  - ↳ Economic Impact
    - ↳ Status of Lease Payments
- ↳ Prepaid Lease Option
- ↳ Compensation (who wants it, who should get it, how much, etc.)
- ↳ Annual Lease Fee

Identity-based issues are not shown in the above summary because they are not attached to any one or two primary or secondary issues, but rather human issues permeate each and every issue listed above. Human issues are expanded on under the subheadings: identity-based issues such as the impact of residential schools; uncertainty & expropriation are tied together by a fear that the Band is trying to drive the leaseholders out; and, human rights based issues that relate to colonialism, or as Kessleman summarizes: “balancing aboriginal rights of autonomy with non-aboriginal rights of representation and equality” (2000, p. 46).

Opinions vary on what issues are central to the Musqueam / leaseholder dispute, such as:

Harvey

[The issue] is one of contract interpretation and in particular, what is meant by the phrase *current land value* [and] the fiduciary obligation of the government does not impact on the question of what the rent is supposed to be under the leases. (2000)

DIAND #2

The issues for the Musqueam relate to economics, and the issues for the leaseholders are taxation without representation, and an expectation that the government will take care of them.

Kew:

The situation in Musqueam Park is a business dispute, simply about money. The leaseholders are negotiating as leaseholders would in any commercial arrangement, trying to refine the deal to their advantage.

Likewise, opinions vary about what the issues are *not*, such as:

Chief Campbell

The issue is not concerned about race; it is not concerned about treaty; it is not about Musqueam getting even; it is not about self-government and it has absolutely nothing to do with the Nisga'a treat (Barbour, 1999, pg. 1).

Musqueam Park resident #2

This dispute is not an issue of native and white, but an issue of market, and the only thing it has in common the Nisga'a treaty, is aboriginal self-government.

Musqueam Park resident #1

This is not even a landlord/tenant dispute but rather one of uncertainty resulting from the transfer of authority from the Federal Government to the Musqueam Band for managing the leases and collecting the taxes.

Nevertheless, since topics such as property taxation and self-government, are brought up in most of the interviews, I assume they have some relevance and have included them here as issues that have arisen within the lease dispute.

People involved in the dispute believe that the government and media play a significant role in the escalation of the conflict between the Musqueam and the leaseholders.

Harvey:

The media likes a controversial story. . . controversy sells. . . [and] media is unable to resist the temptation to tie the Musqueam Park situation to other issues . . . that are unrelated but which make the story even more controversial than it would otherwise be. (2000)

Sometimes the choice of words alone can aggravate the situation as Campbell points out, “[w]e did not unilaterally set, or as the media is fond of saying, *demand*, these rents” (1999b).

### **Terms of Master Lease Agreement #5358**

The issue of *fair rent* surfaced at the onset of the Musqueam / leaseholder dispute when failing a negotiated agreement, the lease fee was to reflect 6% of the current land value. The vagueness of the terms "fair" and "current land value" led to a dispute that to date has spanned five years.

### **Current Land Value**

The key issue is how to assess *current land value*; some argue it should be assessed as fee simple or freehold; others believe it should be assessed as leasehold.

As an explanation: fee simple: refers to “an estate under which the owner is entitled to unrestricted powers to dispose of the property, and which can be left by will or inherited; freehold refers to a “tenure of land or property in fee simple”; and leasehold refers to “the holding of property by lease; property held by lease” (Oxford Dictionary, 1998).

To complicate matters, although in the Musqueam Park case Crown land is leased, it is assessed as fee simple according to the B.C. Assessment Authority:

The assessed value of [Crown] land is based on its market value, not the value of the Crown lease or license. (BCA, 2000c)  
and,

Even though a Crown lease may cost less than the purchase price of similar privately owned land, property assessments are based on the value of the land as if owned outright by the occupier, not the value of the lease. (BCA, 2000c)

The reason the dispute about whether the land should be assessed as fee simple or leasehold in calculating current land value, is because typically fee simple title is worth more than leasehold title. So if the land is assessed as fee simple it is a financial benefit to the Musqueam; but, such an assessment will increase the amount of property tax payable, and decrease the selling value of the homes.

#### Musqueam Park Resident #2

The decision of the Supreme Court of Canada will set precedent for assessing the value of the land in future negotiations between Bands and their leaseholders.

#### Findlay:

They've bought a leasehold interest on Indian land expect[ing] that current land value meant the fair market value of these properties. . . the band [and the] court. . .has said you don't have to look at the lands you actually live on we can look at comparable land held in freehold or fee simple, off the reserve, not subject to Indian government's not subject to any of these special rules and of course they're not the same thing, you are being taxed on something and treated rent wise on something that you don't own. (CHED, 1999, p. 15).

It was understood between the parties at the time that current land value did not contemplate fee simple value because no residual interest in the land, homes or overall improvements was being transferred. (1999, p. 5)

Harvey:

The Musqueam Band disagrees with this deduction because all of the municipal services had been installed by the date the leases were signed". (2000)

Sparrow:

...how the court of appeal can say that land that is lease land can be of the same value . . . as freehold land, as fee simple land." (CKNW, 1999, p. 4)

## **Property Assessment**

The issue of current land value invoked a number of spin-off issues, such as: the basis and method of assessment; whether assessments should be based on leasehold or freehold title, which I discussed in the previous section; and, whether or not servicing costs should be deducted and, if so, how much and based on what?

Lease #5358 agreement states that the current land be assessed as if it were unimproved lands in the same state as they were on the date of this agreement (1965, s.2, ss.2, paragraph (a).

The disagreement is whether servicing costs should be deducted before or after the current land value assessment. Servicing costs include city services as well as road construction, water, sewer, electricity and/or gas systems (Lease #5358, s.8, paragraph a).

In 1997, the Federal Trial Court ruled

that the market values of land under long-term leases on an Indian reserve are significantly lower than the market value of off-reserve fee simple land and that land in Musqueam Park will have a lower value than neighbouring fee simple land off the reserve, with that lower value attributable to the Indian reserve feature of the land. (DIAND, 2000a, p. 4)

In 1998, the Federal Court of Appeal

sets the means of appraising the value of the land as if it were fee simple land off reserve and reduced in value because the lots are on reserve land. The average lot is appraised at \$6000,000, and the servicing costs to be

deducted from the freehold value are determined to be about \$120,000 per lot. (DIAND, 2000a, p. 4)

In March 1999,

The Musqueam Indian Band cross-appeals to the Supreme Court of Canada concerning the federal Court of Appeal's position on the deduction of servicing and developments costs from the fee simple value of the leasehold lands. (DIAND, 2000a, p. 4)

Jim Kew:

The Musqueam Park land should be assessed in comparison to other leased land, not neighbouring properties. The closest sampling of comparable land that receives services; pays fees; and whose terms of lease are comparable to Musqueam Park, are the lots leased at the University of British Columbia.

## **Market Value**

Negative publicity is one component that has greatly impacted the market value of both the Musqueam and Salish Park residents, who believe that the current market value of their homes is zero and the Musqueam Band is the cause of it.

Campbell:

When the value and marketability of their leasehold properties nose-dives as a result of the negative publicity they create, they put the blame on us. (1999a)

The other component that affects market value is described by Campbell as,

. . .an inverse relationship between the lease rents and the market value of the tenant's leasehold interest. An increase in the lease rents will result in a corresponding reduction in the market value of the leasehold interest. (1999b)

The B.C. Assessment Authority defines market value as,

. . . the price expected if a reasonable amount of time is allowed to find a purchaser and if both seller and prospective buyer are fully informed. For assessment purposes in British Columbia, market value is the most probable price that an unencumbered property would sell for on the open market on July 1. (BCA, 2000c)

However a Salish Park Resident #1, believes that:

Assessors are told to assess the property as being comparable to the more expensive homes on Marine Drive, not the Musqueam people's residential area which sits between the expensive Marine Drive homes and Musqueam Park and is assessed at a very low rate.

Campbell explains that:

The sum of the market values of the landlord's reversion interest and the tenant's leasehold interest should equate to the market value of the freehold interest in the land. (Campbell, 1999b)

The tenant's interest in the land created by the lease is called the leasehold interest; the landlord's interest is called the reversionary interest. These two interests can be separately sold or assigned. (Campbell, 1999b)

If the lease rent is lower than market rent for similar property, the tenant's leasehold interest will have a positive value. If the lease rent is the same as market rent, then the tenant's leasehold interest will be zero. (Campbell, 1999b)

To which Harvey adds that the "tenants who are there now. . . paid far too much. They paid prices that would only make sense if you purchasing a 99 year prepaid lease. (CKST, 1999, p. 32)

### **Increase in Property Values**

The leaseholders' claim that the dramatic increase in property value was completely unexpected, while others claim that the increase could easily have been anticipated.

Robert Nault:

. . . contractual legal binding arrangement negotiated between the tenants and the crown...they should have been aware of the inflation that's been going on in the Vancouver area over the last thirty years. (CBU-Almanac, 1999b, p. 3).

Chris Dumfries, a senior appraiser with Royal LePage:

There has been a relatively steady increase in values between 1965 and 1995. So, for example, if somebody were . . .having a lease assigned to them in 1980 they might note that, while typical lot values in the Dunbar/Point Grey area were \$125,000, they were only \$12,180 in 1965. Likewise, in 1990, the typical Dunbar lot value was \$450,00 or about 36 times what a similar property would have sold for in 1965. The increase in these two examples, should have given some indication that, when rent review time came, it was not going to be small. (1999, p. 40-41)

Findlay:

Taxes have doubled. . .a total collapse of the market here. (CHED, 1999, p. 13)

## **Property Taxation**

The increase in property assessment values also results in an increase in property tax as "provincial and municipal governments use property assessments to determine what tax rate they must set to raise the revenue they need to pay for public services" (BCA, 2000a).

Lease #5358:

the lessee is to pay municipal taxes upon the said lands within ninety (90) days of receiving the tax notice from the City of Vancouver. . . . (1965, s.15)

Findlay:

Lou said the lease hadn't changed. One of the most fundamental terms of the lease is that the people are mandated to pay their taxes to the City of Vancouver. . .which was wiped out by the conservative government in 91 and these people were left with a whole different regime. (CHED, 1999, p. 16-17).

Salish Park Resident #1

Property tax is assessed on land values of \$850,000 when the market value last year was \$550,000 and homes are now either unsellable or selling for less than \$300,000.

**Campbell:**

Leased lands on our reserve are assessed exactly the same way as leased Crown lands are assessed everywhere in the province by the same B.C. Assessment Authority on the basis of their fee-simple value. It was done this way when the city collected the taxes. Nothing has changed. (1999a)

**Findlay:**

Property assessments were based on the fair market value of the leasehold interest in the properties, and the taxes payable based on the same mill rate as other City residents, but based on this leasehold assessed value. (1999, p. 7).

**Musqueam Park Resident #1**

The government has approved property tax on a need based budgeting which means the Band can set the rate however they choose.

**Musqueam Park Resident #2**

The purpose of property taxation is to cover the costs of servicing, not to generate revenue.

Based on financial audits the new Musqueam administration office was built with surplus property tax revenue.

In much of the data collected through interviews and other documents, there is frequent reference to taxes having doubled since the Musqueam Band started collecting property tax. I wondered how the property tax rate was set and learned that a mill rate is established based how much the revenue the tax authority needs to raise more to be able to provide services (BCA, 2000c). So, although taxes have increased dramatically, it is due to the increased property values, not a change to the mill rate. The mill rate the Musqueam Band uses is the same as the mill rate used by the City of Vancouver. This suspicion was confirmed during an interview held with the second Musqueam Park resident.

(For more information on property assessment and taxation, refer to Appendix V.)

