History of Indian Land Claims in B.C.

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"All Indians in B.C. are entirely self-supported and self-supporting," said Matthew Baillie Begbie, the first Chief Justice of the United Colony of British Columbia and then of the new Province itself.

Indeed, that is the way it had been. For thousands of years Indian nations had subsisted in British Columbia and at the time of first contact between Indians and Europeans the Indian economy was thriving.

At first, European settlement enhanced that economy, driving up the price of furs and generating Indian production to service the white man's needs. James Douglas established a settlement at Fort Victoria for the Hudson's Bay Company in 1843 and contracted with the Songhees Indians to supply timber. Near the fort, the Indians grew potatoes.

But, as we see today, the Indian economy was doomed, The British were determined to establish their dominance over all of the lands of what is now British Columbia, and their altruism in devising "the best and most humane means of dealing with the native Indians" (these were the words of the Secretary of State for the Colonies in 1858) was, at first, misdirected, and, later, mean-spirited.

It was inevitable that an Indian "claim" would develop. That it came to be known as a "land claim" was not only because the Indians became a dispossessed people in their own lands, but also because so little reserve land was set aside for the Indians by the white man; and. then, even those lands were coveted by non-Indians,

It was long after the Indians had began to assert their claims that they learned that such claims were actually validated by the white man's law. English common law recognized the concept of aboriginal title, and the Indians were surprised to learn from non-Indian advocates of their rights that in 1763 a proclamation signed by King George III had prohibited any alienation of Indian land without the consent of the Crown.

However, it was not until late in the 20th century that the law began to work for the Indians. From about the 1860s onwards, when the Indians first came to the realization that the white man was not prepared to share the lands and resources of British Columbia with them, they had pursued their claim politically. The ability for lucid verbal expression was prevalent in many Indian cultures, and Indian leaders became adroit lobbyists. But seldom, if ever, were the Indians a united force to be reckoned with. Their internal politics worked against their objectives then as it continues to do today.

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Contact between coastal Indians and Europeans first occurred in the 1770s, but to understand the development of the Indian claim it is necessary only to go back to 1843 and the establishment of Fort Victoria by James Douglas.

Later Douglas became Chief Factor of the Hudson's Bay Company for Vancouver Island. a post he held when the Crown Colony was proclaimed in 1850. The following year Douglas took on the duties of Governor as well.

To ease the way for white settlement on the Island, in 1850 Douglas began purchasing Indian land, paying the Indians with best-quality Hudson's Bay Company blankets. In all, 14 tribes on Vancouver Island sold their lands to the HBC, retaining the right to hunt and fish as formerly and keeping their villages and enclosed fields. (The HBC purchases have subsequently been held by the courts to be Indian treaties).

The Colony grew slowly, and after 1854 Douglas ceased to make purchases of Indian land. It was not until 1858 - gold rush days - that there was a population explosion In British Columbia. That year Douglas retired as Chief Factor and took on the duties as Governor of the mainland Colony as well.

The end of treaty-making coincided with the increased demand for land by new arrivals, many of them from the western United States. Homesteaders could pre-empt up to 320 acres of land per family. As further inducements to settlement, additional acreage could be bought at cut-rate prices.

Douglas is faulted by some for failing to continue to make treaties or purchases, but it must be borne in mind that these had been done at the expense of the Hudson's Bay Company, and Douglas knew the HBC would lose its trading licence in 1859. The licence required that Vancouver Island must then be reconveyed to the Imperial Crown, the terms of the transfer to be negotiated.

Douglas actually made an appeal to the Colonial Office in 1861 for a loan of £3,000 to enable him to treat with the Indians on behalf of the two colonies. He was turned down. The Colonial Office felt any such costs should be borne by the Colonies. The priorities of the latter, however, were the development of the local infrastructure and the building of a trading route to the east.

Douglas was under no explicit instructions from the Imperial Government to make treaties. The Colonial Secretary advised him in 1858 "that it should be an invariable condition, in all bargains or treaties with the natives for cession of lands possessed by them, that subsistence should be supplied to them in some other shape, and above all, that it is the earnest desire of Her Majesty's

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Government that your early attention be given to the best means of diffusing the blessings of the Christian Religion and of civilization among the natives.

"Subsistence in some other shape" turned out to be Indian reserves, Douglas introduced a policy of asking the Indians to indicate the extent of the lands they required, and of setting aside these lands for them. As it turned out, the Indians were not lavish in their demands, failing to realize the subsequent pressures that would be brought to bear. (Douglas's reserves were not always properly staked and were never surveyed. Later, this was to lead to the loss of considerable reserve land).

"Civilization" turned out to mean the gathering of the wandering Indians in permanent villages for ease of the white man's administration. Unfortunately, it also meant the introduction of liquor and small pox, both of which were to play major roles In debilitating the Indian society.

The "blessings of the Christian religion" meant supplication before evangelical missionaries and the surrender of Indian children to Christian residential schools.

Few persons were far-sighted enough, or cared enough, to realize that the introduction of these policies would mark the beginning of the end of the Indian way of life. In 1870, during debate in the colonial legislature on the proposal to join Canada, at least one MLA expressed fear that the containment of Indians on reserves would destroy their economy, and that this in turn would act against the interests of the non-Indian community. There were no Indians in the legislature, and the Colony's terms of Union with Canada of 1871 were negotiated without any Indian input Officially, Indians were still "savages."

