Archive Quarterly

the west wasn't won First Issue I.I April 2024

BC *Lands Act,* 1874

In claiming all the land west of the Rocky Mountains, BC was denied by Canada's Attorney General. The AG's reasoning gives a clear picture of today's outstanding land question, and helps explain the Province's most recent *Lands Act* amendment proposal this spring - as well as its cancellation. Page 22

The Fourth World turns fifty

Grand Chief George Manuel's first book described a place with no other designation in global politics: Status Indians on Indian Reserves, in Canada. Miles behind the Third World, and locked in the First World, what has changed? *New review of 1974 book.* Page 36

1874 Petition of the Douglas Tribes

110 Chiefs from Port Douglas to Bute Inlet documented their protest. While settlers were moving on to their lands and fencing them out, Indian Reserve Commissioners cut back their boundaries. The Chiefs pursued diplomatic solutions. Page 28

Gov't to Appeal Indian Hunt Case

NANAIMO (Staff)—Vancouver Island Indians are laying plans for a victory potlatch but the government will appeal a judgment that allows them to hunt and fish out of season.

Front page of the *The Sun* newspaper, Vancouver, March 4, 1964.

Snuneymuxw hunters Clifford White and David Bob were charged with possession of deer out of season. They defended themselves: they were exercising their ancestral rights to hunt and fish on their unoccupied lands, as preserved 110 years earlier by agreement with James Douglas, Hudson's Bay Company Governor on Vancouver Island.

But the province argued their 1854 agreement was not a treaty, and in any case they had no rights to hunt beyond those in the *BC Game Act*.

The BC Court of Appeal found a paper inked with 'X'es indicating the Nanaimo Headmen's signatures and Douglas' signature, and no written text, to be a "treaty" within the meaning of the *Indian Act*. Page 4

related articles

Kitty Sparrow on *White and Bob*, 1964, and THAT DAY IN COURT. **1996 Interview** Page 6

The province appealed to the Supreme Court of Canada after White and Bob won recognition of their rights in the BC Court of Appeal. But the SCC didn't hear them. ***Respondents' Factum*** P. 7

The final report of the BC Indian Reserve Commission was legislated over total opposition and protest. **1924 Allied Tribes Petition** P. 30

Land conveyance or treaty? P. 18
Map of Douglas Treaties Page 16
Timeline of Events surrounding the Fort Victoria treaties Page 20

Tamanawas Laws, Potlatch Laws, 1884

***An Act further to amend The Indian Act, 1860*sc1884**

Section 3. Every Indian or other person who engages in or assists in celebrating the Indian festival known as the "Potlach" or in the Indian dance known as the "Tamanawas" [Sundance] is guilty of a misdemeanor, ...

Authentic governance was criminalized for 70 years. *RCAP report; Chief William Scow's title paper,* Page 37

A Quarter Century

Following a failed Constitutional referendum, 1992, to mobilize self-government, a five-year Royal Commission on Aboriginal Peoples, major armed confrontations and the *Delgamuukw* ruling on native title,

Canada's 1995 / 99 policy on Aboriginal Self Government

or, the

"Inherent Right Policy"

is the highest form of "self-determination" the country will recognize. There are 650 First Nations in Canada. 20 have opted for self-government agreements under the 1999 policy.

Five are within BC, required to complete Final Agreements in the BC treaty process. One is in a small community in Manitoba, and fourteen were in the far north and territories, also required by larger settlement agreements. Governance structures achieved under the policy are corporate, municipal entities.

Indigenous policy critics refer to it as the "self-termination" strategy, because traditional authorities are replaced by Canadian-made governance structures.

Three Quarters

Status Indians can vote in BC. *The Native Voice*, 3.3 March 1949

Victoria, B.C., March 14th, 1949.

The Native Voice Publishing Co. Ltd.:

It is a great pleasure for me to extend to the Native Indians of British Columbia my warm and personal greetings.

I feel that in granting them the franchise, this Government has recognized a principle which should have been invoked long ago. These new voters are the only true Canadians; the rest of us came to this country from other lands and it is only fit that they should have a voice in the affairs of their own country.

I might point out that the amendment to the "Elections Act" does not grant to the Indian any more than the franchise itself, but this is a priceless possession to all free men in a free country and thus for the first time the Indians of British Columbia will have an opportunity of voicing their claims to all of the other privileges which are accorded Canadian citizens. It also PRESERVES ANY RIGHT HE HAD IN THE PAST, but it gives him only the additional right to vote in the election OR BE A CANDIDATE IN THE ELECTION.

This is the first and most important right and privilege and through the exercise of the franchise their voice will be heard in Council, not only on their own just claims, but on all other matters relating to the progress, prosperity and development of this great Province.

It seems to me that this step of the Province of British Columbia will have a profound effect upon their very reasonable request that they be given the vote at Federal elections.

I know that they will play their part as good citizens and that they will give due consideration to the issues and the candidates when they cast their ballots.

As it stands now, the Indian is in a position effectively to demand his rights.

I wish, as Attorney-General of this Province, to tender my sincere congratulations and all good wishes for the future progress of our newly enfranchised Canadians.

Yours very truly,

G. WISMER,
Attorney-General.

The AQ banner

According to Elders,
the Canadian flag is not supposed to be red. The maple leaf in the center, to be green, represents "the great tree of life," *the forest of grace and living*. Or, as they said at Albany, New York, in 1698:

"...all of us sit under the shadow of that great Tree, which is full of Leaves, and whose roots and branches extend not only to the Places and Houses where we reside, but also to the utmost limits ..., which Tree is now become a Tree of Welfare and Peace, and our living under it for the time to come will make us enjoy more ease, and live with greater advantage than we have done for several years past."

So the Onondaga sachem, Sadeganaktie, is quoted as describing the terms of peace with England.

The shoulders of the Canadian flag should be blue, representing the rivers, whose banks we all live upon, or the two shining seas on either side of America. Why Canada made it all red is not well known.

On the AQ banner, running through the leaf is the Pacific coastline where Indigenous jurisdiction and land title continue without treaties, despite colonial assumptions.

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Fact Check

What does the Canada UNDRIPA actually say?

In 2007, the United Nations General Assembly voted overwhelmingly to adopt the Declaration on the Rights of Indigenous Peoples.
...Canada voted against it.
...In 2016, Canada formally endorsed the Declaration. Five years later, the following legislation was passed into law by the Canadian government.

.....

The full text of
Canada's 2021
"United Nations Declaration on the Rights of Indigenous Peoples Act"

Preamble

Whereas the United Nations Declaration on the Rights of Indigenous Peoples provides a framework for reconciliation, healing and peace, as well as harmonious and cooperative relations based on the principles of justice, democracy, respect for human rights, non-discrimination and good faith;

Whereas the rights and principles affirmed in the Declaration constitute the minimum standards for the survival, dignity and well-being of Indigenous peoples of the world, and must be implemented in Canada;

Whereas, in the outcome document of the high-level plenary meeting of the General Assembly of the United Nations known as the World Conference on Indigenous Peoples, Canada and other States reaffirm their solemn commitment to respect, promote and advance the rights of Indigenous peoples of the world and to uphold the principles of the Declaration;

Whereas, in its document entitled Calls to Action, the Truth and Reconciliation Commission of Canada calls upon federal, provincial, territorial and municipal governments to fully adopt and implement the Declaration as the framework for reconciliation, and the Government of Canada is committed to responding to those Calls to Action;

Whereas, in its document entitled Calls for Justice, the National Inquiry into Missing and Murdered Indigenous Women and Girls calls upon federal, provincial, territorial, municipal and Indigenous governments to implement the Declaration, and the Government of Canada is committed to responding to those Calls for Justice;

Whereas First Nations, Inuit and the Métis Nation have, throughout history and to this day, lived in the lands that are now in Canada with their distinct identities, cultures and ways of life;

Whereas Indigenous peoples have suffered historic injustices as a result of, among other things, colonization and dispossession of their lands, territories and resources;

Whereas the implementation of the Declaration must include concrete measures to address injustices, combat prejudice and eliminate all forms of violence, racism and discrimination, including systemic racism and discrimination, against Indigenous peoples and Indigenous elders, youth, children, women, men, persons with disabilities and gender-diverse persons and two-spirit persons;

Whereas all doctrines, policies and practices based on or advocating the superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences, including the doctrines of discovery and terra nullius, are racist, scientifically false, legally invalid, morally condemnable and socially unjust;

Continued on page 34...

To summarize, there are three concrete steps legislated by this Act:

1. In *Interpretation,* Canada formally defines the "rights of Indigenous Peoples" referred to in the 2007 UN Declaration as those rights included in Section 35 (1) of the Canadian Constitution.

Note that Section 35 rights are identified by courts on a case-by-case basis, where judges have denied most of the rights in the UN version.

By creating this definition, Canada has effectively subverted the entire UNDRIP to the terms of its own domestic policies and practices.

That is to say, the goals as they appear in the Preamble, here, can't be reached while this definition is operating.

2. The *Act* says that an Action Plan must be made to create recommendations on two things, in consultation with Indigenous Peoples: measures to 1.) address discrimination and 2.) promote mutual respect and understanding.

3. The legislation requires reporting on the implementation of the Action Plan.

Note that the Preamble is not actionable or justiceable.

White and Bob were charged under the BC *Game Act*.

The local magistrate convicted them of illegally being in possession of deer outside the BC hunting season. They appealed to a County Court, where Judge Swencisky acquitted them of the charges.

Their acquittal, said Swencisky, was due to their ancestral rights under a treaty with the Governor of Vancouver Island in 1854. A Treaty right to hunt would render the BC *Game Act* inoperative, in their case.

"Exhibit 8" – the subject of much discussion in court – is a blank piece of paper with 'X' marks on it, and Governor James Douglas' signature. It is the only written receipt of the land deal made on December 23, 1854, between the Nanaimo Tribes and the Hudson's Bay Company. The deal is described in other reports to the Imperial government as a treaty, and the Snuneymuxw (Nanaimo) keep their history of its meaning in their own way.

Lawyers for the Crown, intent on charging the Indians under the *Game Act*, denied that was a treaty and said no hunting or other rights remained to White and Bob. The government lost.

The 1964 ruling was followed up by a Supreme Court of Canada ruling confirming it. It was a landmark change in BC and Canada. It added to 50 years of varying Canadian court decisions about fining and jailing Indigenous hunters in spite of their treaty rights. And it was the first time the *Royal Proclamation of 1763* was raised in a BC courtroom.

See the October issue to learn more about judicial vagaries around hunting rights across Canada.

R. v. White and Bob

Excerpt from Justice Norris' reasons,
the BC Court of Appeal, September 1964:

"The submission of counsel for the respondents was as follows:

A. The Game Act, properly construed, does not apply to the Respondents because they are entitled to hunt by virtue of a treaty made in 1854 between the Governor of Vancouver Island and the Indian tribes at Nanaimo (being the said Exhibit 8) and

1. The Treaty reserved to the Indians the right to hunt over unoccupied lands.

2. The Respondents, being descendants of the Indians who signed the Treaty, are entitled to claim the benefits it conferred on the Indians.

3. The Crown was a party to the Treaty and in any event, having taken the benefit of the treaty, is bound by it.

4. The "unoccupied lands" over which the Indians were given the right to hunt encompassed the whole of their ancient tribal territories.

5. The Treaty referred to is a Treaty within the meaning of the Indian Act, Section 87, and therefore the Game Act does not apply to the Respondents.

6. In any event the Legislature did not intend to take away the right to hunt confered on the Indians by the said Treaty of 1854.

B. 1. The Game Act, properly construed, does not apply to the Respondents because their aboriginal title to their hunting grounds and their right to hunt thereon have never been extinguished, the aboriginal title being recognized under International law.

2. The Crown grant of Vancouver Island to the Hudson's Bay Company in 1849 did not extinguish the aboriginal rights of the Indians because :
(a) The Crown could not, by the exercise of its executive power to make a grant of land in 1849 extinguish the aboriginal title of the Indians.

(b) The Crown did not convey the 'hunting grounds' of the Indians in the grant.
(c) Crown grants to proprietary companies were always subject to Indian title.
(d) The evidence shows that it was never contemplated by the Colonial Office, the government of the Colony, the Hudson's Bay Company, or the Indians, that the grant should extinguish the Indian title.

C. 1. As to the Royal Proclamation of 1763, that Proclamation guaranteed the aboriginal rights of the Indians.

2. That Proclamation applied -- and applies -- to Vancouver Island.

D. If the Game Act, properly construed, applies to the Respondents, it is ultra vires the Province as being legislation in relation to Indians and lands reserved for the Indians because :
(a) Prior to British Columbia entering confederation in 1871, no legislation had been passed extinguishing the aboriginal right of the Indians to hunt.
(b) After British Columbia entered confederation in 1871, it had no power to pass legislation in relation to 'Indians and lands reserved for the Indians'.

E. The Indian Act, Section 87 does not operate so as to make the Game Act applicable to the Respondents.

Notices under the provisions of the *Constitutional Questions Determination Act* of British Columbia [R.S.B.C. 1960, c. 72] were duly given by the respondents to the Attorneys-General of Canada and of British Columbia to the effect that the constitutional validity of s. 25 of the *Game Act* of British Columbia would be called into question in the hearing of this appeal

in so far as that section purports to take away the respondents' right as Indians to hunt on unoccupied lands lying within the ancient tribal territories of the Nanaimo Indians pursuant to the treaty made at Nanaimo, B.C., in 1854 between Governor Douglas and the Nanaimo Indians, the *Royal Proclamation* of King George III of October 7, 1763, and the aboriginal title of the Indians and the respondents' right to be in possession of game as a result of such hunting. The Attorney-General of Canada was not represented on the hearing of the appeal.

Substantially for the reasons given by my brother Davey, which I have had the privilege of reading, I am of the opinion that ex. 8 is a "Treaty" within the meaning of s. 87 of the *Indian Act*. However, in view of the argument of counsel for the Crown, I think it is proper to add something further on that matter and to deal specifically with the matter of aboriginal rights and the applicability of the *Royal Proclamation of 1763*.

On all of these three matters it is proper to consider the history of the position of the Indians on this continent and in particular on Vancouver Island from the earliest times, the recognition of that position by the nations which sought or obtained dominion over the Indians and over the lands which they occupied and therefore the international treaties by which that dominion became effective and the legislation Imperial, Canadian, and Provincial affecting these rights of Indians. It is most important also to consider the position and authority of the Hudson's Bay Co. and the position and authority of James Douglas as Chief Factor of the Hudson's Bay Co. and Governor of Vancouver's Island as it was then called.

As to the Royal Proclamation of 1763, that Proclamation guaranteed the aboriginal rights of the Indians.

That Proclamation applied - and applies - to Vancouver Island.

This was the opinion of Justice Norris, in the matter of *White and Bob*, 1964. However it was not until decades later that the government would concede this point, nor until Canadian judges would agree upon it.