## **Taxation without representation**

The issue of taxation extended beyond the amount owing to include who was collecting the property tax. In June 1988, parliament passed Bill C-115, "allowing First Nations across Canada to tax reserve properties including leased land" (DIAND, 2000a, p. 3; DIAND, 2000b). In February 1991, "taxation authority for residents living on the Musqueam Indian land is transferred to the Band" (DIAND, 2000a, p. 3). When the federal government transferred property taxation from the City of Vancouver to the Musqueam Band, the leaseholders reacted by charging the federal government with breached of contract. Minister Robert Nault is quoted as saying, it is "a responsibility of the crown to uphold the contractual arrangement that was made between the leaseholders" (CBU-Almanac, 1999b, p.3). However the leaseholders charge is based on the terms of the original lease #5358 which states that the leaseholders are "to pay the municipal taxes upon the said lands within ninety (90) days of receiving the tax notice from the City of Vancouver" (1965, s.15). Harvey remarks that "who is collecting the rent has absolutely no bearing. Any other tenant that complained that their landlord had appointed a property management company to look after the property would be met with an incredulous, So What? (Harvey, 2000).

The issue of property taxation extends beyond the issue of who collects the property tax to another issues of taxation without representation and legislative changes without notice.

### **Findlay:**

You want to know and be informed, who you are paying your taxes to, how much those taxes will be. You want to know that you have a civic vote and can make representations. (CHED, 1999, p. 17)

Abandoned by the Federal Government; and oppressed by a new regime of taxation (1999, p. 8)

Kesselman identifies the issues as discriminatory taxation and taxation without representation.

. . . the *central* issue of voting and representation rights. Without those rights, non-aboriginal residents lack the channels for participation, influence, and restraint that are conventional in institutions for democratic governance. (2000, p. 38-39)

All of the First Nations that have assumed taxation powers under section 83 have opted to exempt their own resident members from the taxes that they impose on non-members. (2000, p. 38-39)

Not only is there taxation without representation, but the resident aboriginals enjoy representation without taxation. (2000, p. 46)

Campbell:

The other controversial issue has been the taxation of leasehold interests. Just as tenants do not generally have a right to vote for their landlords, tenants on Musqueam land have no right to vote for Musqueam band council. Yet the tenants' lack of a vote has been advanced as a serious argument against the fairness of the rents the court has set. (1999a)

If we were to disregard their interests in a taxation bylaw, the minister would refuse to approve it. It is untrue, therefore, to say that our tenants are being taxed without representation. The tenants also complain that they don't have the right to run for office or vote in elections for the Musqueam Band Council. They retain rights to vote in Vancouver municipal elections, and provincial and federal elections, but they cannot participate in the political life of our community. (1999a)

However, when Musqueam Park Resident #2, approached the local MLA with the claim that they were being taxed without representation, the MLA apparently told the leaseholder that the Musqueam were constituents as well so he could not get involved.

### **Role of Department of Indian and Northern Affairs Canada (DIAND)**

The federal government is in a difficult position of trying to appease leaseholders that have significant political power and their fiduciary duty to the Musqueam.

It seems that the federal government is a scapegoat in this dispute because both parties blame the government for not intervening in a manner that each party sees as appropriate. It seems that both parties have chosen to use the federal government as a scapegoat to save-face. So regardless of decisions the federal government makes, one of the parties can claim that the government is not protecting their interests in a situation where the disputants has no control. To illustrate the blame laying, here are a few quotes:

**Sparrow:**

. . .the penalty shouldn't be put on the tenants, and the band also shouldn't be the one being the bad guy here trying to enforce the rate increase. It's really the department. The department is the key third person here. (CKNW,1999, p.6)

**Harvey:**

The government has a fiduciary responsibility for the well-being of all First Nations. That's their social issues, their housing issues, that's their education issues, the fishing issues, the land issues is obligated. (2000)

The government has a fiduciary duty to exercise legal powers for the exclusive benefit of the Band (eg. it must take all action necessary to collect the rents from the Musqueam Park tenants and turn those rents over to the Band.) (2000)

The Minister of Indian Affairs, being an elected politician, has been extremely dilatory in commencing the legal actions against the tenants to collect delinquent rents. . . breaching fiduciary duty and causing significant financial harm to the Band (the lost interest on the rent not collected amounts to over \$1,000 a day). (2000).

The Band will likely have to sue the Federal government yet again to obtain compensation as it did when it sued the government [and won] for its mismanagement over the Shaughnessy golf club lease. (2000).

Coppard (*The Vancouver Courier* newspaper, September 6, 1999):

The leaseholders have launched legal action against the band and the federal government, arguing the government breached the terms of the lease in 1980 when it handed administrative power to the band. (12/05/99)

Band lawyer Lewis Harvey said the government may be liable for breaching its fiduciary responsibility to the Musqueam if it doesn't take action to collect the rents. . . the lawyer for the Musqueam Band said the government must proceed promptly, or risk being sued for more than \$5 million in outstanding rent. (12/05/99)

Findlay:

We are preparing, right now, to sue the government and band. . . [for] the secret handling of this; the failure to negotiate; the way this has been handled from beginning to end, and the economic loss that's resulted. (CHED, 1999, p. 24)

The leaseholders are, in a state of financial and emotional collapse. They are being squeezed by the federal government now. Because the band said they'd sue the government if the government didn't move to collect the rent. (CHED, 1999, p. 20)

Musqueam Park Resident #1 &2

We may have a quarrel with the Musqueam people, but it is the Minister of Indian Affairs, not the local DIAND representatives, that we are angry with for the breach of lease signed with the leaseholders.

## **Land Ownership**

The role of the federal government brings up another issue, that of land ownership and lease management. This is particularly difficult to make sense of because of the need to distinguish between "legal ownership and beneficial ownerships. . . [which] may be confusing to the general public, all of these legal concepts are well-known and understood by the law and the courts" (Harvey, 2000, p. 3).

Although Campbell contends that:

All that the Crown gets from the legal title is legal authority to deal with the land in transactions with third parties. That is why the Musqueam Park leases show the Crown as the landlord. (Campbell, 1999b)

Harvey explains the difference between legal title and ownership as:

Federal Crown holds the legal title to all reserve land in Canada. . .a title subject to a legally enforceable fiduciary obligation owed to the Band. (2000, p. 2)

This does not mean that it has an ownership interest in reserve lands of the same kind it enjoys with regard to other federally owned Crown lands. Rather, the Federal Crown holds the legal title to reserve lands for the exclusive use and benefit of the entitled Band for whom the reserve has been set apart. (2000, p. 2).

The situation is comparable to the trust arrangements created under a will. where an executor holds the legal title to assets, but no beneficial interest in the asset, only the legal authority to deal with the assets. . .for the exclusive benefit of the beneficiaries. (2000, p. 2)

When the Federal Crown first asserted sovereignty of this area in colonial times. . .the acquisition of legal title conferred legal power to deal with the lands, but that power came subject to a legally enforceable fiduciary duty (sometimes called a trust duty). . .to protect the Band's aboriginal title and to ensure the lands are exclusively used for the benefit of the Band. (Harvey, 2000)

So while the federal government was transferring the authority to manage the leases to the Musqueam Band, the leaseholders claim they knew nothing about it.

Findlay:

Without any notice to the leaseholders by either the Musqueam or the federal government. Although told this by Ron Irwin when he was Minister of Indian Affairs, the leaseholders thought the Minister was mistaken, and only had this confirmed to them on January 13, 1999. (1999, p. 7)

Campbell tries to explain that nothing has changed in the leases because:

Under s. 53 of the Indian Act, leased lands are to be managed by the Minister, 'or a person appointed by the Minister.' On October 6, 1980, the Minister appointed the Musqueam Band Council to manage reserve lands designated for leasing purposes. (1999b, p. 5)

In fact the Lease #5358 does state that

In the event that the Minister and the Lessee *or its assignees* . . . . (1965, s.2, ss.3)

Harvey adds:

The Band has delegated authority [from the Minister of Indian Affairs] to collect rent payments, consent to assignments of lease on the Minister's behalf and *conduct negotiations with the tenants* on the renewal rent that kicked in under the leases in 1995. (2000)

The legal authority to commence lease actions to enter into amendments of the lease, all of that remains with the federal government. It hasn't been transferred anywhere. (CHED, 1999, p. 7)

Musqueam Park Resident #1:

The federal government is setting up racial based legislation, government, and enclaves and MPR expects it will turn out as it has in South Africa.

## **Lease Negotiation**

The federal government also transferred the authority to re-negotiation the leases to the Musqueam Band, again apparently without the leaseholders knowing.

Findlay:

The residents expected there to be meaningful negotiations, and that those negotiations would take place between the residents and the Federal Government, that has both a fiduciary duty to aboriginal peoples, and a duty of fairness and accountability to all Canadian citizens. (1999, p. 7)

It was not unreasonable for these citizens to assume that the Government would not alter or eliminate their rights granted by contract with consideration given, nor to assume that any future negotiations would take place with Government. (1999, p.12)

Harvey disagrees, saying:

These lease terms have been exactly the same since the day the leases were originally written in 1965. They haven't changed. Anyone who bought a lease in there would've had to sign the document. (CKST, 1999, p.6)

The Department had all the right and authority needed to participate in the lease negotiations if it had wanted to. The reason it did not intervene initially is two-fold. First, it did not want to intervene. Having negotiated the lease with 30 years of fixed rents with one sudden increase to market based rent in

1995, I assume they preferred to let the Band take the political heat which they were aware would be generated. Second, from the Band's point of view, having experienced a history of Department mismanagement of their lands, it preferred to conduct the lease negotiations and not have the Department compromise their interests again as it did when it granted the sweetheart lease to the Shaughnessy Golf Club. Bottom Line: The Department could have intervened at any time (for that matter it still can), but neither it nor the Band wanted the Department to be negotiating on the Band's behalf. (2000)

The parties disagree about the degree of involvement the Musqueam Band had during lease negotiations in 1965:

Chief Campbell:

The 99-year leases in Musqueam Park lots were negotiated by Indian Affairs. (1999a)

Findlay:

The Band was actively involved in instructing the Department of Indian Affairs' lawyers.

Negotiations involving the Musqueam Band, the Developers, D.I.A. and the Dept. of Justice took 7 years. (1999, p. 1).

Harvey:

The Musqueam agreed to leasing. They didn't agree to the terms and they weren't consulted about the particular terms (CHED, 1999, p.3).

The parties also disagree about who initiated current lease negotiations.

Campbell:

We tried to negotiate a fair rent with the tenants [leaseholders]. I won't go into the details of the negotiations, but it was clear that we were not making progress. (Campbell, 1999b).

The Musqueam Park residents interviewed both say they tried to start negotiations as early as 1991 but the Band would not participate. Furthermore, the second Musqueam Park resident interviewed said that:

Larry Fast, the lawyer for the Band at the time, said they had no intention of negotiating prior to the expiration date because they expected land values to continue to increase.

I tried to forewarn the Minister that the dispute was heating up and asked the Minister to intervene, but the Minister brushed off my concerns advising that the federal government had turned the power to negotiation over to the Band. That was the first I had heard about the transfer to power.

## **Economic Impact**

Both groups feel an economic impact: lease fees for the leaseholders; uncollected lease revenue for the Band; and, the legal fees and court costs for both parties, which apparently amounts to hundreds of thousands of dollars.

In addition to which Jim Kew advises that the Musqueam are feeling a financial impact as only two of the 74 leaseholders have paid their lease fees; while, at the same time, Findlay refers to the financial devastation the leaseholders are experiencing.

DIAND #2 explains what the economic benefit means to First Nations people:

The issues for the native community centre around economics: they likely see the resource as a means to make money to improve the Band's standard of living to be comparable with leaseholders; to educate their people to be able to manage their resources, administration, and management of Band's affairs; and, increase their self-sufficiency, particularly since the resource they used to depend on has diminished.