What is perhaps the first reference to Indian claims occurs in the British Columbia Gazette of October 6. 1866. over the name of Joseph W. Trutch, the Chief Commissioner of Lands and Works and Surveyor-General. The notice stated in part:

> "The Officer Administrating the Government desires it to be notified that the claims of the Kamloops and Shuswap Indian Tribes to the tract of land extending for over forty miles along the right bank of the South Branch of the Thompson River, from Kamloops to the Great Shuswap Lake, have been adjusted, and three portions thereof appropriated as reserves for the use of these tribes…"

What the Indians got were three parcels of land, one of them relatively large for a B.C. reserve at three miles square. The rest of the lands claimed by the Indians were made available to settlers for pre-emption.

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In theory, Indians too were allowed to pre-empt land. Douglas said as much to the Legislature in 1864, the year he retired. In 1865, a colonial ordinance made it unlawful for Indians to pre-empt land except with the permission of the Governor. (This prohibition was confirmed by the Province in 1888 when the Legislature prohibited Indians from pre-empting land except with the consent of the Lieutenant-Governor-in-Council.)

If Douglas had indeed permitted pre-emptions, his policy in this respect was not well-known, In 1862 the Chief Commissioner of Lands and Works for the mainland colony, Col. Richard Moody of the Royal Engineers. asked the Colonial Secretary whether, as a matter of policy. Indians could purchase land "just as a white man would." Moody had Indian land purchase applications before him. The Colonial Secretary replied that the Governor had directed that "there can be no objection to your selling lands to the natives on the same terms as they are disposed of to any purchasers in the Colony, whether British subjects or aliens."

In a separate communication in 1862 Moody asked whether Indians could pre-empt land. Indians had been applying for pre-emptions along the Fraser River and elsewhere. Moody was advised that legislation was planned to cover the situation Provisions would be made for Indians to hold land by way of pre-emption subject to certain residential and improvement requirements, and subject to the consent of the Governor.

(In 1872a Fort Langley Indian received permission to pre-empt 100 acres. After that, it became the policy of the province to refuse permission, ostensibly because it might interfere with the policy of the federal government - which had assumed jurisdiction and responsibility for the Indians of B.C. - of concentrating them on reserves).

Increasingly, the evidence was of denial. Indians began to plead that the while man was putting up figurative fences if not actually pushing them off of the lands they had traditionally used and occupied, But the situation was to become much worse.

In 1864, the year of Douglas's retirement, Joseph Trutch became Chief Commissioner of Lands and Works. Trutch had moved to B.C. from Oregon, bringing with him a sort of American frontiersman's cowboy disdain for Indians. As Commissioner, and later as Lieutenant-Governor of the new Province of British Columbia, Trutch seemed obsessed in his determination that Indians must not be allowed to impede settlement.

As Douglas had once noted, Indians had distinct notions of property rights. During the gold rush some Indians had demanded that the intruders pay rent for the use of Indian lands. In his book, Scenes and Studies of Savage Life, Gilbert Sproat wrote that when he landed at Port Alberni in 1860 with the intention of logging certain lands he was told by the local chiefs the land was theirs and if he wanted to log it he would have to buy the land from them. .

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Judge Begbie was also aware of the Indians' feelings, and had in fact urged Douglas in 1860 to get on with the business of making treaties. "The Indian title is by no means extinguished." he wrote to Douglas. "Separate provision must be made for it, and soon."

But Trutch was of no such mind. One of his first acts was to put a halt to the "generous" reserve allocation policy of Douglas. Existing reserves were cut back and, in some cases, pre-emptions were granted to whites of lands that had originally been reserved for Indians.

Trutch wrote to the Secretary of State for the Colonies saying that he was satisfied that the claims of the Indians over lands which they identified as theirs but made no real use of. were preventing settlement and cultivation.

Imperial policy towards aboriginal peoples seems to have changed about this time. When Trutch complained that a surveyor, William McColl, had erred in creating reserves on the Lower Fraser that were too vast, the Colonial Secretary said: "There is good reason to believe that Mr. McColl greatly misunderstood the instructions conveyed to him in respect of marking out these reserves in the first instance, and he has In consequence created reserves of land far beyond the wants or expectations of the Indians."

The Colonial Secretary also confirmed that the title to reserves would remain in the Crown, "The Indians have no power to alienate any portion of their reserves, and no such alienation can be confirmed:' he said, Although the reasons may have differed, the policy was the same as one which had been instituted b)' James Douglas in 1859. Then, Douglas had inserted a notice in the Victoria Gazelle declaring reserves to be the property of the Crown. his intention being to dissuade settlers from bargaining for Indian lands by making it known that Indians were not competent to convey title.

Finally,. Trutch was authorized to reduce reserves that were "excessive" In size. The Indians had never really possessed it in the first place, said the Colonial Secretary, It was all the fault of the hapless McColl for "so loosely reserving such large tracts of land out of which, at some future day, the various Indian reserves would have to be accurately defined."

Thus armed, Trutch set in motion what was to become a long and bitter dispute between the Province and the federal government over the number and size of reserves - a dispute which can be said to continue to this day. It became intertwined with, and exacerbated, the argument over the existence of Indian title. From the time of Confederation in 1871 to the present day, the two related issues have dominated the Indian agenda in British Columbia,

The Terms of Union of 1871 represent, perhaps the most inspired piece of work of Joseph Trutch. Notably, the Terms made no reference whatsoever to Indian title, although at that very

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lime Dominion reserve commissioners were making treaties with Indians in the territory now covered by the prairie provinces.