The Court is entitled "to take judicial notice of the facts of history whether past or contemporaneous" as Lord du Parqu said in *Monarch Steamship Co., Ld. v. Karlshamns Oljefabriker* (A/B), [1949] A.C. 196 at p. 234, [1949] 1 All E.R. 1 at p. 20, and it is entitled to rely on its own historical knowledge and researches, *Read v. Bishop of Lincoln*, [1892] A.C. 644, Lord Halsbury, L.C., at pp. 652-4.

In order that my references on these matters may be understood from the beginning, I now state in general terms the conclusions to which I have arrived as follows:

(1) The fact of aboriginal rights on conquest or "discovery" so called of "new" lands has been recognized throughout the centuries by all the European nations which contended for power on this continent.

(2) The *Proclamation of 1763* was declaratory and confirmatory of such aboriginal rights and applies to Vancouver Island.

(3) The document ex. 8 including the condition or understanding hereinbefore quoted was a "Treaty" within the understanding of the Hudson's Bay Co. and Governor Douglas and the Colonial Government and the Indians and was therefore a "Treaty" within the contemplation of s. 87 of the *Indian Act*. It confirmed the Indians in their aboriginal rights of hunting and fishing, these being the rights essential to the survival of the Indians. These rights have never been surrendered or extinguished.

(4) As a result, the relevant restrictive provisions of the British Columbia *Game Act* under consideration on this appeal do not apply to the respondents. Any regulation of these rights would be a matter for the Parliament of Canada under s. 91 (24) of the *B.N.A. Act, 1867*."

The case was decided in favour of the treaty rights. BC's government appealed the matter to the Supreme Court of Canada. ***See page 6.***

Kitty Sparrow

THAT DAY IN COURT

From a 1996 interview with Valerie VanClieaf, Stephen Samuel and Steve Kisby.

That was the first case Thomas Berger ever won. He was my mother's protege.

What happened was that in my father's office...this game warden kept arresting Indians for hunting deer, and throwing them in Oakalla prison. My mother was fighting them on it. She got Berger, just out of law school then, to go and take this case up. She gave him all the historical background and everything.

They were charged with hunting deer out of season and there's great long pages of reasons for judgement about it. It's based on the *Proclamation of 1763.*

My mother...was dying; she died that year. She wanted me to take her over in an ambulance to Victoria to hear the appeal on that. I took her over there (for the trial decision)... and the Indians carried her up, she was in a wheelchair.

The reasons for judgement went on for a long time. Half-way through, you could see he was in favour of the Indians. The game warden was sitting next to me and when he saw the jig was up, he got up to go and my mother stuck her chin out and she said, "You bastard, get back there and learn something!"

They won that appeal. The arguments are still valid. ...that's a precedent. …Before you go for sovereignty of the land, you've got to prove that the land is Indian. And that's my point: why do the Indians have to prove that when the colonialists don't?

Join AQ in October for a comparison of contradictory rulings on hunting.

The Daily Colonist. CLASSIFIED

VICTORIA, BRITISH COLUMBIA, THURSDAY, NOVEMBER 11, 1965 PAGE TWENTY-FIVE

Supreme Court Rules Douglas Treaty Valid

Rights of Indians Upheld

Game Laws Do Not Apply

By PATRICK O'NEILL
Island Editor

No Expense to Budding Municipality

Gaglardi Promises Royston New Roads

Image from the Victoria *Times Colonist* online collection of archived editions.

1965 **The Supreme Court of Canada upheld the BC Court of Appeal's September 1964 decision on *White and Bob.***

The SCC's reasons were delivered orally by Judge Cartwright, November 10, 1965, in a unanimous decision. Here follows their entire ruling:

[1] Mr. Berger, Mr. Sanders and Mr. Christie, we do not find it necessary to hear you. We are all of the opinion that the majority in the Court of Appeal were right in their conclusion that the document, Exhibit 8, was a "treaty" within the meaning of that term as used in s. 87 of the *Indian Act* [R.S.C. 1952, c.149]. We therefore think that in the circumstances of the case, the operation of s. 25 of the Game Act [R.S.B.C.1960, c.160] was excluded by reason of the existence of that treaty.

[2] The appeal is accordingly dismissed with costs throughout.

Kitty Bell-Sparrow's parents were Tom and Maisie Hurley. Tom had a successful criminal law practise in Vancouver, and the firm was known to take native clients *pro bono*, and to challenge the Indian Act. Maisie was a legal secretary who first met Tom by working at his firm. She eventually argued some 80 cases for native defendants, and never lost one. She did not have a law degree.

The late Thomas Berger, counsel for White and Bob, began his famous career at Tom Hurley's law firm.

Maisie Hurley assisted with the development of the *Native Voice* newspaper in 1946, journal of The Native Brotherhood of BC.

Kitty Sparrow had a long career in journalism and legal activism, continuing in her parents' legacy.

IN THE SUPREME COURT OF CANADA

ON APPEAL FROM THE COURT OF APPEAL

FOR BRITISH COLUMBIA

BETWEEN:

HER MAJESTY THE QUEEN,

APPELLANT,

A N D:

CLIFFORD WHITE and DAVID BOB,

RESPONDENTS.

RESPONDENT'S FACTUM

PART I

STATEMENT OF FACTS

The Respondents were charged under the Game Act, R.S.B.C. 1960, Chapter 160, Section 25. The charge read as follows:

> 'The Informant says that Clifford White and David Bob, on Sunday, July 7th, 1963 A.D., at Old Nanaimo Lakes Road in the Province of British Columbia, being then and there together unlawfully did have in their possession game, to wit, the carcasses of six deer more than fourteen days immediately following the end of the open season without being authorized to do so by a valid and subsisting permit issued to them under the Game Act.'

Note that:

The Snuneymuxw lawyers were prepared with a 150 page Respondents' Factum, which they delivered to the Supreme Court of Canada ahead of the hearing. It explained their argument in great detail and provided several lines of defense for ongoing hunting rights, and other rights, which were currently being argued across Canada with mixed success and deteriorating judicial regard for Aboriginal treaty rights.

It is significant that the Supreme Court made such a summary ruling, declining the responsibility to hear the matter and enter the crucial Snuneymuxw argument into the top court's record of precedent where it would affect many similar cases.

The Respondents were convicted by Magistrate L. Beevor-Potts at Nanaimo, B.C., on September 25th, 1963, and each of them was ordered to forfeit $100.00 and to pay cost of $3.00, in default to serve forty days imprisonment.

The Respondents appealed to the County Court at Nanaimo, B.C., and a trial de novo was held before Swencisky C.C.J. On March 4th, 1964, Swencisky C.C.J. allowed the appeal and acquitted the Respondents.

At the trial de novo the Respondents gave evidence They said they had been hunting deer on the west slope of Mount Benson for the purpose of obtaining food for themselves and their families. They shot six deer, and these deer wer in their possession when they were stopped by a Game Warden and charged with being in possession of the carcasses in violation of the Game Act.

The Respondents gave evidence that they were members of the Nanaimo Band of Indians. Mr. Wilson Duff, Provincial Anthropologist, gave evidence that the unoccupied lands where the Respondents had been hunting, fell within the ancestral tribal territories of the Nanaimo Indians. Mr. Willard Ireland, Provincial Archivist, was called as a witness by the defence, and produced a number of documents from the provincial archives relating to the aboriginal rights of the Indians on Vancouver Island, including the Nanaimo Indians.

The Crown appealed to the Court of Appeal. On December 15th, 1964, the Court of Appeal dismissed the appeal Sheppard J.A. and Lord J.A. dissenting.

On April 5th, 1965, the Crown obtained leave to appeal from the Supreme Court of Canada, on the following questions of law:

> Was the operation of the Game Act (Revised Statutes of British Columbia 1960, Chapter 160, Section 25, as enacted by 1961, Chapter 21, Section 10), in the circumstances of the charge, excluded
>
> (a) by reason of the existence of a treaty within the meaning of Section 87 of the Indian Act (Revised Statutes of Canada, 1952, Chapter 149), or
>
> (b) by reason of aboriginal hunting rights enjoyed by the Respondents and recognized by a Royal proclamation issued in 1763 and otherwise?

Notice of appeal, on the above questions of law, was filed on April 5th, 1965.

PART III

A R G U M E N T

I. ABORIGINAL TITLE

A. The Respondents' submission

The Respondents submit that they have the right t hunt over the ancient tribal territory of the Nanaimo Indians: The Respondents are members of the Nanaimo tribe. That tribe for centuries occupied that part of Vancouver Island on which the City of Nanaimo stands today, and the territory extending inland, including the west side of Mount Benson, where the Respondents were hunting deer during the closed season, allegedly in violation of the Game Act.

The Nanaimo tribe had a communal interest in the territory they occupied. Their aboriginal right of occupation - which gave the members of their tribe the exclusive right to hunt over their tribal territory - was acknowledged by the other tribes of Vancouver Island in the years before the coming of the white man.

The European countries that colonized North America recognized the aboriginal title of the Indian tribes inhabiting the continent. The British, though asserting sovereignty over the Indian inhabitants, acknowledged that their aboriginal occupation carried with it the right to hunt and to fish over their ancient tribal territories. Thus treaties or agreements were made by the British with the Indians for the surrender of the Indian title, wherever British settlement took place. The United States, following the War of Independence, followed the same policy as the British.

The aboriginal title of the Nanaimo Indians was recognized by law. It was recognized by the British themselves, by the Hudson's Bay Company, by the Colony of Vancouver Island, by the united colony of British Columbia, by the B.N.A. Act, by the government of Canada and by the Province of British Columbia.

The Respondents seek to establish their right to hunt in this case. They do not seek a comprehensive definition of their aboriginal title. What they do claim is that one of the incidents of their aboriginal title is the right to hunt, and that (whatever legal impairment there may have been over the years so far as other incidents of their aboriginal title are concerned) their right to hunt remains unextinguished and that they have the right to hunt over their ancient tribal territory.

B. The proof of the aboriginal occupation and aboriginal title of the Nanaimo Indians

The Respondents submitted proof at the trial de novo before Swencisky C.C.J. of the aboriginal title of the Nanaimo Indians, derived from their aboriginal occupation of their tribal territory, including the territory where the Respondents were hunting.

Mr. Wilson Duff, Provincial Anthropologist, gave evidence regarding the aboriginal occupation of the Nanaimo Indians and the recognition by other tribes of their exclusive right to hunt in their own territory. His evidence was (Case, p. 49, l. 21)

"Q. Turning to the tribes from Nanaimo. Can you tell His Honour what Indians inhabited Nanaimo in 1854, or in that general period?
A. My sources of information on that are the work of two previous anthropologists. I haven't done any field work in this area myself. And also historical documents such as the census. The two previous anthropologists were Diamond Jenness of the National Museum of Canada.
Q. You might give us the spelling of the last name.
A. JENNESS, who worked here at Nanaimo in the 1920's. And I have information from an unpublished manuscript in the National Museum of Canada on the Nanaimo tribes. The other source is a book by H.T. Barnett, 'The Coast Salish of Canada', which deals with the Nanaimo as well as other tribes.
THE COURT: The Coast what?
A. Salish - SALISH. It is the generic name of the Indians in the area. The two sources agree closely on the aboriginal occupancy of the

- 10 -

Nanaimo area. In brief, there were five local bands or groups in this immediate area. They were together known as the Nanaimo tribe. The name of one of these local groups was Saliquin, or Saliquil, or variations of that name. These tribes, or groups, were quite migratory in their habits. Each of them had a village on the Nanaimo River, where it would fish for dog salmon in the fall. In the winter the Saloquin had a winter village right here on Nanaimo harbour. The other four groups had their winter villages on Departure Bay, quite close by. In the springtime all of these groups would move out to Gabriola Island for various kinds of fish and clams and other food, and in midsummer they would all go over to the Fraser River for other kinds of salmon. Now the name Saloquin correctly applies just to one of these five groups. However, I am convinced that Governor Douglas used the name to apply to the Nanaimo tribe."

He continued: (Case, p.52, l.41)

"BERGER:
Q. When you say the tribal territories, can you tell us what you mean by that? What use would the Indians have made of their tribal territories?
DUFF:
A. This could be a very complicated statement, Your Honour, because they used different kinds of territories in - with different intensity. They would use the rivers, of course, for fish with great intensity, and the beaches with great intensity, and the mountains and forest with somewhat less intensity, yet they would go at least that far back, not only to hunt the land mammal, deer, but also other land mammals, but to get bark and roots for basketry and matting and such things. These territories would be definitely used by them and would be recognized by other tribes as belonging to them.
Q. And Mount Benson would be within the areas the Nanaimo Indians used in 1854 for these purposes?
A. Mount Benson is so close to that there is no doubt but that it would be within the Nanaimo tribes area." (underlining added)

The Respondents also rely on the despatch (Exhibit 11) that Governor Douglas sent to the Secretary of State for the Colonies, on March 25th, 1861. Governor Douglas' despatch accompanied a petition from the House of Assembly of Vancouver Island requesting the aid of the Imperial government in extinguishing the Indian title. Governor Douglas' despatch reads as follows (Case, Volume of Exhibits, p. 120 et seq.):

Vancouver Island
Victoria,
25th March, 1861:

My Lord Duke

I have the honour of transmitting a Petition from the House of Assembly of Vancouver Island to Your Grace, praying for the aid of Her Majesty's Government in extinguishing the Indian Title to the public Lands in this Colony; and setting forth with much force and truth, the evils that may arise from the neglect of that very necessary precaution

2. As the Native Indian population of Vancouver Island have distinct ideas of property in land, and mutually recognize their several exclusive possessory rights in certain Districts, they would not fail to regard the occupation of such portions of the Colony by white settlers, unless with the full consent of the proprietary Tribes, as national wrongs; and the sense of injury might produce a feeling of irritation against the Settlers, and perhaps disaffection to the Government, that would endanger the peace of the Country. (underlining added)

3. Knowing their feelings on that subject, I made it a practice, up to the year 1859, to purchase the Native rights in the land, in every case, prior to the settlement of any District: but since that time in consequence of the termination of the Hudson's Bay Company's Charter, and the want of funds, it has not been in my power to continue it. Your Grace must indeed be well aware that I have, since then, had the utmost difficulty in raising money enough to defray the most indispensable wants of Government.

4. All the settled Districts of the Colony, with the exception of Cowitchen, Chemainis, and Barclay Sound, have been already bought from the Indians, at a cost in no case exceeding £2.10 Sterling for each family. As the land has since then increased in value, the expense would be relatively somewhat greater now, but I think that their claims might be satisfied with a payment of £3. to each family: so that taking the Native population of those districts at 1000 families, the sum of £3000 would meet the whole charge.

5. It would be improper to conceal from Your Grace the importance of carrying that vital measure into effect without delay.

6. I will not occupy Your Grace's time by any attempt to investigate the opinion expressed by the House of Assembly, as to the liability of the Imperial Government for all expenses connected with the purchase of the claims of the aborigines to the public land, which simply amounts to this, that the expense would in the first instance, be paid by the Imperial Government, and charged to the account of proceeds arising from the sales of public land. The land itself would therefore be ultimately made to bear the charge.