While elaborating on the status of lease fee payments, it seems pretty clear that the parties do not agree on how much has been paid and how much is owing.

**DIAND:**

On June 8, 1999, seventy-three of the tenants do not make their 1999 lease payments. (2000a, p.5)

On September 20, 1999, DIAND sends 'Notice of Default' letters to five tenants who have made no lease payments since 1995, and 68 tenants who have made no 1999/2000 lease payments. (2000a, p.5)

**Harvey:**

Some of the tenants have not paid any rent at all since 1994, and yet no Court judgments have been obtained against them. (2000)

**Musqueam Park Resident #2:**

Two leaseholders have paid the 24,000 amount set by the Federal Court of Appeal, 70 leaseholders have paid the \$10,000 amount set by the Federal Trial Court Division, and three leaseholders who have not paid anything. He added that he is not sure if anyone has paid the June 2000 lease amount.

**Prepaid Lease Option**

The residents of Salish Park have prepaid leases, which means that they have paid the full amount owing to the Musqueam Band and do not owe anything more for the duration of the lease. Among the many other points they disagree on, they also do not agree on whether or not the leaseholders were given the option to prepay their leases.

**Findlay:**

Pre-paid leases is an offer that has never been made by the Band to the Musqueam Park residents, although the Musqueam Park residents have asked for this option more than once. (1999, p. 6).

Colonel Jones then head of the Department of Indian Affairs, did not see the creation of revenue for the Musqueam as important, (1999, p. 2).

The Musqueam are looking for financial redress on the backs of 75 homeowners who are unable to give it. The leaseholders are left financially stranded, with no recourse open that is not drastic and demeaning. (1999, p. 13).

**Chief Campbell:**

Ironically, we gave the tenants an opportunity in 1980 to convert their leases into prepaid leases. They rejected our proposal. The chief qualifies that statement by saying that, fewer than a quarter of the tenants were interested. We needed at least half to take up our offer to justify the costs of appraisal and renegotiation.

One Musqueam Park negotiator told us in 1995, 'Why would we accept your offer and give up the low rents that we had then under our leases?' (1999a).

## **Compensation**

The financial impact felt by both parties includes a recognition that the process of reaching a new agreement is costing them money; and, for the leaseholders the new lease payment is going to cost them anywhere from \$10,000 to \$30,000 a year more. To correct the situation both parties are suing the government for compensation to cover their losses.

**Harvey:**

The tenants realize that their salvation is going to come only from the Federal government, and only if they can raise a sufficiently troublesome public controversy that the government will decide it would be cheaper to pay them off, even though they have no legitimate basis to claim compensation, in order to shut them up. So far, the federal government has adamantly refused to pay them the compensation they are asking (they are claiming about \$50,000,000). (2000)

**Findlay:**

The leaseholders are preparing to sue the government for the economic loss that has resulted from the government's mishandling of the Musqueam Park dispute. (CHED, 1999, p. 24)

**Campbell:**

If anyone should be compensated by the Government for the Musqueam Park leases, it is the Musqueam Band. The rents we were receiving up to 1995 were unconscionably low. In 1965 inflation had been averaging 2% a year for the previous 20 years. Why did the government lock us in to rents that increased at an average un compounded rate of only 1% a year during the first twenty year period? (1999b)

## **Annual Lease Fee**

The financial impact just discussed brings me full circle to a discussion about the original issues of current land value and fair rent.

Findlay:

Unreasonable and unfair hikes of some 57 hundred percent in the lease amounts, has it's a total collapse of the market here. (CHED, 1999, p. 13)

Campbell :

That percentage [7,366 per cent increase] is more a measure of how low the 30-year-old rents were rather than how high the new rents are. (1999a)

We will receive the same rent for the next 20 years with no increases for inflation or appreciation in the value of our land. (1999a)

While these rents may seem high to someone not familiar with the high land values on the west side of Vancouver. . . they are not out of line. (1999b)

## **Identity-based Issues**

As I have already mentioned, identity-issues are prevalent throughout each issue just covered. I chose to gather them together here for simplicity and to illustrate the point that the Musqueam / leaseholder dispute contains both resource- and identity-based issues.

Sparrow:

. . .it's a major political thing. . . and it's also legal. But also there's the human side of this I think that has to be considered. And that is the side that a lot of Musqueam people that haven't voiced their feelings. (CKNW, 1999, p. 14)

. . . what has happened is emotions have been getting involved. Of course on both sides, emotions. And you can't resolve things under emotion. And as a result of that now there is no more dialogue. (CKNW, 1999, p. 3)

Jim Kew:

Human issues cannot be quantified in law or commerce and being subjective, involve many emotions that relate to control of resources; the continued denial of native's rights as people; and, although the Government has acknowledged that aboriginal title and rights exist, the Government has not defined what that means.

DIAND #2

Based on years of interaction with First Nations people. . .many of issues are a result of colonization when native children were removed from their families and put in residential schools where their language, culture, and traditions were silenced. Even in the best of residential experiences, the native children grew up stripped of their identity and ability to be self-sufficient. The result is that many First Nations people are overly dependent on Government or, more recently, the Band as they unable to do even the simplest task on their own.

I believe that the native people want to regain their independence and administer and manage their own affairs but have not fully developed the ability and resources to do so which takes us back to the issues being economic for the native people.

As an aside, this process is outlined in Gathering Strength available online at [www.inac.gc.ca](http://www.inac.gc.ca).

Campbell:

From our point of view, however, our reserve land base is much more than just an income-producing capital asset. It is the place where the Musqueam people have lived for thousands of years. If we were to simply sell this land, in a few generations, Musqueam would cease to exist as a distinctive people. That is why we and most other Bands never sell reserve lands. (1999b)

Findlay:

The leaseholders are in a state of financial and emotional collapse. The leaseholders thought the Government would take care of them but now the leaseholders feel not only abandoned by the federal and provincial governments, they are being squeezed by the federal government. (CHED, 1999, p. 20)

Other identity-based issues centre around personal safety and security. A concern was expressed by leaseholders and a member of the Musqueam Band over the

potential explosion that could have resulted from gas meters being ripped off of leaseholder homes in retaliation by Musqueam youths. Needless to say, the incident posed a serious threat to the leaseholders' sense of safety and security. The threat to safety is also felt on the Musqueam side as Gail Sparrow admits to having "had death threats" (CKNW, 1999, p. 6).

## Human Rights

Although Chief Campbell maintains that the Musqueam / leaseholder dispute has nothing to do with *race*, the frequency of terms, such as: rights, racism, discrimination, indian, non-indian, and self-government, suggest otherwise.

According to Henry, Tator, Mattis & Rees (1995) there are three main forms of racism: individual, systemic, and, cultural (Roy, undated).

Individual racism manifests itself in individual's attitudes and behaviours, and is the easiest type to identify. Systemic racism consists of the policies and practices of organizations, which directly or indirectly operate to sustain the advantages of peoples of certain "social races". This type of racism is more difficult to address because it is implicit in the policies of organizations and often unconscious. Cultural racism is the basis of both other forms of racism, as it is the value system which is embedded in society which supports and allows discriminatory actions based on perceptions of racial difference, cultural superiority and inferiority. (Roy, undated)

Kew:

As wards of the state, under British Common law, the Crown is granted certain rights but the natives are not - no property rights, no ancestral rights, and no human rights.

The issues originate in colonialism, resulting in the Musqueam, like other First Nations groups, feeling the impact of the Canadian legacy of racism and systemic discrimination.

A human issue as one between holistic cultures and industrial cultures who, isolate themselves from social responsibility and other roles in society.

The issue of *reverse racism and discrimination* is also often mentioned. The Oxford dictionary (1998) defines *reverse discrimination* as "discrimination against

men or white people that results from policies intended to end discrimination against women or racial minorities.” However, Kaiser (1990) believes reverse racism is a myth, and argues that “oppression can only exist when there is an institutional power imbalance” (p. 8).

Since power . . . is in the hands of white, upper middle class, Christian men, women and people of color cannot systematically oppress [them]. As a result ‘reverse racism’ . . . cannot, and does not exist. These are terms invented to resist a more equitable balance of power, and do not reflect an actual condition or reality. Although individual white Christian men may be passed over in favor of a member of a target group, they are not truly ‘oppressed’ by the target group. . . it is merely prejudice, and not oppression” (Kaiser, 1990, p. 8).

Nevertheless, Salish Park resident #1 believes that the leaseholders are the victims of discrimination and racism:

. . . the issues are bigotry, hatred and racial supremacy from the Musqueam Band toward the leaseholders, where one ethnic group [the Musqueam Band] considers the other [leaseholders] as inferior.

Some residents find the Band intimidating and feel the effects of reverse segregation. The No Trespassing signs, in itself, are intimidating.

The signs SPR1 is referring to are posted on the boundaries between the Musqueam home and other residents and read,

No trespassing except on business, trespassers may be prosecuted by order of the Musqueam chief and council and, No trespassing. Violators subject to fine and/or imprisonment under section 30 Indian Act.

Kesselman:

Obviously, there is a potential conflict between the rights of non-aboriginal residents on First Nations and aboriginal rights to self-government. Hence, there arises the question of *how to reconcile the rights of the two groups*, giving effective representational rights in decision-making to non-aboriginal residents while preserving the autonomy and self-government rights of aboriginals. (2000, p. 43-44)

A Salish Park Resident says that there is a sense of discrimination because leaseholders have to pay tax and natives live tax-free.

**Sparrow:**

The only way that First Nations can . . . prove their rights or their inheritance. . . [is] as a result of court decisions. (CKNW, 1999, p. 10)

**Findlay:**

Really its all about non natives are treated on native land under native governments (CHED, 1999, p. 14)

**Harvey:**

The general attitude, incredible though it may now seem in hindsight, was that Indian reserves belonged to the federal government and that Indians, despite their millennia long occupation, had no legal rights to their land. This was a conscious and deliberate policy position taken at the highest level of the Federal government.

[First Nations people] were generally regarded as the recipients of government benevolence, and in the minds of most they should be grateful and not bite the hand that feeds. Unfortunately, some of these attitudes still persist long after the highest courts of the land have ruled to the contrary. (Harvey, 2000)

With respect to the leaseholders being uninformed about the changes in legislation delegating authority to the Musqueam Band,

The reason this complaint is given the prominence it is by the tenants and the media is because of a widespread public (dare I use the word racist) predisposition to believe that Indians are militant, unreasonable and unfair, especially when it comes to dealing with non-Indians. (Harvey, 2000)

The media likes to tell the public what they want to hear [and] people out there want to believe that the desperate plight of Indians on reserve is not their fault or responsibility. It's especially easy to feel complacent if you think that the Indians are really a bunch of mean and greedy people who are the cause of their own problems. (Harvey, 2000)

**Campbell:**

The tenant's interests are also well protected with the right to appeal to the courts. We have always done our best to consult with them and take their interests into account in setting our taxation policies. However, some just will not accept the legitimacy of First Nations exercising taxation jurisdiction over our own lands. They opposed our taxation jurisdiction when it was introduced

and are still doing so for the same reasons. They complain in the media about their democratic rights being ignored (Campbell, 1999a).

We have every right to expect fair market rent, just as any other landowner in similar circumstances would expect (1999b).

Throughout documentation and interviews, the terms rights, racism, discrimination, and other identity-based issues surface. It seems that each time a resource-based issue, such as: property taxation, lease fees, or terms of the agreement is analyzed, a component of identity surfaces.

## VI. Data Analysis and Interpretation

Chapter III illustrates the complexity of the Musqueam Band / Musqueam Park leaseholders dispute. The interrelationship between issues is complicated in itself: property assessments affect the current land value and property taxation; land ownership and management affect property assessments and lease negotiation; and procedural issues that either include or exclude a party from the process of making plans and decisions.