By Section 91(24) of the British North America ht, 1867, the Dominion Government had responsibility for. and jurisdiction over, "Indians. and lands reserved for the Indians," In the negotiations leading to Union the Colon_' had agreed that Ottawa's Indian jurisdiction would extend to British Columbia. and this was reflected in Article 13 of the Terms. It staled:

"The charge of the Indians and the trusteeship and management of the lands reserved for their use and benefit, shall be assumed by the Dominion Government, and a policy as liberal as that hitherto pursued by the British Columbia Government, shall be continued by the Dominion Government after the Union. To carry out such policy, tracts of land of such extent as it has hitherto been the practice of the British Columbia Government to appropriate for that purpose, shall from time to time be conveyed...to the Dominion Government in trust for the use and benefit of the Indians."

In fact, B.C.'s "liberal" reserves worked out to no more than 10 acres per Indian. On the prairies, the figure was usually 128 acres.

Not only had Trutch ensured that the Terms were silent about Indian title, but he had implicitly confirmed that the Colony's practices with respect to the establishment of Indian reserves would continue after British Columbia became a province.

In late 1871 the province provided the Dominion Government with a list of 74 reserves that had been formally surveyed and recorded, totalling 28.438 acres, but there was no federal action until November of 1872, when Lieutenant-Colonel W. Powell, M.D., was appointed as Canada's Superintendent of Indian Affairs in British Columbia.

Trutch, as Lieutenant-Governor of the new province, was reluctant to let go of his command over Indian policy. Moreover, he was antagonistic towards Powell's appointment. In a letter, remarkable for its audacity, Trutch wrote to the Prime Minister suggesting that he, Trutch, take charge of the Dominion Government's newly-acquired Indian responsibilities."

"...1 am of the opinion, and that very strongly," said Trutch. "that (or some time to come at least the general charge and direction of all Indian affairs in B,c. should be vested in the Lt.-Governor, if there is no constitutional objection to such arrangement. .."

He added: "If you now commence to buyout Indian title to the lands o(B,C. you would go back of all that has been done here (or 30 _'ears past and would be equitably bound to compensate the tribes who inhabited the districts now settled and (armed by white people equally with those in

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the more remote and uncultivated portions. Our Indians are sufficiently satisfied and had better be left alone. . ."

Powell's appointment, however, was confirmed, although he received no firm instructions from Ottawa until 1873. When the Dominion Government accepted Powell's proposition, that reserves in BC should be allocated on the basis of 80 acres for each head of family. This caused a flurry of correspondence between federal and provincial bureaucrats and ministers. The Province was resisting the federal government at every step of the way.

The matter came to a head in 1875 when the Dominion Government went so far as to exercise its constitutional right to veto the provincial Land Act of 1874. which consolidated various statutes affecting Crown lands in the Province, on the grounds that it made no mention of the cession o(Indian title having been obtained.

Forrest laViolette, in The Struggle for Survival (1961), wrote: "The Act was disallowed in March, 1875. The provincial legislature amended it, and after consultation with the Dominion Government regarding a procedure for the selection and allotment of reserves, the Act went into operation."

The standoff had been ended by William Duncan. a lay minister of the Church Missionary Society who worked among the Tsimshians of the Northwest Coast and was consulted from time to time by officials of both governments.

Duncan recommended that no acreage formula for reserves be fixed for British Columbia as a whole. but that each Indian nation be dealt with separately. Reluctantly, the Province agreed to the establishment of a three-man reserve allotment commission. One member would be named by each government. and together the governments would choose the third.

The commission was appointed in 1876. but almost immediately a dispute arose over its terms of reference. These allowed it to reduce reserves where there was a declining Indian population, with lands removed reverting to the Province. The federal government argued that the Indian Act required formal surrenders by the Indians before there could be any reserve reductions. The Province countered with a demand that if that was the case, the Indian Act should be amended.

Meanwhile. the joint nominee to the Commission, Gilbert Sproat. added to the dispute by noting that the terms o(reference were silent on the question of Indian title.

He suggested that perhaps instructions should be issued to the commission to permit it to make treaties with the Indians (or the cession of land. But the Province was adamant it would not recognize title and had no obligation to seek treaties with the Indians.

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After an unhappy few years, during which BC officials refused to support the commission's work, It was dissolved in 1878 at provincial Insistence. The federal government then passed an order naming Sproat as a single commissioner and sought provincial concurrence in this. The BC Government said it would not interfere with Sproat's work "except in extreme cases,"

Sproat found that not only was the Province difficult to get along with, but so was Powell, the Federal Indian Superintendent. Sproat resigned in 1880. Joseph Trutch, now a Dominion agent in B.C., was asked by the Prime Minister, Sir John A. Macdonald, to suggest a replacement. Trutch proposed his brother-in-law. Peter O'Reilly, a former judge. O'Reilly served until 1898. He was replaced by A. W. Powell, the then Indian Superintendent, who performed both duties until 1908. Over the years the allotment commissions created more than 1,000 reserves. Disputes continued. but for the most part the reserves were approved by the Province.

As might be expected, the reserve commissioners did not always receive a warm welcome among the Indians. Unrest continued to grow. and unease crept across the province. In 1874 the Dominion Government seems finally to have come to the realization that it had little understanding of the Indian situation in British Columbia at the time o(Confederation, and that Trutch and the other colonial negotiators had been coy in their phrasing of Article 13.

Powell received a petition that year from Indians in the Fraser Valley and the coastal Lower Mainland complaining about their treatment, particularly with regarded to the size of the reserves that were being set aside for them. The petitioners said they were beginning to believe "that the aim of the white men is to exterminate us as soon as they can, although we have been always quiet, obedient, kind and friendly to the whites."

Powell reported to David Laird, the Minister of the Interior: "If there has not been an Indian war, it is not because there has been no injustice to the Indians, but because the Indians have not been sufficiently united:'

Laird reported to the Dominion Government:

"1. The Indians complain that in many instances, the lands which they had settled upon and cultivated ha\e been taken away from then without compensation, land pre-empted by the while settlers...