7. It is the practical question as to the means of raising the money, that at this moment more seriously engages my attention. The Colony being already severely taxed for the support of its own Government could not afford to pay that additional sum; but the difficulty may be surmounted by means of an advance from the Imperial Government to the extent of £3000, to be eventually repaid out of the Colonial Land Fund.

8. I would in fact strongly recommend that course to Your Grace's attention, as specially calculated to extricate the Colony from existing difficulties, without putting the Mother Country to a serious expense; and I shall carefully attend to the repayment of the sum advanced, in full, as soon as the Land Fund recovers in some measure from the depression, caused by the delay Her Majesty's Government has experienced in effecting a final arrangement

with the Hudson's Bay Company for the reconveyance of the Colony; as there is little doubt when your new system of finance comes fully into operation, that the revenue will be fully adequate to the expenditure of the Colony.

I have the honour to be
My Lord Duke
Your Grace's most obedient
and humble Servant
James Douglas

The Respondents submit there could be no more authoritative evidence that the Indians of Vancouver Island had legal conceptions of their own relating to tribal occupation and tribal title, than Governor Douglas' reference, in the above despatch, to their 'distinct ideas of property in land' and their 'mutual recognition' of 'their several exclusive possessory rights in certain Districts'.

The Petition itself (Exhibit 11) shows that the House of Assembly itself recognized the Indian title. It read (Case, Volume of Exhibits, page 132):

HIS GRACE,
The Duke of Newcastle, Her Majesty's Principal Secretary of State for the Colonies

WE, Her Majesty's faithful and loyal subjects, the Members of the House of Assembly of Vancouver Island in Parliament assembled, would earnestly request the attention of Your Grace to the following considerations:

1. THAT many Colonists have purchased land, at the rate of One Pound Sterling per acre, in districts to which the Indian title has not yet been extinguished.

2. THAT, in consequence of the none-extinction of this title, those persons, though most desirous to occupy and improve, have been unable to take possession of their lands - purchased, in most cases, nearly three years ago; and of this they loudly and justly complain.

3. THAT the Indians, well aware of the compensation heretofore given for lands, appropriated for colonization, in the earlier settled districts of Vancouver Island, as well as in the neighbouring territory of Washington, strenuously oppose the occupation by settlers of lands still deemed their own. - No attempts of the kind could be persisted in, without endangering the peace of the Country, for these Indians, though otherwise well disposed and friendly, would become hostile if their supposed rights as regards land were systematically violated; and they are still much more numerous and warlike, than the petty remnants of tribes, who in 1855 and 1856, in the western part of the adjacent United States territory of Washington, kept up for nearly a year, a desultory and destructive warfare which compelled the whole agricultural population of the Country, to desert their homes, and congregate in blockhouses.

4. THAT within the last three years, this Island has been visited by many intending settlers, from various parts of the world. Comparatively few of these have remained, the others having, as we believe, been, in a great measure, deterred from buying land as they could not rely on having peaceable possession; seeing that the Indian Title was still unextinguished to several of the most eligible agricultural districts of the Island.

5. THAT the House of Assembly respectfully considers, that the extinction of the aboriginal title is obligatory on the Imperial Government.

THAT the House of Assembly, bearing in mind, that from the dawn of modern colonization until the present day, wars with aborigines, have mainly risen from disputes about land, which by timely and moderate concession on the part of the more powerful and enlightened of the disputants concerned, might have been peaceably and economically adjusted; now earnestly pray, that Her Majesty's Government would direct such steps to be taken, as may seem best, for the speedy settlement of the matter at issue, and the removal of a most serious obstacle to the well being of this Colony.

I.S. Helmcken
Speaker

February 6th, 1861

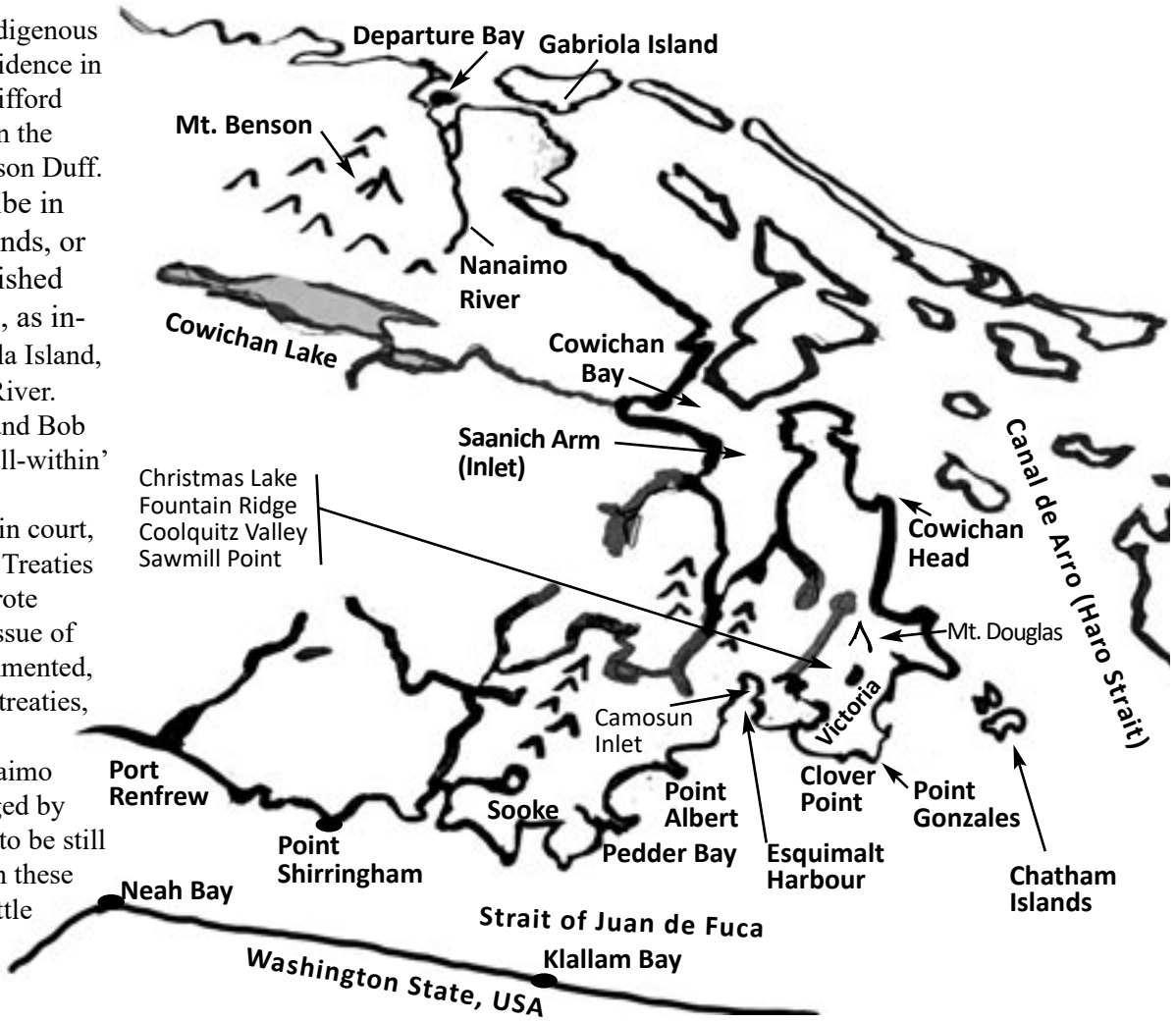
END QUOTE

The Douglas Treaties, 1850-54

Long before the days when Indigenous oral history was allowed as evidence in a Canadian court (c. 1997), Clifford White and David Bob relied on the non-native anthropologist Wilson Duff. Duff was called on to describe in court the Nanaimo tribe's lands, or lands where they had established agreements to use resources, as including: Fraser River, Gabriola Island, Departure Bay and Nanaimo River. Mount Benson, where White and Bob were charged, he said was 'well-within' their established territory,

After that 1964 appearance in court, Duff investigated the Douglas Treaties at Fort Victoria further, and wrote about them for the Fall 1969 issue of *BC Studies* (issue #3). He commented,

"Regarding the Ft. Victoria treaties, an identical treaty which he [James Douglas] made at Nanaimo in 1854 has recently been judged by the Supreme Court of Canada to be still in effect, and so by implication these untidy and almost-unknown little documents have been reconfirmed in their full status as treaties."



The lands described in the Fort Victoria treaties are sketched here:

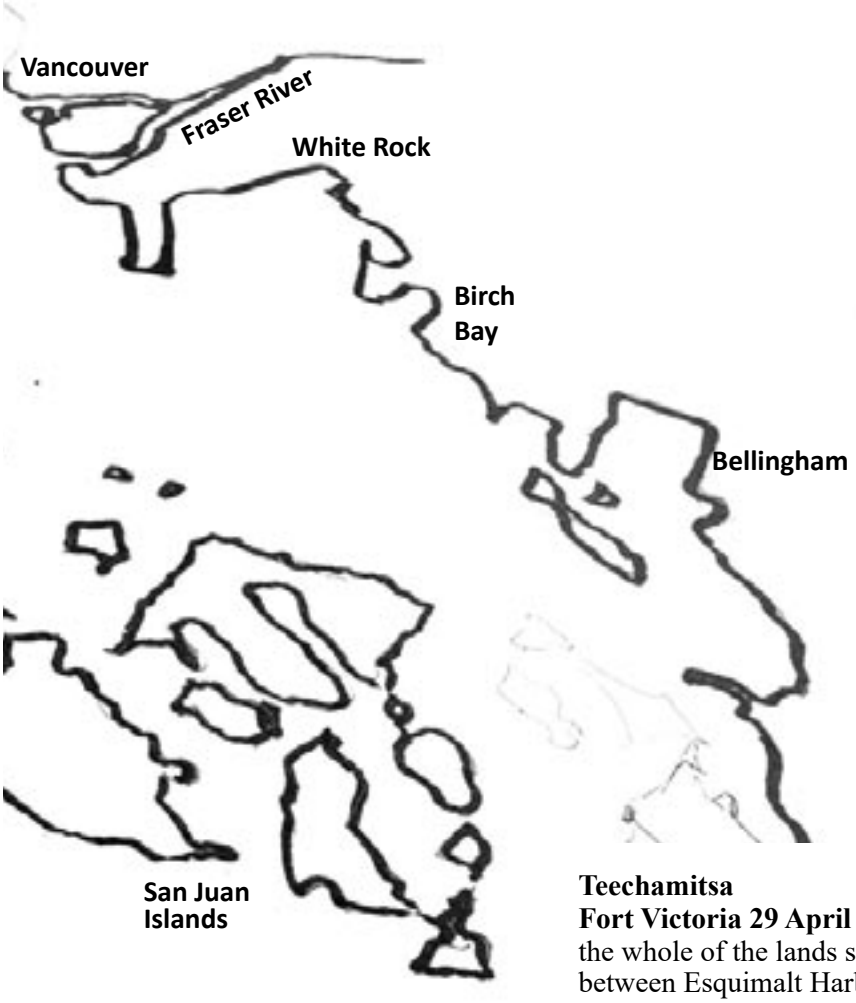
North Saanich
February 11, 1852
.. . commencing at Cowitchen Head and following the coast of the Canal de Arro north west nearly to Sanitch Point or Qua-na-sung from thence following the course of the Sanitch Arm to the point where it terminates and from thence by a straight line across country to said Cowitchen Head the point of commencement; so as to include all the country and lands, with the exceptions hereafter named, within those boundaries.

Whyomilth
April 30, 1850 Fort Victoria
extending from the north west corner of Esquymalth, say from the Island off the entrance of Saw mill stream and running west and north to the mountains, being bounded on one side by the lands of the Teechamitsa and on the other by the lands of the Kosampsum.

Che-ko-nein
April 30, 1850 Fort Victoria
. . between Point Gonzales and Mount Douglas, following the boundary line of the Ghilcowitch and Kosampsom families; the Canal de Arro and the Straits of Juan de Fuca, east of Point Gonzales.

Swengwhung
April 30, 1850 Fort Victoria
...between the Island of the Dead in the arm or Inlet of Camoson where the Kosampsom lands terminate extending east to the Fountain ridge, and following it to its termination on the Straits of De Fuca, in the Bay immediately east of Clover point, including all the country between that line and the Inlet of Camoson.

Chilcowitch
April 30, 1850 Fort Victoria
...the sandy Bay east of Clover Point where the Wheng-Whung boundary terminates, to Point Gonzala and thence north to Minies Plain — a wooded Rocky District; and a part of the lands of Chaytlum.



Ka-kyaakan (Klallam)
May 1, 1850
…between Point Albert and the Inlet of Whoyung (Pedder Bay) on the Strait of Juan de Fuca and the Snow covered mountains in the interior of the Island so as to embrace the Tract or District of Metchosin from the Coast to the said mountains.

Chewhaytsum
May 1, 1850
. . . between the Inlet of Whoyung and the Bay of Syusung known as Soke Inlet, and the snow covered mountains in the interior of the Island.

Soke
Fort Victoria May 10, 1850
. . . between the Bay of Syusung or Soke Inlet, to the Three River beyond Thlowuck or Point Shirringham on the Straits of Juan de Fuca and the snow covered mountains in the interior of Vancouvers Island.

Teechamitsa
Fort Victoria 29 April 1850
the whole of the lands situate and lying between Esquimalt Harbour and Point Albert including the latter, on the straits of Juan de Fuca and extending backward from thence to the range of mountains on the Sanitch Arm about ten miles distant.

South Saanich
Fort Victoria February 6, 1852
. . . between Mount Douglas and Cowitchen Head (Tluma-latchin) on the Canal de Arro and extending thence to the line running through the centre of Vancouver's Island north and south.

Kosampsom

April 30, 1850 Fort Victoria
. . between the Island of the Dead in the Arm or Inlet of Camoson and the head of said Inlet embracing the lands, on the west side and north of that line to Esquimalt, beyond the Inlet three miles of the Coolquits Valley, and the land on the east side of the arm, enclosing Christmas Hill and Lake and the land west of those objects.

The core text of the Ft. Victoria treaties was all very similar, and was later ruled to apply to the Nanaimo 1854 treaty. It read:

Know all men, we, the chiefs and people of the family of [Tribal name], who have signed our names and made our marks to this deed on [this date] do consent to surrender, entirely and forever, to James Douglas, the agent of the Hudson's Bay Company in Vancouver Island, that is to say, for the Governor, Deputy Governor, and Committee of the same, the whole of the lands situate and lying between ....(description of lands)...

The condition of our understanding of this sale is this, that our village sites and enclosed fields are to be kept for our own use, for the use of our children, and for those who may follow after us; and the land shall be properly surveyed, hereafter. It is understood, however, that the land itself, with these small exceptions, becomes the entire property of the white people forever; it is also understood that we are at liberty to hunt over the unoccupied lands, and to carry on our fisheries as formerly.

We have received, as payment, [amount in pounds sterling].

In token whereof, we have signed our names and made our marks, at Fort Victoria,

(Signed) X mark

Treaties? Or a potlatch in bad faith?

moving the Puget's Sound Agricultural Company *livestock to land adjacent to Oregon:* the Douglas Treaties *at* Fort Victoria

Hudson's Bay Company officers held shares in the Puget's Sound Agricultural Company - whose main holdings were in sheep and cattle, still pasturing on the American side of a new border.