Rothman (1997) identifies conflict source as either resource- or identity-based. He explains that resource issues "center on competition over material and territorial interests," whereas identity-based issues are "rooted in history, psychology, culture, belief systems," and are related to human needs and values (p. 17). Resource-based issues are tangible and concrete; identity-based issues are abstract and complex.

Like Rothman, Maslow, in a Hierarchy of Human Needs (described in the social, psychological, and philosophical theory section of Chapter III - Literature Review), emphasizes the importance of human needs and values. To reiterate, the lower level physiological and safety needs must be satisfied before progressing to the next level, and if at any time the basic need becomes frustration, attention is redirected to the level where frustration is felt, such as a need for food. (See also: Appendix III.) The hierarchy, beginning with the lower needs, is as follows: BASIC SAFETY AND PHYSIOLOGICAL NEEDS, such as *Safety Needs* – to feel that the world is organized and predictable; needs to feel safe, secure, and stable; and, *Physiological Needs* – to satisfy hunger and thirst, temperature, oxygen. PSYCHOLOGICAL NEEDS, including esteem, prestige, fame, recognition and respect from others; feeling of accomplishment, achievement, to be competent and independent; to love and be loved, to belong and be accepted; and, the need to avoid loneliness and alienation, interact socially.

SELF-ACTUALIZATION NEEDS, aimed at achieving one's full and unique potential, and to be creative.

During the initial stages of research both court records and governmental archives stated that the dispute centered on terms of the lease, indicating that the dispute is resource-based. I wondered, if this truly were a contract dispute between a landlord and leaseholders, how did it end up in the Supreme Court of Canada. Based on media transcripts and personal interviews, both the Musqueam and leaseholders are motivated to pursue litigation, by an expectation that the economic benefit will outweigh the cost.

Although Rothman (1997) argues that while it "is fair to say that all identity conflicts contain [resource] conflict; not all [resource] conflict contain identity conflict" (p. 11); he also says that "latent identity concerns may become more salient. . .if a resource-based conflict becomes protracted" (1997, p. 146). Perhaps the focus on resource-based issues over identity-based issue can be explained by Nagel as the "tendency to seek an objective account of everything before admitting its reality. But often what appears to a more subjective point of view cannot be accounted for in this way" (1979, 196). Perhaps disputants focus on objective aspects of a dispute, such as the terms of the lease in the Musqueam case, because they are concrete and easier to conceptualize than identity-based issues, which are "relatively intangible and deeply rooted in the more abstract and interpretive dynamics of history, psychology, culture, values, and beliefs" (Rothman, 1997, p. 11).

Chief Campbell says that the dispute is about "abiding by the terms of lease contracts which require the lessees to pay a fair rent for the properties they lease" and, Kew said it is a "business dispute, simply about money."

However, theorists who specialize in social-psychology might disagree with this assessment of the current dispute. Azar, for example, believes that "conflicts in the

world today are framed as conflicts over material interests, [but] empirical evidence suggests that they are not just that. More fundamentally, most contemporary conflicts are about developmental needs expressed in terms of cultural values, human rights and security" (1981, p. 2).

Although the Musqueam dispute seems to centre on money as a resource, I wonder what is it about the money that is significant to each of the parties, especially since proceeding in court is costly for both the Musqueam Band and the leaseholders. It is due to this type of inconsistency that I have chosen a social-psychology theoretical framework based on human interaction and meaning.

From the start of my research, information relayed by one party seemed in direct opposition to information presented by another party, which, from my experience as a facilitator and mediator, is commonplace. The coordinated management of meaning interactional theory explains "how individuals organize, manage, and coordinate" meaning, which is important "because they lead to decisions about what action to take and what action to avoid" (Folger, 1997, p. 57).

To illustrate how differences in the coordination of meaning can lead to different interpretations of the same event. The following example is drawn from an unrelated interaction I facilitated between members of a Tribal Council and employees of a lumber company. The parties' view of trees and plants in their physical context was similar, but in terms of their psychological context was opposite. As an elder explained, "white people say it does not matter if the plant habitat is disturbed during logging, it will grow back, but what they do not understand is that what they consider to be weeds, are herbs to us, and disturbing the soil damages the medicinal properties of a plant. White people see trees as logs, we see trees as culturally significant." The same words have different meanings, depending on how meaning is coordinated. In this case, the word *plant* depicts different meanings for the two groups: plants as weeds or plants as herbs. Kew explains the difference as one between a holistic culture and an industrialized

culture. An excellent illustration of an industrialized perspective comes from a reader's comment in an old mining text on, cyanidation and concentration of gold and silver ores (1936); a pencil-written, personal annotation reads, "[r]ock is waste unless it can be treated to recover the valuable portions at a profit." In both the plant and rock examples, individual values and beliefs are self-evident.

The media's use of words often evokes emotion that, in the Musqueam Park dispute, creates controversy because, as Harvey points out, "controversy sells." Chief Campbell highlights one such instance when he said, "we did not unilaterally *set*, or as the media is fond of saying, *demand*, these rents. . ." (1999b, p. 5).

In relation to the terms of the lease, the meaning of the word "fair" and term "current land value" initiated the Musqueam conflict, because the parties perceive *fairness* or the assessment of *current land value* in opposite ways. For example, the leaseholders considered a lease fee increase from \$400 to \$8,000 per year *fair*; the Trial Court judge ruled that \$10,000 per year was *fair*, in the interest of *fairness*, the Federal Court of Appeal reset lease rents at \$18,400 to \$26,400 per year; and, based on land assessments, the Band felt that a *fair* lease fee would be \$30,000 per year.

From an unpublished Sphere of Conflict, Radford (1999) explains how strong emotions, misperceptions, stereotypes, and miscommunication are causes of *relationship conflicts*: the basis of *data conflicts* is a lack of information or misinformation and different views or interpretations of what is relevant and assessment procedures cause; *Value conflicts* are caused by different criteria for evaluating ideas or behaviour, as well as different day-to-day, terminal, or self-definition values; *Interest conflicts* result from perceived or actual competition over substantive (content), procedural, or psychological interests; *Structural conflicts* are caused by unequal power authority and unequal control or ownership of resources that hinder cooperation. (See also: Appendix II.) Fisher (1978) also

defines problem areas that “often deadlock negotiations as substantive...procedural...and people problems” (Moore, 1996, p. 160).

For instance, the dispute about the level of Musqueam involvement in setting the terms of the original lease is a procedural conflict. Findlay is sure that “the Band was actively involved in instructing the Department of Indian Affairs' lawyers” in the “negotiations involving the Musqueam Band, the Developers, D.I.A. and the Dept. of Justice...” (1999, p. 1); Harvey replies that “the Musqueam agreed to leasing. They didn't agree to the terms and they weren't consulted about the particular terms” (CHED, 1999, p.3). In Radford's terms, this disagreement is likely one of *data conflict* based on a lack of information or misinformation; *value conflict* around the term *involvement*; and, *interest conflict* over procedure. It is also possible that the Band was actively involved in the agreement to surrender the land to the government for development purposes, but not involved in lease negotiations between the Federal Government and the development corporation, or between the development corporation and the leaseholders. Both Findlay and Harvey are accurate in what they are saying based on their own coordination of the meaning of *involvement*, just as *consultation* has very different meanings to groups.

In the earlier example where one group considers a plant a weed, and another a herb, the issue of consultation also surfaced. In this case, the word consultation had different meanings; to the First Nations people *consultation* means to be actively engaged in creating plans and making decisions; whereas, to the lumber company *consultation* meant that they would consult with the First Nations people, but ultimately make plans and decisions without them. Interestingly, the Oxford dictionary defines consult as: “seek information or advice from (a person); seek permission or approval from (a person) for a proposed action” (1998).

In another example of data conflict, the 1996 census report published by Statistics Canada stated that the average income before taxes -- including Salish and Musqueam Parks -- is \$38,000 a year. However, Chief Campbell points out that

"this average was derived from the whole of the Musqueam reserve, which includes about 600 Band members, many of whom are on social assistance and who have little or no income" (1999, pg. 5).

Chief Campbell maintains that the issue in the Musqueam Park dispute is not about race or self-government; for the leaseholders, however, race and self-government is clearly an issue, as Kerry-Lynn Findlay, spokesperson for the leaseholders, points out that the issue is "all about [how] non-natives are treated on native land under native governments" (CHED, 1999, p. 14). In relation to resources or identity, when Campbell refers to the issue as "abiding by the terms of lease contracts which require the lessees to pay a fair rent for the properties they lease" (Barbour, 1999, p. 1), he is looking at the dispute as resource-based, or objectively; when Findlay, on the other hand, refers to the issues in terms of race, self-government, fairness, and reverse-discrimination, she is viewing the dispute as identity-based, or subjectively. Although Campbell sees rent as a resource issue, the term *fair* is rooted in one's values and beliefs.

Although Campbell maintains that race is not an issue in the Musqueam / leaseholder dispute, he does make a reference to cultural identity values when he said: "our reserve land base is much more than just an income-producing capital asset. It is the place where the Musqueam people have lived for thousands of years. If we were to simply sell this land, in a few generations, Musqueam would cease to exist as a distinctive people" (Campbell, 1999b, p. 4).

Throughout transcripts and during interviews, frequent references are made to value and structural conflicts, in terms of racism and human rights. Jim Kew points out that, under British Common law, the Crown is granted certain rights but the natives, as wards of the state, are not - no property rights, no ancestral rights, and no human rights. Sparrow: said that "the only way that First Nations can . . . prove their rights or their inheritance. . . [is] as a result of court decisions" (CKNW, 1999, p. 10). As well, the repetition of words, such as: native, non-native, on-reserve

land, off-reserve land, Indian and self-government clearly indicate a relationship conflict on the basis of stereotyping.

Negative stereotyping, another identity related aspect of this dispute, is defined by Fisher as "oversimplified, inaccurate, rigid, and derogatory beliefs about the characteristics of the other group which are applied indiscriminately to all individuals in that group" (1999, p. 10). Fisher further says that "mutual stereotyping. . . [occurs] when each group sees the other negatively, as aggressive, untrustworthy, manipulative, and itself positively, as peaceful, trustworthy, and cooperative" (p. 10).

As Harvey puts it, "people out there [the public] want to believe that the desperate plight of Indians on reserve is not their fault or responsibility. It's especially easy to feel complacent if you think that the Indians are really a bunch of mean and greedy people who are the cause of their own problems" (2000).

When Kew referred to the Canadian legacy of racism, he revealed a potential root cause of the Musqueam / leaseholder dispute: colonialism. Although the history and impact of colonialism, racism, and aboriginal rights is far too broad to adequately deal with here, I will include a few quotations to give the reader a sense of the colonialist mindset that reflects religious, development, civilizing, and exploitation motives. To illustrate, Goonathilake quotes Cortes as saying, 'the first aim of your expedition is to serve God and spread the Christian faith. . .among those people who dwell in darkness'; and, Pizarro who stated, 'I have not come for any such reason. I have come to take their gold away from them' (1982, p. 82). The "history of colonial administration is presented as if all the activities of the colonialists were directed to the solution of the most vital problems in the development of the colonial countries. . . [and] to introduce the non-European countries the fruits of Western civilisation" (Cherynk, 1968, p. 25). In "Karl Marx's words, whenever any real progress was achieved it was only done by 'dragging individuals and peoples through blood and dirt, through misery and degradation'"

(Cherynk, 1968, p. 17). Goonathilake, notes a combined sense of superiority, height of imperial glory, and the sense of a civilizing mission is described in Rudyard Kipling's well-known poem of 1899, the *White Man's Burden* (1982, p. 76-77)

Take up the White Man's burden—  
 Send forth the best you breed—  
 Go bind your sons to exile  
 To serve your captives' need;  
 To wait in heavy harness,  
 On fluttered folk and wild—  
 Your new-caught, sullen people,  
 Half-devil and half-child

Prime Minister Pierre Eliot Trudeau initiated changes to the Constitution Act in 1982, which included new rights for natives: "the existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed" (1982, section 35). One Musqueam Park resident (MPR #1) believes that the British were too tolerant and lenient when they invaded this country, that they should have forced assimilation and extinguished all aboriginal rights.