"2. They complain that.. .their cattle and horses are systematically driven away from the open country by the white settlers...

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Wilson Duff, in his book “Indian History of B.C.," wrote that the situation was so intense in 1877 that an Indian war seemed imminent. And Ottawa warned Victoria that in the event of an uprising the Dominion Government would side with the Indians.

"Indian rights to soil in British Columbia have never been extinguished:' the Minister of the Interior said in a telegram, “Should any difficulty occur, steps will be taken to maintain the Indian claims to all the country where rights have not been extinguished by treaty.”

There was, of course, no war. During the last quarter of the 19th century the Indian protest continued, but events were isolated or otherwise independent of one another. Some highlights:

1880s generally, Christian missions are widely established on both the Coast and in the Interior; removal of Indian children into residential schools is begun

1884: The Indian Act is amended to outlaw: the Potlatch, "which for many tribes is an integral part of their government.

1884: Reserve Commissioner O'Reilly visits the Kootenay Indians to obtain information for the purpose of allotting reserves and learns the Indians claim ownership of the whole valley of the Columbia River from the US boundary including all of the Kootenay Lakes area.

1886: The gunboat Cormorant is sent to the Northwest Coast to assist in quelling an Indian disturbance involving William Duncan and his dispute with the Church Missionary Society. The Indians of Metlakatla and Fort Simpson. Duncan's allies. present the captain of the Cormorant with a petition protesting that they are being robbed of their land by the white man.

1886: At Metlakatla, five Indians construct a building at Mission Point on property allegedly owned by the Church Missionary Society, off the reserve. Charged with trespass, they assert their aboriginal title as their defense. The case is heard before Matthew Bailley Begbie who, 26 years earlier, accepted the concept of Indian title. But now Begbie is unmoved by the arguments put forward by the Indians' lawyer, Theodore Davie (a future premier of British Columbia).

The Victoria author Peter Murray, in his biography of William Duncan, speculates that Begbie's reversal on the issue of title resulted from the fact that he himself had become a substantial land-owner in British Columbia.

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Wrote Murray, in The Devil and Mr. Duncan: "Begbie ruled the Indians had no rights to the land 'except such as the grace and intelligent benevolence of the Crown may allow, and has always allowed them':'

Begbie was unmoved by the fact that the Governor-General of Canada, Lord Dufferin, had made a speech in Victoria in 1876 calling for the recognition of aboriginal rights. As evidence, Begbie said, Dufferin's remarks were irrelevant.

1887: Haida Indians tell Commissioner O'Reilly (who is, co-incidentally, Begbie's best friend) that they own the whole of the Queen Charlotte Islands; a government - appointed commission of inquiry visits the Tsimshians and reports to Victoria that the issues of native title, aboriginal rights and treaties "require attention by the government, and the sooner, the better:'

1891: The Nisga'a begin their own newspaper, which is later to become an important instrument in their land struggle.

1899: Dominion treaty commissioners begin to draw Indians in Northeastern British Columbia (all of BC east of the Rockies) into Treaty 8; the Province is not involved.

As the 19th century drew to a close, the Indian grievance continued to fester internally, but externally there were few overt signs of it. It was not until 1906 that the issue erupted again with the decision by Salish chiefs meeting In Cowichan to send a delegation to London to present their grievance to King Edward VII.

The three delegates, including Chief Joe Capilano of the Squamish Indians, presented the King with a. petition declaring that their Indian title had never been extinguished; that white men had settled on their land against their wishes; that appeals to the Government of Canada had been futile; and that they had no vote and were not consulted with respect to Indian Agents.

While the King heard them out, no action was taken, for the British felt the issue was one for the Government of Canada to resolve.

The Cowichan Indians submitted a further petition to the King in 1909, routed through the Secretary of State for the Colonies. The petition was presented by Arthur E. O'Meara, said to be both a lawyer and clergyman, who became prominent in subsequent Indian activism. The petition stated that the Province had "wrongfully repudiated and ignored" the title of the Cowichans. It asked that "steps be taken to protect the usufructuary right of your petitioners in all of the said lands, or, that in the alternative the whole question of the rights of the said Tribe be

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submit1ed to the Judicial Committee of the Privy Council for decision and determination." Nothing was done.

During 1909 two new organizations emerged - the Interior Tribes of BC and, on the coast, the Indian Rights Association. Two years earlier the Nisga'a had formed the Nisga'a Land Committee and began raising money to secure a legal opinion on their claim. But there was no softening of attitude on the part of the provincial government. The Conservative Premier, Richard McBride, had fixed views on the issue. "Of course it would be madness to think of conceding the Indians' demands," he said. "It is too late to' discuss the equity of dispossessing the red man in America."

In 1910 Arthur O'Meara helped found a non-Indian lobby called "The Conference of Friends of the Indians of British Columbia" which proceeded to present a memorial to Prime Minister Sir Wilfred Laurier asking for recognition of aboriginal rights to land and requesting a judicial decision from the Imperial Privy Council.

Laurier was willing to co-operate and lawyers for the federal and provincial governments developed a list of 10 questions to be referred to the Supreme Court of Canada, and then to the Privy Council's Judicial Committee. Seven of the questions were related to reserve issues, but the first three dealt with Indian title. They were:

1. Was the right of title of the Crown as represented by the Government of British Columbia at the Union in or to the lands in the Province which were at the time ungranted, and which were claimed by and then were and had been from time immemorial in the possession of the several tribes of Indians inhabiting the Province within their respective limits, subject to any interest, right or title of the said tribes in so far as the interest. right or title claimed by them had not been theretofore ceded, surrendered or otherwise relinquished?