In 1846, the Imperial British Crown ratified the Oregon Treaty with the USA. It belatedly followed the War of 1812, establishing a line along the 49th parallel west of Ontario.

The urgency to move the livestock to a secure site was one motivation for HBC Governor James Douglas' land purchases from eleven tribes at the south of "Vancouver's Island," a short journey by ship across the Juan de Fuca Strait, from what is now known as Washington State.

The following excerpt from "The Smallpox War Against the Haida," by Tom Swanky, 2023 gives insight to the meaning of the land sales, or "treaties", by documenting the Songhees' practical interpretation of the deal.

Since the Royal Proclamation of 1763, British policy in North America had been that the Crown would: a) make alliances or treaties with the established extra-colonial regimes and not interfere in native self-government; and, b) purchase "Indian title" prior to any colonial expansion into new territories. Making alliances and persuading natives to sell their British law title were the designated means for reducing "Indian wars."

Yet, to applause from the colonial Assembly, *MLA* George Foster declared, *With regard to Indian title, (some parties tell us) that we have to extinguish them; but they have never been acknowledged by this House, by any colony or by the English government. They never existed; we merely acknowledge that a compensation is due for changing their position. This the Home Government should do.*

Major Foster was a Puget's Sound Agricultural Company *(PSAC)* manager. The *PSAC* was the colonial endeavor that had introduced European-style agriculture to Songhees' territory. HBC Governor James Douglas had been a *PSAC* shareholder when he organized a series of "potlatchs" through which the Songhees had let the colonizers gain their first land-hold.

...Douglas describes the apparent precedent setting instance marking the displacement of extra-colonial authority and law in Lekwungen territory at length. It began after a Songhees man killed some colonial cattle. At the core of this incident were two philosophically different orientations to land. The various tenures involving shared land use that are common to the original Peoples are incompatible with the exclusive usage rights implied by a British fee simple title. When the Songhees granted the colonists access to land through the Douglas potlatches, it is inconceivable that they had in mind that they were undertaking the suicide of surrendering sufficient of their usage rights to create a risk of starvation. Or that, in the "sale" of some land use rights, they also might be vacating to a foreign power the sovereign right to regulate the use of this land. When a British subject buys land located in France, that land does not suddenly become free of French regulation: British subjects must obey French rules.

Once the *PSAC* began increasing the pace of industrial agriculture, it soon would have become plain that "wildcrafting" would require ever more Songhees' labor for a shrinking livelihood. It would not have helped that, in addition to the *PSAC's* agricultural activities designed for supplying non-native markets, the *HBC* had begun increasing its revenues by attracting Northerners who would be competing with the Songhees for fish and game during their stays among the colonists.

Farming and hunting are not inherently incompatible land uses. However, when farmers begin displacing animals hunted for food by running sheep or cattle in excessive numbers, farming soon diminishes a hunter's usage. One cow might displace three deer. An acre of barley planted for whiskey might see a month of camas meals lost.

The Songhees man at the center of this pivotal case reacted to these developments in a predictable way: he killed a cow that had consumed the food supply normally due to his family. Apparently, he believed that the colonists had begun exploiting the land beyond the margins at which families entitled to joint usage under Songhees law were being deprived of their livelihoods. The Songhees demonstrated that they believed their countryman was in the right under the established laws. Until this confrontation, the Songhees had no reason to believe anything but that the constitution applicable to governing Songhees territory preserved their law as the law of the land. It is only in colonial ideology that an agreement conveying land use privileges might be interpreted as consent for constitutional change.

The following is a condensed version of Douglas' report that preserves the material facts without his word for word verbiage.

(The native who had killed the cattle) took refuge in the principal Songhees village near Victoria. The (colonial) constable and his retinue of ten men were surrounded by a tumultuous throng of armed Songhees who were restrained

only at the point of bayonets. They (the colonial party) retreated without having executed the warrant and with the loss of two muskets and a boat. A new (colonial) party seized the accused in the morning. I sent another party to demand the boat and muskets. They refused unless the accused was freed. I ordered out rifles and placed a boat where it could be used to attack the village…. The men appeared unmoved at first. But they had two hours to reflect on the consequences of pushing the matter further and then gave up. In the morning, the Songhees chief made proffers of compensation for the slaughtered cattle and quiet was restored.

So, the colonial community incrementally increased its control while incrementally displacing indigenous authority. Douglas refers to a "warrant." This document arose under a British procedure through which a magistrate would pretend to have the appropriate authority to order the arrest of a Songhees man. However, the Crown had no treaty with the Songhees that might allow its agents to execute warrants targeting Songhees individuals in Songhees territory. Even Douglas did not argue this case on its merits. He well-knew that the colonists – who, in 1852, effectively were only the *PSAC* of which he was a shareholder – were depriving the Songhees of their livelihoods. His justification was the insurrectionist one that, somehow, Songhees' authority no longer applied in Songhees territory whenever it might be inconvenient for the colonists' agenda.

The Lekwungen territory template provided a formula for both dispossession and subjugation. Where one community might apply the established laws to offensive settlers, the colonial authorities would humiliate that community by demonstrating its *de facto* weakness. As long as that community could not rally others to its cause, colonists could disrespect the extra-colonial authorities and their legal process with impunity. After the Douglas potlatch/purchases in the early 1850s, according to enquires made by Bishop George Hills about the welfare of the Songhees under the Douglas administration, more than half of them had disappeared by 1860. So, Lekwungen territory was also the first case where Douglas and the North Pacific colonizers created conditions of life that were sure to reduce the native population.

From the colonizers' foothold on southern Vancouver Island, neighboring Cowichan territory was the obvious target for expansion. Yet, before 1862, every effort to assert sovereign control over the Cowichan or to occupy their land had failed. In 1859, the Assembly openly worried about the inability of settlers "to contend" in an "Indian war" involving the more numerous Cowichans. Great numbers, alone, allowed native communities to project an effective *de facto* political presence. So, before 1862, settlers either accepted the Cowichan regime's conditions or they returned to Victoria.

The colonizers' failure to establish a foothold in Cowichan territory before 1862 revealed the extent to which the *HBC's* paramilitary presence and the navy at Esquimalt had been critical in Lekwungen territory. Applying the incremental model elsewhere would require the same readiness for violence at any sticking point. All things remaining equal - including native numbers - the cost of readiness for violence in territory after territory would be heavy: it could not be quantified yet even for Cowichan territory. Incremental assertions of control would benefit greatly from reducing the native capacity for resistance.

There was an alternate model for colonization. It was the California model used by the Americans below the border. This model put the initiative for the occupation of native territories with settler militias. Miners would flock to areas of interest without consent from the native authorities and then respond to resistance by beginning "Indian wars." These wars often included instances of genocide. Miner militias with experience in California applied this approach along the lower Fraser River. This activity produced the "Fraser River settlements." These settlements served as the first land hold for the Colony of *BC.* British magistrates assumed control from the militias in 1859 and continued displacing the indigenous authorities.

However, where the conditions for a quick pacification were not so well-concentrated as they were along the lower Fraser, this model was fraught with the prospect of protracted and costly "Indian wars." Moreover, farmers thinly distributed on 160-acre plots, pack trains crossing long distances and miners in isolated settings all would be more vulnerable to reactive native assertions of sovereignty than were highly-motivated gangs of outlaw miners. In 1859, Douglas licensed a party of California miners to establish a magistrate on Haida Gwaii in a move that might have begun the colonization of Haida territory on the California model. That attempt was stillborn, however, when even these hardened California miners became daunted at facing the "great numbers" of Haida who mustered to resist the invasion.

Before his appointment as Governor for the Colony of Vancouver Island, Douglas had said, *I am decidedly opposed to Indian wars as desperate remedies which should never be resorted to until all other means…have been tried in vain…. (T)he Government of Oregon, against tribes more domesticated …put 500 men in the field and the expense of one campaign came to $400,000 and yet (it) had not gained one object for which the war had been undertaken.*

So, in Douglas' considered and explicitly stated view, conventional wars should be used only as a last resort and where the targets could be overwhelmed with more readily definable costs. In Lekwungen territory, after gaining access by seemingly accepting the extra-colonial system, Douglas had asserted increments of control merely by showing a willingness to begin an "Indian war." ...Douglas' preferred approach was to gain access peacefully and then to abuse that access incrementally.

Timeline of Events *surrounding the* Douglas Treaties

1789 – crisis at Nootka between Spain and Britain marks the global significance of the northwest coast of America.

1790 – Nootka Sound Convention hosted by Maquinna: British and Spanish explorers agree to both navigate, fish, trade, and make treaties to settle in the Pacific Northwest. British trade on the coast is marked by warfare.

1790s-1870s – war on the coast is fought specifically for access to the primary fur trade supply and control of the seagoing HBC trade goods market. Raids on unauthorized mining parties and forts are answered by gunboats firing into villages; clashes on the water sink ships; entrances to key rivers are barricaded against the HBC; miners and pioneers burn houses and house posts. The Kwakiutl, Nootka and Haida control trade from the coast; the Tsimshian and Tlingit control trade from the Skeena and Stikine to the coast.

1793-1808 – North West Company (NWCo) fur traders follow the Grease Trail over the Rocky Mountains with native guides and reach the Pacific Ocean by land. Fraser, Alexander, and Mackenzie establish new trading posts.

1805 – NWCo founds "New Caledonia" at McLeod Lake, the first permanent trading post in the southern interior.

1812 – war between the USA and Britain ends in favour of the Canadas, due to alliance with Chief Pontiac. A border is established between British colonies and the USA. To the unsettled west, this line is contemplated but not demarcated.

1821 – Hudson's Bay Company (HBC) takes over the NWCo after war at Red River and begins building trading forts under the aegis that "as long as the sun shines and the three rivers flow, the newcomers will live and work side by side" the Indigenous nations and peoples. HBC outpost at Babine Lake is the first within the Northwest Interior where the economy is controlled by Gitksan, Wet'suwet'en and Nisga'a.

1825 – Russia and Britain make a treaty to separate their interests at the Alaska border.

1823 – American Chief Justice John Marshall rules in *Johnson v. McIntosh* that the "doctrine of discovery" principle does not amount to "ownership" but the exclusive right among Europeans to make land treaties with the Indigenous owners.

c. 1832 – Tribes assembled at Pavillion refuse to trade fish to HBC at Fort Kamloops. They refuse access to their most productive fishery to dry salmon at Lillooet. In response, the chief Kamloops trader tells them a smallpox epidemic is on its way, and succeeds in trading them 10,000 dry salmon for the only vaccine available. No epidemic comes at that time.

c. 1838 – HBC post at Fort Rupert, with permission of the Kwagiutl, at Tsaxis. Coal is mined from the beaches and sold to the HBC. Within ten years, the Company expands mining to the outrage of Kwakiutl leadership. By 1850, the fort is abandoned, workers flee, and two British sailors landed there (lost) are killed. Governor Blanshard shells the nearby Nahwhitti village in reply.

1840 – Puget's Sound Agricultural Company starts up as an enterprise for HBC officers to own shares in, and to feed HBC forts, based in Tacoma (presently Washington State, USA).

1843 – Chief Factor of HBC James Douglas, and Roman Catholic missionary Father Bolduc, decide on the site of Fort Camosun (later Victoria), in consultation with the Songhees leadership. Hundreds of Songhees people work for the HBC in constructing the fort, as well as supplying it with food and material, and are said to have considered it a joint venture.

1846 – the Oregon Treaty determines an international border west of Ontario along the 49th parallel between Britain and USA . The HBC post at Fort Vancouver (presently Washington State) moves to Fort Victoria (presently British Columbia).

An international village of many hundreds, if not thousanads, of people grows up near Ft. Victoria, each camp an outpost of its coastal nation.

1847 – the Whitman Massacre near Walla Walla (presently Washington State, not far from Fort Victoria in the unsettled Oregon Territory), involved members of the Cayuse killing 14 missionaries who allegedly introduced measles among them. It sparked a war-like pursuit by the US Cavalry, concluding in 1850 with the trial and hanging of five Cayuse accused.

1848 – California gold rush begins.

1849 – Britain claims 'Vancouver's Island,' and all its lands for the HBC charter and Colony of Vancouver's Island, to replace Fort Vancouver in the Oregon territory. The condition of this joint-venture in colonization is that settlement take place within five years.

1850/51 – land "purchased" around Ft. Victoria from the tribal nations there, for the HBC settlements, marks a grave misunderstanding – or bad faith on the part of HBC: appearing to the Original Peoples as a renewable tenure secured by potlatch, which is the law of their lands. The potlatch payments

of a few blankets and a few British pounds to each Headman are never repeated, and the agreed rights "to hunt and fish as formerly" are soon trampled by intensive agricultural grazing.

1852 – HBC launches the first salmon packing enterprise, for export, salting and barreling native-caught salmon.

The Puget's Sound Agricultural Company moves its livestock across the Strait of Juan de Fuca to the fields and hunting grounds surrounding Victoria. Cows and pigs raze the camas fields which are a food staple for the HBC treaty partners.

A Songhees Chief slaughters a cow on his hunting fields, following the retreat of wild game. Governor Douglas engages a gunboat to force the Chief's surrender and reparations.

1854 – Vancouver's Island is assumed by Britain, from the HBC, for a British-ruled colony. Land is purchased from the Nanaimo tribe for HBC settlement, particularly coal mining. The British Navy stations at Esquimalt Harbour.

1857 – The British Church Missionary Society's William Duncan arrives at Lax Kw'alaams, Fort Simpson, and begins aggressively to recruit Christian converts. Soon hundreds of these Tsimshian people relocate with Duncan to Metlakatla.

1858 – Fraser Gold Rush. Tens of thousands of miners approach the mainland interior via Victoria, where the HBC issue mining permits in areas where they have no land rights.

The Colony of British Columbia is declared by Britain, absorbing the HBC's trade charter into direct British rule.

1858/59 – Californian miner militias take over areas along the lower Fraser River for settlement, by lethal force. British rule does not contradict them.

1860 – Bishop George Hills reports that the Songhees population on their lands has diminished by half.

Governor Douglas orders Haida canoes at Victoria to be towed by gunboat to Johnstone's Pass.

c. 1860 – the first ever judicial hearings of murders of native people by white people are conducted by Judge Begbie during his court circuit in British Columbia.

1861 – Vancouver Island's Governor and House of Assembly beg the Secretary of State for the Colonies for assistance to buy more land for settlement, and are denied any assistance other than British gunboats and soldiers.

1861, summer – Governor Douglas visits several nations on the mainland, including Lil'wat, Squamish, Secwepemc, and Sto:lo peoples. The extensive oral history is that land agreements were made to the effect of keeping miners and settlers out of huge areas then surveyed and reserved only for those nations, alongside accepted routes for settler travel. However, although there is documentation that Douglas sent those agreements to Britain, there is no written record of them in the BC provincial archive.

1862 – height of Cariboo gold rush.