Goonathilake (1982), on the other hand, sums up colonialism as "the whole conversion process was an extraordinary mixture of force, cruelty, stupidity and greed, redeemed by occasional flashes of imagination and charity" (p. 82).

From Harvey's perspective, the attitude and belief of the general public is that "Indians . . . had no legal rights to their land [and, were] regarded as the recipients of government benevolence, and in the minds of most they should be grateful and not bite the hand that feeds. Unfortunately, some of these attitudes still persist . . ." (2000).

The colonialist mindset still seems evident in comments made by callers to the Rutherford radio talk show, following interviews with Harvey and Findlay. One caller, identified as John, believes that "the root problem of this business is multiculturalism. When you attempt to accommodate all kinds of people's different ways of doing things" (CHED, 1999, p. 28). He continues: "Why would Ottawa be

so keen to accommodate these people at every bend in the road?" to which Rutherford replies, "Political. Political correctness" (CHED, 1999, p. 28). Harvey attributes remarks, such as the caller's, to a "lack of understanding. People don't understand" (CKST, 1999, p. 10). A lack of understanding seems to exist in the case of a caller, identified as David, disagrees with Rutherford's comment that "you can't buy a lease lot. You don't own it. The Musqueam Indian Band or the federal government owns it" (CHED, 1999, p. 33). David emphasizes that as far as his brother, who bought a lot and house on Musqueam land, was concerned, "he was buying the house and the lot," to which Rutherford responds, "well he was misinformed" (CHED, 1999, p. 34).

David clearly blames the Musqueam for his brother's problems, explaining that his brother paid \$80,000 [for a lot and a house in the '60s], and that "if it wasn't Indians involved with this...it would be [worth] around five - six hundred thousand" (CHED, 1999, p. 34). Many of the residents I interviewed had opinions similar to David's, blaming the Musqueam for the dramatic decrease in the market value of their homes.

The Musqueam people are not alone in feeling discriminated against--some leaseholders feel they are being discriminated against. In addition to the criticism the leaseholders face for not anticipating a dramatic increase in lease fees as an outcome of lease renegotiations, the leaseholders feel abandoned by the federal and provincial governments. One Salish Park resident (#1) remarks that "the leaseholders feel a sense of discrimination because they have to pay tax and natives live tax-free; the intimidation by the Band is driving some people out; its reverse racism; and, if it were any other group is would be considered malicious persecution."

When reverse discrimination issues surface, it is likely caused by what Coser explains as social change created by conflict by shifting the distribution of power, wealth or status between negatively and positively privileged groups (1956,p. 37):

Before hostile attitudes are turned into social action the negatively privileged group must first develop the awareness that it is indeed, negatively privileged. It must come to believe that it is being denied rights to which it is entitled. It must reject any justification for the existing distribution of rights and privileges. (p. 37)

While the Musqueam people are trying to regain independence and self-sufficiency, the leaseholders feel negatively privileged by being denied representation whilst being taxed; and, at the same time, perceives the Musqueam as positively privileged based on the shift of power and authority from the federal government over land management rights.

Coser also discusses the following positive functions of social conflict: group binding, preserving, enhancing, and stabilizing; release of built-up tension; a means to promote change; the establishment and maintenance of balance of power (1956, p. 13-14). Elaborating on the positive function of power and relationship, Coser adds that conflict "creates and modifies common norms necessary for the readjustment of the relationship," and "it makes possible a reassessment of relative power and thus serves as a balancing mechanism which helps to maintain and consolidate societies" (1956, p. 137). As demonstrated in court rulings on the Musqueam dispute, and in the inclusion of native rights in the Canadian constitution, society's attitude towards the rights of First Nations people is improving. Official documents, such as the Indian Act, are good examples of the changing attitude toward First Nations people in Canada. Moss and Gardner O'Toole, quoting passages from S.B.C. 1985, c. 2, says that provincial legislation in 1875 stated that 'no Chinaman or Indian' could vote (p. 5); in fact, according to Bartlett, the opposition's reasons for denying the vote to Indians was because "extending the vote represented an encroachment on the rights of white people" (Moss and Gardner O'Toole, p. 7). The change in attitude toward First Nations

people is evident in 1949, when the British Columbia government granted Indian people the right to vote in provincial elections [SBC 1949 c.19.]; and “on 10 March 1960. . .the House of Commons finally gave Aboriginal people the vote without making them give up treaty rights in exchange” (G.C., 2000)’. Moss and Gardner O’Toole outlines how during the colonial period the non-native perception of Indians shifted from a view of natives as “independent and sovereign peoples. . .[to one where] Indian nations began to be viewed as dependent groups. . .in need of protection and civilization” (p. 2). However, the Constitution Act of 1982 states that “the existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed” (section 35, paragraph 1); and in 1985, Parliament passed Bill C-31 “bringing the [Indian] Act into line with the provisions of the Canadian Charter of Rights and Freedoms” (Charter, 2000; DIAND, 2000c).

As Parliament and Canadian courts have influenced a change of attitude towards the rights and freedoms of First Nations people over the last century, the Supreme Court of Canada’s decision on the Musqueam dispute will continue to influence change, not only among the Musqueam, the federal government, and the leaseholders, but within society.

From DIAND #2’s point of view, economic, power, and identity issues are interrelated, as many First Nations people want to regain independence and self-sufficiency. In order to achieve that goal, First Nations people are shifting their means of self-sufficiency from a historic one based on plants, animals and fish, to one based on economics and formal education. This is due, in part, because their historical resource-base is greatly diminished as a result of colonization; and, in part, because the federal government will only devolve responsibility and authority to First Nations people if they manage resources according to government rules and standards.

Another example of the interrelationship between economics, power, and identity is described by D. Jung (1978): “money is a form of power above and beyond

mere physical survival" (p. 465). Jung believes that "money is important for a variety of reasons, and different persons may not share the same reasons. Because money is a medium of exchange.... it may be hoarded or accumulated as a form of security, status, and power" (p. 464). Money, in its tangible state, is resource-based; however, money as a form of power, is identity-based.

Platt compares money and power in relation to poverty: monetary, intellectual, and political poverty, defined by Seeley as an "inability to command events that affect your destiny" (Platt, 1970, p. 27). An example of the interrelationship between political and monetary poverty, and the creation of structural conflict, is seen in the case where the Federal Government transferred to the Musqueam band authority to collect property tax and to negotiate and manage leases, and in doing so, inadvertently stripped the leaseholders of the ability to affect events that may determine their destiny. When new legislation took effect, the power to command events shifted from the leaseholders to the Musqueam Band, thereby affecting monetary wealth, which is used to enhance intellectual wealth. So as the political influencing powers of the Musqueam have increased in the Canadian courts and with the federal government, the influencing powers of the leaseholders have decreased.

In all of the case examples used here, a potential for error exists: either party could be telling the truth as they know it (though false according to other sources), or presenting only information that enhances their case against the other. Similarly, politicians support public opinion that they think will get them into power, or re-elected. It is common practice for the opposition to contradict whatever the current government says. Although Chief Campbell said the Musqueam / leaseholder issue has nothing to do with the treaty process or the Nisga'a treaty, the dispute includes similar issues, such as non-native rights with respect to voting. The context of the comments Chief Campbell (1999a) is quoting is unknown; however, they seem to express a conscious, deliberately articulated opinion of a politician in general:

Politicians from the Liberal party and the federal reform party who oppose the Nisga'a treaty said, 'Just watch. What has happened at Musqueam is what the whole province can expect from the settlement of treaties with First Nations.

Liberal MP Ted McWhinney has suggested that the Musqueam Park rent situation is a threat for the support for the B.C. treaty process.

Barbour:

Many politicians have publicly denounced the rental hike and used it as a fear-generating tactic against treaty-making. (1999, A6)

Vancouver City Councillor George Puil went on record saying: "I've never trusted the Musqueam Band. I've met with them from time to time over the years and they've always told us what 'they' want. They don't want to conform to our by-laws. This doesn't bode well for the future." (1999, A6)

The rental hike has exposed the Musqueam Band to a lot of criticism in the mainstream press, where an uncommon amount of space and time has been dedicated to generating anti-Native sentiments. (1999, A6)

However, Robert Nault maintains that "[t]his isn't a political process or political game that we're playing here. This is a legal obligation" (CBU-Almanac, 1999b, p. 3).

Regardless of the motivation of politicians and media, for the average person terms such as set, demand, fair, value, and involvement reflect individual beliefs and values that are consciously or unconsciously oriented. In this context, unconscious is defined as "that part of the mind which is inaccessible to the conscious mind but which affects behaviour, emotions" (Oxford Dictionary).

Therefore, the words chosen, such as *Indian land*, may not be an indication of conscious racism but rather an unconscious expression of racism, or simply a poor choice of words. A Trial Court judge ruled that "land in Musqueam Park will have a lower value than neighbouring fee simple land off the reserve, with the lower value attributable to *the Indian reserve feature of the land*" (DIAND, 2000a, p.4); Chief Campbell remarked that it was a "discriminatory argument" (1999a, p. 4). The

Federal Court of Appeal judge overturned the Trial Court's judgment, and set "the means of appraising the value of the land as if it were fee simple land. . . not reduced in value because the lots are on reserve land." The only reduction in value is attributable to servicing costs, as outlined in the original lease agreement, which states that current land value be based on "unimproved lands in the same state as they were on the date of this agreement" (Lease 5358, p. 1).

While it may seem that the Musqueam / leaseholder dispute centres solely on resource-based issues, it is important to recognize the role of identity-based issues. As system design theorists warn,

the easiest way out will lead back in [because] most people prefer to intervene in a system at the level of rules [such as the terms of a lease agreement]. . .where the elements are more visible and it requires less skill to work with them. But as you move toward the more intangible elements, such as people's deep-seated attitudes and beliefs, your leverage for effect change increases. (Senge, 1994, p. 93)

Fisher, consistent with Senge, observes that "although conflict often arises out of objective and ideological differences, its escalation and intractability are typically the result of psychological and social factors" (1999, p. 85).

Systems theorists emphasize the importance of recognizing the latent source of a problem from its manifest symptoms, because solutions that relieve the symptoms only "divert attention away from the real or fundamental source of the problem." Although the quick fix "alleviates the symptom," the relief is temporary, and when "the symptom returns, [it is] often worse than before" (Senge, 1994, p. 126). In the Musqueam / leaseholder dispute, if the government compensates either party, they will have relieved an economic symptom, but not the source of the problem, which seems to involve land ownership, management, and identity issues.

Rothman suggests that resource-based issues are "concerned with outward things or events. . .external to the mind" and, are *not* influenced by "feelings or personal bias" (Oxford Dictionary, 1998). The Musqueam / leaseholder dispute, however, is

about more than “outward things or events”--culture, identity, experience, belief systems, human needs, and “personal bias” are at play.

When Sir Winston Churchill remarked that “[t]he historian of great events is always oppressed by the difficulty of tracing the silent, subtle influences, which in all communities precede and prepare the way for violent outbursts and uprisings” (1995), included in the “silent, subtle influences” could be latent issues of identity.

Clearly, the Musqueam / leaseholder dispute involves many issues, some concrete, such as terms of the lease and the lease fee, others obscure, such as what does the term “fair” mean to each party. The use of litigation, as a dispute mechanism, will likely resolve the resource-based issues; however, although mediation was attempted, there does not seem to be a dispute mechanism in place to resolve issues involving relationships, communication, and identity, which includes power, involvement, and values. To address resource-based conflict, while ignoring identity-based conflict, is to create an agreement that will be short-lived and satisfactory to neither party.