2. If so, does such interest. right or title of the said tribes so inhabiting constitute an interest other than that of the Province in the said lands within the meaning of section 109 of the British North America Act, 1867?

   Is such interest, right or title of the said tribes of Indians an interest independent of and legally sustainable in competition with the beneficial interest of the Province?

   Are the said tribes of Indians entitled to remain in possession of the said lands according to their respective limits as against the Government of the Province, or any

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person to whom the Province may grant the same, until the said interest, right or title of the said tribes of Indians shall have been ceded, surrendered or otherwise relinquished?

3. Were the several areas of tracts of lands in the Province of British Columbia which were at the time of the Union claimed by the various tribes of Indians inhabiting the Province within their respective limits, and which then were and had been from time immemorial in the possession of the said tribes respectively, and which had not been ceded to or purchased by the Crown, lands reserved for the use and benefit of the Indians within the meaning of Article 13 of the Terms of Union with British Columbia?

The lawyers' convoluted drafting was, however, in vain; Premier McBride would not approve the questions and refused to go along with Laurier in the proposed joint reference. McBride was adamant that as long as he was premier there would be no recognition of Indian title.

In 1911 there was a further petition to the provincial government by a group of 96 Indians, and the following year a group of Indians at Kamloops presented a petition to the new Conservative prime minister, Sir Robert Borden. It is, however, the O'Meara inspired petition of 1910 - the "Statement of Facts of Claims" - which is looked upon as the first assertion in law of the enjoyment by the Indians of an unextinguished title.

With Conservatives in power in Ottawa and Victoria, the two governments were able to agree in 1912 on the establishment of a Royal Commission to resolve the reserve land question. The federal government appointed J. A. J. McKenna, LL.D., of Winnipeg as a Special Commissioner to represent Ottawa in negotiating a settlement with B,C., and the' resulting McKenna. McBride Agreement set in motion a three-year study of the reserve land issue by a five-man commission, The commission was not empowered to deal with the aboriginal title claim and the Indians, generally speaking. were not happy with it and not always co-operative.’

In a series of interim reports and a final report in 1916, the commission recommended the creation of new reserves, the enlargement of some reserves and the reduction of others. When the reductions. or "cut-offs" as they became known, were finally made several years later over Indian objections, a new political problem was created in British Columbia. (During the late 1970s and 1980s the author negotiated settlements of cut-off land disputes on behalf of the provincial government).

One of the interim reports of the McKenna-McBride Commission provided for the future allotment of reserves in the Treaty 8 area (Northeastern British Columbia). The commissioners had been unable to visit the area and recommended that reserve selection be left until later when

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a proper census had been made of the Indian population. What was significant about the Commission's report was its agreement to the allotment of reserves on the basis of the prairie treaty formula of 640 acres for each family of five persons, Elsewhere in British Columbia, as has been seen, reserves were much smaller. (In 1961 the Province conveyed 24,500 acres of land to the Fort Nelson Indian Band on the basis of the prairie formula to fulfill the Band's treaty entitlement. In the 1980s, the McLeod lake Indian Band decided it would attempt a modern-day treaty adhesion in order to secure more lands. The issue remains unresolved).

While the Royal Commission was at work the title issue continued to gather momentum, primarily because of the Nisga'a and O'Meara. With O'f-1eara's help, the Nisga'a prepared a petition in 1913 that was directed to the federal government and the Colonial Secretary.

"The claims which we make in respect of this territory (the Nass Valley) are clear and simple," the Nisga'a said, "We lay claim to the rights of men:'

Citing the Royal Proclamation of 1763 and the recognition of aboriginal rights at Common Law, the Nisga'a went on to say:

> "In thus seeking to realize what is highest and best for our people. we have encountered a very serious difficulty in the altitude which has been assumed by the Government of British Columbia. That Government has neglected and refused to recognize our claims. and for many years has been selling over our heads large tracts of our lands,"

In his book, Aboriginal Peoples and Politics, subtitled The Indian Land Question in British Columbia, 1849-1989, Professor Paul Tennant of the University of British Columbia says the Nisga'a petition became "an important political text and political catalyst, as well as a symbol of the political struggle of the Indians for their land rights. "Its impact in Ottawa was significant, for it prompted the Deputy Superintendent of Indian Affairs, Duncan Scott: to recommend to the Government in 1914 that the Nisga'a claim be referred to the Exchequer Court. But the question to be put to the Court was a loaded one. It said:

> "That the Indians of British Columbia shall by their chiefs and representatives, in a binding way, agree, if the Court, or on appeal, the Privy Council, decides that they have a title to the lands of the Province, to surrender such title, receiving from the Dominion benefits to be granted for extinguishment of title in accordance with past usage of the Crown in satisfying the Indian claim to unsurrendered territories, and to accept the finding of the Royal Commission on Indian Affairs in British Columbia, as approved by the Governments of the Dominion and the Province, as a full allotment of Reserve lands to be administered for their benefit as part of the compensation.”

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Under Scott's conditions, the Province would be absolved of further obligation and any residual costs would be borne by Canada. If the court or Privy Council found against the' Indians, federal policy would be "governed by consideration of their interests and future development:'

The proposal would apply' not just to the Nisga'a, but to all of the tribes of British Columbia, The Indians, of course, rejected it. Scott was not surprised, saying "it was virtually a denial of the extravagant expectations which had been aroused."