Smallpox arrives in Victoria. It appears among the international villages around the Fort, and the Governor expels them to return to their own nations, as well as burning down most of the Haida settlement near Fort Victoria. Government and HBC delegations bring smallpox carriers to areas that are most coveted by the colonists for expansion and to link travel routes, such as in the huge Cowichan nation between Victoria and Nanaimo (which had declined to make treaties with Douglas); the great villages at Bella Coola which control coastal access to the interior plateau and the Chilcotin; to Haida Gwaii, where the people's powerful resistance to colonial assertions of authority have long out-lasted Governor Douglas' attempts to buy favour with Haida's enemies or competitors. It appears in HBC blankets, distributed by gloved HBC hands to the people at either end of Harrison Lake – the key to travel between the lower mainland and the interior. Every nation recalls the introduction of smallpox by impromptu visits from HBC or government "survey" parties during the year 1862.

The vaccine bartered for at Pavillion 30 years before is not distributed beyond colonists at Ft. Victoria.

By the end of 1862, many (if not the majority of) villages previously full of Indigenous people are empty and abandoned as the small surviving fractions of the peoples join together to live in consolidated arrangements.

1862 – The *Preservation of Game Act* is passed and it outlaws fishing with nets in lakes and in Victoria harbour, as well as restricting hunting, contrary to Douglas' treaty provisions.

1864 – the Tsilhqot'in declare war against all whites, barring them entry and dispatching any who enter their country, in a response to the smallpox warfare visited upon them. 18 white roadbuilders re killed at the start of this war, in April.

In May a well-planned gathering at New Westminster is attended by thousands along with their Chiefs and leadership, having been invited some time earlier. The oral history of this event is that Governors Douglas and his successor Seymour were forced to appear to the Peoples and offer public, witnessed terms of peace and amelioration, including a percentage of the government's profit from off-reserve land use. Sharing of profits is recalled by Elder historians of every nation in other meetings as well, but denied ever after by BC. The New Westminster May gatherings continue for ten years, until in 1875 the Lower Fraser Chiefs refuse to attend and follow up their 1874 Petition with a statement of condemnation against the Governors and Queen.

Governor Douglas retires.

1874 BC Lands Act

report of the Attorney General

Télèsphore Fournier

Three years after confederation with Canada, the province of British Columbia passed its own legislation concerning the status of land within its very recent borders.
The 1874 *Act* was deemed unconstitutional, and disallowed. Here follows the report on the matter, approved by the Minister of Justice:

"The Committee of the Privy Council have had under consideration the Report from the Minister of Justice, ...and they respectfully submit their concurrence in the views and recommendations set forth in the said Report, and advise that a copy be transmitted to the Right Honourable H.M. Secretary of State for the Colonies & to the Lieut. Governor of British Columbia.

Fournier's report, Jan. 1875:

That of the Acts passed by the Legislature of the Province of British Columbia in the 37th year of Her Majesty's reign and assented to on the 2nd March 1874 is the following:
No. 2 entitled "An Act to ammend and consolidate the Laws affecting Crown Lands in British Columbia." The title of the Act explains its objects.

...the words "Crown Lands" may, for the purposes of this memorandum, be considered to mean all lands in the Province vested in the Crown of which no grant has been made.

...The undersigned refers to the Order in Council under which the Province of British Columbia was admitted into the Dominion, and particularly the 13th Section as to the Indians which is as follows:

> "The charge of the Indians and the Trusteeship and management of the lands reserved for their own use and benefit, shall be assumed by the Dominion Government, and a policy as liberal as that hitherto pursued by the British Columbia Gov't 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 by the Local Government to the Dominion Government, in trust for the use and benefit of the Indians on application of the Dominion Government; and in case of disagreement between the two Governments respecting the quantity of such tracts of land to be so granted, the matter shall be reserved for the decision of the Secretary of State for the Colonies."

...having regard to the known existing and increasing dis-satisfaction of the Indian Tribes of British Columbia at the absence of adequate reservations of land for their use, and at the liberal appropriation for those other parts of Canada upon surrender by Treaty of their territorial rights, and the difficulties which may arise from the not improbable assertion of that dissatisfaction by hostilities on their part, the undersigned deems it right to call attention to the legal

Excerpt from:

An Act to amend and consolidate the Laws affecting Crown Lands in British Columbia

Unsurveyed Land

3. Any person being the head of a family, a widow, or single man over the age of eighteen years, and being a British Subject, or any alien upon making a declaration of his intention to become a British subject, ...may record any tract of unoccupied, unsurveyed, and unreserved Crown lands (not being an Indian settlement) not exceeding 320 acres in extent, in that portion of the Province situate to the northward and eastward of the Cascade or Coast Range of Mountains, and 160 acres in extent in the rest of the Province. **Provided, that such right shall not be held to extend to any of the Aborigines of this Continent...**

position of the Public Lands of the Province.

The Undersigned believes he is correct in stating, that with one slight exception as to land in Vancouver Island surrendered to the Hudson's Bay Company which makes the absence of others the more remarkable no surrenders of land in that Province have ever been obtained from the Indian Tribes inhabiting it, and that any reservations which have been made, have been arbitrary on the part of the Government and without the assent of the Indians themselves, and although the policy of obtaining surrenders at this lapse of time and under the altered circumstances of the Province may be questionable, yet the Undersigned feels it his duty to assert such legal or equitable claim as may be found to exist on the part of the Indians.

There is not a shadow of doubt that, from earliest times, England has always felt it imperative to meet the Indians in Council and to obtain surrenders of tracts of Canada as from time to time such were required for the purposes of settlements. The 40th article of the Treaty of Capitulation of the City of Montreal, dated 8th September 1760, is to the effect that:

> **"The Savages or Indian allies of His Most Christian Majesty shall be maintained in the lands they inhabit if they choose to remain there."**

The Proclamation of King George III in 1763 erecting within the Countries and Islands, ceded and confirmed to Great Britain by the Treaty of the 10th February 1763, four distinct Governments styled Quebec, East Florida, West Florida and Granada, contains the following clauses:

[Here, at p. 12 to 21 this Report quotes verbatim the "Indian part" of the proclamation reproduced above, from "Whereas it is just and reasonable" to "in order to take their trial for the same." The only parts reproduced now are the parts underlined by the Minister of Justice and Deputy Minister in the original.]

> **"...such parts of our dominions and territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them as their hunting grounds;..**
> **...or upon any lands whatever, which not having been ceded to or purchased by us, as aforesaid, are reserved to the said Indians, or any of them...**
> **...and we do strictly enjoin and require all persons whatsoever, who have either wilfully or inadvertently seated themselves upon any lands within the Countries above described, or upon any other lands, which not having been ceded to or purchased by us, are reserved to**

> **the said Indians as aforesaid, forthwith to remove themselves from such settlements."...**

It is not necessary now to inquire whether the lands to the west of the Rocky Mountains and bordering on the Pacific Ocean form part of the lands claimed by France, and which, if such claim were correct, would have passed by cession to England under the Treaty of 1763; or whether the title of England rests on any other ground; nor is it necessary to consider whether the Proclamation covered the land now known as British Columbia. It is sufficient for the present purposes to ascertain the policy of England in relation to the acquisition of the Indian territorial rights, and how entirely that policy has been followed to the present time, except in the instance of British Columbia.

It is also true that the Proclamation of 1763 to which allusion has been made, was repealed by the Imperial Statute 14 George III, Ch: 83, known as "The Quebec Act" but that Statute merely, so far as regards the present case, annuls the Proclamation, "so far as the same relates to the Province of Quebec and the Commission and authority thereof, under the authority whereof the Government of the said Province is at present administered" and the Act was passed for the purpose of effecting a change in the mode of the Civil Government of the administration of Justice in the Province of Quebec.

The Imperial Act 1821, 1st & 2nd George 4, Ch: 66 for regulating the Fur Trade and establishing a Criminal and Civil jurisdiction within certain parts of North America, legislates expressly in respect to that portion of the Continent which is therein spoken of as "the Indian territories", and by the Imperial Act 1849, 12 & 13 Vic: Ch: 48 "An Act to provide for the Administration in Vancouver's Island", the last mentioned Act is recited and it is added in recital that "for the purpose of the colonization of that part of the said Indian Territories called Vancouver's Island, it is expedient that further provision should be made for the administration of justice therein."

The Imperial Act 1858, 21 and 22 Vic: Ch: 98, "An Act to provide for the Government of British Columbia" recites,

> **"that divers of Her Majesty's subjects and others have, by the license and consent of her Majesty, resorted to and settled on certain wild and unoccupied territories on the North West Coast of North America now known as 'New Caledonia' from and after the passing of the Act to be named British Columbia and the Islands adjacent..."**

The determination of England, as expressed in the Proclamation of 1763 that the Indians should not be molested in the possession of such parts of the dominions and territories of England as, not having been ceded to the King, are reserved to them, and which extended also to the prohibition of purchase of lands from the Indians, except only by the Crown itself - at a public meeting or assembly of the said Indians to be held by the Governor or Commander in Chief has, with slight alterations, been continued down to the present time, either as the settled policy of Canada or by Legislative provision of Canada, to that effect, and it may be mentioned that, in furtherance of that policy, so lately as in the year 1874, treaties were made with various tribes of Indians in the North West

considering...
...the Indian Tribes of the Province never surrendered their Territorial rights;
...the arbitrary Reserves are totally inadequate to their support and requirements, and without their assent;
...they are not averse to hostilities to enforce rights which it is impossible to deny them;
...the Act ignores those rights and prohibits them from recording or pre-empting Land:
then, the BC Public Lands Act should be disallowed.

~

Territories, and large tracts of lands, lying between the Province of Manitoba and the Rocky Mountains, were ceded and surrendered to the Crown, upon conditions of which, the reservations of large tracts for the Indians and the granting of annuities and gifts annually, formed an important consideration: and, in various parts of Canada, from the Atlantic to the Rocky Mountains, large and valuable tracts of land are now reserved for the Indians, as part of the consideration of their ceding and yielding to the Crown their territorial rights in other portions of the Dominion.

* Considering, then, these several features of the case - that no surrender or cession of their Territorial rights, whether the same be of a legal or equitable nature, has been ever executed by the Indian Tribes of the Province; that they allege that the reservations of land made by the Government, for their use have been arbitrarily so made and are totally inadequate to their support and requirements, and without their assent - that they are not averse to hostilities in order to enforce rights which it is impossible to deny them, - and that the Act under consideration not only ignores those rights, but expressly prohibits the Indians from enjoying the rights of recording or preempting Lands, except by consent of the Lieutenant Governor, - the Undersigned feels that he cannot do otherwise, than advise that the Act [No. 2: the BC Public Lands Act] in question is objectionable, as tending to deal with lands which are assumed to be the absolute property of the Province, an assumption which completely ignores, -as applicable to the Indians of British Columbia, - the honour and good faith with which the Crown has in all other cases, since its sovereignty of the territories in North America dealt with their various Indian Tribes.

The Undersigned would also refer to the B.N.A. Act 1867 Sec. 109, applicable to British Columbia, which enacts in effect that, all lands belonging to the Province, shall belong to the Province "subject to any trust existing in respect thereof, and to any interest other than that of the Province in the same." That which has been ordinarily spoken of as the "Indian Title" must, of necessity, consist in some species of interest in the lands of [p. 31] British Columbia. If it is conceded, that they have not a freehold in the soil but that they have an usufruct, - a right of occupation, or possession of the same for their own use, then it would seem that these Lands of British Columbia are subject, if not to a "trust existing in respect thereof," at least to "to an Interest other than that of the Province alone."

The Undersigned, therefore, feels it incumbent upon him to recommend this Act should be disallowed. ❞

TOUCHSTONE

BC *Lands Act*, ongoing

On the 150th anniversary of BC's 1859 February 14th declaration that it owns the province in fee, the government prepared a change to the way it disposes of land by licensing and sale. This land scheme aimed to resolve the problem that British Columbia never gained legal title to the lands within its colonially-declared borders. The 2009 "Recognition and reconciliation" legislation was engineered with approval of the First Nations Leadership Council. This is an advocacy group formed by the executive of the Assembly of First Nations (BC), the First Nations Summit (part of the BC Treaty Commission project) and the Union of BC Indian Chiefs (since 1969) - all of which have First Nation or Indian Band members as the constituent body. While the executive FNLC gave its considerable political support to the new legislation, its member Chiefs did not feel heard on the matter and an ensuing series of workshops in eight regions revealed that the people strongly opposed it. The R&R legislation was sunk, and subsequently scrubbed from online memory.

The problem of "uncertainty" on the land in BC is the result of colonial denial of the Indigenous title, jurisdiction and rights in their countries, starting with the unilateral assertion of sovereignty by the crown and continuing with each successive government's legislative and police or military suppression of those rights - many of which are mentioned in this journal.

The Recognition legislation was an attempt to resolve that uncertainty by gaining Indigenous approval of BC's land plans, however dubious, by that participation in the legislation.

BC has lost many a Supreme Court case for the lack of it.

In early 2024, on the 150th anniversary of the original BC *Lands Act*, the province again attempted to amend the legislation. This time it would simply legislate licensing and land use approvals through a formulaic consultation and accomodation process, formally acknowledging recent Canadian Supreme Court rulings on the rights of Indigenous communities to have a say.

It was abandoned only weeks into the public consultation process, amid clear public disapproval of accountability to Indigenous title holders.

The status of the land has been contended by Indigenous Peoples since Europeans arrived. Originally, there was no contest: there were desperate sailors and healthy, natural nations governing and living in a stable, sustainable fashion. Then there were gunboats; more sailors; soldiers; biological warfare; and increasing waves of unstable and unsustainable settlement which have brought us to the present day.

The province and its citizens have demonstrated a resilient dismissal and disdain for the Peoples whose lands it consumes. The tools of legislation, coercion, brute force and forcible assimilation continue to be the mode of choice for the future. But neither have the native nations changed their position on being eclipsed from the future, just a graft cut from their ancient roots.

Canada's solution

to BC's *Lands Act:*

After the 1874 British Columbia *Lands Act* statute appeared to repeal the *Royal Proclamation of 1763* as well as s.109 of the *British North America Act*, the Canadian Privy Council enacted an Order-in-Council to disallow it, which the Governor General duly did.

Then Fournier was appointed to the Supreme Court and replaced as Attorney General by Edward Blake.

BC renewed their *Lands Act,* and Blake persuaded the cabinet not to disallow it. He explained: "Great inconvenience and confusion might result from its disallowance." The Governor General went along with this ascendancy of political expediency over constitutional supremacy.

Continuing in this way, Attorney General Blake enacted the first *Indian Act* in 1876, inventing municipal-style Indian governments subject to federal and provincial laws of general application - even on unceded Indian land and on lands protected by Treaties.

Blake became president of the Privy Council in 1877, the higest legal authority in Canada and answerable to the British crown.

Synopsis from Ongoing Genocide caused by Judicial Suppression of the "Existing" Aboriginal right, *by Bruce Clark, 2019.*

Introducing *Archive Quarterly*

This publication is the unexpected result

of a project that began investigating the ongoing legacy of Indigenous "roadblocks" in British Columbia.