## VII. Conclusion

Based on preliminary research and analysis, there is a strong indication of the correlation between resource- and identity-based issues, and it seems that both are important to the settlement of the Musqueam / leaseholder dispute.

Although Rothman (1997) clearly articulates the difference between identity- and resource-based conflict, he does not explore the similarities or fundamental interrelation between material interests and identity interests. Rothman states that although “all identity-based conflicts contain resource-based conflicts, not all resource-based conflict involve identity-based conflicts.” In the Musqueam / leaseholder dispute, records, transcripts, and other documents written from the perspectives of the Musqueam, the leaseholders, and the federal government focus on resource-based issues: lease fee, method of assessment, and terms of the agreement. Similarly, the judicial system examines the Musqueam / leaseholder dispute from an objective, point-of-law perspective. From all accounts, there is very little reference to the impact this dispute is having on the people involved.

Evidence from archives and interviews suggests that although the Musqueam / leaseholder dispute is resource-based, it includes identity-issues. For example, many of the terms used, such as native, non-native, colonialism, rights, fairness, involvement, and trust, relate to cultural and individual identity.

Theorists, such as Fisher (1999), Maslow (1971), Azar (1990), and Northrup (1989), all maintain that identity plays a significant role in conflict. Fisher believes that “although conflict often arises out of objective and ideological differences, its escalation and intractability are typically the result of psychological and social factors” (1999, p. 85); similarly, Azar states that “conflicts in the world today are framed as conflicts over material interests. Empirical evidence suggests that they are not just that. More fundamentally, most contemporary conflicts are about

developmental needs expressed in terms of cultural values, human rights and security” (1981, p. 2).

Although the Musqueam Park dispute focuses on resource-based issues, they are intertwined with identity-based issues, which explain what it is about a resource that is important to each party; for instance, money as an object is a resource; but money as a form of power, or viewed as an opportunity to become self-sufficient, is identity-based. Similarly, the term *rent* in “fair rent,” frequently used in documents refers to a resource, but the term *fair* is based on identity values. Even when identity-based issues are not referred to directly, they are referred to indirectly in the terminology used to describe a resource.

It is interesting to note that in my interviews both parties openly discussed what they saw as the other party’s motivations, which, indirectly, refer to the other party’s identity needs; however, individuals were reluctant to discuss the identity needs of their own group. One identity-related issue both groups referred to is the impact the dispute has had on individual health. An open discussion between individuals from both parties about health related needs, concerns, and fears could improve interpersonal relations. Just as psychological and social factors can escalate conflict, they also have the potential to de-escalate conflict.

Both groups might be rejecting the role of identity in this dispute because identity-based issues are “relatively intangible and deeply rooted in the more abstract and interpretive dynamics of history, psychology, culture, values, and beliefs” (Rothman, 1997, p. 11). Identity-issues are difficult to conceptualize and require effort to uncover, whereas resources are easy to grasp because they are concrete and observable.

One of the many functions of social conflict is that of promoting change. In the Musqueam Parks dispute, change will likely include a shift in the existing imbalance of rights, power, and privilege between the Musqueam and the

leaseholders, regardless of the Supreme Court's ruling. The Musqueam have proven that they are a group with increasing wealth—monetary, intellectual, and political—which serves as a “balancing mechanism . . . to maintain and consolidate societies” (Coser, 1956, p. 137). Based on recent court decisions ruling in favour of the Musqueam, one resident concluded that the Musqueam have nothing to lose, for if they do not get the money from us, they will sue the government for the money, which, according to Harvey, will likely be the case. Similarly, the relationship between lease fees and property resale value will affect the relational power and monetary wealth of the two groups: when lease fees were low, property resale value was high; now, with an increase in lease fees, property resale values have decreased.

Another potential change to come out of this dispute is a shift away from negative stereotyping of First Nations people, the leaseholders, and the federal government. The Musqueam have been portrayed as greedy, lazy, and dependent on the government. In radio transcripts and in newspaper articles, leaseholders are stereotyped as well-educated people, who should have known their legal rights and obligations when signing their lease agreements, and should have anticipated the potential of a dramatic increase in lease fees. A government stereotype that has already changed as a result of this dispute, is the belief that “you’ve got the security and the backing of the federal government. . .you’ve negotiated with the federal government . . . and trusted the government,” to a realization that it “[t]urns out maybe you shouldn’t have” (Rutherford, 1999 p. 36). Interactional theory, such as the coordinated management of meaning, explains stereotyping as “how individuals organize, manage, and coordinate” meaning, which is important, “because they lead to decisions about what action to take and what action to avoid” (Folger, 1997, p. 57).

Both the Musqueam and leaseholders perceive their own group as being negatively privileged and the other as positively privileged. So even though power, control, and independence are important to both groups, as the dispute progresses

the leaseholders and Musqueam Band seem *less* involved in the process and outcome, possibly as a result of their perception of being under-privileged. Platt (1970) theorizes that an "inability to command events that affect your destiny" (p. 27) is a type of poverty: political poverty. The leaseholders and Musqueam Band have shifted the power to make decisions to the judicial system; control of communication to the media; and, have forfeited their independence by appealing to the federal government to intervene. There may be many reasons the parties have transferred power, communication, and independence to others; two possibilities are that it was a strategic move, or that it was a reaction to some form of pressure. Regardless, further research and analysis is required before any conclusions can be reached.

Although the Musqueam / leaseholder dispute was initially deemed to be strictly a resource-based conflict, the issues of power and independence suggest that identity-based issues play a significant role. Rothman explains that it is not really a question of whether or not "identity issues are at stake, because in most conflicts they are either manifest or latent to some extent" (p. 147). Rothman adds that when "interest [resource]-based conflict becomes protracted. . . latent identity concerns may become more salient and in need of amelioration or at least expression" (1997, p. 146). Rothman, like Fisher, Ury, and Patton, differentiates between substantive and people problems. Fisher, et al, like other theorists, maintains that identity needs do play a role in substantive conflicts as "conflict lies not in objective reality, but in people's heads. . . the difference between your thinking and theirs. . . [based on] perception, emotion, and communication" (p. 22). So although Rothman contends that "all identity conflicts contain interest [resource] conflicts; not all interest [resource] conflicts contain identity conflicts" (1997, p. 11), he acknowledges that "[m]any do, however, particularly the longer they go on" (p. 11), and that "if an initially interest-based conflict becomes protracted. . . latent identity concerns may become more salient and in need of amelioration" (p. 146).

As well, other theorists such as: Maslow, who contributes motivation to the satisfaction of human needs; Fisher, Ury, and Patton who explain that “the parties’ relationship tends to become entangled with their discussions of substance” (1991, p. 20); and forewarnings, like Azar’s, that “conflicts in the world today are framed as conflicts over material interests. . . [but] most contemporary conflicts are about developmental needs expressed in terms of cultural values, human rights and security” (1981, p. 2). Simply put, “a basic fact. . .is that you are dealing not with abstract representatives of the ‘other side,’ but with human beings. They have emotions, deeply held values, and different backgrounds and viewpoints; and they are unpredictable. So are you” (Fisher, et al, 1991, p. 18-19).

As Roberts and Kemeny explain, “most people prefer to intervene in a system at the level of rules [such as the terms of a lease agreement]. . .where the elements are more visible and it requires less skill to work with them” (Senge, 1994, p. 92). Metaphorically speaking, it is like determining a problem with an engine, it is easy to conceive a problem if we can see a broken part; but, if the problem is not visible it requires the ability to conceive how the engine works in order to troubleshoot the problem. Disputants can usually recognize the substantive aspects of the problem, but often have difficulty conceiving issues in terms of human needs, values, and beliefs. Perhaps this is because “in the average person, [needs] are more often unconscious than conscious” (Maslow, 1970, p. 34).

Based on the idea that it is difficult to conceive identity needs, especially when they are unconsciously motivated, I wonder if it is possible to have a resource-based conflict that does not involve identity needs. Is it possible to separate the drive to satisfy identity interests from a substantive interest that could contribute to the frustration or satisfaction of that human need? As Platt asks, “[w]here is the *self*? Are you not involved in everything you see or feel? If so, why make the artificial separation, speaking of the *self* as though it were another noun?” (1970, p. 62). To Platt’s “see or feel,” I would add “do”: are we not involved in everything we

do? It seems that identity-based issues, however minimal, need to be considered in all resource-based conflict.

In the Musqueam / leaseholder dispute, individuals may not be aware of their identity needs; or they may be fully aware of the identity issues involved, but choose to conceal them, to protect themselves. The value in recognizing the role of identity in resource-based conflicts is in the increased likelihood of identifying an otherwise latent problem at its source. Systems design theorists emphasize the importance of recognizing the difference between problems and symptoms when applying solutions, and warn about the potential consequences of solutions that temporarily alleviate a symptom but do not address an underlying problem, which left to fester will resurface, often worse than before. In the Musqueam Park dispute, the suggestion that the government compensate either group is a quick-fix solution. The federal government seems to have anticipated the potential consequences of compensation and has rejected the idea.

System design experts maintain, "as you move toward the more intangible elements, such as people's deep-seated attitudes and beliefs, your leverage for effective change increases" (Senge, 1994, p. 93). In terms of change, social change may occur on a larger scale that involves a better understanding and acceptance of individual rights, regardless of race, religion, or culture; or, on a smaller scale where negative stereotyping of the Musqueam and leaseholders is dispelled.

The Courts will address substantive problems of the Musqueam Park dispute by deciding on a method of land assessment and by setting a lease fee; procedural problems by replacing the negotiation process with Court appointed rulings; and people problems, on a macro level, by influencing parliament to change discriminatory legislation. However, no mechanism seems to be in place to address the human issues between the Musqueam and leaseholders. Perhaps greater recognition and consideration of identity-based needs throughout resource-

based negotiations would address human issues, human needs, in ways that prevent dispute escalation and protraction, and that promote harmonious relations between parties, both during a dispute, and later, as they live beside each other as neighbours.

## **VIII. Recommendations**

A key recommendation is to establish a mechanism, such as a mediated or facilitated process, to get the parties involved again. As pointed out in the previous chapter, the judicial system can address most of the substantive and procedural issues in the current dispute; however, there is no mechanism in place to deal with ongoing relationship and communication issues between the parties, or with future substantive issues. It is unknown at this point whether the parties involved even recognize the identity-related issues protracting this dispute.

Interviewees identified a remarkable number of potential solutions. Perhaps involving the participants themselves in the dispute solving process would get the parties actively seeking solutions. From my understanding and experience, when disputants are involved in generating and implementing solutions, the solutions decided on by the disputants typically last longer than solutions imposed by others. Again, the court rulings may be a quick fix for the immediate problem, but does it address underlying issues? Although precedent-setting outcomes will result from Supreme Court rulings, many of the other components of this dispute could be resolved by the disputants if they were willing to take an active role in discussing the issues, both resource and identity-based, and identifying potential solutions that would meet both groups' needs. Typically, decisions reached through litigation result in one party winning and the other losing, which further damages community relations.

If the parties agreed to reconvene (which they have not), I would recommend the process be facilitated, to ensure the climate remains respectful and that everyone has a chance to speak. Of course, it is imperative that the Musqueam and leaseholders, not the federal government, choose the facilitator. The appointment of a mediator by the government may be a reason an earlier attempt to mediate the dispute failed.

The issues are complex, multidimensional, and interrelated. Northrup (1989) recommends the use of "fractionation, which suggests that a larger conflict may be broken down into several smaller, more manageable conflicts; that is, some issues in a conflict may be more easily settled than others" (p.63).