O'Meara continued to pester the federal government on behalf of the Nisga'a and eventually emerged as counsel for the Allied Tribes, an organization formed in 1915 among several Interior tribes and the Nisga'a. In 1916the membership base of the Allied Tribes was greatly expanded and the organization prepared a statement of its grievances that was sent to Ot1awa and abroad. The statement listed 17 proposals for satisfying the' Indian demands. many of which appear moderate and realistic at this time of writing, The Indians asked for ownership of their reserves, an expansion of the reserve land base where possible to 160 acres per capita. a system of individual Indian land title, hunting and fishing rights, compensation for reserve land alienations, and the removal of statutory restrictions. Peter Kelly of the Haida and Andrew Paull of the Coast Salish emerged as the leaders of the Allied Tribes, But the politics of the day was discolored by the tabling of the report of the McKenna-McBride Commission, which the Allied Tribes refused to accept. Here the Indians were not alone - the provincial government was unhappy with the report as well, but for dissimilar reasons.

In 1920 the Allied Tribes prepared a paper entitled "A Half Century of Injustice Toward the Indians of British Columbia." It turned on the federal government, accusing it of having a less favorable attitude towards Indians than even that of the Province.

The Allied Tribes' membership was further expanded in 1922. At a conference in Victoria the following year it revised its proposals of 1916, saying that if their demands were met, the Indians would forego their claims to aboriginal title, An element of cash compensation was added - $2,500,000 - to be paid over an agreed number of years, Although the Indian proposals look today as if they would form a ready basis for negotiation, they were rejected by the federal government.

Lobbying by the Allied Tribes during the early 1920s resulted in the receipt of permission to present a petition to Parliament. In June of 1926 the Allied Tribes appealed to Parliament for assistance in obtaining an independent decision on aboriginal rights through the Privy Council, and for the convening of a special committee of Parliament to consider their demands.

Remarkably, Parliament agreed to the establishment of a special committee, Comprised of seven members of the House and seven members of the Senate. The Joint Committee met in late March

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and early April of 1927, hearing evidence from federal officials as well as from Peter Kelly, Andrew Paull and two other representatives of the Allied Tribes

"This was a major climax in the history of the Indian title question," wrote Wilson Duff, But the episode did not end in success. While the Indian witnesses comported themselves well, their counsel, O'Meara, antagonized the members of the committee, Duncan Scott was no help to the Indians, arguing that the provision of reserves compensated the Indians for aboriginal title and that federal expenditures on Indian programs would provide for their needs.

The subsequent finding by the Joint Committee illustrates that, rather than heating the matter with serious intent, it was merely going through the motions. On April 9, 1927 the Committee ruled unanimously that the petitioners have not established any claim to the lands of British Columbia based on aboriginal or other title." The parliamentarians said Duncan Scott's 1914 proposal for a reference to the Exchequer Court had been rejected by the Indians and, because they had declined to put their claim to that test, "it is the further opinion of your committee that the matter should now be regarded as finally closed."

The Committee recommended that the raising of funds for land claims activities be outlawed. This was subsequently done through an amendment to the Indian Act. "The amendment quite simply made it impossible for any organization to exist if pursuing the land claim was one of its objectives," notes Paul Tennant in *Aboriginal Peoples and. Politics*. The result was the collapse of the Allied Tribes.

Tennant says the prohibitory amendment was passed with little discussion. "It was taken for granted that Parliament had the right to curtail the rights and freedoms of Indians in ways that would not have been tolerated by Whites themselves."

The Committee also recommended that the sum of $100,000 be spent by the federal government in British Columbia each year for Indian programs. This recommendation was accepted, and the $100,000 annuity came to be known as the "B.C. Special."

The first half of the 20th century saw few other significant developments. The federal and provincial governments continued to bicker over, and tinker with, the report of the McKenna-McBride Commission. Finally, in 1938, more than 1,200 reserves were transferred to Canada by British Columbia Order-in-Council 1036.

From 1913 on it became increasingly difficult for Indians to carry on their traditional activities of hunting, fishing, trapping and gathering as the provincial and federal governments brought forth wildlife regulations. Indians had been exempted from the provincial Game Protection Act until 1913, but that year the Legislature repealed the exemption provisions. The feeling was that it

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would be to the eventual benefit of the Indians if there was less reliance among them on traditional food sources.

Coastal Indians formed the Native Brotherhood in 1931 to pursue the betterment of the Indian condition and to keep the aboriginal rights struggle alive. Eventually the Brotherhood evolved into a sort of labour union for Indian fishermen.

In 1947 the franchise was extended to Indians provincially, and two years later a Nisga'a Indian, Frank Calder, was elected to the Legislature as the CCF member for Atlin (a riding populated largely by Nisga'a).

A turning point of sorts came in 1951 when the Federal government, perhaps believing the Indians had been quieted, amended the Indian Act to legalize the Potlatch and to remove the prohibition on the raising of monies for land claims activities.

Within a few years Indian political activity was again on the rise. New Indian organizations and support groups sprang up and tribal councils were formed by the Nisga'a and others. Frank Calder was at the helm for the Nisga'a. In the Interior a Shuswap Indian, George Manuel, began organizing at the grassroots level. In 1960 he succeeded in presenting a land claims petition to Parliament, and in later years was to head the Union of BC Indian Chiefs, which Manuel helped found in 1969.

Lester Pearson, as Prime Minister, promised to deal with land claims, and his Indian Affairs Minister, Arthur Laing, went through the motions, but nothing came of it. Frustrated, Frank Calder and the Nisga'a Tribal Council went to court in 1969,Iaunching a suit against the Government of British Columbia for a declaration of Indian title to the lands of the Nass Valley. Their counsel, Tom Berger, had achieved an earlier success in the White and Bob case, wherein the courts confirmed that the Douglas purchases of the 1850s were, indeed, treaties.