Asking the questions, "what led up to a "stand-off" position?" and, "what has happened since that event… ie, court case? Resolution? Further conflict? Real change?", the answer is that so many events contribute to the situation, amid such an extensively sordid history of colonization, that the result would be too long for a book; even a series of books.

In the meantime, the collection of archival material and interviews has taken on a life of its own, both by being sought out and retrieved from forgotten places, and by being donated to the Roadblock project. The collection seems to ask for its own rightful place, where people can access the evidence and information.

That's where AQ emerges. This journal accompanies the research process as an intermittent communication; a curated cluster of materials that should be read together.

AQ is here to add to the political work of keeping that history, west of the Rocky Mountains. It is also here to bring attention and support to a comprehensive and focused archive as will vindicate Indigenous land defenders and prevent further acts of genocide by promoting education, understanding, and memory among non-native people; and a fair future For Indigenous Peoples. And perhaps, then, an end to roadblocks.

With a big shout for the people of the land; for the generosity and grace of the tireless indigenous instructors at the University of the Kitchen Table; with thanks to our supporters, and the hope you will benefit by this work,
Kerry Coast, editor

In every issue:

Original sources
in Archival documents
Touchstone essays
for context
Related events
giving insight
Quotes
for the ages
Interviews
with the Elders
Book reviews
Maps
Timelines
That Day in Court
Fact check
Anniversaries
to remember
In print and digital copy: April, July, October, and January.

What can AQ do for you?

Online Collection

Digitization is an ongoing work in progress. As stored materials are retrieved and digitized, they are uploaded to www.thewestwasntwon.com where they are free to download. A subscription to that will help keep you advised on new entries and articles.

Deposit

The Archive Project is working to offer a safe repository for household and personal collections, original or copied. We can work together to preserve materials and digitize them, making original sources accessible to others.

Travelling Exhibits

Curated exhibits provide experiences of history in motion. A binder full of roadblock news clippings mimics a stop-motion film that transports the viewer along a somber narrative. Surround-displays of timeline pieces reveal the cyclical progress of relapsing affairs, particularly visible in a year-by-year diorama of the power struggle over the care of Aboriginal children.

The BC treaty process remains a mysterious institution, with little media insight, until 30 colourful annual BCTC reports is set into a chronological layout studded by court cases, protest, and international attention.

Special Issues

When today's news announces a change, or progress, it can be hard to put it in context. Providing detailed overviews, extra issues will focus on Aboriginal Title in the courts, June; and Children and Families, December.

Take this QR key to follow, subscribe, reply, donate, and use archived resources:

110 Chiefs Protest

To the Indian Commissioner for the Province of British Columbia:

The petition of the undersigned, Chiefs of Douglas Portage, of Lower Fraser, and of the other tribes on the seashore of the mainland to Bute Inlet, humbly sheweth:

1. That your petitioners view, with a great anxiety, the standing question of the quantity of land to be reserved for the use of each Indian family.

2. That we are fully aware that the Government of Canada has always taken good care of the Indians, and treated them liberally, allowing more than one hundred acres per family; and we have been at a loss to understand the views of the Local Government of British Columbia, in curtailing our land so much as to leave, in many instances, but few acres of land per family.

3. Our hearts have been wounded by the arbitrary way the Local Government of British Columbia have dealt with us in locating and dividing our Reserves. Chamiel, ten miles below Hope, is allowed 488 acres of good land for the use of twenty families: at the rate of 24 acres per family; Popkum, eighteen miles below Hope, is allowed 369 acres of good land for the use of their families: at the rate of 90 acres per family; Cheam, twenty miles below Hope, is allowed 375 acres of bad, dry and mountainous land for the use of twenty-seven families: at the rate of 13 acres per family; Yuk-Yuk-y-yoose, on Chilliwack River, with a population of seven families, is allowed 42 acres: 5 acres per family; Sumass, at the junction of Sumass River and Fraser, with a population of seventeen families, is allowed 43 acres of meadow for their hay, and 32 acres of dry land; Keatsy, numbering more than one hundred inhabitants, is allowed 108 acres of land. Langley and Hope have not yet got land secured to them, and white men are encroaching on them on all sides.

4. For many years we have been complaining of the land left us being too small. We have laid our complaints before Government officials nearest to us; they sent us to some others; so we had no redress up to the present; and we have felt like men trampled on, and are commencing to believe that the aim of the white men is to exterminate us as soon as they can, although we have always been quiet, obedient, kind and friendly to the whites.

5. Discouragement and depression have come upon our people. Many of them have given up the cultivation of land, because our gardens have not been protected against the encroachment of the whites. Some of our best men have been deprived of the land they had broken and cultivated with long and hard labour, a white man enclosing it in his claim, and no compensation given. Some of our most enterprising men have lost part of their cattle, because white men had taken the place where those cattle were grazing, and no other place left but the thickly timbered land, where

Chief Peter Ayessik to the Superintendent of Indian Affairs

New Westminster, July 14th, 1874.

SIR, - Having been, along with some others, commissioned by the Chiefs to present our common petition to you, we have come down to New Westminster yesterday, and, after consultation, we came to the conclusion to send the petition by mail.

You have told Alexis and myself not to go down till you send notice.

We expect to hear from you, through Rev. Father Durieu, at New Westminster.

I have, &c.,

(Signed) Peter Ayessik, Chief of Hope.

In these 150 years since the Province took everything but an acre per person, while settlers encroached from all sides, Indian Reserve boundaries have rarely, and barely, increased.

they die fast. Some of our people are now obliged to cut rushes along the bank of the river with their knives during winter to feed their cattle.

6. We are now obliged to clear heavy timbered land, all prairies having been taken from us by white men. We see our white neighbours cultivate wheat, peas, &c., and raise large stocks of cattle on our pasture lands, and we are giving them our money to buy the flour manufactured from the wheat they have grown on the same prairies.

7. We are not lazy and roaming-about people, as we used to be. We have worked hard and a long time to spare money to buy agricultural implements, cattle, horses, etc., as nobody has given us assistance. We could point out many of our people who have, those past years, bought, with their own money, ploughs, harrows, yokes of oxen, and horses; and now, with your kind assistance, we have a bright hope to enter into the path of civilization.

8. We consider that 80acres per family is absolutely necessary for our support, and for the future welfare of our children. We declare that 20 or 30 acres of land per family will not give satisfaction, but will create ill feelings, irritation amongst our people, and we cannot say what will be the consequence.

9. That, in case you cannot obtain from the Local Government the object of our petition, we humbly pray that this our petition be forwarded to the Secretary of State for the Provinces, Ottawa.

Therefore your petitioners humbly pray that you may take this our petition into consideration and see that justice be done us, and allow each family the quantity of land we ask for.

And your petitioners, as in duty bound, will ever pray.

(Signed) Peter Ayesik,
Chief of Hope,
And 109 others.

I hereby testify that the Chiefs above referred to met together in my presence, and the above petition is the true expression of their feeling and of their wishes.
(Signed) Peter Ayessik,
Chief of Hope

Note that:

Many generations ago, the new colonial administration reduced Indian Reserves to small, site-specific areas. They did so in contempt of years of cooperation, the laws of the Indigenous nations, and areas surveyed by Governor Douglas to many of the Peoples' satisfaction.

So in 1875, following the lack of response to their Petition and as a formal refusal to attend Governor Seymour's invitation, they said:

We have heard that you have obtained from the Dominion some money in our name in order that we should celebrate properly the Queens Birthday.

We come to inform you that we do not wish to celebrate the Queen's day. ...She knows that the British Columbia Government has deprived us of our land leaving but few acres and in some cases not even one acre per head; she knows that we have made a petition nearly one year ago praying that 80 acres [go] to every family. She has not yet said a word in our favour. If she is so great as we have been told, she must be powerful enough to compel the British Columbia Government to extend our present Reserves so that every Indian family will have 80 acres of land.

We come to tell you to send back the money the Dominion allowed for the celebration of the Queen's day. We do not wish it to be spent for us as long as our land question is not settled according to our wishes.

...White men are coming in great numbers and take all the land around our villages. If our land question is not settled immediately ... We will be forced to act as Seashell Indians have done with just reason this winter, drive out every whiteman who would try to preempt the lands we wish to have outside our present Reserves...

In 1924, every community and tribal nation adhered to a petition to Parliament to fight adoption of the McKenna-McBride BC "Indian Reserve Commission" report.

That petition continued half a century of an Indigenous defense movement which included delegations to Ottawa and England, Declarations of outright ownership, Notices of dispute, addresses to the Privy Council court; meetings where hundreds of chiefs attended at Fort Rupert, Kamloops, Vancouver, Hope, Spences Bridge, and New Westminster.

And in 1924, with supreme indifference, Canada legislated the disputed Indian Reserve land boundaries as made by its own Commission.

The Allied Tribes petitioned Parliament, again, to correct the travesty of the Reserve Commission and demand an honourable, impartial tribunal to hear the land problem and address the injustice.

ALLIED TRIBES PETITION TO PARLIAMENT

The Petition of the Allied Indian Tribes of British Columbia humbly showeth as follows:

1. This Petition is presented on behalf of the Allied Indian Tribes of British Columbia by Peter R. Kelly, Chairman duly authorized by resolution unanimously adopted by the Executive Committee of Allied Tribes on 19th December, 1925.

2. When British Columbia entered Confederation Section 109 of the British North America Act was made applicable to all public lands with certain specific exceptions. By virtue of the application of this Section it was enacted that the public lands belonging to the Colony of British Columbia should belong to the new Province. By virtue of the application of the same Section as explained by the Minister of Justice in January, 1875, all territorial land rights claimed by the Indian Tribes of the Province were preserved and it was enacted that such rights should be an "interest" in the public lands of the Province. The Indian Tribes of British Columbia claim actual beneficial ownership of their territories, but do not claim absolute ownership in the sense of ownership excluding the title of the Crown. It is recognized by the Allied Tribes that there is in respect of all the public lands of the Province an underlying title of the Crown, which title at least for the present purposes it is not 'thought necessary to define.'

3. In order to make clear what is meant by an "interest" the Petitioners quote the following words of Lord Watson to be found in the Indian Claims Case—L.R. 1897 A.C. at page 210: 'An interest other than that of the Province in the same appears to denote some right or interest in a third party independent of, or capable of being vindicated in competition with, the beneficial interest of the old Province.'

4. The position taken by the Allied Tribes was placed before Parliament by means of Petition presented to the House of Commons on 23rd March, 1920 and read in the House of Commons and recorded on 26th March, 1920 (Hansard, p. 825) and Petition presented to the Senate on 9th June, 1920, to all contents of which two Petitions the Petitioners beg leave to refer.

5. In the month of August, 1910, Sir Wilfrid Laurier, having been advised by the Department of Justice that the Indian land controversy should be judicially decided, met the Indian Tribes of Northern British Columbia at Prince Rupert and speaking on behalf of Canada said — "I think the only way to settle this question that you have agitated for years is by a decision of the Judicial Committee, and I will take steps to help you."

6. By agreement which was entered into by the late Mr. J. A. J. McKenna Special Commissioner on behalf of the Dominion of Canada and the late Premier Sir Richard McBride on behalf of the Province of

British Columbia in the month of September, 1912, and before the end of that year adopted by both Governments, it was stipulated that by means of a Joint Commission to be appointed, lands should be added to Indian Reserves and lands should be cut off from Indian reserves. By that agreement it was provided that the carrying out of its stipulations should be a "final settlement of all matters relating to Indian affairs in the Province of British Columbia."

7. On the 30th day of June, 1916, the Royal Commission on Indian Affairs for the Province of British Columbia appointed in pursuance of the agreement above mentioned issued Report which was placed in the hands of both Governments.

8. In the month of September, 1916, the Duke of Connaught, acting as His Majesty's Representative in Canada and in response to a letter which had been addressed to him on behalf of the Nishga Tribes and the Interior Tribes, gave assurances communicated by His Secretary to the General Counsel of the Allied Tribes in the following words:

> "His Royal Highness has interviewed the Honourable Dr. Roche with reference to your letter of the 29th May and your interview with me and I am commanded by His Royal Highness to state that he considers it is the duty of the Nishga Tribe of Indians to await the decision of the Commission, after which, if they do not agree to the conditions set forth by that Commission, they can appeal to the Privy Council in England where their case will have every consideration. As their contentions will be duly considered by the Privy Council in the event of the Indians being dis-satisfied with the decision of the Commission, His Royal Highness is not prepared to interfere in the matter at present and he hopes that you will advise the Indians to await the decision of the Commission."

9. The Allied Tribes have always been and still are unwilling to be bound by the agreement above mentioned and have always been and still are unwilling to accept as final settlement the findings contained in the Report of the Royal Commission.

10. In the year 1920 the Parliament of Canada enacted the law known as Bill 13 being Chapter 51 of the Statutes of that year authorizing the Governor-General in Council to carry out the agreement above mentioned by adopting the Report of the Royal Commission. From the preamble and the enacting words the professed purpose of the Bill appeared to be that of effecting settlement by actually adjusting all matters.

11. In course of debate regarding Bill 13 held in the Senate of 2nd June, 1920, Sir James Lougheed, leader of the then Government in the Senate, answering remarks of Senator Bostock by which was expressed the fear that if the Bill should become law the Indians might "entirely be put out of Court and be unable to proceed on any question of title," gave the following assurance (Debates of Senate—1920, p. 475 col. 2):

> "I might say further, honourable gentlemen, that we do not propose to exclude the claims of Indians. It will be manifest to every honourable gentleman that if the Indians have claim- anterior to Confederation or anterior to the creation of the two Crown Colonies in the Province of British Columbia- they could be adjusted or settled by the Imperial Authorities. Those claims are still valid. If the claim be a valid one which is being advanced by this gentleman and those associated with him as to the Indian Tribes of British Columbia being entitled to the whole of the lands of British Columbia this Government cannot disturb that claim. That claim can still be asserted in the future."

12. Upon occasion of interview had with the Executive Committee of allied Tribes at Vancouver on 27th July, 1923, the Minister of Interior speaking on behalf of the Government of Canada conceded that the

allied Tribes are entitled to secure judicial decision of the Indian land controversy and gave assurance that the Dominion of Canada would help them in securing such decision.

13. By Order-in-Council passed in the month of August, 1923, the Government of the Province of British Columbia adopted the Report of the Royal Commission.

14. By Memorandum which was presented to the Government of Canada on 29th February, 1924, the Allied Tribes opposed the passing of Order-in-Council of the Government of Canada adopting the Report of the Royal Commission upon the ground, among other grounds, that no matter whatever relating to Indian affairs in British Columbia having been fully adjusted and important matters such as foreshore rights, fishing rights and water rights not having been to any extent adjusted, the professed purpose of the Agreement and the Act had not been accomplished.

15. By Order-in-Council passed 19th July, 1924, the Government of Canada, acting under Chapter 51 of the Statutes of the year 1920 and upon recommendation of the Minister of the Interior adopted the Report of the Royal Commission.