Two issues that seem to influence all others are the role of the federal government and the Minister of Indian and Northern Affairs Canada; and the lack of communication that has resulted in speculation and hearsay, contributing to misunderstandings and uncertainty. The federal government needs to keep both parties informed of decisions the government makes which may affect either party. For example, the federal government did not inform the leaseholders that the authority to manage and negotiate the Musqueam leases devolved from the government to the Musqueam Band in 1980. Had the leaseholders been informed, much of the speculation about the motives of the Musqueam Band trying to drive the leaseholders out might have been prevented. And again, in 1991, when the federal government transferred property taxation authority from the City of Vancouver to the Musqueam Band, the leaseholders were not informed. This lack of communication intensified the leaseholders' concerns and uncertainty. Many leaseholders were concerned that their basic human needs might be compromised, including security, stability, respect from others, and a sense of control over one's life. Leaseholders were left wondering what to expect next.

Another issue that could be dealt with separately is the role of the federal government in land ownership and management issues. Although the federal government wants to stay out of the dispute, the appointed minister has a duty, as a minister and as a landlord, to intervene. If the minister wishes to continue avoiding this responsibility, the federal government may wish to consider fully excluding itself from the dispute. The leaseholders need to know with whom they are dealing with on a day-by-day basis, as well as during lease fee negotiations. The Musqueam Band would probably also prefer full land ownership and management authority, instead of the current situation, where they share that

responsibility with the federal government. The federal government's lack of involvement and intervention has already resulted in a lawsuit by the leaseholders for breach of contract, and a lawsuit by the Musqueam Band over breach of fiduciary duty.

The issues related to communication, involvement, and the role of the federal government are three areas that require attention. But each issue summarized in the chapter on data collected, such as: property tax assessment, the impact of colonization on the self-sufficiency of First Nations people, and lease legalities, requires further research and analysis, to understand the depth and breadth of each issue beyond manifest symptoms, to its latent source. As system design theorists would agree, only on the basis of a thorough understanding of a problem, can appropriate solutions be created and applied.

Further study and analysis in the following areas would prove useful in understanding the Musqueam / leaseholder dispute: holistic cultures and industrialized cultures, and methods to address differences between them; the impact of colonization and the role it plays in conflict escalation or settlement; and an interdisciplinary study comparing and combining theory related to anthropology, human geography, cultural studies, political science, social-psychology, and conflict management.

Another area that I believe could benefit from further study centres on the topic of this paper: the role identity plays in resource-based conflict. There is no doubt that significant research and analysis has occurred in understanding substantive and identity-based needs, interests and conflict. However, other than the recognition that identity plays a role in ethnic, community, and protracted resource-based conflict, its influence in general, seems to have received little attention. Theorists warn that identity-based needs and issues play a significant role in conflict escalation and protraction; yet, they seem to stop short of acknowledging the extent identity plays in all human interactions, including conflict. Therefore, further

research and analysis could illuminate the extent that identity plays in conflict; and, from that understanding, new methods of conflict analysis, management, and settlement could develop.

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## Appendix A: Glossary of Terms

*Note: Unless otherwise indicated, the source referenced for these definitions is the Oxford Canadian Dictionary.*

### Conscious:

Awake and aware of one's surroundings and identity

### DIAND:

Department of Indian and Northern Affairs (Federal Government of Canada)

### Discrimination:

An act, instance, policy, etc. of unfavourable treatment based on prejudice, esp. regarding race, age, or sex

### Fee Simple:

An estate under which the owner is entitled to unrestricted powers to dispose of the property, and which can be left by will or inherited.

### Freehold:

Tenure of land or property in fee simple

### Identity-based \*

"Identity-driven conflicts are rooted in the articulations of, and the threats or frustrations to, people's collective need for dignity, recognition, safety, control, purpose, and efficacy." Identity-based issues are "relatively intangible and deeply rooted in the more abstract and interpretive dynamics of history, psychology, culture, values, and beliefs." (Rothman, 1997, p. 7 & 11)

### Intangible:

Unable to be touched; not solid; unable to be grasped mentally; something that cannot be precisely measured or assessed; (of a business asset, e.g. patent) saleable, but having no value in itself

### Interests\*

"Various concerns, goals, hopes and fears an individual holds. The collection of interests related to the specific conflict, the relationship or the process in which disputants are involved" and, "are the 'real' motivations behind the position (JIBC, 1999, p.30)

"The very tangible, practical resources over which people often compete." (Rothman, 1997, p. 9)

**Intractable:**

Characterized by "poor or nonexistent communication, rigidity in positions, and a high level of hostility." As well, conflict is viewed in terms of win-lose where parties "unable or unwilling to move from initial positions [and] "may be accepted as inevitable" (Northrup, 1989, p. 63)

**Intransigent:**

Uncompromising, stubborn

**Issues:**

The subject matter of our difference of opinion

**Leasehold:**

The holding of property by lease; property held by lease.

**Objective:**

Of a person, an opinion, etc.; not influenced by feelings or personal bias; concerned with outward things or events; dealing with or laying stress on what is external to the mind; observed by another and not only felt by one individual

**Oppression:**

The act or an instance of oppressing; the state of being oppressed; prolonged harsh or cruel treatment or control; mental distress

**Philosophy: Determinism**

The doctrine that all events, including human action, are determined by causes regarded as external to the will

**Philosophy: Existential**

Concerned with existence, esp. with human existence as viewed by existentialism; affirming or implying the existence of a thing

**Philosophy: Existentialism**

Philosophical theory emphasizing the existence of the individual person as a free and responsible agent insulated in an otherwise deterministic world

**Position:**

A solution introduced by a party which benefits that party but does not take the other party's interests, values and needs into consideration. (JIBC, 1999, p.11)

**Psychology:**

The scientific study of the human mind and its functions, esp. those affecting behaviour in a given context. The mental characteristics or attitude of a person or group. The mental factors governing a situation or activity.

**Qualitative Research:**

Data gathered using less structured research instruments; findings are more in-depth since they make greater use of open-ended questions; results provide much more detail on behaviour, attitudes and motivation; is more intensive and more flexible, allowing the researcher to probe since s/he has greater latitude to do so; results are based on smaller sample sizes and are often not representative of the population; and, the analysis of the results is much more subjective. (Joppe, 2000)

"Data in the form of words." (Grosshans & Chelimsky, 1992, Appendix 2:0.57)

Qualitative research typically entails in-depth analysis of relatively few subjects for which a rich set of data is collected and organized... (Rudner, 1999)

**Quantitative Research:**

Quantitative data analysis deals with information expressed as numbers, as opposed to words, and is about statistical analysis." "Data in the form of numbers. Includes four levels of measurement: nominal, ordinal, interval, and ratio. (Grosshans & Chelimsky, 1992, Appendix 2:0.58)

"Quantitative research entails the proper application of statistics to typically a large number of subjects. " (Rudner, 1999)

**Racism**

A belief in the superiority of a particular race; prejudice based on this; antagonism towards other races, esp. as a result of this prejudice; the theory that human abilities etc. are determined by race

Individual racism manifests itself in individual's attitudes and behaviours, and is the easiest type to identify. Systemic racism consists of the policies and practices of organizations, which directly or indirectly operate to sustain the advantages of peoples of certain "social races". This type of racism is more difficult to address because it is implicit in the policies of organizations and often unconscious. Cultural racism is the basis of both other forms of racism, as it is the value system which is embedded in society which supports and allows discriminatory actions based on perceptions of racial difference, cultural superiority and inferiority. (Roy, undated).

**Resource-Based \***

"Competition over material and territorial interests" (Rothman, 1997, p. 17).

**Reverse Discrimination**

Discrimination against men or white people that results from policies intended to end discrimination against women or racial minorities

**Social-psychology:**

Of or relating to society or its organization. Concerned with the mutual relations of human beings or of classes of human beings

**Subconscious:**

The part of the mind which influences acts etc. without one's full awareness; operating or existing without one's full awareness

**Subjective:**

Proceeding from or influenced by, an individuals' personal thoughts and opinions; biased, not impartial or literal; tending to emphasize or be influenced by one's own feelings or opinions; proceeding from or belonging to the individual consciousness or perception; partial, misconceived, or distorted

**Subliminal:**

Operating below the threshold of sensation or consciousness; having an influence upon the mind without one being aware of it; occurring as a result of process or stimulus of which one is unaware

**Substantive:**

Having a firm or solid basis; important, significant; relating to rights and duties as opposed to forms of procedure (law); having separate and independent existence. (Something of substance.)

**Tangible:**

Perceptible by touch; having material form; clearly intelligible; that can be grasped by the mind, not elusive or visionary; substantial, definite; that may be clearly viewed evaluated or calculated

**Tractable:**

Characterised by some degree of goodwill between parties, a perception of the conflict as a common problem to be worked out, a willingness to generate several possible options for settlement, and a desire to find a solution that meets the needs and interests of both (or all) parties. (Northrup, 1989, p. 62)

**Unconscious:**

Not conscious; that part of the mind which is inaccessible to the conscious mind but which affects behaviour, emotions, etc.

**Unsubstantial:**

Having little or no solidity, reality, or factual basis

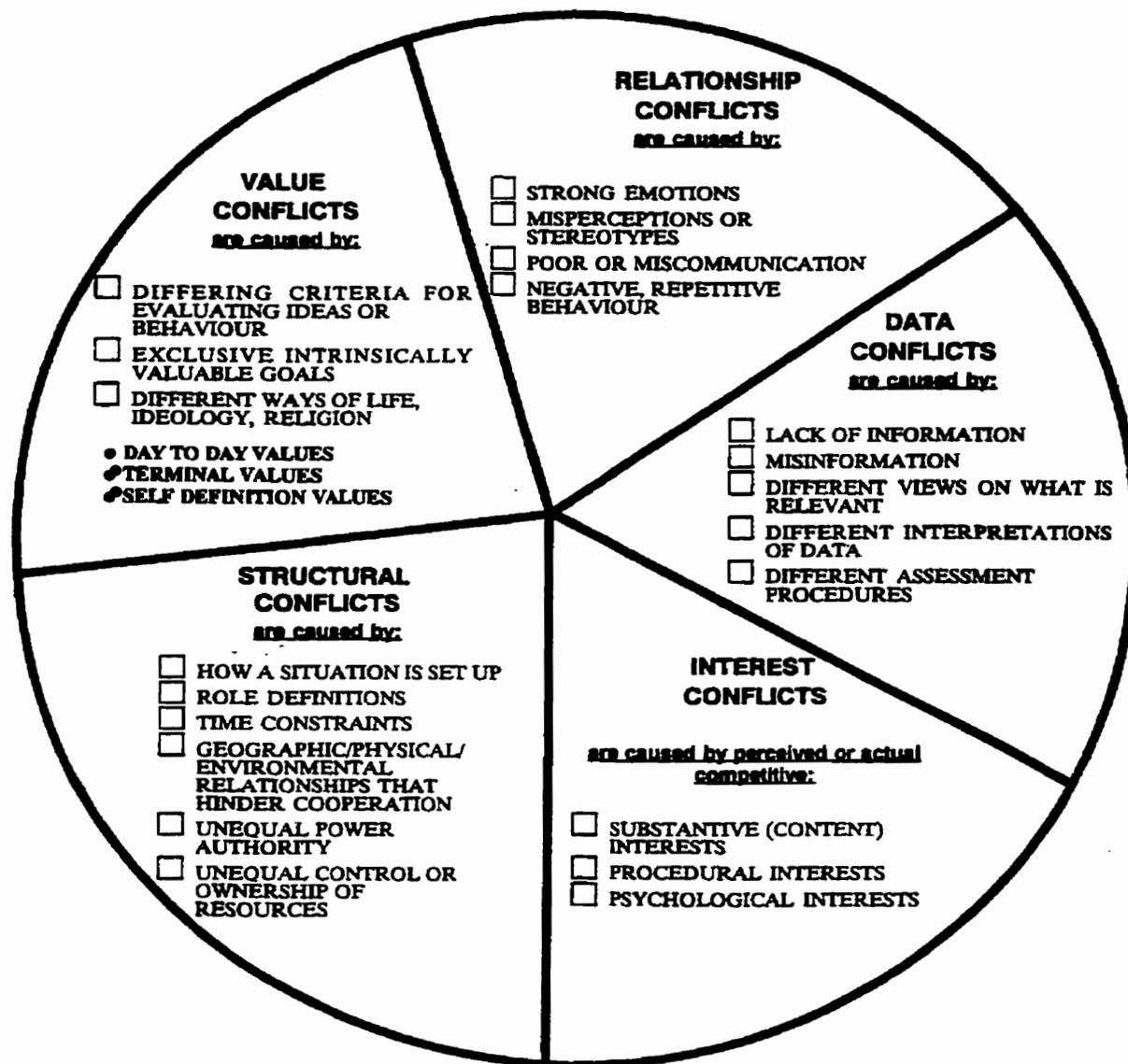
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\* Identity-Based versus Resource-Based Conflicts

