

Dara Culhane. *The Pleasure of the Crown*. Burnaby, B.C.: Talon Books, 1998.

review by Lesley McBain

*The Pleasure of the Crown* by Dara Culhane, an Anthropologist, examines the issue of Aboriginal title in British Columbia through an analysis of the (Gitksan Wet'suwet'en) Delgamuukw trial, which began in May 1987 and ended in June, 1990. More specifically the author states her main purpose is to determine whether or not Chief Justice McEachern's ruling, which relied heavily on history and anthropology, reflected reliable findings based on reputable research.

Originally the author's Ph.D. dissertation, *The Pleasure of the Crown* provides examples of the complex issues surrounding Aboriginal rights in British Columbia, particularly those relating to the Gitksan Wet'suwet'en. The main point of dispute during the lengthy trial was the use of oral history as the source of information to describe and analyze Gitksan and Wet'suwet'en society prior to European arrival. However, Chief Justice McEachern gave virtually no weight to the oral tradition testimony and ruled against the Gitksan Wet'suwet'en in May, 1991. The result of the trial was disappointing and frustrating for the Gitksan Wet'suwet'en of British Columbia. After failed attempts to negotiate a settlement through the B.C. Treaty Commission, the Gitksan Wet'suwet'en applied to have their appeal heard by the Supreme Court of Canada. The appeal was heard over the course of one-and-a-half days in June 1997 and on 11 December 1997 the Supreme Court of Canada announced its ruling. The Court ruled that Allan McEachern was wrong to dismiss the oral history evidence and found that "had he assessed the oral histories correctly, his conclusions may have been very different" (p. 366). Culhane points out that the extent of McEachern's errors resulted in an order by the Supreme Court for a new trial.

The book is divided into nine sections (each with a Latin heading), twenty-three chapters, and several subheadings within each chapter. Although perhaps excessive at times, the headings keep the immense amount of information presented in the book organized. An extensive bibliography and table of cases is also included. However, there are a few minor distractions. For example, a map indicating the territory claimed by the Gitksan Wet'suwet'en is provided, but it is a very basic, poor quality map, which is difficult to read. Also the extensive use of enclosing a word or phrase in quotation marks for emphasis tends to be annoying.

A comprehensive range of topics is presented in Culhane's work. The

first several chapters range from European and Aboriginal perceptions of one another's cultures, to repatriation of the Canadian Constitution (although the more appropriate term is patriation); and from the courts' use of precedence in reaching their decisions, to examples of cases used by contemporary Canadian judges when deciding Aboriginal title and rights cases, as well as the reasons for their judgement. The background information is both interesting and crucial as it provides not only the context for the Delgamuukw case, but a foundation for the author's argument that Chief Justice McEachern's decision was based on disreputable research.

Although *The Pleasure of the Crown* is suitably organized and the material flows well from one topic to the next, there is at times a lack of depth and clarity. For example, Culhane provides a discussion of the Royal Proclamation and arguments surrounding its application in British Columbia. However, its significance, particularly relating to the past and present treaty process outside the province, is limited. Admittedly, there is reference to the numbered and modern day treaties. However, information, such as the amount of reserve land allocated to families outside of B.C., is incorrect and detracts from the point Culhane is trying to make about the meager amount allocated in British Columbia (p. 210). Rather than an 80-acre-per-family standard stated by Culhane, the allocation was 160 acres in Treaties 1 and 2 and 640 acres in Treaties 3 to 11. Although the book is clearly specific to British Columbia, the treaty process, reserve policies, and other events are not. Therefore, if a greater appreciation of "the simple truth that British Columbia First Nations hold unsurrendered Aboriginal title to their lands" (p. 18) is to be achieved, a more developed discussion of the evolution of Canadian-Aboriginal relations outside of B.C. is necessary.

As mentioned previously, one of Culhane's primary objectives was to determine whether or not Chief Justice McEachern's ruling was based on reputable research. In order to find an answer to her question, the author watched, read, listened, and discussed the story of Delgamuukw with a variety of people and examined "the texts through which the law, and Delgamuukw v. R. made itself known to the public" (p. 22). She did not attend the Delgamuukw trial nor interview or consult with any of the participants. The author makes it quite clear that she chose a solitary approach to her work to avoid being accused of collaboration with those involved in the dispute. Having said that, it is curious why, after such extensive research, Culhane spends a disproportionate amount of time on the testimony of one particular witness.

Sheila Patricia Robinson, Ph.D., was accepted by Chief Justice McEachern as an expert witness in the Delgamuukw trial. Culhane questions the criteria which the courts have for establishing expert witnesses and raises some valid questions about the process. However, she then proceeds to spend an inordinate amount of time providing portions of Robinson's testimony and subsequently refuting her statements. Although several of the other 60 witnesses were mentioned, none of their credentials nor testimonies received the same scrutiny as Robinson's. This may have been done to underscore Culhane's point that the ruling was *not* based on reputable research. However, more evidence from the four-year trial should have been provided to support the author's position rather than the prolonged and sometimes strident vendetta against one witness.

Regardless of the faults, *The Pleasure of the Crown* provides a sound account of the Delgamuukw trial and the Treaty process in British Columbia which differs from that in the rest of Canada. This is a tall order to fill in one book! The book concludes with the December 1997 Supreme Court of Canada's ruling on the Delgamuukw appeal where the Supreme Court ordered a new trial. However, the judges recommended that rather than going back to court, disputes relating to land title and jurisdiction should be settled through negotiations. Whether or not it will be possible to reach agreement without resorting to litigation remains to be seen as the ramifications of Delgamuukw and other precedent-setting cases relating to Aboriginal land and titles issues continue.