But the hopes of the Nisga'a for advancing their claim through litigation received two initial setbacks, being rejected by the B.C. Supreme Court and then the B.C. Appeal Court.

It was in 1969 that the federal government apparently decided it would be best for it to get out of the Indian business entirely. The government floated a White Paper suggesting that government programming responsibilities for Indians be turned over to the provinces, with federal funding. and that reserves be conveyed to the Indians. The proposal met with outrage from Indians all across Canada, who read into it "assimilation." But the Nisga’a were not upset. They would sever the umbilical cord without remorse.

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While the Nisga'a were smarting from their early setbacks in the courts, the political scene In British Columbia was apparently changing in their favour: 1972 saw the election of Dave Barrett's NDP Government. In which Frank Calder was to serve for a time as Minister without Portfolio. The assumption was abroad that the NDP would acquiesce to the negotiation of land claims. But when the Trudeau liberals proposed negotiations, Barrett was hesitant. The federal Minister of Indian Affairs, Jean Chretien, wrote to Barrett on August 7, 1973 saying he would be making an announcement the following day on the willingness of the Government of Canada to negotiate Indian claims that were based on the traditional use and occupancy of land. Chretien asked for the Premier's views on the claim that was being advanced by the Union of B.C. Indian. Chiefs, and invited B.C. to join in negotiations.

Barrett responded August 29, 1973. The full text of his letter was as follows: "Dear Mr. Chretien: Thank you for your letter of August 7th, and telegram of August 8th with respect to Indian and Eskimo land claims. Yours very truly, David Barrett, Premier."

Chretien's August announcement of the federal government's new policy on the negotiation of claims was in response to the decision of the Supreme Court of Canada earlier in 1973 in "the Calder case," as it had come to be known. The court's decision was mixed. Three judges said the Nisga'a continued to enjoy aboriginal title, and three said they didn't. The seventh judge on the panel opted out on a technicality.

The significance of the decision was that the six judges who split on the issue of extinguishment were unanimous in finding that the Nisga'a had indeed enjoyed Indian title prior to the exercise of British dominion over the lands of B.C.

That apparently convinced Prime Minister Trudeau to do an about-face on the issue of Indian title. Visiting B.C. in 1969, Trudeau had said: "On the question of aboriginal rights, our answer is 'no'." But in 1973 he welcomed a Nisga'a delegation to Ottawa, saying it appeared the Indians had more rights than he had thought they had.

The new federal policy. developed unilaterally. stated that where the provinces were involved, they should participate in the negotiation and settlement of claims. But a series of communications between Ottawa and Victoria was unproductive.

Said Dave Barrett in 1974: "All we want from the federal government is a letter saying "we the federal government are responsible for settling the land claims questions. We would like you to come to the table to discuss this, this and this: We'll be there tomorrow, but they must sit down and write us a letter and say 'we are responsible for settling the land claims: They won't do it."

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A new generation of Indian leaders had emerged in British Columbia - George Watts of Port Alberni. Bill \\lilson of Comox, Chief Joe Mathias of North Vancouver, James Gosnell of New Aiyansh - but Indian politics were still marked by infighting, animosities and disarray. Readily available federal funding had resulted in the development of large bureaucracies among B.C.'s two dominant Indian organizations - the Union of BC Indian Chiefs and the BC Association of Non-Status Indians. That was probably a part of the problem.

Matters came to a head at the UBCIC's annual assembly in April of 1975, when the delegates decided on radical reforms - including the rejection of federal funding. In his study of the events leading up to the assembly and the meeting itself, Paul Tennant says:

"It became a political and cultural revival meeting that had a profound emotional significance for many of those taking part;" and, "as the speeches and dances proceeded, the desire to be free of government grew apace, as did faith in the ability of Indians to be fully self-sufficient."

But with the withdrawal (temporary) of federal funding, matters got no better. The Indian community became even further divided, and the pursuit of the land claim was lost in the shuffle. In Victoria, Frank Calder had been fired from his cabinet post for a misdemeanor, and Indian expectations had been shattered by Dave Barrett's resistance of entreaties from Ottawa. It took an election campaign to highlight the land claims issue once again,

Unexpectedly, Dave Barrett dissolved the Legislature in November of 1975. The vote was set for December 11. With land claims emerging as an issue in the campaign, Barrett's Minister of Human Resources, Norman Levi, used the Native Brotherhood convention in Comox as a platform for agreeing to meet on the land claims issue with the new federal minister of Indian Affairs, Judd Buchanan.

James Gosnell got involved, proposing that the meeting be held in New Aiyansh. The ministers agreed, and the date was set for January 12, 1976,

Following the defeat of the NDP in the election, Judd Buchanan asked the new Social Credit Government to honour Levi’s commitment. Bill Bennett's government agreed, The Socred representative would be Allan Williams, the new Minister of labour and minister responsible for Indian matters.

Williams personally favoured negotiations, and his statement to the Nisga'a in New Aiyansh that negotiations had for too long been delayed was greeted with much joy. Back in Victoria, however, Williams found the Cabinet reluctant to commit itself to full scale negotiations. The decision was made that British Columbia would co-operate with the federal government in examining the elements of the Nisga'a claim. But it would not, for the moment, be a party to

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negotiations. Like Barrett, Bennett was concerned that once the federal government had drawn British Columbia into the process, it would focus the negotiations on land - an area of exclusive provincial jurisdiction.