16. From the Memorandum issued by the Deputy Minister of Justice on 29th February, answering questions which had been submitted by the Allied Tribes to the Government of Canada, the Order-in-Council passed on 19th July, 1924, and the Memorandum issued by the Deputy Minister of Indian Affairs on 9th August, 1924, it clearly appears as is submitted that both the Department of Justice and the Department of Indian Affairs regard the Statute Chapter 51 of the year 1920 as intended, not for bringing about an actual adjustment of all matters relating to Indian affairs, but for the purpose of bringing about a legislative adjustment of all such matters and thus effecting final settlement under the laws of Canada without the concurrence or consent of the Indian Tribes of British Columbia.

17. The Allied Tribes submit that, so far as Section 2 being the main enactment of Chapter 51 may be interpreted as being intended for accomplishing the purpose above mentioned and thus bringing to an end all aboriginal rights claimed by the Indian Tribes of British Columbia, that enactment is in conflict with the provisions of the British North America Act.

18. On the 15th January, 1925, the Executive Committee of the Allied Tribes unanimously adopted the following resolution:

> "In view of the fact that the two Governments have passed Orders-in-Council confirming the Report of the Royal Commission on Indian Affairs, we the Executive Committee of the Allied Tribes of British Columbia are more than ever determined to take such action as may be necessary in order that the Indian Tribes of British Columbia may receive justice and are furthermore determined to establish the rights claimed by them by a judicial decision of His Majesty's Privy Council."

Note that:

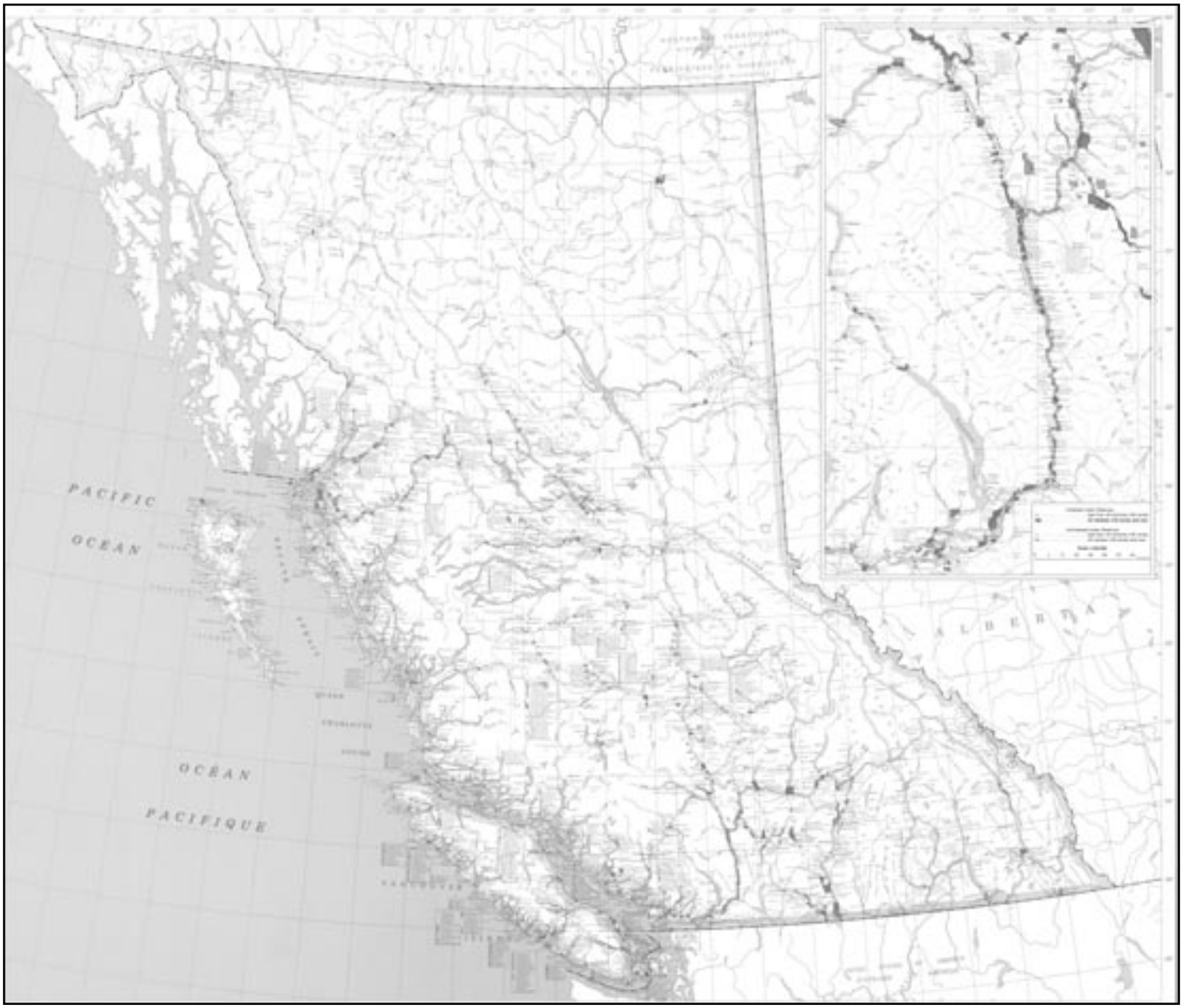
The Allied Tribes' progress to the Privy Council was stonewalled by the politicians, who refused to constitute a proper hearing of the legal action.

The "Claims of the Allied Indian Tribes of British Columbia" instead became the subject of an Inquiry by Canada's Senate and House of Commons, at the end of 1926. The Committee, which included Duncan C. Scott, dismissed the *Claims.*

Parliament followed up the *Claims* Inquiry by amending the *Indian Act* to prohibit gatherings to discuss the land issue, and prohibit lawyers from representing "any claim" for the legal benefit of the Indians.

After dismissing them, Canada budgeted $100,000 annually for the Indians of BC, "in lieu of treaties."

Map of Indian Reserves in BC *by Energy, Mines and Resources Canada*



Energy, Mines and Resources Canada
Energie, Mines et Ressources Canada

NATIONAL ATLAS DATA BASE MAP SERIES, MAP No. NADM-5

CANADA-INDIAN AND INUIT COMMUNITIES BRITISH COLUMBIA

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INDIAN AND INUIT COMMUNITIES

Inhabited Indian Reserves
- a ..... less than 809 hectares (2 000 acres)
- ha ..... 809 hectares (2 000 acres) and over

Uninhabited Indian Reserves
- a ..... less than 809 hectares (2 000 acres)
- ha ..... 809 hectares (2 000 acres) and over

Settlements
- Indian
- Inuit*

Other Communities*
- Indian
- Inuit

*There are no Inuit Settlements or Other Indian or Inuit Communities in British Columbia.

NOTE:

No definite statement on the precise legal status of Indian Reserve or Settlement land can be made without extensive enumeration of particular cases. In general terms, an Indian Reserve is a tract of land the legal title to which is vested in Her Majesty, and which has been set apart for the use and benefit of an Indian Band. The Indian Reserves are administered under the terms of the Indian Act, R.S.C. 1970.

Indian or Inuit Settlements, although situated on Crown land, are not subject to the terms of the Indian Act.

Other Indian or Inuit Communities represent distinct centres of native population.

No information is shown for Reserves, Settlements or Other Communities outside the Province of British Columbia.

Land boundary information for Indian and Inuit Communities is based on data available as of January, 1983. The Indian Reserve designations as inhabited or uninhabited, are based on estimates of registered Indian population as of December 31, 1980.

This map was prepared in consultation with officials of Indian and Northern Affairs Canada and Legal Surveys Division, Surveys and Mapping Branch, Energy, Mines and Resources Canada. Research by I. Jose and R. W. Berglund, Geographical Research, Geographical Services Division, Surveys and Mapping Branch, Energy, Mines and Resources Canada.

Cartography by Cartography and Toponymy, Geographical Services Division, Surveys and Mapping Branch, Energy, Mines and Resources Canada.

In July we will look at the connection between denial of Indigenous land titles and access to land and resources, and the instability of today's generation of young Aboriginal families which makes them vulnerable to harrassment and intervention by child apprehension agencies.

continued from page 3: # text of Canada UNDRIPA 2021

Whereas the Government of Canada rejects all forms of colonialism and is committed to advancing relations with Indigenous peoples that are based on good faith and on the principles of justice, democracy, equality, non-discrimination, good governance and respect for human rights;

Whereas the Declaration emphasizes the urgent need to respect and promote the inherent rights of Indigenous peoples of the world which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories, philosophies and legal systems, especially their rights to their lands, territories and resources;

Whereas the Government of Canada recognizes that all relations with Indigenous peoples must be based on the recognition and implementation of the inherent right to self-determination, including the right of self-government;

Whereas the Government of Canada is committed to taking effective measures — including legislative, policy and administrative measures — at the national and international level, in consultation and cooperation with Indigenous peoples, to achieve the objectives of the Declaration;

Whereas the Government of Canada is **committed to exploring**, in consultation and cooperation with Indigenous peoples, measures related to monitoring, oversight, recourse or remedy or other accountability measures that will contribute to the achievement of those objectives;

Whereas the implementation of the Declaration can contribute to supporting sustainable development and responding to growing concerns relating to climate change and its impacts on Indigenous peoples;

Whereas the Government of Canada acknowledges that provincial, territorial and municipal governments each have the ability to establish their own approaches to contributing to the implementation of the Declaration by taking various measures that fall within their authority;

Whereas the Government of Canada welcomes opportunities to work cooperatively with those governments, Indigenous peoples and other sectors of society towards achieving the objectives of the Declaration;

Whereas the Declaration is affirmed as a source for the interpretation of Canadian law;

Whereas the protection of Aboriginal and treaty rights — recognized and affirmed by section 35 of the Constitution Act 1982 — is an underlying principle and value of the Constitution of Canada, and Canadian courts have stated that such rights are not frozen and are capable of evolution and growth;

Whereas there is an urgent need to respect and promote the rights of Indigenous peoples affirmed in treaties, agreements and other constructive arrangements, and those treaties, agreements and arrangements can contribute to the implementation of the Declaration;

Whereas respect for human rights, the rule of law and democracy are underlying principles of the Constitution of Canada which are interrelated, interdependent and mutually reinforcing and are also recognized in international law;

And whereas measures to implement the Declaration in Canada must take into account the diversity of Indigenous peoples and, in particular, the diversity of the identities, cultures, languages, customs, practices, rights and legal traditions of First Nations, Inuit and the Métis and of their institutions and governance structures, their relationships to the land and Indigenous knowledge;

Now, therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Short Title
Short title

1 This Act may be cited as the United Nations Declaration on the Rights of Indigenous Peoples Act.

Interpretation
Definitions

2 (1) The following definitions apply in this Act.

Declaration means the United Nations Declaration on the Rights of Indigenous Peoples that was adopted by the General Assembly of the United Nations as General Assembly Resolution 61/295 on September 13, 2007 and that is set out in the schedule.

Indigenous peoples has the meaning assigned by the definition aboriginal peoples of Canada in subsection 35(2) of the Constitution Act 1982.

Minister, for the purposes of any provision of this Act, means the federal minister designated as the Minister for the purposes of that provision under section 3.

Rights of Indigenous peoples

(2) This Act is to be construed as upholding the rights of Indigenous peoples recognized and affirmed by section 35 of the Constitution Act 1982, and not as abrogating or derogating from them.

Clarification

(3) Nothing in this Act is to be construed as delaying the application of the Declaration in Canadian law.

Designation of Minister
Order designating Minister

3 The Governor in Council may, by order, designate any federal minister to be the Minister for the purposes of any provision of this Act.

Purposes of Act
Purposes

4 The purposes of this Act are to

(a) affirm the Declaration as a universal international human rights instrument with application in Canadian law; and

(b) provide a framework for the Government of Canada's implementation of the Declaration.

Measures for Consistency of Laws and Achieving the Objectives of the Declaration

Consistency

5 The Government of Canada must, in consultation and cooperation with Indigenous peoples, take all measures necessary to ensure that the laws of Canada are consistent with the Declaration.

Action plan

6 (1) The Minister must, in consultation and cooperation with Indigenous peoples and with other federal ministers, prepare and implement an action plan to achieve the objectives of the Declaration.

Content

(2) The action plan must include

(a) measures to
(i) address injustices, combat prejudice and eliminate all forms of violence, racism and discrimination, including systemic racism and discrimination, against Indigenous peoples and Indigenous elders, youth, children, women, men, persons with disabilities and gender-diverse persons and two-spirit persons, and

(ii) promote mutual respect and understanding as well as good relations, including through human rights education; and

(b) measures related to monitoring, oversight, recourse or remedy or other accountability measures with respect to the implementation of the Declaration.

*Other element*s

(3) The action plan must also include measures related to monitoring the implementation of the plan and reviewing and amending the plan.

Time limit

(4) The preparation of the action plan must be completed as soon as practicable, but no later than two years after the day on which this section comes into force.

Tabling in Parliament

(5) The Minister must cause the action plan to be tabled in each House of Parliament as soon as practicable after it has been prepared.

Action plan made public

(6) After the action plan is tabled, the Minister must make it public.

Report to Parliament
Annual report

7 (1) Within 90 days after the end of each fiscal year, the Minister must, in consultation and cooperation with Indigenous peoples, prepare a report for the previous fiscal year on the measures taken under section 5 and the preparation and implementation of the action plan referred to in section 6.

Tabling in Parliament

(2) The Minister must cause the report to be tabled in each House of Parliament on any of the first 15 days on which that House is sitting after the report is completed.

Referral to committee

(3) The report stands permanently referred to the committee of each House of Parliament that is designated or established to review matters relating to Indigenous peoples.

Report made public

(4) After the report is tabled, the Minister must make it public.

End Quote
of the full text of the 2021 Canada UNDRIPA

The Fourth World turns fifty

Book review:
The Fourth World - An Indian Reality
By George Manuel and
Michael Posluns
1974, The Free Press; re-released 2019 by the University of Minnesota Press

The most celebrated holiday around the world is Independence Day. That is, the date when a modern country gained independence from colonizers.

For the Fourth World, the Aboriginal World, a date of this kind has yet to come.

"The bond of colonialism we share with the Third World *peoples*," wrote George Manuel, a Secwepemc statesman of such colossal achievements that noting them here would leave no room for a book review, "is the shared values that distinguish the Aboriginal world from the *nation-states of the Third World*."

"The Third World is emerging at this time primarily because it is rapidly learning to adapt its lifestyle to Western technology; it reacts to Western political concepts; and it uses racial issues to pivot its expanding influence between the super-powers, gathering concessions from both sides while struggling to imitate them."

In this book, Manuel and Posluns show what the Fourth World can be, and how, in Manuel's lifetime and political career, that potential was consistently derailed by intervening government institutions. The Indian Agent, the priest, the church- and state-run schools, the colonial doctor, the duplicitous politician using discretionary political powers.

Fifty years later, the tools to achieve that self-determining legal pluralism in Canada have only multiplied - but so have the coercive and assimilationist forms of the Agent, lawyer, politician. Still, the concept has proven out, and been adopted and nurtured by many.