IDENTITY-BASED CONFLICT		RESOURCE-BASED CONFLICT
<u>Needs and Values</u>	SOURCE	<u>Resources</u>
<ul style="list-style-type: none"> <li>• Threats to or frustration over such identity needs as dignity, safety, control</li> </ul>		<ul style="list-style-type: none"> <li>• Competition over material and territorial interests</li> </ul>
<u>Intangible</u>	CHARACTERISTICS	<u>Tangible</u>
<ul style="list-style-type: none"> <li>• Rooted in history, psychology, culture, belief systems</li> <li>• Abstract and complex goals</li> </ul>		<ul style="list-style-type: none"> <li>• Focused on finite goods or services: socioeconomic factors, resource scarcity.</li> <li>• Concrete, with goals clearly defined</li> </ul>
<u>Interactive</u>	INITIAL ENGAGEMENT	<u>Transactive</u>
<ul style="list-style-type: none"> <li>• Dialogue about needs and values promoting voice and recognition</li> </ul>		<ul style="list-style-type: none"> <li>• Interest-based and mixed-motive bargaining</li> </ul>

Exhibit 1.1 ARIA Framework - (Rothman, 1997, p. 17).

## Appendix B: Sphere of Conflict



Radford, John (2000). Adapted from the Centre for Dispute Resolution.

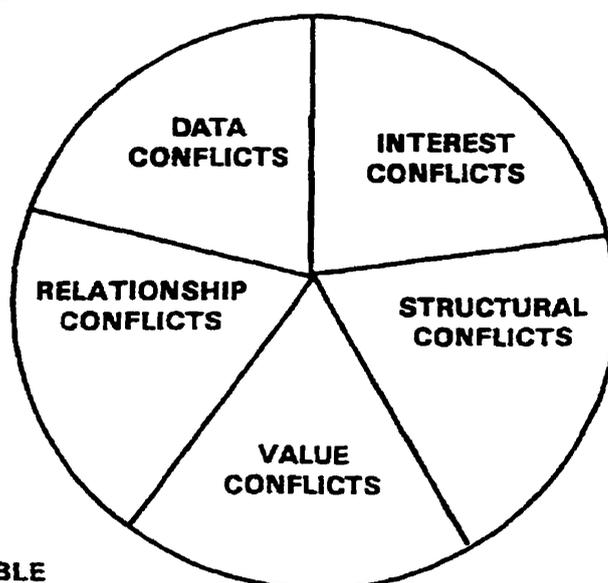
## Sphere of Conflict with Interventions

### POSSIBLE DATA INTERVENTIONS

- reach agreement on what is important
- agree on a process to collect data
- develop common criteria to assess data
- use third party experts to gain outside opinion or break deadlocks

### POSSIBLE INTEREST BASED INTERVENTIONS

- focus on interests not positions
- look for objective criteria
- develop integrative solutions that address all parties' needs
- search for ways to expand options or resources
- develop trade offs to satisfy interests of differing strengths



### POSSIBLE RELATIONSHIP INTERVENTIONS

- control expression of emotions through procedure
- promote expression of emotions by legitimising feelings and providing a process
- clarify perceptions/build positive perceptions
- improve quality and quantity of communication
- block negative repetitive behaviour by changing structure
- encourage positive problem solving attitudes

### POSSIBLE VALUE RELATED INTERVENTIONS

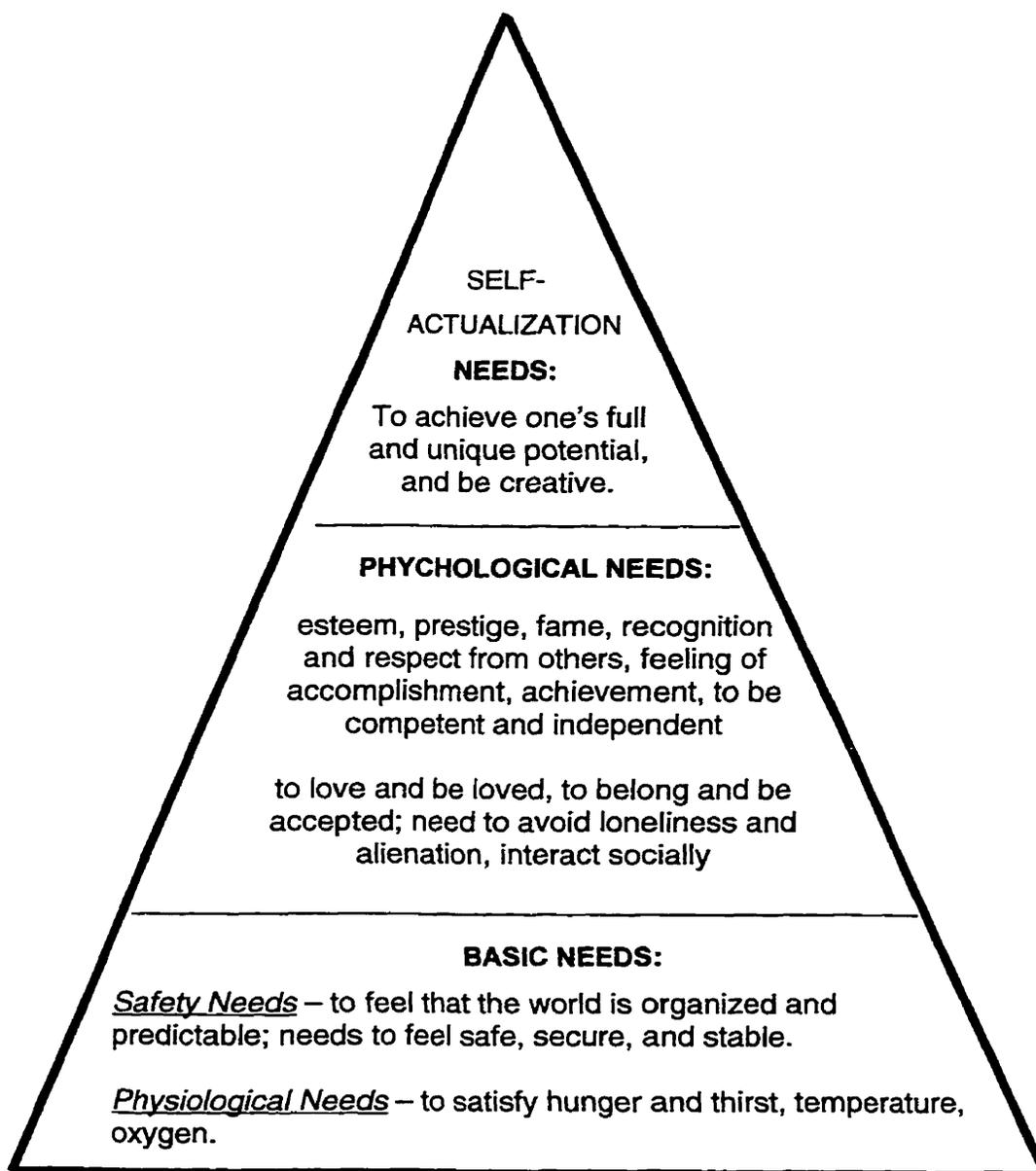
- avoid defining problem in terms of value
- allow parties to agree to disagree
- create spheres of influence where one set of values dominates
- search for superordinate goals

### POSSIBLE STRUCTURAL INTERVENTIONS

- clearly define/change roles
- replace destructive behaviour patterns
- establish a fair and mutually acceptable decision making process
- change negotiation process from positional to interest based bargaining
- modify means of influence used by parties (less coercion, more persuasion)
- change physical/environmental relationship of parties (closeness/distance)
- modify external pressures on parties
- change time constraints (more or less time)

## Appendix C: Maslow's Hierarchy of Human Needs

For an elaborate description of these human needs, an excellent reference is:  
Huizinga, Gerard. (1970). Maslow's Need Hierarchy in the Work Situation. Wolters-  
Noordhoff Publishing Groningen.



## Maslow's List of B(eing)-Values

(Taken verbatim from *Toward a Psychology of Being* (Maslow, 1968, p. 83).

**aliveness;** (process; non-deadness; spontaneity; self-regulation; full-functioning);

**beauty;** (rightness; form; aliveness; simplicity; richness; wholeness; perfection; completion; uniqueness; honesty);

**completion;** (ending; finality; justice; "it's finished"; fulfillment; *finis* and *telos*; destiny; fate);

**effortlessness;** (ease; lack of strain, striving or difficulty; grace; perfect, beautiful functioning);

**goodness;** (rightness; desirability; oughtness; justice; benevolence; honesty);

**justice;** (fairness; orderliness; lawfulness; "oughtness");

**perfection;** (necessity; just-right-ness; just-so-ness; inevitability; suitability; justice; completeness; "oughtness")

**playfulness;** (fun; joy; amusement; gaiety; humor; exuberance; effortlessness);

**richness;** (differentiation, complexity; intricacy);

**self-sufficiency;** (autonomy; independence; not-needing-other-than-itself-in-order-to-be-itself; self-determining; environment-transcendence; separateness; living by its own laws).

**simplicity;** (honesty; nakedness; essentiality; abstract, essential, skeletal structure);

**truth; honesty; reality;** (nakedness; simplicity; richness; oughtness; beauty; pure, clean and unadulterated; completeness; essentiality).

**uniqueness;** (idiosyncrasy; individuality; non-comparability; novelty);

**wholeness;** (unity; integration; tendency to one-ness; interconnectedness; simplicity; organization; structure; dichotomy-transcendence; order);

## **Appendix D: Property Assessment & Taxation**

Following are web site addresses and a list of the headings in each:

[http://bcassessment.gov.bc.ca/1\\_faq/1\\_freq.html](http://bcassessment.gov.bc.ca/1_faq/1_freq.html)

- What is Assessment?
- What is Market Value?
- How is an Assessment of Property Made?
- Why did the Value of my Property Change?
- What is the Relationship Between Property Assessment and Taxes?

[http://bcassessment.gov.bc.ca/e\\_val/3\\_11p.html](http://bcassessment.gov.bc.ca/e_val/3_11p.html)

- What is Crown land or a Crown land tenure?
- Assessment of Crown land property.
- Crown land and property taxes.
- The Acquisition, assignment, and cancellation of Crown tenures.

[http://bcassessment.gov.bc.ca/3\\_val\\_ins.html](http://bcassessment.gov.bc.ca/3_val_ins.html)

- How is market value determined?
- Why are assessments based on market value?
- When might a property's value change?
- Do Taxes increase because of inspections?

Another reference, including an example, related to property assessment and taxation is:

[http://www.grandforksgov.com/Reports/Forks\\_Focus/December/dec\\_taxbill.htm](http://www.grandforksgov.com/Reports/Forks_Focus/December/dec_taxbill.htm)