Having already been guaranteed federal funding, the Nisga'a were anxious to begin. Preliminary meetings were held, and in 1976 the Nisga’a tabled a long position paper. At a meeting in Ottawa in early 1978, the Province responded with a statement that said in part:

> "The provincial government does not recognize the existence of an unextinguished aboriginal title to lands in the Province, nor does it recognize claims relating to aboriginal title which give rise to other interests in lands based on the traditional use and occupancy of land. The position of the Province is that if any aboriginal title or interest may once have existed, that title or interest was extinguished prior to the union of British Columbia with Canada in 1871."

This was in keeping with the long-held view of the Province that certain colonial proclamations and acts of the legislature asserting jurisdiction over the lands of British Columbia had had the effect of extinguishing Indian title. However, the notion that extinguishment was implicit in these acts now has been superseded by a recent finding of the Supreme Court of Canada that "the Sovereign's intention must be clear and plain if it is to extinguish an aboriginal right'"

That was in line with an earlier decision of the United States Supreme Court that congressional intent to extinguish Indian title must be "plain and unambiguous," and not "lightly implied,"

Following the responses of the governments to the Nisga'a claim. the tripar1ite meetings evolved into a process of rhetoric, skirmishing, revisitation of past positions, and broad exploration of issues such as hunting, fishing and forestry. (The writer attended most meetings as a provincial representative until the end of 1986, and acted as chairman of a number of the meetings).

What was lacking in the Nisga'a talks, besides provincial commitment to negotiations, "was a sense of urgency, of substance and of political will on behalf of the federal government. The only substantive issue on the table was that of Nisga'a participation in the fishery, But, because of the determination of the Department of Fisheries and Oceans that fish should not be the currency of a land claims settlement, there was great difficulty in coping with even this one element of the Nisga'a claim,

Although the federal government accepted, for negotiation, claims presented by most of British Columbia's tribal groups[2] during the 1970s and '80s, the Nisga'a claim was the only one that was actually being negotiated during that time. (In 1989 the Nisga'a and the federal government

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signed a "Framework Agreement," presumably in an attempt to show some progress. But the agreement did little more than describe a process of negotiations).

During the 1970s and '80s two other processes impacted on the land claims issue. The first was political. The work of the federal-provincial Continuing Committee of Ministers on the Constitution, followed by First Ministers' Conferences, resulted in eventual constitutional patriation and amendment. In the Constitution Act, 1982, a section was included recognizing and affirming the aboriginal and treaty rights of the Indian, Inuit and f'.1etis peoples,

The amendments provided for a process of meetings among First Ministers and aboriginal organizations to identify those rights and, perhaps, to entrench the right to aboriginal self-government in the Constitution. When the last of four First Ministers' meetings ended in 1987, there were no apparent successes to tally. Still, there was heightened political awareness of the aboriginal agenda, and land claims objectives came to be seen by some observers as very similar in nature to Indian self-government.

On a couple of occasions the government of Bill Bennett had tried to come to grips with the land claims issue, but little was resolved at the Cabinet table, partly because of the inability of ministers to grasp the concept of Indian title, but also because they construed land claims to be a "land grab. "lf it accomplished nothing else, the constitutional process at least focussed some ministerial minds on the realities 'Of the issue and helped set the stage for the revolutionary change in provincial government thinking that was to emerge In 1990.

The second process to cause change took place in the courts, not just in British Columbia but elsewhere in Canada. At trial, or upon appeal, decisions were being brought down time and again in favour of the Indians. In the Sparrow case, dealing with the aboriginal right to fish for food, the Supreme Court of Canada confirmed in 1990 that aboriginal rights in British Columbia were unextinguished. In a number of injunctive proceedings, B.C. Indians were successful in putting a stop to logging on traditional Indian lands. Added awareness of Indian claims in the forestry, mining and fishing industries led to meetings with Indian peoples by industry representatives.

A suit against the Province (Canada was joined as a defendant) by the Gitksan-Wet’suwet'en Tribal Council[3] began in 1987 in the Supreme Court of British Columbia and was not concluded until 1990. At the time of writing, a decision had not been rendered. The Gitksan-Wet'suwefen sought a wide-ranging determination, including aboriginal title and "sovereignty,"

Regardless of all of the foregoing, it was probably just simple, expedient politics that caused the Government of British Columbia to announce in the summer of 1990 that the Province would abandon its long-standing policy of refusing to participate In the negotiation of Indian claims. .Mike Harcourt, who had succeeded Dave Barrett as the NDP leader, was on record as

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expressing willingness to participate in negotiations. An advisory group convened by Premier Bill Vander Zalm recommended that the government change its policy, too. With an election seemingly approaching, Vander Zalm's Cabinet agreed.

An Analysis of the political motivations can be' left for another day, but It seemed evident that Vander Zalm was attempting to style himself as the political leader who would be prudent and tough In negotiations, while Harcourt would be the bleeding heart putting the lands of British Columbia up for grabs.

Whatever the consideration, the deed was done. On October 10, 1990 two of Vander Zalm's ministers went to the Nass River village of Greenville for a ceremony marking the Province's agreement to sit down with the Nisga'a and the federal government to negotiate the Nisga'a land claim. The Indians of B.C., who had long demanded that the Province recognize Indian title, avoided making any such public demand. Now that the Province was no longer repudiating the claims of the Indians, they understood, the acceptance of title was Implicit. It remained only for negotiations to determine what the content of that title might be.

Footnotes

I. The change in spelling to Nisga'a began to occur about 1986/87.

2. The Musqueam land claim was not accepted on the basis that the claimed lands were patented.

3. Formerly known as the Gitksan-Carrier Tribal Council.

4. Ronald Edward Sparrow v. Her Majesty the Queen, unreported (S.C.C.).

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