Manuel grew up in 1920s Secwepemc. Raised by his grandparents, doctor and pharmacist respectively, he spoke his language and lived his natural national lifestyle. That is, until one day there was a fence across the berry trail. Until another day, when Indian Agents tossed his family wagon upon leaving Neskonlith and left their possessions scattered on the trail. Until, for the first time, a member of his village brought home a deer and did not share the meat around. Until the Indian Agents were poised to offer cash welfare payments to those of his community who had no food, no hunting or fishing rights, and not enough for winter.

"Centuries of cooperation, where both parties were benefitting and expanding, forged the Fourth World." But by 1974, "these alliances became like spent money. Gone."

The closest Hudson's Bay Company Fort was at Cache Creek, towards the western border of Secwepemc and many miles from Neskonlith. It is a potent fact that Manuel helped make the stand at Cache Creek, probably weeks after this book was released, to press the point into Canadian consciousness that the Indians had shared everything, more than what was promised, and the settlers had reneged, to the point that an old man's house destroyed by fire could not be replaced by any means at all: not by cutting trees to rebuild; not by the Department of Indian Affairs. The roadblock got a lot of press coverage; the issues behind it did not.

"Political independence for colonized people is only the third world. When Native Peoples come into their own on the basis of their own culture and traditions, that will be the fourth world."

Canada Post featured Manuel in a 2023 postage stamp, with design by Secwepemc artist Tania Willard.

I was born the same year this book was published - this crucial contradiction to the outsider's prejudicial version of history that formed minor bylines in my school books - and yet I learned about native people in the past tense, even as they sat in desks next to me.

This book is highly relevant today: a strong tonic of the very recent history, and lots of it, that has never been learned or understood by settlers before (or since) "reconciliation" was introduced.

If you want to know about the Alberta bands that blockaded Indian Residential Schools; the Cowichan housing marches; the real significance of the 1951 overhaul of the *Indian Act*; if you want to be in the room with the National Indian Advisory Council of the 1960s; hear the real legacy of Canadian Prime Ministers from Mackenzie King to Pierre Trudeau; Indian control of Indian education; then you should read this book.

It holds an inspiring vision, burning bright through time and lighting a future.

Potlatch laws were part of the *Indian Act* until 1951

Many Elders today learned the ways of the potlatch in secret. With dimmed lights, and lookouts posted outside around the gathering, and bibles and crosses at the ready - in case the potlatch should be raided by Indian Agents - the 140 year-old legacy is not so distant as it sounds.

It continued officially until 1951, but by that time the ban on ceremony had extended to all kinds of cultural activities, even singing and dancing. Although the law had changed on the books, it often did not change on the ground.

The late Rosalin Sam of Líl'wat said that the laws, which prohibited singing traditional songs as well, were still feared well into the 1960s. Dance groups only began to reappear in the 1970s - while singing broke out in the street: at roadblocks.

The late Ron George of Wet'suwet'en said, "In earlier days, as my Aunt Gloria recalls, they held feasts with no lighting at all, when the potlatch and the hereditary systems – even gatherings and singing– were illegal. There were always lookouts for white guys – cops or priests or game wardens. Apparently, it took a lot of white resource people to keep track of us 'savages'."

The laws weren't enforced right away. It wasn't until 1889 that the first charges were leveled, against Chief Hemasack of Kwakiutl. The charges were successfully appealed, and he was acquitted because the law on the books was so vague.

But once the ban was regularly enforced, it is said that the imposition had serious impacts on economy and government, criminalizing its center in the feast hall.

The Royal Commission on Aboriginal Peoples, 1992-96

recorded many testimonies to the impacts of banning the potlatch, as well as recollections of the practise itself

From RCAP's Final Report 1996, the role of the potlatch:

The practice of potlatching was intimately tied to the rank-ordered social organization of northwest coast societies. We draw particularly on accounts of the Tsimshian for illustration.

Clans traced their origin to an ancestor who was either an animal that could assume human form or a human being who had encountered such a supernatural being. The ancestor was the originator or the recipient of special gifts, which might be represented in names, crests, songs, stories and entitlements to harvest the fish, game and plants of certain places. Only the descendants of the common ancestor could exercise the privileges bestowed, and the relationship with the spirit benefactor had to be maintained by ceremonial observances and correct behaviour.

Names were inherited and carried with them different status and prerogatives.

Potlatches provided occasions to acknowledge and confirm this social order ceremonially. They were convened to mourn deaths, bestow names, erase the shame of accidents or ceremonial errors, recognize succession to titles and economic rights, and acknowledge marriages and divorces. The seating of guests and the value of gifts distributed accorded strictly with the prestige of each chief and lineage member. Attendance at the event and acceptance of gifts distributed confirmed that the participant had 'witnessed' the business being conducted. For example, if a chief died and a new chief assumed his name and rights over his territories, the new title holder would convene a feast where the boundaries of the territories would be recited. If the guests from other clans and neighbouring territories considered that the claims being made were wrong, they had an obligation to say so. *Continues on p.38*

"...prohibiting healing ceremonies like the potlatch and sun dance furthered the external society's regulatory control over community-based systems of healing in Aboriginal communities, and contributed to the suppression of traditional healing practises."

~ RCAP's Health & Healing Policy Draft, 5 May 1994: pp. 75-76.

Claims to territory, when validated through feasts, could not subsequently be overturned, because the memory of witnesses was a record as reliable in an oral culture as a deed in a registry office was in a literate culture.

The chief hosting the potlatch had the authority to convene the feast and to collect surplus goods from clan members to feed the guests and distribute presents, but his ceremonial position did not give him authority over members. Being a good host and showing generosity brought respect not only for the chief but also for the members of his clan. The desire to uphold the honour of the clan motivated clan members and their relatives to contribute. Although the chief could not command, he did have influence in decisions about village defence or the well-being of members, but these decisions were normally taken in consultation with other ranking members of the household and/or chiefs of other clans represented in the village.

Villages functioned autonomously, although villagers that were related linguistically or connected in trading relationships often came together ceremonially to cement relations. Conflicts within related groups such as the Tsimshian were known to occur over boundaries or the insult or even murder of a chief. Feasts were a means of avoiding or resolving such conflicts. Europeans observed that the potlatch was a way of fighting with property rather than with weapons.

Obviously, potlatches could be convened only by clans favoured with surplus resources harvested and manufactured from their environment. Accumulating goods for distribution at a potlatch could go on for years if the claims to be validated were of major significance to the clan. Not only the clan members contributed to the preparations. The rule was that persons had to marry outside their clan, with the

The potlatch was so essential to maintaining boundaries, limiting trespass, securing harvesting rights and social order, that west coast peoples were willing to risk and endure imprisonment rather than give it up

~

result that every individual was related to two clans. In a matrilineal society such as the Tsimshian, a chief was a member of his mother's clan. However, his father and his father's relatives contributed to the cost of hosting feasts and were subsequently repaid for their contributions, with interest.

The potlatch was so essential to maintaining boundaries, limiting trespass, and securing harvesting rights and social order that Tsimshian and other west coast peoples were willing to risk and endure imprisonment rather than give up potlatching when the practice was outlawed.

Gifts distributed to witnesses at potlatches included objects of everyday use and others elaborated and decorated for ceremonial value: utensils, blankets, boxes, canoes and copper plates. One of the most valued items, which might be distributed or ceremonially burned at the feast, was oolichan grease. The oolichan is a member of the smelt family; the fish is harvested in great quantities and pressed to remove its oil, which is valued as a preservative for other foods and as a condiment. The fish is so rich in oil that, after pressing and drying, it can be threaded with a wick and burned as a candle; thus the alternative name 'candlefish'.

Oolichan oil was a principal item of trade between coastal peoples and the interior.

Parliament, though it rarely provided adequate financial support, was only too willing to lend the weight of increasingly coercive legislation to the task, tightening departmental control of Indian communities in the service of economic and social change. The potlatch was portrayed as "the most formidable of all obstacles in the way of the Indians becoming Christian or even civilized".

This was a significant development in Indian policy because it went further than merely imposing non-Indian forms on traditional Indian governance or land holding practices — it was a direct attack on Indian culture.

In 1921 Duncan Campbell Scott issued revealing instructions to his agents:

"It is observed with alarm that the holding of dances by the Indians on their reserves is on the increase, and that these practices tend to disorganize the efforts which the Department is putting forth to make them self-supporting. ...You should suppress any dances which cause waste of time, interfere with the occupations of the Indians, unsettle them for serious work, injure their health, or encourage them in sloth and idleness."

...official disapproval and the pressure generated by it, harassment from the Indian agents, use of the Indian Act trespass provisions to evict Indians from other reserves, and mass arrests and trials did have the desired effect of eliminating or at least undermining the potlatch and other traditional ceremonies in many cases. This was particularly so under the leadership of Campbell Scott, who led a virtual crusade against traditional Indian cultural practices and who sponsored an amendment to the Indian Act in 1918 that gave Indian agents the additional power when acting as justices of the peace to prosecute the anti-dancing and anti-potlatching provisions.

Chief William Scow of Alert Bay:

appendice to the 1971,
Submission to the Prime Minister
and Government of Canada
by the Union of British Columbia
Indian Chiefs
as to the Claim Based on Native Title to
the Lands Now Forming
British Columbia
and the Waters Contained Therein
or Adjacent Thereto

"When Parliament passed the Potlatch Law in 1884, there were about 17,765 Indians in the coastal region directly affected by it. The Indian population of the province was declining at the time, and it continued to decline until 1929 when it reached its lowest point - an estimated 12,366 in that part of the province. In 1938, the year that Parliament directed its attention to the potlatch issue for the last time, the population trend had just been reversed, and by 1939 the Indian population had increased to 13,303.

The Southern Kwakiutl of the central Coast region, though only a relatively small portion of the total Indian population, provided the leaders who mobilized and sustained the opposition to the law and its enforcement. Figures for 1917 (the closest year to the first arrest in the Alert Bay trials, 1914-22, for which there are available figures) show an estimated 1,890 in the total Kwakiutl population, and by 1929, the next year for which figures are available, there were only 1,088 in the Southern group. Although the Southern Kwakiutls were the focus of the prosecutions between 1914 and 1922, the Potlatch Law controversy became, for all coastal Indians, a memorable experience.

It is reported by Hawthorn and his associates that:
"a number of current (1958) beliefs and attitudes had their origin in the long struggle around this institution (the potlatch) and have survived today with something of a life of their own." What these beliefs and attitudes are, they do not specify. The evidence suggests, however, that particular experiences during the potlatch issue developed a general sense of injustice. Even the missionaries had recognized that the potlatch was central to the social organization of the Indians. The Indians came to consider the missionaries' efforts to eliminate this basic institution along with court and police actions, as an unjust denial of the Indian past. William Scow, one of the Kwaukiutl potlatchers convicted in 1922, now Chief Scow and several times president of the Native Brotherhood, is considered to be one of the outstanding Indian leaders in all Canada. He expressed the Indian view to Mr. R.A. Howy, then Deputy Superintendent-General of Indian Affairs, that: "when you took the potlatch away from us, you gave us nothing to take its place."Chief Scow's statement means that the whites were unable to create a substitute institution which would continue the past and provide the basis for the anticipation of the future as did the potlatch.

The Potlatch Law experiences were not the sole factor responsible for developing the Indians' sense of injustice; there were many others also related to the settlement process. One gains some notion of the Indians' feelings resulting from the European invasion, the conflict, and the subordination as well as the cultural change in the letter of Chief Billy Assu, a Kwakiutl of the Cape Mudge band and a defendant in the 1922 potlatch trials.

Unavoidably of course, the policies relating to land and reserves involved displacement and resettlement for the Indian. The Indians of today manifest feelings of suspicion and distrust not only about the unwarranted negation of their traditions but also about the Reserve system.

"Reserve psychosis," a term first employed by John Dewey, refers to a particular frame of mind, a rigidly integrated complex of attitudes which makes the Indians over-defensive about the management of their Reserves and resources and about their rights in relation to the Reserves. The "Reserve psychosis" was a product of many actions. As in the case of the potlatch, general social unrest gradually became focused around a claim to the ownership of the whole province, and the protest grew from a simple expression of belief to a complex legal case.

We have seen from the potlatch controversy that the whole of native life in the northwest was becoming unsettled. Because social control had broken down, it became possible for Indians who had never before had the sanctioned right to potlatch to secure trade goods and engage in the ceremonial practices.

Indians, missionaries, government officials, and settlers were considerably agitated. The continued defensive line of the province in response to Indian protests and the actions of the federal government, the increasing political education of the natives, the gradual loss of unrestricted resources for the natives, and the partial urbanization of some tribes - these were just a few of the factors which operated to define the idea of an aboriginal title, a title that could be extinguished only by a "meeting in council" and some kind of settlement. For them, settlement by potlatch was the traditional way, but as white people could not understand the native view of potlatching, the idea of extinguishing the aboriginal title by negotiation was taken up as a substitute. It later acquired a symbolic importance, charged with emotions, which no one envisaged in 1874."

While British North America banned the Potlatch in 1884, the Berlin Conference on European trade in West Africa established lofty conventions

From the famous "Three Pager" by James Douglas Louie, Pau-tuclasimc of Líl'wat:

The principle of the Sacred Trust of Civilization can be traced at least to the Sixteenth Century. It is an expression of the obligation of conquering powers to treat indigenous peoples in a way which promotes their well being and self determination.

In the 18th Century this principle was developed and manifested in the mandate system, whereby the Mandatory powers were said to administer colonial territory in Trust for the people under their control.

The Berlin Conference held in 1884-85 is testimony to the tacit agreement of the European powers to this Sacred Trust. It was made clear, that the normal title of acquisition of territory by European powers was the bilateral Treaty and not discovery or unilateral occupation.

Debates at this conference concerned various conceptions in international law, the classic one being the rule of law of Nations, according to which freedom of consent to the transfer of territory from the original inhabitants to the new rulers was to be done with consent.

This consent was sacrosanct.

The principle of voluntary consent was "at least tacitly accepted by the conference."

47 years prior, in 1837, the British House of Commons appointed a committee to consider the measures to be adopted with regard to the Native inhabitants of countries where British settlements are made. Their report was published June 26, 1837. No encroachments on the territory or disregard of the rights of the aboriginal inhabitants of countries, including what is now Canada, was to be allowed. The protection of the aborigines was considered a duty, and:

"whatever may be the legislative system of any colony, we therefore advise that, as far as possible, the aborigines be withdrawn from its control."

"Chief William Scow, left, with Vicount Alexander of Tunis as honourary Chief Nakapunkim and Brigadier Hoffeister at Diamond Jubilee celebration at Kitsilano Beach." July 13,1946. City of Vancouver Archives, Major J.S. Matthews collection, Public Domain. Chief Scow was among many leaders arrested for a potlatch given in 1922. Read his 1971 paper, over the page.

July AQ

Archive Quarterly

Ten years after title in *Tsilhqot'in Nation*

Denial of title, access, brings housing crisis on reserve into 8th decade

Native Peoples Caravan

$5b Kelowna Accord promised change

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